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February 8, 2018

British Columbia Utilities Commission  
Suite 410, 900 Howe Street  
Vancouver, BC  
V6Z 2N3

Attention: Mr. Patrick Wruck, Commission Secretary and Manager, Regulatory Support

Dear Mr. Wruck:

**Re: FortisBC Alternative Energy Services Inc.**

**Application for Approval of the Fiscal 2018/2019 Revenue Requirements and Cost of Service Rates for the Thermal Energy Service to Delta School District No. 37 (DSD) (the Application)**

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Pursuant to sections 59 to 61 of the *Utilities Commission Act*, please find attached FAES' Application for approval of the Fiscal 2018/2019 revenue requirements and rates for the Thermal Energy Service to the DSD based on the switch to COS rates.

If you require further information or have any questions regarding this submission, please contact Grant Bierlmeier at (604) 443-6548.

Sincerely,

**FORTISBC ALTERNATIVE ENERGY SERVICES INC.**

***Original signed:***

Doug Slater  
General Manager

Attachments

cc (email only): Delta School District No. 37



**FORTISBC ALTERNATIVE  
ENERGY SERVICES INC.**

**Application for Approval to  
Charge the Cost of Service Rate to  
Delta School District No 37**

**February 8, 2018**

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1 **1. EXECUTIVE SUMMARY**

2 The British Columbia Utilities Commission (BCUC or Commission) Orders G-31-12, C-3-12, G-  
3 71-12 and G-88-12, approved the Certificate of Public Convenience and Necessity (CPCN) and  
4 the agreements (contracts) negotiated between FortisBC Alternative Energy Services Inc. (FAES)  
5 and the Delta School District (DSD) for service to buildings in the DSD for a single rate described  
6 as the Thermal Energy Rate. The approved contracts set out the use of a pooled, postage stamp,  
7 cost of service based rate referred to as the Cost of Service Rate (COS Rate) to recover the  
8 Annual Cost of Service (COS) FAES incurs in providing thermal energy to the buildings. These  
9 contracts also include a transitional market rate (MR) to be in place for a period of time prior to  
10 charging the COS Rate, and an associated DSD deferral account referred to as the District  
11 Deferral Account (DDA). The DDA collects the cumulative difference between the revenues and  
12 the COS during the transitional period where the MR is in effect, for future recovery in the COS  
13 Rate.

14 The negotiated contracts between the DSD and FAES establish that, at any time, either, the DSD  
15 can elect to pay the COS Rate, or FAES can apply to the Commission to charge the COS Rate.  
16 Under the agreements, neither option is contingent upon the relative position of the MR and the  
17 COS Rate.

18 Since 2012, the DSD has been paying the MR, which has not only been lower than the COS  
19 Rates would have been<sup>1</sup>, but also lower than the MR that DSD anticipated it would be paying  
20 based on the forecasts included in the original CPCN Application.

21 The Commission approved COS Rates and the DDA balances for the contract years 2012/13 (by  
22 Order G-88-12), 2013/14 (by Order G-81-13), 2014/15 (by Order G-100-14) and 2015/16 (by  
23 Order G-213-15). As part of the Commission review of the COS for 2015/16, the Commission  
24 explored whether it was appropriate to have the DSD start paying the COS Rate at that time, and  
25 whether review of the COS was necessary until the DSD begins to pay the COS Rates.  
26 Subsequently, the annual COS Rates and DDA balances for 2016/17 and 2017/18 were provided  
27 by FAES to the Commission and the DSD for information purposes only. Consistent with its  
28 previous COS Rate approvals, FAES has prepared its COS Rate forecast and DDA balance,  
29 included in Appendix A.

30 The COS has dropped below the forecast provided in the CPCN, Rates and Rate Design  
31 applications for the COS in year 5 of the service. Accordingly, the costs that the DSD could expect  
32 to pay in 2018/19 are consistent with predictions made at the outset of service in 2012.

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<sup>1</sup> As evident in Appendix A, the MR has been significantly below the revenue forecast the first 5 years, and is likely to remain that way for the foreseeable future. This can largely be attributed to the following factors:

1. The MR is tied to natural gas pricing which has declined significantly; and
2. The volume of thermal energy sold was significantly lower than originally forecast.

1 The variance in revenue between the COS and the MR has caused the accumulation of  
2 approximately \$3.845<sup>2</sup> million in the DDA, which is expected to continue to grow at a rate of  
3 approximately \$650 thousand per annum (before amortization and AFUDC) unless the switch is  
4 made to the COS Rate now. Delaying payment of the COS Rate any further will harm both the  
5 DSD and FAES. Growth and carrying costs of the DDA balance will only increase DSD's future  
6 costs and increase the financial risks to FAES. Further, ongoing use of the MR not only precludes  
7 FAES from having a reasonable opportunity to earn a fair return on its investment, but is also  
8 inadequate to even cover the cost of electricity, natural gas, and operating expenses. For these  
9 reasons, FAES submits that now is the appropriate time to charge the COS Rate.

10 FAES is applying to the Commission for approval of the 2018/19 COS Rate which will be charged  
11 to the DSD effective July 1, 2018 (the Application). The COS Rate is based on the Annual COS  
12 calculations prescribed in the contracts and set out in this Application, as well as approval of the  
13 actual DDA balance on June 30, 2017. There are several reasons why now is the appropriate  
14 time to begin to charge the COS Rate:

- 15 1. The natural transition period to the underlying COS Rate of 2 to 5 years has now elapsed  
16 and the DSD has paid \$4,268,000 less than the expected business as usual (BAU)<sup>3</sup> and  
17 \$2,720,000 less than the COS during that period;
- 18 2. Thermal energy system operations have stabilized and it is now established that demand  
19 is significantly below the original forecasts;
- 20 3. Continued efforts by FAES to facilitate expansion of the rate pool have not resulted in any  
21 reasonable prospects of adding additional schools in the near or long term; and
- 22 4. FAES and DSD have made effort to negotiate alternative solutions, but those efforts did  
23 not result in an agreement.

## 24 **1.1 APPROVALS SOUGHT**

25 Pursuant to section 59 to 61 of the *Utilities Commission Act* (UCA), FAES is seeking the  
26 Commission's approval of the COS Rate of \$0.223 per kWh, effective July 1, 2018. Further,  
27 pursuant to section 89 of the UCA, if the Commission is unable to render its decision on this  
28 Application before July 1, 2018, FAES requests the Commission set an interim rate at the forecast  
29 COS Rate (\$0.223 per kWh), effective July 1, 2018, pending the Commission's final determination  
30 in this Application. After a final determination is made in this Application, any difference between  
31 the interim rate and the approved rate will be debited or credited to the DDA as required.

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<sup>2</sup> Forecast at June 30, 2018

<sup>3</sup> The Business as Usual (BAU) cost refers to the DSD would expect to pay for the cost of energy (natural gas, electricity), associated carbon offsets, and the operation and maintenance of the existing heating plants at the affected facilities, at the time of the agreement (Exhibit C1-2, BCUC 1.22.1) – See Appendix F, Quick Reference Quotes - BCUC Decision, Order G-31-12 page 52.

1 A draft final order with the specific orders sought is included in Appendix D.

## 2 **1.2 REGULATORY PROCESS**

3 FAES has abided by the terms of the contracts, has been unsuccessful in negotiating a resolution  
4 with the DSD on this matter, has provided the DSD with advance notice of its intent to make this  
5 Application, and has provided the DSD with an advance copy of this Application. FAES also  
6 sought comments from the DSD on this matter, which have been included in Appendix C. FAES's  
7 proposed process is outlined below, along with a response to DSD's proposed process.

### 8 **1.2.1 A Written Hearing Process is Appropriate**

9 The most efficient and cost effective regulatory review process for this Application is a written  
10 hearing involving FAES and the DSD, consisting of the steps outlined in the table below.

11 A written hearing process recognizes:

- 12 • The Application turns on the negotiated contracts between DSD and FAES, which the  
13 Commission approved in 2011 and 2012;
- 14
- 15 • The Commission's decision in this matter, which is tied to the administration of an existing  
16 service agreement, does not impact any other customers; traditional ratepayer groups  
17 thus have no interest in the outcome; and
- 18
- 19 • The Application does not require a broader public interest determination.

20  
21 Involving other groups in the process that are neither parties to the agreement, nor have a direct  
22 financial stake in the outcome, would be inefficient. It would lengthen and complicate the process.  
23 The additional regulatory costs would serve to increase the DDA balance unnecessarily.

24 The proposed timetable accommodates DSD filing its own evidence setting out its views, and  
25 recognizes that there are efficiencies in having DSD provide that evidence before any information  
26 requests. The dates have been revised in response to the DSD's comment (in Appendix C) that  
27 it would need additional time to file evidence.

ACTION	Date (2018)
DSD Submission of Evidence (if any)	Friday, March 9
Commission and DSD IRs to FAES	Thursday, March 15
Commission and FAES IRs to DSD	Thursday, March 29
FAES Response to IRs	Friday, April 6
DSD Response to IRs	Friday, April 20
FAES Rebuttal Evidence (if any)	Friday, May 11

FAES Final Argument	Friday, May 25
DSD Final Argument	Friday, June 8
FAES Reply Argument	Friday, June 22

1 **1.2.2 Response to DSD’s Proposed Regulatory Process**

2 In its comments in Appendix C, the DSD has requested an oral hearing. The process sought by  
3 DSD goes significantly beyond what would normally be employed by the Commission to address  
4 a proceeding of this nature and scope. There is no compelling rationale to add to the complexity  
5 and cost of the process.

6 The Commission routinely deals with very significant matters entirely in writing (e.g. the British  
7 Columbia Hydro and Power Authority Revenue Requirements Application, Resource Plan filings,  
8 FortisBC Energy Inc. Lower Mainland Intermediate Pressure System Upgrade Project CPCN  
9 Application, etc.). All prior processes related to DSD, including the CPCN process itself, have  
10 been addressed in writing. The Commission should be particularly concerned about the efficiency  
11 of the process in this context. The costs of this process will flow into the deferral account. In  
12 circumstances such as this where there is a concern about the recovery of a growing deferral  
13 account balance, adding unnecessarily to the balance is counter productive.

14 The DSD’s stated rationale for departing from typical practice is that this proceeding turns on  
15 credibility, including with respect to prior representations made by FAES. FAES submits that this  
16 proceeding, at its core, involves interpreting a written agreement between sophisticated parties  
17 that were represented by legal counsel. During the CPCN proceeding, the DSD confirmed in  
18 response to Commission information requests that they are sophisticated and that they  
19 understood the agreement.<sup>4</sup> The agreement that DSD signed is unequivocal that the written  
20 agreement contains the entire agreement between the parties:

21 **11.8 ENTIRE AGREEMENT**

22 This Agreement contains the whole agreement between the Parties in respect of the  
23 subject matter hereof and there are no terms, conditions or collateral agreements  
24 express, implied or statutory other than as expressly set forth in this Agreement and  
25 this Agreement supersedes all of the terms of any written or oral agreement or  
26 understanding between the Parties, including without limitation the letter of intent  
27 between the Parties dated February 7, 2011.<sup>5</sup>

28 Moreover, contrary to DSD’s argument, live witnesses are not necessary to address “prior  
29 submissions that FAES made to the Commission concerning the allocation of risk within the RDA  
30 and liability for the DDA”<sup>6</sup>. FAES’ submissions and evidence in prior proceedings were made in

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<sup>4</sup> CPCN and Rates Application, Exhibit C1-2, DSD Response to BCUC IR 1.20.1 (See Appendix F).

<sup>5</sup> RDA Section 11.8.

<sup>6</sup> DSD Comments, page 5 (Appendix C).

1 writing. They are part of the public record and are available to be filed as part of DSD's evidence  
2 in this proceeding to the extent DSD feels it is necessary to do so.

3 Finally, the DSD suggests that other parties such as the original interveners should have the  
4 opportunity to participate in this proceeding. The original CPCN application was filed by FEI, not  
5 FAES. Ratepayer groups that registered as interveners in the CPCN proceeding were interested  
6 in the potential impact of this service on natural gas ratepayers of FEI. This interest no longer  
7 exists as the service has been separated from FEI.<sup>7</sup>

8 DSD has also cited government as a potential intervener. As mentioned above, this proceeding,  
9 at its core, relates to the interpretation of the agreements between FAES and the DSD. The DSD  
10 was the sole signatory to the agreements and represented to FAES that it was authorized to enter  
11 into the agreements in the RDA:

12 **5.1 DISTRICT'S REPRESENTATIONS AND WARRANTIES**

13 The District hereby represents and warrants to FEI as follows, as of the Effective Date,  
14 and acknowledges that FEI is relying on these representations and warranties in  
15 entering into the transactions contemplated by this Agreement:

16 (a) the District has the full right, power and authority to enter into this Agreement;

17

18 (b) all necessary action on the part of the District has been taken to authorize and  
19 approve the execution and delivery of this Agreement and the performance by  
20 the District of its obligations hereunder;

21

22 (c) this Agreement and the performance of its obligations under this Agreement does  
23 not and will not breach any provisions of any other agreement or Law that is  
24 binding on or applicable to the District as of the date of this Agreement;

25

26 (d) the District is not party to any action, suit or legal proceeding, actual or  
27 threatened, and there are no circumstances, matters or things known to the  
28 District which might give rise to any such action, suit or legal proceeding, and  
29 there are no actions, suits or proceedings pending or threatened against the  
30 District before or by any Governmental Authority, which could affect the District's  
31 ability to perform its obligations under this Agreement.<sup>8</sup>

32 For the reasons set out above, FAES submits that a written process should be limited to the  
33 customer - DSD - and the utility - FAES - in order to avoid adding unnecessary costs and  
34 complication to an application concerning the interpretation of an agreement between two parties.

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<sup>7</sup> The assignment and transfer of the service to FAES pursuant to directive 1 of Order G-31-12, and confirmed by the granting of the CPCN by Order C-3-12.

<sup>8</sup> RDA Section 5.1.

1    **1.3    *FAES INITIAL RESPONSE TO DSD INITIAL COMMENTS***

2    DSD has provided initial comments on the substance of FAES' Application, but indicated that it  
3    will be making further submissions. FAES will await that evidence to provide a complete  
4    response. However, as an initial comment, DSD's interpretation of the agreement (summarized  
5    by DSD on page 2 of Appendix C) as allowing DSD to pay below-cost rates for as long as it  
6    desires with FAES assuming all liability for millions of dollars in unrecovered costs contradicts the  
7    express terms of the agreement. The agreement allows FAES to apply to switch the DSD to cost  
8    of service rates, without limitation on the timing of such an application. DSD's interpretation is so  
9    one-sided in favour of the DSD that it lacks an air of commercial reality.

10   FAES is sympathetic to DSD's budgetary concerns to a point, but DSD is a sophisticated party. It  
11   has had the ability to budget appropriately, particularly when it has been benefitting from market  
12   rates that are even lower than the market rates that had been forecasted by the parties at the  
13   outset. The DSD has chosen to spend that unexpected benefit, rather than set it aside. FAES  
14   has a valid and binding agreement with the DSD, and is only seeking to implement that agreement  
15   in accordance with the terms.

16   The DSD has included in its letter discussion about the specifics of "without prejudice"  
17   negotiations between the parties. FAES disagrees with the DSD's characterization of the  
18   negotiations between the parties. However, since these discussions were conducted on a  
19   "without prejudice" basis, FAES will refrain from providing its perspective in keeping with the  
20   agreement of the parties. FAES has respectfully requested that the DSD do the same in their  
21   future correspondence.

22

1 **2. BACKGROUND**

2 **2.1 NEGOTIATED CONTRACTS APPROVED BY THE BCUC**

3 In 2011, DSD and FAES negotiated a series of contracts supporting the provision of thermal  
4 energy services at existing and future sites within the DSD with an initial term of 20 years. The  
5 parties negotiated an Energy System Service Agreement (ESSA) for each site and an overall  
6 Rate Development Agreement (RDA) that pools the costs of providing service to each ESSA into  
7 a single COS Rate. This single, pooled, postage stamp rate recovers the COS that FAES incurs  
8 to serve all of the buildings. Copies of the DSD contracts are provided in Appendix E.

9 In 2011, FAES applied to the Commission for a CPCN for the construction and operation of the  
10 thermal energy service. The Commission issued Orders G-31-12, G-71-12 and G-88-12, which  
11 approved the CPCN including the negotiated contracts between FAES and DSD.

12 The 20 contracts which comprise the approved agreement between FAES and the DSD were  
13 negotiated between two sophisticated parties. This view was shared by the Commission:

14 However, the Panel is of the view that the parties to this agreement are  
15 sophisticated, Delta SD needs to replace aging infrastructure, and the Project  
16 presents Delta SD with the opportunity to reduce its GHG emissions while helping  
17 to mitigate its exposure to potentially increasing carbon offset costs in the future.  
18 The Panel also acknowledges that the Project may provide a benefit to FEI as it  
19 undergoes a transformation and that this could potentially benefit its existing  
20 natural gas customers. Accordingly, the Panel considers this a justification for the  
21 Project to proceed.<sup>9</sup>

22 **2.1.1 Cost of Service Rate Design**

23 The RDA is a Cost of Service rate design with an Annual Cost of Service defined as:

24 d. “Annual Cost of Service” means FEI’s total cost of Services for all of the  
25 Buildings in respect of which the Parties have entered into Energy System  
26 Service Agreements at any time during the Term and that have been  
27 approved by the BCUC, including:

28 (i) the return on the Rate Base Value of FEI necessary to provide Service  
29 to all of the Buildings in respect of which the Parties have entered into  
30 Energy System Service Agreements at any time during the Term and  
31 that have been approved by the BCUC, utilizing the capital structure of  
32 FEI, the debt financing rate in that capital structure at the benchmark

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<sup>9</sup> Order G-31-12, Page 65, (see Appendix F).

- 1 rate of return on equity for utilities in British Columbia plus 50 basis  
2 points;
- 3 (ii) amortization, depreciation and tax costs;
- 4 (iii) direct costs;
- 5 (iv) Energy Purchase Costs;
- 6 (v) A reasonable amount for overhead allocation and administration;
- 7 (vi) the annual amount necessary to recover the SD37 Rate Rider discount  
8 provided in the immediately prior Annual Period;
- 9 (vii) the annual amount necessary to amortize the District Deferral Account  
10 balance, either credit or debit, over the remaining years in the Term or  
11 ten (10) years, whichever is longer; and
- 12 (viii) any other amount that the BCUC determines that it should be included  
13 from time to time.<sup>10</sup>

#### 14 **2.1.2 Market Rate Mechanism**

15 The RDA also includes a “transitional” market rate available to the DSD at the outset of the  
16 service.

- 17 (ee) “Market Rate” at any point in time means an amount equal to:  
18 Initial Market Rate x Index Adjustments<sup>11</sup>

19 The MR was conceived as a proxy for the total costs of thermal energy for all the sites, or business  
20 as usual, less a negotiated reduction. This total cost was then expressed as a rate for thermal  
21 energy consumption based on the estimated thermal energy demand in total for all the sites  
22 combined in the RDA. During the time that the MR is in effect, the MR changes each month in  
23 accordance with the Statistics Canada index for natural gas prices in British Columbia. The  
24 parties established this MR and monthly adjustment mechanism together and included it as  
25 Appendix B of the RDA.

26 The Initial Market Rate was set by taking the business as usual cost of \$941,000 divided by the  
27 estimated thermal energy demand of 10,600 MWH.<sup>12</sup>

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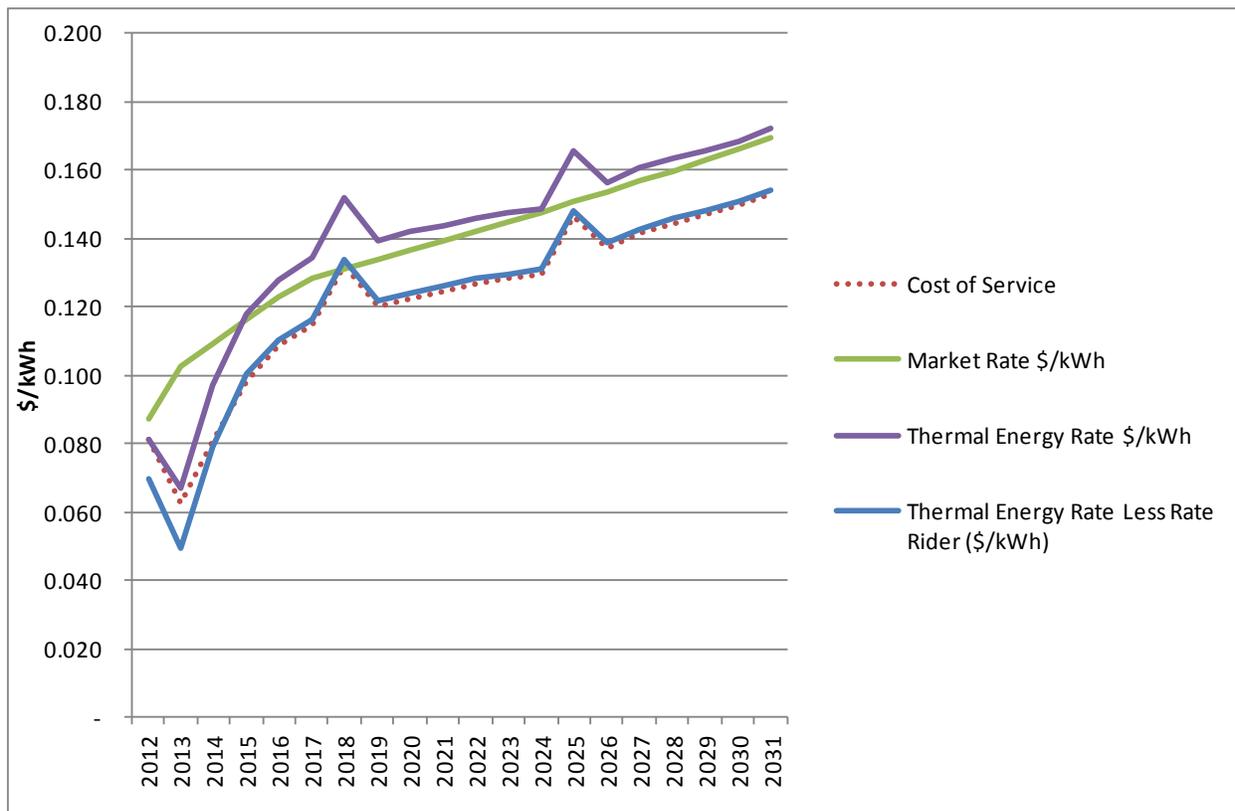
<sup>10</sup> RDA Section 1.1 (d).

<sup>11</sup> RDA Section 1.1 (ee).

<sup>12</sup> RDA Appendix B. The Business as Usual (BAU) cost refers to the DSD would expect to pay for the cost of energy (natural gas, electricity), associated carbon offsets, and the operation and maintenance of the existing heating plants at the affected facilities, at the time of the agreement (Exhibit C1-2, BCUC 1.22.1) – See Appendix F, Quick Reference Quotes - BCUC Decision, Order G-31-12 page 52.

1 The purpose of the transitional MR was to smooth annual charges to the DSD during the initial  
 2 years of the thermal energy service. Figure 1 below was included in Compliance Filing to Order  
 3 G-31-12 and illustrates the intention of the MR (green) to smooth initial variability. The transition  
 4 from the MR to the COS Rate was expected to occur within 2 to 5 years<sup>13,14,15</sup>.

5 **Figure 1: Expected Market Rate and COS Rate (Order G-31-12 Compliance Filing)**



6  
 7 Any variances between the actual COS and revenues are captured in the DDA and included as  
 8 part of the COS after the switch to the COS Rate (see section 2.1.3 below).

9 The negotiated contracts between the DSD and FAES establish that, at any time, either, the DSD  
 10 can elect to pay the COS Rate, or FAES can apply to the Commission to charge the COS Rate.  
 11 Neither option is contingent upon the relative position of the MR and the COS Rate. The  
 12 transitional market rate was not intended to be used for speculation or to delay paying the COS  
 13 Rate indefinitely. This was understood by the DSD as demonstrated in its response to BCUC IR  
 14 1.20.1 of Exhibit C1-2 of the 2011 CPCN and Rates application:

<sup>13</sup> CPCN and Rates Application, Exhibit B-3, FEI Response to BCUC IR 1.38.3 (see Appendix F).

<sup>14</sup> CPCN and Rates Application, FEI Final Submission, Paragraph 67 (see Appendix F).

<sup>15</sup> BCUC Order G-31-12, Paragraph 53 (see Appendix F).

1           20.0 TRIGGERING SWITCH FROM MARKET RATE TO COST OF SERVICE RATE

2           Reference: Exhibit B-3, BCUC 1.38.4 In response to BCUC 1.38.4, when asked  
3           what factor or criteria the Delta SD should consider before triggering their election  
4           to switch to the cost of service rate, FEI replied:

5                     ““Ultimately this is a question for the SD and not FEI.

6                     However, in FEI’s opinion, at any given time that the SD is on the market  
7                     rates the SD may well consider such things as the outright difference  
8                     between the two rates first, the budgetary conditions they currently operate  
9                     within, the prevailing market conditions for energy and the fact that the  
10                    market rate is intended to the transition, not provide a market speculation  
11                    mechanism.”

12           **BCUC 20.1** Does FEI’s response accurately describe the factors that the Delta SD  
13           would consider before triggering an election to switch from the market rate to the cost  
14           of service rate?

15           **DSD Response:** Yes, these factors have been discussed during agreement  
16           negotiations and are well understood by Delta SD.”<sup>16</sup>

17           Once the transition to the COS Rate occurs, the MR will no longer be available. These contract  
18           terms have been included below:

- 19           (rr)    "Thermal Energy Rate" means the Market Rate until either:
- 20                    i.   the District notifies FEI in writing that it elects to pay the Cost of  
21                    Service Rate; or
  - 22                    ii. FEI receives approval from the BCUC to charge the Cost of  
23                    Service Rate, provided that:
    - 24                        a.   at least 90 days prior to submitting its application to the BCUC,  
25                        FEI notifies the District in writing of its desire to charge the  
26                        Cost of Service Rate;
    - 27                        b.   FEI includes in the application any comments that the District  
28                        provides to FEI within 90 days of the notification in section (a)  
29                        above; and
    - 30                        c.   FEI sends a complete copy of the application to the District  
31                        prior to submitting it to the BCUC;

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<sup>16</sup> CPCN and Rates Application, Exhibit C1-2, DSD Response to BCUC IR 1.20.1 (Seen Appendix F)

1 after which time the Thermal Energy Rate means the Cost of Service Rate and the  
2 Market Rate will no longer be available.<sup>17</sup>

3 As set out in the RDA and referenced above, FAES must fulfil (and has fulfilled) the three  
4 requirements in ii (a) to (c) below prior to filing its application.

### 5 **2.1.3 District Deferral Account**

6 A key component of the Cost of Service rate design specified in the contract is the establishment  
7 of the DDA which is defined as:

8 q. "District Deferral Account" means the record of the cumulative difference  
9 between the Annual Cost of Service and revenues, including a provision for  
10 interest at the AFUDC rate;<sup>18</sup>

11 The RDA requires that the difference between actual revenues and the cost of service be recorded  
12 in the DDA for recovery or refund in future COS Rates. Upon approval, the COS Rate will include  
13 amortization of the DDA balance over the remaining 14 years in the initial term of the RDA such  
14 that the DDA balance is reduced to zero by the end of the initial term.<sup>19</sup> By including amounts in  
15 the DDA that capture all variances between revenues and the COS, the RDA is a cost of service  
16 based rate design, even during the transition period when the MR is in effect. In the years  
17 following approval of the COS Rate, the DDA will continue to capture the difference between  
18 revenues and the COS. These difference will be recorded in the DDA and amortized in the COS  
19 Rate over the number of years remaining in the initial term of the service.<sup>20</sup>

#### 20 **2.1.3.1 Impact of the DDA at Expiry**

21 At the end of the initial term, the contracts allow the DSD to either purchase the energy systems  
22 or have them removed. Given the nature of the systems, and the need for thermal energy,  
23 purchase of the systems is the more likely alternative unless the DDA balance is extremely large.  
24 The price that the DSD must pay for the energy systems is defined in each ESSA as follows:

25 (a) "Adjusted Energy System Purchase Price" means, as of the date on which a  
26 purchase of the Energy System pursuant to Article 15 is effective, either:

27 i. the Rate Base Value; or

28 ii. such other purchase price for the Energy System as is determined by the  
29 BCUC;

---

<sup>17</sup> RDA Section 1.1(rr).

<sup>18</sup> RDA Section 1.1(q).

<sup>19</sup> CPCN and Rates Application, Exhibit B-3, FEI Response to BCUC IR 1.37.7, 2015/2016 Revenue Requirement Application, Exhibit B-4-1, FEI Response to BCUC IR 1.2.4,

<sup>20</sup> CPCN and Rates Application, Exhibit B-3, FEI Response to BCUC IR 1.37.7, 2015/2016 Revenue Requirement Application, Exhibit B-4-1, FEI Response to BCUC IR 1.2.4,

1 plus all applicable taxes<sup>21</sup>

2 Rate base value is also defined in the contracts as follows:

3 (jj) "Rate Base Value" means the amount approved by the BCUC from time to time  
4 that is comprised of:

5 (i) mid-year net plant in-service (gross plant in service, less Capital  
6 Contributions, less accumulated depreciation relating to both, and negative  
7 salvage);

8 (ii) work-in-progress not attracting allowance for funds used during  
9 construction;

10 (iii) the mid-year balance of unamortized deferral accounts (regulatory assets  
11 and liabilities );

12 (iv) the thirteen-month average of cash working capital and other working  
13 capital; and

14 (v) mid-year future income tax asset and offsetting liability;<sup>22</sup>

15 As of June 30, 2018, the mid-year net plant in-service for the DSD is forecast to be \$6.211 million  
16 plus deferred charges of \$3.431 million and working capital of \$0.025 million. Therefore we  
17 estimate the Rate Base Value to be approximately \$9.667 million. At the expiry of the contract  
18 term, DSD has the option to either acquire the energy system or have FAES remove the energy  
19 system:

#### 20 15.1 Expiry

21 Upon expiry of the Term, unless otherwise agreed between the Parties and subject  
22 to agreement by the BCUC (if required pursuant to applicable Laws), the District  
23 may, at its option and by written notice to FEI within 30 days following the  
24 termination:

25 (a) require FEI to remove the Energy System at FEI's cost in accordance with  
26 Section 15.5; or

27 (b) acquire the Energy System from FEI at the Adjusted Energy System  
28 Purchase Price.<sup>23</sup>

29 Remaining on the MR and avoiding paying the COS will cause the DDA balance to continue to  
30 grow. With this growth, it is likely that the DSD will ask FAES to remove the assets, leaving DSD  
31 with a significant windfall (having paid less than even the ongoing operating costs) and leaving  
32 no opportunity for FAES to recover the DDA or to earn a fair return on its investment. FAES

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<sup>21</sup> ESSA Section 1.1(a).

<sup>22</sup> RDA Section 1.1(jj).

<sup>23</sup> ESSA Section 15.1

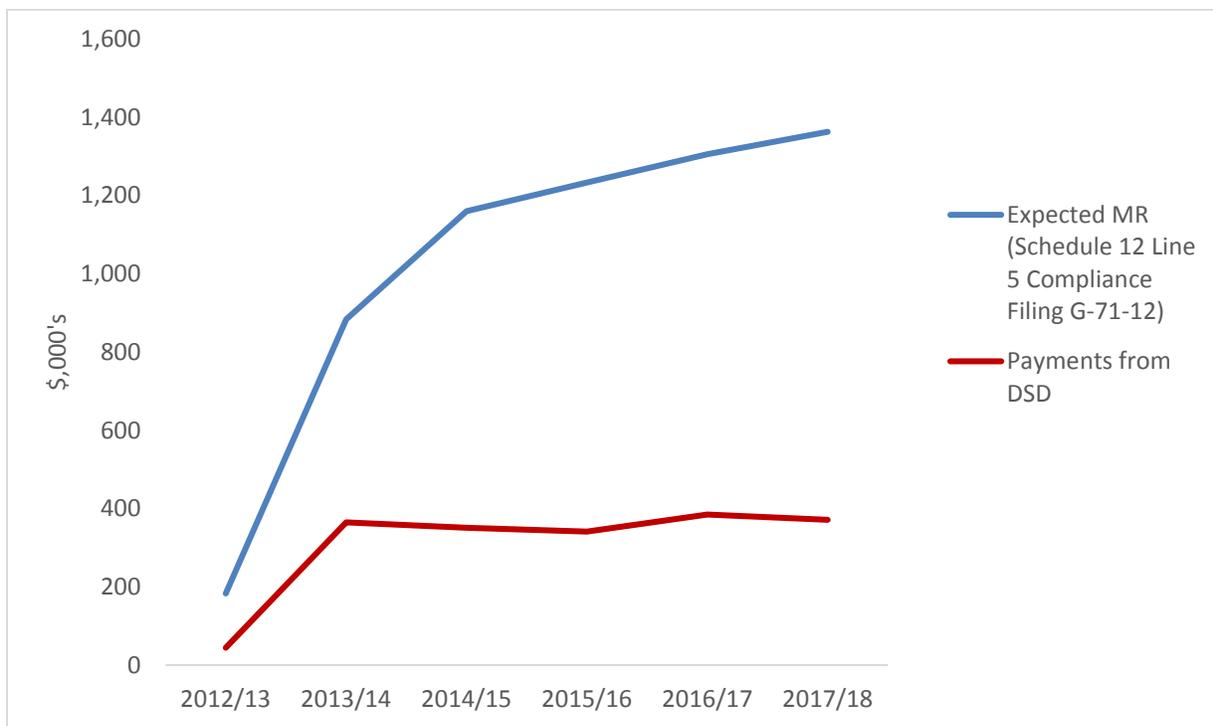
- 1 should have a reasonable opportunity to earn a fair return on its investment for the service it
- 2 continues to provide. This can only happen if the DDA balance stops growing and the revenues
- 3 are sufficient to recover both the COS and the DDA balance over the initial term, as set out in the
- 4 Contracts.

1 **3. CURRENT SITUATION**

2 **3.1 THE MARKET RATE TRANSITION PERIOD HAS PASSED**

3 The intention of the MR was to provide a transition period prior to charging the COS Rate within  
4 approximately 2 to 5 years<sup>24,25,26</sup>. However, the MR has remained significantly below expectations  
5 since the inception of the service, resulting in a reduction in payments from the DSD in the  
6 transition period of \$4,267,000 relative to the expected business as usual (MR) forecasts. Figure  
7 2 shows the disparity between the expected MR at the time and actual payments from the DSD  
8 in dollars.

9 **Figure 2: Expected MR vs. Payments from DSD**



10

11 As described above, the timing of the switch to COS was left flexible but was expected to occur  
12 within the 2 to 5 year timeframe. At present, it is clear that the MR will remain below the COS in  
13 the foreseeable future. Prolonging the use of the MR any longer will not serve the interests of  
14 either the DSD or FAES as it will only lead to a larger balance in the DDA, thereby increasing  
15 future rates to the DSD and financial risks to FAES.

<sup>24</sup> CPCN and Rates Application, Exhibit B-3, FEI Response to BCUC IR 1.38.3 (see Appendix F).

<sup>25</sup> CPCN and Rates Application, FEI Final Submission, Paragraph 67 (see Appendix F).

<sup>26</sup> BCUC Order G-31-12, Paragraph 53 (see Appendix F).

1 There are two factors that have contributed to the significant disparity between the expected MR  
2 and the actual revenue received:

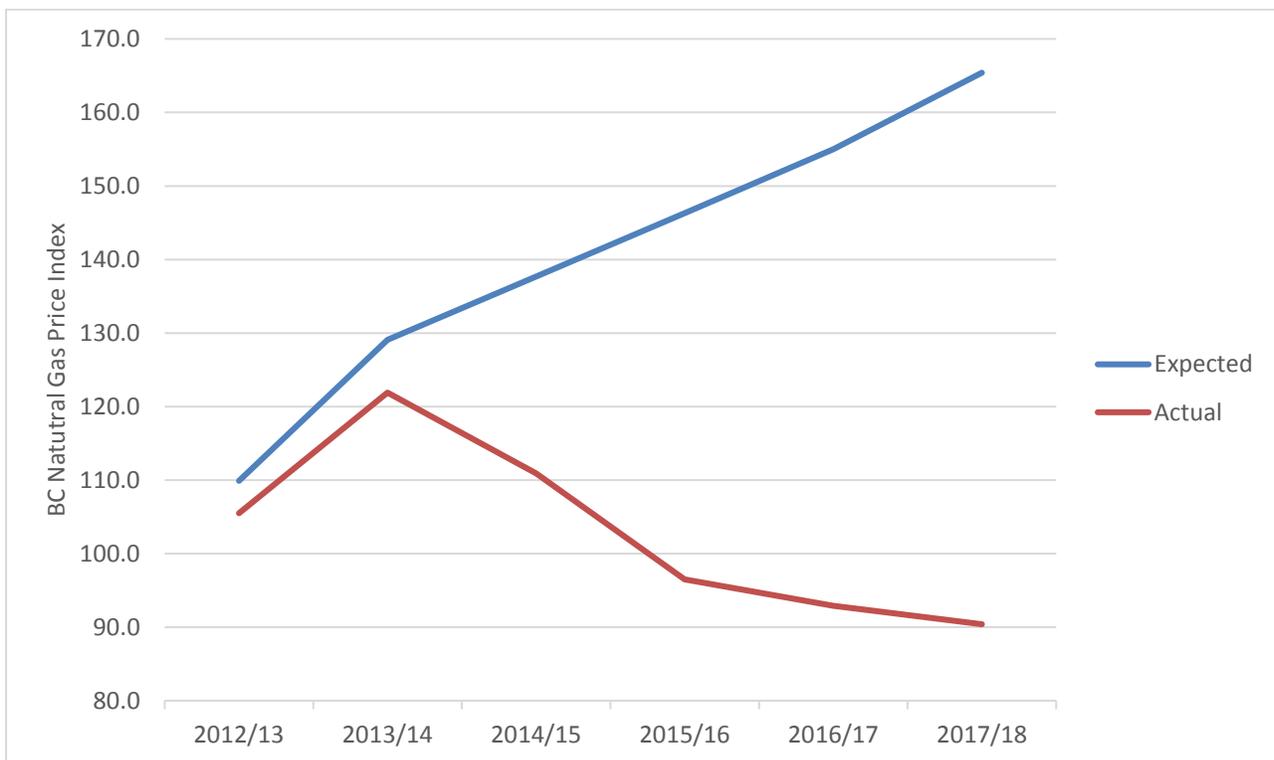
- 3 1. Natural gas prices fell significantly since the MR was calculated, which reduced the MR  
4 significantly. The DSD and FAES both expected natural gas prices to increase at the time  
5 the contracts were negotiated; and
- 6 2. The anticipated thermal energy demand (denominator) used to calculate the market rate  
7 did not materialize. This created a low initial market rate which was then used as the basis  
8 for all future years' market rates.

9  
10 These factors are discussed in more detail below.

### 11 **3.1.1 Lower Natural Gas Prices than Forecast**

12 The primary factor contributing to the variance in revenue relative to the expected BAU, is that  
13 natural gas prices fell significantly since the MR was calculated, which reduced the MR  
14 significantly. The DSD and FAES both expected natural gas prices to increase at the time the  
15 contracts were negotiated. The effect of the variance in thermal energy demand has been  
16 exacerbated by low natural gas prices relative to original forecasts. Figure 3 illustrates the sharp  
17 decline in pricing that occurred approximately 1 year into the service.

18 **Figure 3: BC Natural Gas Price Index Lower than Expected**



19

1 The lower price has had the effect of reducing revenues from the MR significantly. The total  
2 variance since the service began, due to lower price relative to the expected BAU is \$2,775,000,  
3 as shown below in Table 1.

4 **Table 1: Effect of Lower MR on Revenues**

Line	Particulars	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	Total
1	Expected Demand (MWh)	2,099	8,617	10,605	10,605	10,605	10,605	
2	Expected BAU Rate (\$/kWh)	0.087	0.103	0.109	0.116	0.123	0.129	
3	<b>Expected BAU (\$,000's)</b> Line 1 × Line 2	<b>183</b>	<b>884</b>	<b>1,160</b>	<b>1,233</b>	<b>1,306</b>	<b>1,363</b>	<b>6,129</b>
4	Actual Rate (\$/kWh)	0.066	0.079	0.070	0.059	0.056	0.054	
5	<b>Revenue at Expected Demand (\$,000's)</b> Line 1 × Line 4	<b>139</b>	<b>681</b>	<b>742</b>	<b>626</b>	<b>594</b>	<b>573</b>	<b>3,354</b>
6								
7	<b>Variance due to lower Price (\$,000's)</b> Line 3 - Line 5	<b>45</b>	<b>203</b>	<b>418</b>	<b>607</b>	<b>712</b>	<b>790</b>	<b>2,775</b>

6 **3.1.2 Lower Thermal Energy Demand than Forecast**

7 The second factor contributing to the variance in revenue relative to the expected BAU is that the  
8 anticipated thermal energy demand (denominator) used to calculate the market rate did not  
9 materialize. This permanently affected the initial market rate. Appendix B of the RDA used a  
10 total thermal energy demand for the sites of 10,600 MWh per annum. The purpose of the thermal  
11 energy demand estimate was to allow expression of annual costs into a unit rate. This demand  
12 estimate does not impact the overall COS or business-as-usual cost to the DSD, just the rates,  
13 which in turn affects the revenues.

14 This “business-as-usual cost” was divided by the estimated energy demand to set the initial MR  
15 at \$0.089/kWh, derived as \$941,000/10,600 MWh. Actual demand was significantly lower than  
16 this which had the effect of reducing the total revenues by \$1,492,000 through 2017/18 (see Table  
17 2 below).

18 **Table 2: Effect of Lower Demand on Revenues**

Line	Particulars	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	Total
1	Expected Demand (MWh)	2,099	8,617	10,605	10,605	10,605	10,605	
2	Actual Rate (\$/kWh)	0.066	0.079	0.070	0.059	0.056	0.054	
3	<b>Revenue at Expected Demand (\$,000's)</b> Line 1 × Line 2	<b>139</b>	<b>681</b>	<b>742</b>	<b>626</b>	<b>594</b>	<b>573</b>	<b>3,354</b>
4	Actual Demand (MWh)	673	4,626	5,006	5,818	6,893	6,893	
5	<b>Revenue (\$,000's)</b> Line 1 × Line 4	<b>44</b>	<b>365</b>	<b>350</b>	<b>343</b>	<b>386</b>	<b>372</b>	<b>1,862</b>
6								
7	<b>Variance due to lower Demand (\$,000's)</b> Line 3 - Line 5	<b>94</b>	<b>315</b>	<b>392</b>	<b>282</b>	<b>208</b>	<b>200</b>	<b>1,492</b>

21 Lower thermal energy demand has had a dramatic effect on revenues and consequently the DDA  
22 balance. Further, given that the forecast variance in thermal demand is embedded into the initial  
23 MR and is not adjusted in subsequent calculations of the MR, it becomes a systemic bias towards  
24 lower revenues when the DSD is paying the MR.

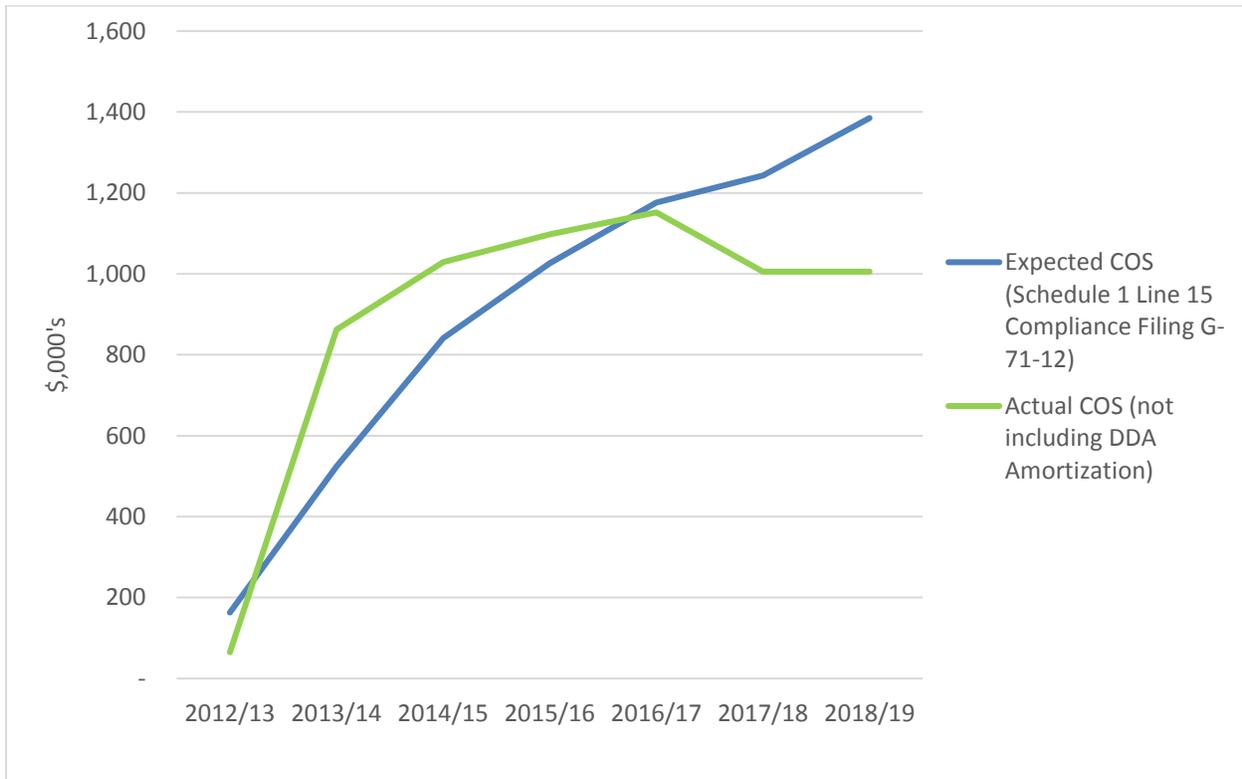
1 **3.2 THE COST OF SERVICE ALIGNS WITH FORECASTS**

2 The COS Rate for 2017/18 was provided to the Commission and the DSD in June 2017. An  
3 updated version including actuals for 2016/2017 along with additional supporting information is  
4 included in Appendix A.

5 As illustrated in Figure 4 below, the COS in year 5 of the service aligns closely with the expected  
6 costs that were estimated at the outset of the project. The higher COS in the initial years relates  
7 to the delay in realization of Capital Cost Allowance tax benefits as compared to the initial forecast.

8 While the realization of tax deductions has been delayed, the forecasted costs align with  
9 expectations set out that resulted in the approvals received by Order G-71-12. Moreover, given  
10 that FAES has waited the full 5 year transition period, it is reasonable to now allow FAES to begin  
11 charging the COS Rate.

12 **Figure 4: Alignment of Cost of Service with Forecasts**



13

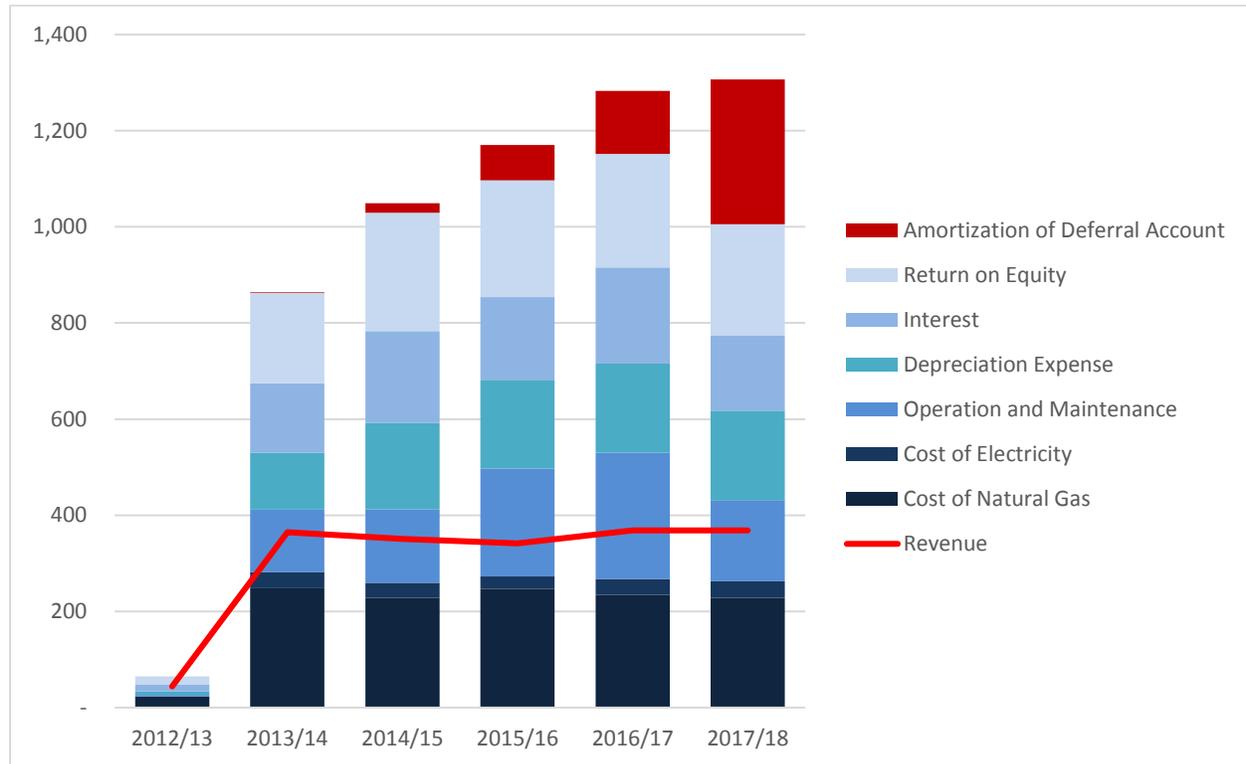
14 **3.3 IMPACT ON THE DISTRICT DEFERRAL ACCOUNT**

15 The DDA is solely for the DSD and is separate from the Thermal Energy Services Deferral  
16 Account (TESDA) at FAES. The DDA balance is expected to be \$3,845,000<sup>27</sup> as of the end of  
17 June 2018 and is growing each year at approximately \$650,000 (before amortization and

<sup>27</sup> Difference between COS and revenues (at the MR so far) equals \$3,354,000 plus \$491,000 AFUDC

1 AFUDC). Figure 5 below illustrates the differences between the COS and revenues since  
 2 inception of service to the DSD.

3 **Figure 5: Comparison of Revenues to COS**



4  
 5  
 6 Any further delay in switching from the MR to the COS Rate will exacerbate the impact to the DSD  
 7 when the switch occurs. This is attributed to the expectation that the balance will continue to grow  
 8 while the remaining term will continue to decrease over time, both of which will result in higher  
 9 COS Rates in the future.

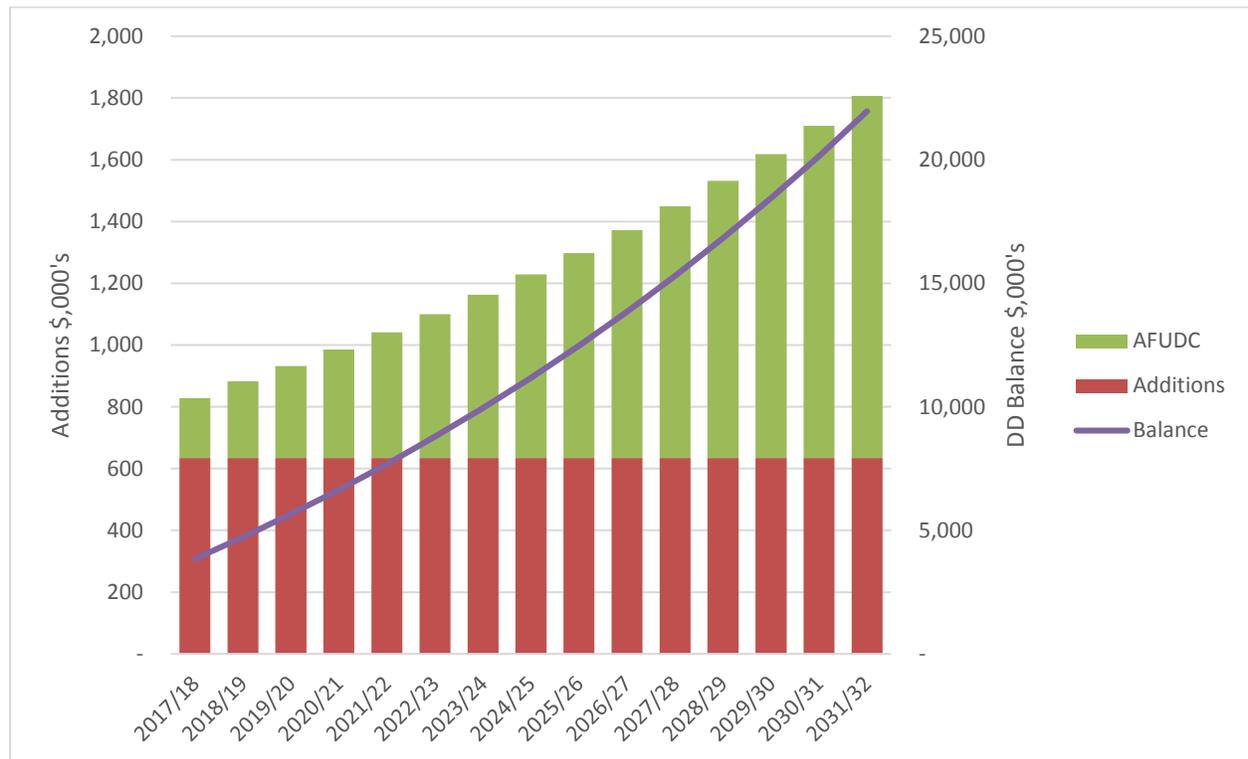
10 The growing balance has consequences for both the DSD and FAES. For the DSD, delaying  
 11 payment of the COS Rate has the effect of creating a larger rate impact when the switch does  
 12 occur. A further delay will only serve to increase the COS Rate in the future.

13 The consequence for FAES is that FAES is at risk for the balance in the DDA in the event that  
 14 the service is not renewed past the initial term and there is a remaining balance in the deferral  
 15 account. Therefore, continuing on the MR does not afford FAES a reasonable opportunity to earn  
 16 a return on its investment. As such, FAES submits that it is not reasonable to continue with the MR  
 17 and delay charging the DSD the COS Rate now that the transition period is complete.

18 Gross additions to the DDA excluding interest and DDA amortization are forecasted to be  
 19 \$650,000 in 2017/18 before amortization and AFUDC. Factoring in the carrying costs of the  
 20 balance, the gap between revenues and the cost of service will grow even more rapidly over the

1 next number of years. For illustration, the total DDA balance would exceed \$20 million at the end  
 2 of the initial term of the contract if a switch to the COS Rate does not occur in contrast with a zero  
 3 balance at the end of the initial term should the COS Rate be approved now.

4 **Figure 6: DDA Additions and Balance**



5

1 **4. APPLICATION TO CHARGE THE COS RATE**

2 As the MR was intended to be transitional in nature, and was not intended as a mechanism for  
3 the DSD to avoid paying the cost of service, the RDA confers upon FAES the right to apply to the  
4 Commission for approval to charge the COS Rate at any time. This provision recognizes that the  
5 Commission remains the authority that will determine when to switch to the COS Rate if the parties  
6 are unable to agree on the timing.

7 Accordingly, the question at hand is when, not if, FAES should begin charging the COS Rate.  
8 Given that the MR remains below the COS Rate causing the DDA to grow, it is not in the best  
9 interests of either the DSD or FAES to continue to charge the MR. While the DSD has enjoyed  
10 the benefit of reduced annual charges over the initial 5 years, continuing on the MR will only serve  
11 to increase costs to the DSD through an increased DDA balance and associated financing.  
12 Further, it would place FAES in an untenable position where it is prevented from the opportunity  
13 of earning a fair return on its investment unless the Commission later approves very significant  
14 rate increases.

15 Approval to charge the COS Rate occurs through the Commission's approval of the COS Rate  
16 itself. Once approved, FAES will discontinue calculating the adjusted "market rate" in accordance  
17 with the terms of the contract.

18 FAES notified the DSD on September 15, 2017 of its desire to charge the COS Rate. A copy of  
19 the letter is included in Appendix B. A copy of this Application was provided to the DSD prior to  
20 submission. The DSD's comments have been included in Appendix C.

21 **4.1 COST OF SERVICE**

22 In June 2017, FAES submitted to the Commission the actual and relevant forecasts for each year  
23 of service to date from 2012/13 through to the forecast for 2017/18 including:

- 24 (a) The annual thermal energy sales;
- 25 (b) The annual cost of service including the relevant cost line items;
- 26 (c) The annual revenue;
- 27 (d) The Cost of Service Rate; and
- 28 (e) The Deferral Account Balance.

29  
30 At that time, the COS Rate for 2017/18 was calculated to be \$0.218/kWh, which was further  
31 discounted by the rate rider of \$0.018/kWh as per the contract. Pursuant to Order G-53-16, the  
32 Commission acknowledged receipt of the 2017/18 COS Rate filing on September 15, 2017.

1 In support of the approvals sought in this Application, FAES has provided additional information  
2 in Appendix A including the actual COS for each year through 2016/17, an updated<sup>28</sup> forecast of  
3 COS and revenue for 2017/18, and a forecast of COS for 2018/19 including the balance in the  
4 DDA. FAES has calculated the COS Rate for 2018/19 to be \$0.223/kWh and is seeking approval  
5 to charge this rate, less the DSD Rate Rider of \$0.018/kWh as of July 1, 2018.

6 **4.2 IMPACT TO THE DSD**

7 Since the inception of the service, the actual COS has been lower than the original forecasted  
8 COS. Accordingly, the actual COS Rate is reasonable within the context of the contracts and the  
9 previous approvals. It is also consistent with the expectations of all parties at this stage of the  
10 service as demonstrated by the data in Order G-71-12 Compliance Filing.

11 The DDA amortization, if amortized over the currently remaining 14 years of the contract, will add  
12 \$405 thousand per annum to the COS. Table 3 illustrates that a delay in charging the COS to  
13 year 10 of the service would increase the DDA amortization to approximately \$1 million per year  
14 which is approximately equal to the total annual COS itself.

15 **Table 3: DDA Impact on COS (\$Million/Annum)**

Balance (\$M)	Amortization Period (Years)				
	14	13	12	11	10
3.85	\$0.41				
4.70		\$0.52			
5.65			\$0.66		
6.60				\$0.82	
7.55					\$1.01

16  
17 While there is a significant gap between the annual revenues associated with the MR and the  
18 COS Rate, the COS aligns with the expectations set out for year 5 of the service and beyond.  
19 The DSD has enjoyed the benefit of reduced annual charges over the initial 5 years as a result of  
20 the lower MR than forecast. Continuing on the MR will only serve to increase costs to the DSD  
21 through an increased balance and associated financing of the DDA balance.

22 **4.3 REASONS WHY IT IS TIME TO SWITCH TO THE COS RATE**

23 FAES and the DSD have had ongoing discussions about the service since its inception including  
24 the timing of when to begin paying the COS Rate. Both FAES and the DSD took the position in  
25 summer 2015 that it was not yet time for the Commission to act unilaterally and have the DSD

<sup>28</sup> Updated from FAES DSD DDA Balance and COS Compliance Filing dated June 20, 2017.

1 begin paying the COS Rate. Since then, it has become clear that continuing to defer payment of  
2 the cost of service is no longer appropriate for the following reasons:

- 3 1. The natural transition period to the underlying COS of 2 to 5 years has now elapsed;
- 4 2. Thermal energy system operations have stabilized and it is now established that demand  
5 is significantly below the original forecasts;
- 6 3. Continued efforts by FAES to facilitate expansion of the rate pool have not been  
7 successful and at this time, there are no longer any reasonable prospects of adding  
8 additional schools; and
- 9 4. FAES and DSD have made effort to negotiate alternative solutions, but those efforts did  
10 not result in an agreement.

11 These reasons are discussed in more detail below.

#### 12 **4.3.1 Natural Transition Period has Elapsed**

13 The transitional MR was originally setup to allow a transition period to the COS Rate in recognition  
14 of the DSD's need to manage its annual budgetary requirements.<sup>29</sup> The DDA captures any  
15 differences in revenues and the cost of service for future recovery from the DSD in the COS Rate.  
16 Although there was no set time to switch from the transitional MR to the COS Rate, the MR was  
17 contemplated to be used for between 2 to 5 years. However, this natural transition period has  
18 now elapsed without a resulting switch to the COS Rate. Accordingly, it is reasonable, after five  
19 years and accumulating a significant balance in the DDA, which increases future rates for the  
20 DSD and risks to FAES, to allow FAES to charge the DSD a rate based on the cost of service,  
21 according to the terms of its contracts with the DSD.

#### 22 **4.3.2 Operations are Stable and Demand is Now Well Established**

23 In 2015, the Commission explored whether it was appropriate to force a switch to the COS Rate;  
24 however, at that time the service had only been established for two full years and was subject to  
25 optimization at that time<sup>30</sup>. Now that the service has been established for over four years, the  
26 service is stable and thermal energy demand is known. This lower demand than originally  
27 forecast results in lower revenues and a higher COS Rate than used in the original assumptions,  
28 despite the fact that the total COS is in line with original projections at this time. The lower thermal  
29 energy demand subsequently creates an additional, permanent gap between the MR and COS

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<sup>29</sup> Exhibit B-1 2011 FEI Application page 44-45 (see Appendix F), Exhibit B-3 FEI responses to BCUC IR1.38.3 (see Appendix F), Exhibit C1-2 DSD Response to BCUC IR 1.20.1 (see Appendix F), Exhibit C1-2 DSD Response to BCUC IR 1.20.2 (see Appendix F), FEI Final Submission section 67 (see Appendix F), Order G-31-12 Reasons for Decision Page 42 (see Appendix F), Order G-31-12 Reasons for Decision Page 53 (see Appendix F), 2014/2015 Revenue Requirement FAES Response to BCUC IR 1.1.4 (see Appendix F), 2015/2016 Revenue Requirement DSD Final Argument (see Appendix F), Order G-146-15A Reasons for Decision Page 4 (see Appendix F).

<sup>30</sup> Order G-146-15A, Section 2.3 (see Appendix F).

1 Rate that will not reasonably close. This means that remaining on the MR in the hope that it will  
2 cross above the COS Rate is also unrealistic.

### 3 **4.3.3 No Additional Customers in the Rate Pool**

4 The RDA contemplates the expansion of the rate pool:

5 FEI may include a thermal energy system that provides energy for space and  
6 ventilation heating, cooling and domestic hot water to one or more buildings owned  
7 by third parties in the calculation of the Thermal Energy Rate provided that:

8 (a) doing so will not increase or otherwise adversely affect the Thermal Energy  
9 Rate; and

10 (b) there will be no physical connection of any third party thermal energy system  
11 to the Buildings or Lands (as that term is defined in any Energy System Service  
12 Agreement) without the prior approval of the District<sup>31</sup>

13 With the expansion of the rate pool, the DSD would potentially benefit from rate stabilization due  
14 to a larger pool of customers as well as a lower COS Rate through application of the SD 37 Rate  
15 Rider. However, if no other customers are added to the pool, the DSD only benefits by a one  
16 year deferral of the rate rider.

17 To this end, FAES had engaged a number of other school districts with the intention of expanding  
18 the service. However, FAES has been unable to bring additional customers into the RDA despite  
19 its attempts. As such, the RDA has been limited to only DSD sites.

### 20 **4.3.1 Negotiations Have Not Resulted in Alternative Solutions**

21 FAES and the DSD have had ongoing discussions about the service since its inception including  
22 the timing of when to begin paying the COS Rate. FAES and the DSD engaged in negotiations  
23 during 2017 aimed at finding alternative solutions; however, this process did not result in a  
24 negotiated solution.

25 As of September 2017, five years has elapsed in the initial term and the parties have not been  
26 able to arrive at a mutually agreeable solution together, nor has the DSD elected to pay the COS  
27 Rate. After attempting to reach a resolution, FAES provided notice to the DSD on September 15,  
28 2017, of its intention to apply to the Commission to begin charging the COS Rate. A copy of the  
29 notice letter is provided in Appendix B.

30

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<sup>31</sup> RDA Section 4.1

1 **5. CONCLUSION**

2 The DSD and FAES negotiated a series of contracts in support of the provision of thermal energy  
3 services to the DSD. The parties negotiated a contract based on a cost of service rate design  
4 which included a transitional market rate with the purpose of smoothing rate fluctuations in the  
5 initial years of the service. These contracts were subject to a comprehensive public review  
6 process and were approved by the Commission in 2012.

7 After five years of the service, it is now clear that it is time to complete the transition to the COS  
8 Rate. It is also clear that delaying the transfer to the COS Rate any further will have negative  
9 impacts for both the DSD and FAES. Accordingly, the time has come to charge the COS Rate  
10 as anticipated under the contract.

11 FAES or the DSD each have the option to elect to switch to the COS Rate under their contract.  
12 In this Application, FAES has applied for approval of the COS Rate in order to effect the switch.  
13 Upon approval, the market rate will no longer be available.

14 In support of its Application, FAES has updated its forecasted COS and DDA balance included in  
15 Appendix A. This resulting COS Rate is aligned with original approved forecasts and with the  
16 DSD's BAU costs and remains a fair and reasonable rate. Therefore, the Commission should  
17 approve the applied for COS Rate.

**Appendix A**

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**2018/2019 COST OF SERVICE RATE AND DEFERRAL  
ACCOUNT BALANCE FORECAST UPDATE**

**APPENDIX A****2018/19 COST OF SERVICE RATE AND DEFERRAL ACCOUNT BALANCE FORECAST UPDATE**

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**Appendix A Financial Schedules**

**APPENDIX A**

**2018/19 COST OF SERVICE RATE AND DEFERRAL ACCOUNT BALANCE FORECAST UPDATE**

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1 **COST OF SERVICE**

2 In support of the approvals sought in this Application, FAES has provided additional information  
 3 as schedules to this Appendix A including the actual COS for each year through 2016/17, an  
 4 updated<sup>1</sup> forecast of COS and revenue for 2017/18, and a forecast of COS for 2018/19  
 5 including the balance in the DDA.

6 The updated cost of service includes the calculation of rate base, financing costs on rate base,  
 7 energy input costs including the cost of natural gas and electricity, OM&A costs, depreciation  
 8 and income taxes.

9 The forecast COS for 2018/19 is shown in Table 1 below.

10 **Table 1: DSD Cost of Service/Revenue Requirement**

<u>Line Particulars</u>	<u>2018/19</u>
1 <b>Cost of Service</b>	
2 Cost of Natural Gas	221
3 Cost of Electricity	<u>34</u>
4 Energy Purchase Costs	256
5 Operation and Maintenance	171
6 Property Taxes	-
7 Depreciation Expense	189
8 Income Taxes	-
9 Return on Rate Base	391
10 Amortization of District Deferral Account	<u>405</u>
11	
12 <b>Annual Cost of Service</b>	<u><b>1,412</b></u>

12 **1.1 COST OF ENERGY**

13 FAES pays the prevailing rates for natural gas and electricity purchases as adjusted by the  
 14 Commission from time to time, and passes those costs through to the DSD by making annual  
 15 adjustments to the COS rates. FAES has forecast the costs for electricity and natural gas using  
 16 the prevailing rates for energy forecast for 2018/19 and a forecast of the fuel consumption  
 17 based on the sites in service and their design performance characteristics.

18 The electricity that FAES uses to provide thermal energy service to the DSD is always a subset  
 19 of the DSD electricity bill. The rationale for this methodology is as follows: where FAES is  
 20 providing thermal energy using high-efficiency boilers, the electricity usage is estimated based  
 21 on usage factors agreed upon with the DSD and where FAES is providing thermal energy using  
 22 a geo-exchange system with heat pumps, the electricity usage is sub-metered on the DSD main

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<sup>1</sup> Updated from FAES DSD DDA Balance and COS Compliance Filing dated June 20, 2017.

## APPENDIX A

### 2018/19 COST OF SERVICE RATE AND DEFERRAL ACCOUNT BALANCE FORECAST UPDATE

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1 electricity meter. Therefore, the FAES electricity charges are always based upon a share of the  
2 DSD total electricity charges.

3 FAES has held the forecasted total consumption of electricity and gas constant from 2016/17  
4 actuals. The DSD energy consumption is expected to remain flat from 2016/17 as there are no  
5 planned expansions of the thermal energy system. In addition to the volume of fuels, FAES has  
6 also assumed that the natural gas rates are reduced to reflect the actual rates to date and the  
7 approved rates for 2018, and that electricity rates remain flat.

## 8 **1.2 OM&A**

9 FAES forecasts that during the fiscal year 2018/19, the annual maintenance costs will amount to  
10 \$144,000. FAES has contracted Johnson Controls to provide operations and maintenance on  
11 the equipment as of 2017, replacing the DSD facilities staff. In 2017/18, FAES will replace a  
12 boiler at Sunshine Hills Elementary School, a compressor at Delview Secondary School and a  
13 heat pump compressor at South Delta Secondary School. In 2018/19, FAES also expects to  
14 replace another boiler at Sunshine Hills Elementary. According to Order G-88-12, FAES is to:

15 *“a) only include an allowance in the cost of service for capitalized overheads at the rate of 14*  
16 *percent during years in which FAES expects capital additions or capital replacements and to*  
17 *apply the appropriate capitalization rate in future based on the appropriate accounting policies in*  
18 *place at that time;”*

19 Accordingly, FAES is capitalizing \$28,000 of OM&A in each of 2017/18 and 2018/19.

20 Order G-71-12 directed FAES to include \$50,000 as a forecast for overhead charges as a proxy  
21 for an actual value, until such time as sufficient operational experience is gained and cost  
22 allocation methods are in place to update the estimate with actual overhead charges. At the  
23 time that this amount was derived, all overheads provided by FEI to the TES service were  
24 recorded in the TESDA balance. These amounts alone contributed \$3,320,000 to the TESDA  
25 balance from 2011 through 2014, not including carrying costs.

26 FAES proposes to include in the Cost of Service, an amount each year equal to the original  
27 forecast provided in the CPCN and rates application. This amount is equal to \$50,000 in  
28 2013/14 and escalated at 2% each year thereafter, or \$54,000 in 2018/19. The total amount of  
29 overhead that this will collect over the life of the contract is \$1,105,000, or \$556,750 in 2012/13  
30 dollars. In this manner, the overhead allocation that FAES will collect towards the TESDA is  
31 consistent with the amounts included in the original application, unless the TESDA in total is  
32 reduced to zero, at which time, FAES will also reduce this amount of the Cost of Service to zero.

## 33 **1.3 DEPRECIATION**

34 FAES has used approved depreciation rates for the assets. The CIAC amortization rate reflects  
35 the average life of the DSD assets in order to match the amortization of the CIAC with the life of

## APPENDIX A

### 2018/19 COST OF SERVICE RATE AND DEFERRAL ACCOUNT BALANCE FORECAST UPDATE

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1 the assets. FAES has identified an error in the amortization rate<sup>2</sup> used for the CIAC and has  
2 updated the amortization rate to reflect all assets in service as of 2018/19, resulting in a lower  
3 amortization rate of 3.17% instead of 5.36% which was used previously. This reduces the CIAC  
4 amortization each year from \$65 thousand to \$33 thousand, which subsequently increases the  
5 depreciation expense while keeping a larger CIAC balance to reduce rate base and the  
6 associated costs including earned return.

#### 7 **1.4 AMORTIZATION OF DDA**

8 The DDA balance as of June 30, 2018 is forecast to be \$3,845,000. FAES has included  
9 amortization of the DDA in the Cost of Service so that the DDA balance reduces to zero over  
10 the remaining initial term of the contract. As per the contract, FAES will continue to use the DDA  
11 to capture differences between actual cost of service and actual revenue each year.  
12 Accordingly, the DDA balance and amortization will be recalculated and reforecast each year.  
13 For 2018/19, the amortization amount is calculated to be \$405,000.

#### 14 **1.5 TAXES**

15 The government of BC has approved an increase to the BC corporate tax rate from 26% to 27%  
16 starting January 1, 2018, consequently FAES has used 27% as the tax rate embedded in the  
17 COS Rate for 2018/19. Income taxes for the 2018/19 revenue requirements are forecast to be  
18 zero. The assets in service produce a significant capital cost allowance (CCA) for the geo-  
19 exchange systems by qualifying for class 43.2 at an accelerated depreciation rate of 50 per  
20 cent. FAES has used the available CCA to reduce taxable income to zero. In addition, there is a  
21 loss carry forward available at \$1,788,000 forecast on of June 30, 2018, which is available to  
22 reduce future income taxes payable.

#### 23 **1.6 FINANCING COSTS AND ROE**

24 For 2018/19, FAES has used a deemed capital structure of 40 per cent equity and 60 per cent  
25 debt as per Order G-31-12 and a negotiated Return on Equity (ROE) premium of 50 basis  
26 points on the benchmark utility ROE, which currently stands at 8.75 per cent. FAES has  
27 updated its cost of debt using the Commission-approved methodology for the DSD. The cost of  
28 debt is calculated as 4.49 per cent and is consistent with BBB-rated distribution utilities. As  
29 directed by the Commission in Order G-71-12 (Directive 1d), FAES used AltaGas Ltd. and  
30 Emera Inc. as proxies for TES utilities.

31 As per Orders G-31-12, G-71-12 and G-88-12, FAES has updated the cost of debt for the  
32 upcoming 2018/19 cost of service rate calculations using the method approved. This is  
33 consistent with BBB-rated (investment grade) distribution utilities including an additional  
34 premium to reflect the extra cost to arrange an incremental small debt issue as of January 22,  
35 2018.

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<sup>2</sup> CIAC amortization had not included all assets in the calculation previously.

**APPENDIX A**

**2018/19 COST OF SERVICE RATE AND DEFERRAL ACCOUNT BALANCE FORECAST UPDATE**

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1 In order to establish this rate, FAES obtained debt rate quotes for Altagas Ltd. and Emera Inc,  
 2 for use as proxies, from two Canadian Chartered banks, CIBC World Markets and RBC Capital  
 3 Markets as of April 24, 2017.

Credit Spread	CIBC Interpolated BBB 20-year <sup>1</sup>	1.85%	
	RBC Interpolated BBB 20-year <sup>1</sup>	1.78%	
	Average Rate		1.81%
GOC	CIBC Interpolated GOC Benchmark - 20 year <sup>1</sup>	2.35%	
	RBC Interpolated GOC Benchmark - 20 year <sup>1</sup>	2.32%	
	Average Rate		2.33%
Issuance Fee Annualized			0.35%
Total Interest Rate			4.49%

<sup>1</sup> - Linear Interpolation

4 **1.7 COS RATE**

5 To determine the 2018/19 COS Rate of \$0.223 per kWh FAES divided the 2018/19 forecast  
 6 cost of service of \$1,412 thousand and the prior year rate rider discount of \$124 thousand, by  
 7 the forecast annual consumption for billing purposes of 6,893 MWh.

8 With this DSD RRA, FAES is requesting approval of a cost of service (COS) rate for the fiscal  
 9 year 2018/19 of \$0.223/kWh. This will be reduced by the negotiated rate rider of \$0.018/kWh as  
 10 per the contract such that the total rate will be \$0.205/kWh.

11 The rates the DSD is paying for 2017/18 are based on the initial market rate, indexed by the  
 12 natural gas index for British Columbia, less the negotiated rate rider.

13 Table 2 below shows the MR and the COS rates for the fiscal years 2017/18 and 2018/19  
 14 respectively.

**APPENDIX A**

**2018/19 COST OF SERVICE RATE AND DEFERRAL ACCOUNT BALANCE FORECAST UPDATE**

1

**Table 2: Market and Cost of Service Rates**

<u>Line Particulars</u>	<u>2017/18</u>	<u>2018/19</u>
1 Annual Volume for Billing (MWh)	6,893	6,893
2		
3 Initial Market Rate \$/kWh	0.089	-
4 Weighted Average Natural Gas Index	90.4	-
5 Weighted Average Market Rate \$/kWh	<u>0.072</u>	<u>-</u>
6 Gross Revenue from Thermal Energy Rate	495	-
7		
8 SD 37 Rate Rider (\$/kWh)	<u>(0.018)</u>	<u>(0.018)</u>
9 SD37 Rate Rider Discount	(124)	(124)
10		
11 Revenue	371	1,412
12		
13 Annual Cost of Service (FACS)		1,412
14 Prior Year Rate Rider Discount (PYRRD)		124
15 Energy Purchase Costs (EPC)		256
16 Forecast Thermal Energy Deliveries (FTED)		6,893
17 Energy Rate \$/kWh		0.037
18 Cost of Service Rate \$/kWh		0.223

2

3 **1.8 CONTINUITY SCHEDULES**

4 Table 3 provides a continuity schedule since inception of the service in 2012/13, showing:

- 5
- The forecast Cost of Service, Cost of Service Rate, and revenues, and
  - The actual Cost of Service, revenues and deferral account balance
- 6

7

8 As illustrated below, annual increases in the COS are primarily driven by the amortization of the

9 DDA and associated AFUDC.

**APPENDIX A**
**2018/19 COST OF SERVICE RATE AND DEFERRAL ACCOUNT BALANCE FORECAST UPDATE**
**Table 3: Forecast and Actual Annual Cost of Service, COS Rate and Deferral Account Balance**

	<u>2012/13</u>		<u>2013/14</u>		<u>2014/15</u>		<u>2015/16</u>		<u>2016/17</u>		<u>2017/18</u>		<u>2018/19</u>
	<u>Forecast</u>	<u>Actual</u>	<u>Forecast</u>	<u>Actual /</u>	<u>Forecast</u>								
Cost of Natural Gas	48	23	87	249	97	228	180	247	170	235	229	228	221
Cost of Electricity	26	0	240	34	241	31	33	26	50	33	45	34	34
Operation and Maintenance	144	3	96	129	131	153	172	224	189	263	211	169	171
Property Taxes	-	-	-	-	1	-	4	-	4	-	-	-	-
Depreciation Expense	64	7	91	118	126	179	130	185	158	185	158	186	189
Income Taxes	(276)	-	-	-	-	-	-	-	-	-	-	-	-
Earned Return	157	31	329	333	387	437	380	415	441	437	395	388	391
Amortization of Deferral Account	-	-	1	1	20	20	55	73	122	131	290	302	405
<b>Annual Cost of Service</b>	<b>163</b>	<b>65</b>	<b>846</b>	<b>864</b>	<b>1,003</b>	<b>1,049</b>	<b>953</b>	<b>1,170</b>	<b>1,134</b>	<b>1,283</b>	<b>1,329</b>	<b>1,307</b>	<b>1,412</b>
forecast Annual Cost of Service (FACS)	163		846		1,003		953		1,134		1,329		1,412
Prior Year Rate Rider Discount (PYRRD)	-		19		86		98		109		124		124
Energy Purchase Costs (EPC)	74		328		337		213		220		274		256
Thermal Energy Sales (FTED), (in MWh)	2,099	673	7,892	4,626	7,892	5,006	5,701	5,818	6,205	6,893	6,658	6,893	6,893
(FACS + PYRRD - EPC) / FTED	\$ 0.042		\$ 0.068		\$ 0.095		\$ 0.147		\$ 0.165		\$ 0.177		\$ 0.186
Energy Rate (\$/kWh)	\$ 0.035		\$ 0.042		\$ 0.043		\$ 0.037		\$ 0.035		\$ 0.041		\$ 0.037
<b>Cost of Service Rate (\$/kWh)</b>	<b>\$ 0.078</b>		<b>\$ 0.110</b>		<b>\$ 0.138</b>		<b>\$ 0.184</b>		<b>\$ 0.200</b>		<b>\$ 0.218</b>		<b>\$ 0.223</b>
Revenue		44		365		351		341		385		371	1,412
<b>Effective Rate (\$/kWh)</b>		<b>\$ 0.065</b>		<b>\$ 0.079</b>		<b>\$ 0.070</b>		<b>\$ 0.059</b>		<b>\$ 0.056</b>		<b>\$ 0.054</b>	<b>\$ 0.205</b>
Gross Additions (Annual Cost of Service - Revenue)		21		499		698		829		898		936	-
AFUDC		-		-		51		94		153		194	218
Amortization		-		(1)		(20)		(73)		(131)		(302)	(405)
District Deferral Account Balance		21		519		1,247		2,097		3,017		3,845	3,658

**FortisBC Alternative Energy Services Inc.**

School District No 37 - Delta

*Fiscal 2018/19 Forecast*

Appendix A

Financial Schedules

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FortisBC Alternative Energy Services Inc.  
 School District No.37 - Delta  
 Fiscal 2018/19 Forecast  
 Appendix B  
**Thermal Energy Rates**  
 (\$000's), unless otherwise stated  
 Schedule 1

Line	Particulars	Reference	Actual 2012/13	Actual 2013/14	Actual 2014/15	Actual 2015/16	Actual 2016/17	Forecast 2017/18	Forecast 2018/19
1	Annual Volume for Billing (MWh)		673	4,626	5,006	5,818	6,893	6,893	6,893
2									
3	Initial Market Rate \$/kWh		0.089	0.089	0.089	0.089	0.089	0.089	-
4	Weighted Average Natural Gas Index		105.5	121.9	110.9	96.5	92.9	90.4	-
5	Weighted Average Market Rate \$/kWh		0.084	0.097	0.088	0.077	0.074	0.072	-
6	Gross Revenue from Thermal Energy Rate	Line 6 * Line Schedule 1	56	448	441	446	509	495	-
7									
8	SD 37 Rate Rider (\$/kWh)		(0.018)	(0.018)	(0.018)	(0.018)	(0.018)	(0.018)	(0.018)
9	SD37 Rate Rider Discount	Line 9 * Line 1	(12)	(83)	(90)	(105)	(124)	(124)	(124)
10									
11	Revenue	Line 6 + Line 9	44	365	351	341	385	371	1,412
12									
13	Annual Cost of Service (FACS)	Schedule 2, Line 12							1,412
14	Prior Year Rate Rider Discount (PYRRD)	Line 9							124
15	Energy Purchase Costs (EPC)	Schedule 2, Line 4							256
16	Forecast Thermal Energy Deliveries (FTED)	Line 1							6,893
17	Energy Rate \$/kWh	Line 15 / Line 16							0.037
18	Cost of Service Rate \$/kWh	((FACS)-(EPC)+(PYRRD))/(FTED) +Energy Rate							0.223

**FortisBC Alternative Energy Services Inc.**

School District No 37 - Delta

Fiscal 2018/19 Forecast

Appendix A

**Annual Cost of Service and Rate Calculation**

(\$000's), unless otherwise stated

Schedule 2

Line	Particulars	Reference	Actual	Actual	Actual	Actual	Actual	Projection	Forecast
			2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
1	<b>Cost of Service</b>								
2	Cost of Natural Gas	Schedule 3, Line 13	23	249	228	247	235	228	221
3	Cost of Electricity	Schedule 4, Line 9	0	34	31	26	33	34	34
4	Energy Purchase Costs		23	282	260	273	268	263	256
5	Operation and Maintenance	Schedule 5, Line 14	3	129	153	224	263	169	171
6	Property Taxes	Schedule 5, Line 25	-	-	-	-	-	-	-
7	Depreciation Expense	Schedule 11, -(Line 26 + Line 55)	7	118	179	185	185	186	189
8	Income Taxes	Schedule 6, Line 18	-	-	-	-	-	-	-
9	Return on Rate Base	Schedule 8, Line 24	31	333	437	415	437	388	391
10	Amortization of District Deferral Account	Schedule 12, Line 9	-	1	20	73	131	302	405
11									
12	<b>Annual Cost of Service</b>	<b>Sum of Lines 2 through 9</b>	<b>65</b>	<b>864</b>	<b>1,049</b>	<b>1,170</b>	<b>1,283</b>	<b>1,307</b>	<b>1,412</b>

**FortisBC Alternative Energy Services Inc.**

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*Fiscal 2018/19 Forecast*

Appendix A

**Cost of Natural Gas**

*(\$000's), unless otherwise stated*

Schedule 3

<u>Line</u>	<u>Particulars</u>	<u>Reference</u>	<u>2012/13</u>	<u>2013/14</u>	<u>2014/15</u>	<u>2015/16</u>	<u>2016/17</u>	<u>2017/18</u>	<u>2018/19</u>
1	<b><u>Energy</u></b>								
2	<b>Natural Gas (GJ)</b>								
3	Rate Class 1		-	-	-	-	-	-	-
4	Rate Class 2		1,887	25,593	22,812	27,205	32,905	32,905	32,905
5	Rate Class 3		-	-	-	-	-	-	-
6	<b>Total Natural Gas (GJ)</b>		<b>1,887</b>	<b>25,593</b>	<b>22,812</b>	<b>27,205</b>	<b>32,905</b>	<b>32,905</b>	<b>32,905</b>
7									
8	<b><u>Cost</u></b>								
9	<b>Natural Gas Cost</b>								
10	Rate Class 1	Line 3 x \$ per GJ/1000	-	-	-	-	-	-	-
11	Rate Class 2	Line 4 x \$ per GJ/1000	23	249	228	247	235	228	221
12	Rate Class 3	Line 5 x \$ per GJ/1000	-	-	-	-	-	-	-
13	<b>Total Natural Gas Energy Cost</b>	<b>Sum of Lines 10 through 12</b>	<b>23</b>	<b>249</b>	<b>228</b>	<b>247</b>	<b>235</b>	<b>228</b>	<b>221</b>

**FortisBC Alternative Energy Services Inc.**

School District No 37 - Delta

Fiscal 2018/19 Forecast

Appendix A

**Cost of Electricity**

(\$000's), unless otherwise stated

Schedule 4

Line	Particulars	Reference	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
1	<b>Energy</b>								
2	<b>Electricity (MWh)</b>								
3	Large Commercial (> 2,000 GJs/555 MWh)		3	335	287	233	359	359	359
4	<b>Total Electricity (MWh)</b>		<b>3</b>	<b>335</b>	<b>287</b>	<b>233</b>	<b>359</b>	<b>359</b>	<b>359</b>
5									
6	<b>Cost</b>								
7	<b>Electricity Cost</b>								
8	Residential	Line 3 x \$ per MWh	-	-	-	-	-	-	-
8	Large Commercial (> 2,000 GJs/555 MWh)	Line 3 x \$ per MWh	0	34	31	26	33	34	34
9	<b>Total Electricity Cost</b>	<b>Sum of Line 8</b>	<b>0</b>	<b>34</b>	<b>31</b>	<b>26</b>	<b>33</b>	<b>34</b>	<b>34</b>

**FortisBC Alternative Energy Services Inc.**

School District No 37 - Delta

Fiscal 2018/19 Forecast

Appendix A

**O&M, Other Revenue and Property Tax**

(\$000's), unless otherwise stated

Schedule 5

Line	Particulars	Reference	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
1	<b>Gross O&amp;M</b>								
2	Labour Costs		-	-	30	28	26	20	20
3	Employee Expenses		-	-	18	15	-	-	-
4	Fees & Administrations Costs		3	26	-	19	1	-	-
5	Contractor Costs		-	90	80	111	184	124	124
6	Overheads and Shared Services Allocation <sup>1</sup>		-	35	50	51	52	53	54
7									
8	Non-Labour Costs	Sum of Lines 4 through 6	3	151	148	196	237	177	178
9									
10	Total Gross O&M Expenses	Line 2 + Line 8	3	151	178	224	263	197	198
11									
12	(Less): Capitalized Overhead	-Line 10 x 0%	-	(21)	(25)	-	-	(28)	(28)
13									
14	Net O&M	Line 10 + Line 12	3	129	153	224	263	169	171
15									
16	1- TESDA recovery								
17	2- Calculation is based on the second preceeding year; ex., 2015/2016 is based on 2013/2014, and 2016/2017 is based on 2014/2015								

FortisBC Alternative Energy Services Inc.

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Fiscal 2018/19 Forecast

Appendix A

Income Tax Expense

(\$000's), unless otherwise stated

Schedule 6

Line	Particulars	Reference	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
1	<b>Income Tax Expense</b>								
2									
3	Earned Return	Schedule 8, Line 24	31	333	437	415	437	388	391
4	Deduct: Interest on Debt	Schedule 8, Line 23	(15)	(144)	(191)	(172)	(200)	(157)	(165)
5	Add: Depreciation Expense	Schedule 11, -(Line 26 + Line 55)	7	118	179	185	185	186	189
6	Deduct: Overhead Capitalized Expensed for Tax	Schedule 5, Line 12 x 6/14	-	(9)	(11)	-	-	(12)	(12)
	Add: Amortization		-	1	20	73	131	302	405
7	Deduct: Capital Cost Allowance	Schedule 7, Line 64	(24)	(299)	(434)	(501)	(464)	(344)	(280)
8	Deduct: Loss Carry-forward Utilized	Line 23	-	-	-	-	(88)	(363)	(529)
9	Taxable Income After Tax	Sum of Lines 3 through 7	-	-	-	-	-	-	-
10									
11	Income Tax Rate		25.00%	25.88%	26.00%	26.00%	26.00%	26.50%	27.00%
12	1 - Current Income Tax Rate	1- Line 11	75.00%	74.13%	74.00%	74.00%	74.00%	73.50%	73.00%
13									
14	Taxable Income	Line 9 / Line 12	-	-	-	-	-	-	-
15									
16	Total Income Tax Expense	Line 14 x Line 11	-	-	-	-	-	-	-
17	Adjustments		-	-	-	-	-	-	-
18	Net Tax Expense	Line 16 + Line 17	-	-	-	-	-	-	-
19									
20	Loss Carry-forward								
21	Opening Balance		-	(444)	(1,330)	(2,050)	(2,260)	(2,172)	(1,809)
22	Loss Carry-forward		(444)	(886)	(719)	(210)	-	-	-
23	Loss Utilization		-	-	-	-	88	363	529
24	Closing Balance		(444)	(1,330)	(2,050)	(2,260)	(2,172)	(1,809)	(1,280)

FortisBC Alternative Energy Services Inc.

School District No 37 - Delta

Fiscal 2018/19 Forecast

Appendix A

Capital Cost Allowance

(\$000's), unless otherwise stated

Schedule 7

Particulars	Reference	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
<b>1 Mechanical Room Piping- Class 17 @ 8%</b>								
2 Opening Balance	Preceding Year, Line 5	-	693	1,257	1,194	1,098	1,011	930
3 Additions	Schedule 9, Line 2 - Allocation of CIAC	722	645	39	0	-	-	-
4 CCA	[Line 2 + ( Line 3 x 1/2)] x CCA Rate	(29)	(81)	(102)	(96)	(88)	(81)	(74)
5 Closing Balance	Sum of Lines 2 through 4	693	1,257	1,194	1,098	1,011	930	855
6								
<b>7 Pumps- Class 43.2 @ 50%</b>								
8 Opening Balance	Preceding Year, Line 11	-	415	797	417	208	104	80
9 Additions	Schedule 9, Line 3 - Allocation of CIAC	553	785	25	0	-	38	-
10 CCA	[Line 8 + ( Line 9 x 1/2)] x CCA Rate	(138)	(404)	(404)	(208)	(104)	(62)	(40)
11 Closing Balance	Sum of Lines 8 through 10	415	797	417	208	104	80	40
12								
<b>13 Boilers low CCA- Class 17 @ 8%</b>								
14 Opening Balance	Preceding Year, Line 17	-	235	416	396	365	336	335
15 Additions	Schedule 9, Line 4 - Allocation of CIAC	244	208	14	0	-	27	27
16 CCA	[Line 14 + ( Line 15 x 1/2)] x CCA Rate	(10)	(27)	(34)	(32)	(29)	(28)	(28)
17 Closing Balance	Sum of Lines 14 through 16	235	416	396	365	336	335	334
18								
<b>19 Structures- Class 17 @ 8%</b>								
20 Opening Balance	Preceding Year, Line 23	-	60	94	89	82	75	69
21 Additions	Schedule 9, Line 5 - Allocation of CIAC	62	40	3	0	-	-	-
22 CCA	[Line 20 + ( Line 21 x 1/2)] x CCA Rate	(2)	(6)	(8)	(7)	(7)	(6)	(6)
23 Closing Balance	Sum of Lines 20 through 22	60	94	89	82	75	69	64
24								
<b>25 Intrasystem Piping- Class 17 @ 8%</b>								
26 Opening Balance	Preceding Year, Line 29	-	421	886	828	761	700	644
27 Additions	Schedule 9, Line 6 - Allocation of CIAC	439	519	13	0	-	-	-
28 CCA	[Line 26 + ( Line 27 x 1/2)] x CCA Rate	(18)	(54)	(71)	(66)	(61)	(56)	(52)
29 Closing Balance	Sum of Lines 26 through 28	421	886	828	761	700	644	593
30								
<b>31 Loop Field (Ground Source Heat Exchanger)- Class 43.2 @ 50%</b>								
32 Opening Balance	Preceding Year, Line 35	-	763	929	486	243	122	61
33 Additions	Schedule 9, Line 7 - Allocation of CIAC	1,017	730	29	0	-	-	-
34 CCA	[Line 32 + ( Line 33 x 1/2)] x CCA Rate	(254)	(564)	(472)	(243)	(122)	(61)	(30)
35 Closing Balance	Sum of Lines 32 through 34	763	929	486	243	122	61	30
36								
<b>37 Meter Low CCA- Class 17 @ 8%</b>								
38 Opening Balance	Preceding Year, Line 41	-	405	718	681	627	577	530
39 Additions	Schedule 9, Line 8 - Allocation of CIAC	422	359	22	0	-	-	-
40 CCA	[Line 38 + ( Line 39 x 1/2)] x CCA Rate	(17)	(47)	(58)	(54)	(50)	(46)	(42)
41 Closing Balance	Sum of Lines 38 through 40	405	718	681	627	577	530	488
42								
<b>43 Sustaining Capital- Class 43.2 @ 50%</b>								
44 Opening Balance	Preceding Year, Line 47	-	-	-	-	-	-	-
45 Additions	Schedule 9, Line 9 (2012-2018)	-	-	-	-	-	-	-
46 CCA	[Line 44 + ( Line 45 x 1/2)] x CCA Rate	-	-	-	-	-	-	-
47 Closing Balance	Sum of Lines 44 through 46	-	-	-	-	-	-	-
48								
<b>49 Sustaining Capital- Class 43.1 @ 30%</b>								
50 Opening Balance	Preceding Year, Line 53	-	-	-	-	-	-	-
51 Additions	Schedule 9, Line 9 (2019-2031)	-	-	-	-	-	-	-
52 CCA	[Line 50 + ( Line 51 x 1/2)] x CCA Rate	-	-	-	-	-	-	-
53 Closing Balance	Sum of Lines 50 through 52	-	-	-	-	-	-	-
54								
<b>55 Capitalized Overhead- Class average @ 23.55%</b>								
56 Opening Balance	Preceding Year, Line 59	-	-	11	21	16	12	23
57 Additions	Schedule 5, Line 12 -Allocation of CIAC	-	12	14	-	-	16	16
58 CCA	[Line 56 + ( Line 57 x 1/2)] x CCA Rate	-	(1)	(4)	(5)	(4)	(5)	(7)
59 Closing Balance	Sum of Lines 56 through 58	-	11	21	16	12	23	32
60								
<b>61 Total CCA</b>								
62 Opening Balance	Preceding Year, Line 65	-	2,991	5,106	4,111	3,401	2,937	2,673
63 Additions		3,460	3,300	159	1	-	80	43
64 CCA		(468)	(1,185)	(1,153)	(711)	(464)	(344)	(280)
65 Closing Balance	Sum of Lines 62 through 64	2,991	5,106	4,111	3,401	2,937	2,673	2,436

FortisBC Alternative Energy Services Inc.

School District No 37 - Delta

Fiscal 2018/19 Forecast

Appendix A

Rate Base

(\$000's), unless otherwise stated

Schedule 8

Line	Particulars	Reference	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
1	<b>FAES Rate Base</b>								
2	Gross Plant In Service- Beginning	Schedule 10, Line 13	-	3,460	7,974	8,144	8,145	8,145	8,237
3	Gross Plant In Service- Ending	Schedule 10, Line 49	3,460	7,974	8,144	8,145	8,145	8,237	8,292
4									
5	Accumulated Depreciation- Beginning	Schedule 11, Line 14	-	(7)	(145)	(362)	(586)	(809)	(1,034)
6	Accumulated Depreciation- Ending	Schedule 11, Line 50	(7)	(145)	(362)	(586)	(809)	(1,034)	(1,261)
7									
8	CIAC - Beginning	Schedule 10, Line 53	-	-	(1,212)	(1,212)	(1,212)	(1,212)	(1,212)
9	CIAC - Ending	Schedule 10, Line 56	-	(1,212)	(1,212)	(1,212)	(1,212)	(1,212)	(1,212)
10									
11	Accumulated Amortization- Beginning	Schedule 11, Line 54	-	-	19	58	96	134	173
12	Accumulated Amortization- Ending	Schedule 11, Line 57	-	19	58	96	134	173	211
13									
14	Net Plant in Service, Mid-Year	Sum (Lines 2 through 12 )/2	1,726	5,044	6,632	6,535	6,351	6,211	6,097
15									
16	Adjustment to 13-month average		(1,273)	25	-	-	-	-	-
17	Unamortized Deferred Charges, Mid-Year	Schedule 11, Line 10	-	-	-	-	-	-	-
18	Cash Working Capital	Schedule 5, Line 10 x 1/8	0	19	22	28	33	25	25
19	<b>Total TES Rate Base</b>	<b>Sum of Lines 14 through 18</b>	<b>453</b>	<b>5,088</b>	<b>6,654</b>	<b>6,563</b>	<b>6,384</b>	<b>6,236</b>	<b>6,122</b>
20									
21	<b>Return on FAES Rate Base</b>								
22	Equity Return <sup>1</sup>	Line 19 x ROE x Equity %	17	188	246	243	236	231	227
23	Debt Component <sup>2</sup>	Line 19 x (LTD Rate x LTD%)	15	144	191	172	200	157	165
24	Total Earned Return	Line 22 + Line 23	31	333	437	415	437	388	391
25	Return on Rate Base %	Line 24 / Line 19	6.92%	6.54%	6.57%	6.33%	6.84%	6.21%	6.39%
26									
27									
28									
29	Cost of Service Discount Rate	1 + Line 25	1.07	1.14	1.21	1.29	1.38	1.46	1.56
30									

31 <sup>1</sup> Equity component of rate base at 40.0% with return on equity of 10.0%

32 <sup>2</sup> Debt component of rate base at 60.0% with debt rate of 4.73% in 2013/2014, 4.79% in 2014/2015, 4.38% in 2015/2016, 5.23% in 2016/2017, and 4.19% in 2017/18

FortisBC Alternative Energy Services Inc.  
School District No 37 - Delta  
Fiscal 2018/19 Forecast  
Appendix A  
**Capital Spending**  
(\$000's), unless otherwise stated  
Schedule 9

Line	Particulars	Reference	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
1	Capital Spending 2012 Onwards								
2	Mechanical Room Piping		721.6	882	39	0	-	-	-
3	Pumps		553	1,074	25	0	-	38	-
4	Boilers low CCA		244	285	14	0	-	27	27
5	Structures		62	55	3	0	-	-	-
6	Intrasystem Piping		439	709	13	0	-	-	-
7	Loop Field (Ground Source Heat Exchanger)		1,017	998	29	0	-	-	-
8	Meter Low CCA		422	491	22	0	-	-	-
9	Sustaining Capital		-	-	-	-	-	-	-
10	Total Capital Spending 2012 Onwards	Sum of Lines 3 through 9	3,460	4,493	145	1	-	64	27
11									
12	Contributions in Aid of Construction		-	(1,212)	-	-	-	-	-
13	Removal Costs		-	-	-	-	-	-	-
14	Net Annual Project Costs- Capital	Line 12 + Line 13	3,460	3,282	145	1	-	64	27
15									
16	Total Project Costs- Capital Spending and AFUDC	Sum of Line 25		8,099					
17	Total Net Project Costs- Capital Spending, AFUDC, CIAC & Removal Costs	Sum of Lines 25 and 14		6,887					

**FortisBC Alternative Energy Services Inc.**

School District No 37 - Delta

Fiscal 2018/19 Forecast

Appendix A

**Gross Plant in Service & Contributions in Aid of Construction**

(\$000's), unless otherwise stated

Schedule 10

Line	Particulars	Reference	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
1	<b>Gross Plant in Service</b>								
2									
3	Gross Plant in Service, Beginning								
4	Mechanical Room Piping		-	722	1,603	1,642	1,643	1,643	1,643
5	Pumps	Preceding Year, Line 41	-	553	1,627	1,651	1,652	1,652	1,689
6	Boilers low CCA	Preceding Year, Line 42	-	244	529	544	544	544	571
7	Structures	Preceding Year, Line 43	-	62	118	120	120	120	120
8	Intrasystem Piping	Preceding Year, Line 44	-	439	1,148	1,161	1,161	1,161	1,161
9	Loop Field (Ground Source Heat Exchanger)	Preceding Year, Line 45	-	1,017	2,015	2,044	2,044	2,044	2,044
10	Meter Low CCA	Preceding Year, Line 46	-	422	913	935	935	935	935
11	Sustaining Capital	Preceding Year, Line 47	-	-	-	-	-	-	-
12	Capitalized Overhead	Preceding Year, Line 48	-	-	21	46	46	46	74
13	Total Gross Plant in Service, Beginning	Sum of Lines 5 through 12	-	3,460	7,974	8,144	8,145	8,145	8,237
14									
15	Gross Plant in Service, Additions <sup>1</sup>								
16	Mechanical Room Piping		722	882	39	0	-	-	-
17	Pumps	Schedule 9, Line 3 + Line 14	553	1,074	25	0	-	38	-
18	Boilers low CCA	Schedule 9, Line 4 + Line 15	244	285	14	0	-	27	27
19	Structures	Schedule 9, Line 5 + Line 16	62	55	3	0	-	-	-
20	Intrasystem Piping	Schedule 9, Line 6 + Line 17	439	709	13	0	-	-	-
21	Loop Field (Ground Source Heat Exchanger)	Schedule 9, Line 7 + Line 18	1,017	998	29	0	-	-	-
22	Meter Low CCA	Schedule 9, Line 8 + Line 19	422	491	22	0	-	-	-
23	Sustaining Capital	Schedule 9, Line 9 + Line 20	-	-	-	-	-	-	-
24	Capitalized Overhead	Schedule 5, -Line 12	-	21	25	-	-	28	28
25	Total Gross Plant in Service, Additions	Sum of Lines 17 through 24	3,460	4,514	170	1	-	92	55
26									
27	Gross Plant in Service, Retirements								
28	Mechanical Room Piping		-	-	-	-	-	-	-
29	Pumps		-	-	-	-	-	-	-
30	Boilers high CCA		-	-	-	-	-	-	-
31	Structures		-	-	-	-	-	-	-
32	Intrasystem Piping		-	-	-	-	-	-	-
33	Loop Field (Ground Source Heat Exchanger)		-	-	-	-	-	-	-
34	Meter Low CCA		-	-	-	-	-	-	-
35	Sustaining Capital		-	-	-	-	-	-	-
36	Capitalized Overhead		-	-	-	-	-	-	-
37	Total Gross Plant in Service, Retirements	Sum of Lines 29 through 36	-	-	-	-	-	-	-
38									
39	Gross Plant in Service, Ending								
40	Mechanical Room Piping		722	1,603	1,642	1,643	1,643	1,643	1,643
41	Pumps	Line 5 + Line 17 + Line 29	553	1,627	1,651	1,652	1,652	1,689	1,689
42	Boilers low CCA	Line 6 + Line 18 + Line 30	244	529	544	544	544	571	598
43	Structures	Line 7 + Line 19 + Line 31	62	118	120	120	120	120	120
44	Intrasystem Piping	Line 8 + Line 20 + Line 32	439	1,148	1,161	1,161	1,161	1,161	1,161
45	Loop Field (Ground Source Heat Exchanger)	Line 9 + Line 21 + Line 33	1,017	2,015	2,044	2,044	2,044	2,044	2,044
46	Meter Low CCA	Line 10 + Line 22 + Line 34	422	913	935	935	935	935	935
47	Sustaining Capital	Line 11 + Line 23 + Line 35	-	-	-	-	-	-	-
48	Capitalized Overhead	Line 12 + Line 24 + Line 36	-	21	46	46	46	74	101
49	Total Gross Plant in Service, Ending	Sum of Lines 41 through 48	3,460	7,974	8,144	8,145	8,145	8,237	8,292
50									
51									
52	<b>Contributions in Aid of Construction (CIAC)</b>								
53	CIAC, Beginning	Preceding Year, Line 56	-	-	(1,212)	(1,212)	(1,212)	(1,212)	(1,212)
54	Additions	Schedule 9, Line 12	-	(1,212)	-	-	-	-	-
55	Retirements		-	-	-	-	-	-	-
56	CIAC, Ending	Sum of Lines 53 through 55	-	(1,212)	(1,212)	(1,212)	(1,212)	(1,212)	(1,212)

1- AFUDC included in 2012/2013 Gross Plant in Service Additions is calculated using actual estimated timing of spend while assuming a mid-year in service date for all projects

FortisBC Alternative Energy Services Inc.

School District No 37 - Delta

Fiscal 2018/19 Forecast

Appendix B

Accumulated Depreciation & Amortization

(\$000's), unless otherwise stated

Schedule 11

Line	Particulars	Reference	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	
1	<b>Accumulated Depreciation</b>									
2										
3	Accumulated Depreciation, Beginning									
4	Mechanical Room Piping	Preceeding Year, Line 41	-	(1)	(17)	(45)	(78)	(111)	(143)	
5	Pumps	Preceeding Year, Line 42	-	(2)	(38)	(103)	(179)	(256)	(333)	
6	Boilers low CCA	Preceeding Year, Line 43	-	(0)	(7)	(20)	(36)	(51)	(67)	
7	Structures	Preceeding Year, Line 44	-	(0)	(4)	(8)	(11)	(13)	(16)	
8	Intrasystem Piping	Preceeding Year, Line 45	-	(1)	(15)	(34)	(57)	(81)	(104)	
10	Loop Field (Ground Source Heat Exchanger)	Preceeding Year, Line 46	-	(1)	(32)	(67)	(108)	(149)	(189)	
11	Meter Low CCA	Preceeding Year, Line 47	-	(2)	(32)	(84)	(115)	(147)	(178)	
12	Sustaining Capital	Preceeding Year, Line 48	-	-	-	-	-	-	-	
13	Capitalized Overhead	Preceeding Year, Line 49	-	-	(0)	(1)	(2)	(2)	(3)	
14	Total Accumulated Depreciation, Beginning	Sum of Lines 5 through 13	-	(7)	(145)	(362)	(586)	(809)	(1,034)	
15										
16	Accumulated Depreciation, Depreciation Expense <sup>1</sup>									
17	Mechanical Room Piping@ 2%		(1)	(16)	(28)	(33)	(33)	(33)	(33)	
18	Pumps@ 4.63%	Schedule 10, Line 5 & Line 17	(2)	(37)	(65)	(76)	(76)	(77)	(78)	
19	Boilers low CCA@ 2.86%	Schedule 10, Line 6 & Line 18	(0)	(7)	(13)	(16)	(16)	(16)	(17)	
20	Structures@ 2%	Schedule 10, Line 7 & Line 19	(0)	(4)	(5)	(2)	(2)	(2)	(2)	
21	Intrasystem Piping@ 2%	Schedule 10, Line 8 & Line 20	(1)	(14)	(20)	(23)	(23)	(23)	(23)	
22	Loop Field (Ground Source Heat Exchanger)@ 2%	Schedule 10, Line 9 & Line 21	(1)	(31)	(35)	(41)	(41)	(41)	(41)	
23	Meter Low CCA@ 3.33%	Schedule 10, Line 10 & Line 22	(2)	(30)	(52)	(31)	(31)	(31)	(31)	
24	Sustaining Capital@ 2.75%	Schedule 10, Line 11 & Line 23	-	-	-	-	-	-	-	
25	Capitalized Overhead@ 1.73%	Schedule 10, Line 12 & Line 24	-	(0)	(1)	(1)	(1)	(1)	(2)	
26	Total Depreciation Expense	Sum of Lines 18 through 25	(7)	(138)	(217)	(223)	(223)	(225)	(227)	
27										
28	Accumulated Depreciation, Retirements									
29	Mechanical Room Piping		-	-	-	-	-	-	-	
30	Pumps	Schedule 10, -Line 29	-	-	-	-	-	-	-	
31	Boilers low CCA	Schedule 10, -Line 30	-	-	-	-	-	-	-	
32	Structures	Schedule 10, -Line 31	-	-	-	-	-	-	-	
33	Intrasystem Piping	Schedule 10, -Line 32	-	-	-	-	-	-	-	
34	Loop Field (Ground Source Heat Exchanger)	Schedule 10, -Line 33	-	-	-	-	-	-	-	
35	Meter Low CCA	Schedule 10, -Line 34	-	-	-	-	-	-	-	
36	Sustaining Capital	Schedule 10, -Line 35	-	-	-	-	-	-	-	
37	Capitalized Overhead	Schedule 10, -Line 36	-	-	-	-	-	-	-	
38	Total Accumulated Depreciation, Retirements	Sum of Lines 30 through 37	-	-	-	-	-	-	-	
39										
40	Accumulated Depreciation, Ending									
41	Mechanical Room Piping		(1)	(17)	(45)	(78)	(111)	(143)	(176)	
42	Pumps	Line 5 + Line 18 + Line 30	(2)	(38)	(103)	(179)	(256)	(333)	(411)	
43	Boilers low CCA	Line 6 + Line 19 + Line 31	(0)	(7)	(20)	(36)	(51)	(67)	(84)	
44	Structures	Line 7 + Line 20 + Line 32	(0)	(4)	(8)	(11)	(13)	(16)	(18)	
45	Intrasystem Piping	Line 8 + Line 21 + Line 33	(1)	(15)	(34)	(57)	(81)	(104)	(127)	
46	Loop Field (Ground Source Heat Exchanger)	Line 10 + Line 22 + Line 34	(1)	(32)	(67)	(108)	(149)	(189)	(230)	
47	Meter Low CCA	Line 11 + Line 23 + Line 35	(2)	(32)	(84)	(115)	(147)	(178)	(209)	
48	Sustaining Capital	Line 12 + Line 24 + Line 36	-	-	-	-	-	-	-	
49	Capitalized Overhead	Line 13 + Line 25 + Line 37	-	(0)	(1)	(2)	(2)	(3)	(5)	
50	Total Accumulated Depreciation, Ending	Sum of Lines 42 through 49	(7)	(145)	(362)	(586)	(809)	(1,034)	(1,261)	
51										
52										
53	<b>Accumulated Amortization of Contributions in Aid of Construction (CIAC)</b>									
54	Accumulated Amortization CIAC, Beginning	Preceeding Year, Line 57	-	-	19	58	96	134	173	
55	Amortization	Schedule 10, Line 53 & Line 54	-	19	38	38	38	38	38	
56	Retirements	Schedule 10, -Line 55	-	-	-	-	-	-	-	
57	Accumulated Amortization CIAC, Ending	Sum of Lines 54 through 56	-	19	58	96	134	173	211	
58										
59	<b>Removal Cost Provision</b>									
60	Mechanical Room Piping		-	-	-	-	-	-	-	
61	Pumps		-	-	-	-	-	-	-	
62	Boilers low CCA		-	-	-	-	-	-	-	
63	Structures		-	-	-	-	-	-	-	
64	Intrasystem Piping		-	-	-	-	-	-	-	
65	Loop Field (Ground Source Heat Exchanger)		-	-	-	-	-	-	-	
66	Meter Low CCA		-	-	-	-	-	-	-	
67	Sustaining Capital		-	-	-	-	-	-	-	
68	Total Removal Cost Provision	Sum of Lines 61 through 67	-	-	-	-	-	-	-	
69										
70	1- Depreciation & Amortization Expense calculation is based on opening balance + additions x 1/2 for all years									

**FortisBC Alternative Energy Services Inc.**

School District No 37 - Delta

Fiscal 2018/19 Forecast

Appendix B

**Deferred Charges**

(\$000's), unless otherwise stated

Schedule 11

<b>Line Particulars</b>	<b>Reference</b>	<b>2012/13</b>	<b>2013/14</b>	<b>2014/15</b>	<b>2015/16</b>	<b>2016/17</b>	<b>2017/18</b>	<b>2018/19</b>
1								
2	<b>Deferred Charge- Non-Rate Base (SD37 Deferral Account)</b>							
3	Opening Balance	-	21	519	1,247	2,097	3,017	3,845
4	Opening Balance, Adjustment	-	-	-	-	-	-	-
5	Gross Additions	21	499	698	829	898	936	-
6	Tax	-	-	-	-	-	-	-
7	AFUDC & Adjustments	-	-	51	94	153	193	218
8	Net Additions	21	520	1,267	2,170	3,148	4,147	4,063
9	Amortization Expense	-	(1)	(20)	(73)	(131)	(302)	(405)
10	Closing Balance	21	519	1,247	2,097	3,017	3,845	3,658

**Appendix B**

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**FAES NOTIFICATION TO DSD SEPTEMBER 15, 2017**



10-1111 West Georgia Street  
Vancouver, BC V6E 4M3  
[www.fortisbc.com](http://www.fortisbc.com)

September 15, 2017

Joe Strain  
Secretary Treasurer  
Delta School District #37  
4585 Harvest Drive, Delta, BC  
V4K 5B4

Dear Joe,

**Re: Delta School District Thermal Energy Service**

Further to our meeting on September 11, 2017, Fortis Alternative Energy Inc. (FAES) and the Delta School District (DSD) have been engaged in discussions since April 26, 2017 aimed at finding a resolve to the growing disparity between the Cost of Service (COS) and Market Rate (MR). With mutual satisfaction that we have fully explored and exhausted efforts, I respectfully provide notice of FAES's desire to charge the COS Rate under Section 1.1 (rr) of our contract.

FAES intends to file an application with the BCUC to move to the COS rate no less than 90 days from the date of this letter. FAES will send DSD a copy of the application prior to its submission. If you have any questions or concerns, please don't hesitate to contact me directly at (604) 443-6515.

Sincerely,

A handwritten signature in blue ink, appearing to read "D Slater".

**Doug Slater**  
**General Manager**  
**FortisBC Alternative Energy Services Inc.**

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**Appendix C**  
**DSD COMMENTS**

February 7, 2018

Delivered by Email ([Doug.Slater@fortisbc.com](mailto:Doug.Slater@fortisbc.com))

FortisBC Alternative Energy Services Inc.  
10-1111 West Georgia Street  
Vancouver, B.C. V6E 4M3

**Attention: Doug Slater, General Manager**

**Re: Draft Application to Charge the COS Rate (the “Draft Application”)**

Dear Mr. Slater,

We write in regard to the above-noted matter and further to your correspondence received January 25, 2018, enclosing a copy of the Draft Application.

Pursuant to Article 1.1(rr)(ii)(b) of the Energy Rate Development Agreement (the “RDA”), Delta School District No. 37 (“DSD”) hereby provides FortisBC Alternative Energy Services Inc. (“FAES”) with its preliminary comments on the Draft Application. Please be advised that, for the reasons set out below, DSD intends to oppose the granting of the relief sought in the Draft Application. DSD also disagrees with FAES on the procedural steps and form of hearing that will be required to have this matter determined by the B.C. Utilities Commission (the “Commission”), as well as the potential number of parties to any Commission proceeding in respect of the Draft Application.

It bears emphasis that this correspondence is not intended to be exhaustive, and only to provide a summary of the general position of DSD with respect to the Draft Application. To this end, DSD reserves the right to make further submissions to the Commission in respect of these issues and to raise additional issues if necessary, upon being provided with a copy of the final version of the Draft Application.

**A. TRANSITION PERIOD TO COST OF SERVICE RATE**

***A1. FEAS Statements***

Throughout the Draft Application, FAES describes the market rate for thermal energy (the “Market Rate”) as a “transitional” Market Rate several times, and claims that the “natural transition period” for the Market Rate was 2 to 5 years and argues that DSD should now be charged the cost of service rate (the “COS Rate”) because this 2 to 5 year “natural transition period” has elapsed.

## *A2. DSD Comments*

The Draft Application appears to be premised on the notion that there is something inevitable about the timing of a switch from the Market Rate to the COS Rate during the term of the RDA. As set out below, DSD maintains that this is inconsistent with the objective intent of the parties in entering into the RDA, the terms and conditions of the RDA, FAES' prior representations to DSD both before and after the RDA was executed, and FAES' prior submissions to the Commission concerning the allocation of risk in the RDA. Contrary to the position now taken by FAES, the timing of any transition has always been intended to depend entirely on the relationship between the two rates.

During the original Certificate of Public Convenience and Necessity proceedings before the Commission, FEI (the then-applicant) acknowledged that DSD desired to minimize the potential volatility of its energy rate and stated that the purpose of the Market Rate was to provide a "smooth transition" from the Market Rate to the COS Rate.<sup>1</sup> At that time, FEI stated that it expected DSD to elect to switch from the Market Rate to the COS Rate within a 2 to 5 year time period because FEI forecasted that the COS Rate would dip below the Market Rate during this time period, thereby providing DSD with a "smooth transition" from the Market Rate to the COS Rate. It bears emphasis, however, that nowhere in the RDA itself is a 2 to 5 year time period expressly contemplated, and the duration of this anticipated transition period was arrived at by FEI alone. DSD confirms that at no time did it agree to be compelled to switch to the COS Rate within a 2 to 5 year time period, should FEI/FAES' forecasts about the Market Rate and the COS Rate fail to hold true. To this end, DSD also notes that both the RDA and the related Energy System Service Agreements ("ESSAs") that were entered into between the parties contemplate that a switch to the COS Rate may occur well after a 2 to 5 year time period has elapsed, and possibly not before the term of the RDA expires.

As FAES is aware, DSD has long maintained the following position in its discussions with FAES and before the Commission on the question of when it would be appropriate to switch to the COS Rate under the RDA:

1. that DSD is not contractually obligated to switch from the Market Rate to the COS Rate unless and until DSD determines that such an election would be in its own best interest;
2. that FAES may only apply to the Commission for approval to charge DSD the cost of service rate if there are clear and demonstrable benefits to DSD in doing so; and
3. that, in the event that DSD does not switch from the Market Rate to the cost of service rate during the term of the RDA, and DSD elects not to renew the RDA, FAES shareholders will be solely responsible for any and all amounts that have accrued in the District Deferral Account ("DDA") during the term of the RDA.<sup>2</sup>

DSD's position is based on the terms and conditions of the RDA, FAES' express representations to DSD both before and after the RDA was executed, and FAES' prior submissions to the Commission concerning the allocation of risk in the RDA.

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<sup>1</sup> Section 1.2.3 of CPCN and Rates Application.

<sup>2</sup> DSD Submissions, FAES Revenue Requirement Application for 2015/2016

Pursuant to the provisions of the *School Act*, R.S.B.C. 1996, c. 412, DSD is required to pass a balanced budget annually. Should the Commission grant the relief sought in the Draft Application and allow DSD to be switched to the COS Rate, DSD anticipates that it would be compelled to impose budget cuts of approximately \$900,000 - \$1 million per annum for the remainder of the term of the RDA, in order to comply with its *School Act* requirements.

DSD will submit that the Commission should not, by regulatory intervention, alter the negotiated risk allocation concerning the timing of a possible transition from Market Rate to the COS Rate. FAES plainly seeks to have the Commission shift any and all risks from its shareholders to the DSD and the public. This result is not required under either the terms of the RDA or any regulatory policy or principles that should guide the Commission in dealing with the delivery of alternative energy services.

## **B. CALCULATION OF DISTRICT DEFFERAL ACCOUNT BALANCE AND COS RATE**

### ***B1. FAES Statements***

In the Draft Application, FAES states that “the DDA balance is expected to be \$3,845,000 as of the end of June 2018 and is growing each year at approximately \$650,000 (before amortization) plus AFUDC.”<sup>3</sup> FAES also states that it “has calculated the COS Rate for 2018/19 to be \$0.223/kWh and is seeking approval to charge this rate, less DSD Rate Rider of \$0.018/kWh as of July 1, 2018.”<sup>4</sup>

### ***B2 DSD Comments***

DSD disputes FAES’ calculation of the DDA balance and the COS Rate. Specifically, DSD maintains that FAES has failed or refused to adequately review and minimize both the initial capital costs associated with the thermal energy project, as well as its ongoing operational and maintenance costs, and DSD intends to challenge the calculation of the DDA balance in any proceeding before the Commission.

For these reasons, DSD maintains that it would not be just and reasonable for Commission to grant the relief sought in the Draft Application at the present time.

## **C. NEGOTIATION OF ALTERNATIVE SOLUTIONS**

### ***C1. FAES Statements***

In the Draft Application, FAES states that “FAES and DSD have exhausted efforts to negotiate alternative solutions.”<sup>5</sup>

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<sup>3</sup> Draft Application, p. 14.

<sup>4</sup> Draft Application, p.20.

<sup>5</sup> Draft Application, pp. 2, 17 and 19.

**C2. DSD Comments**

DSD disagrees with the notion that FAES and DSD have exhausted efforts to arrive at a negotiated resolution. The few solutions proposed by FAES to date have all been premised on DSD assuming all of the risk and liability associated with this particular FAES thermal energy business venture. DSD is open to engaging in further negotiation with FAES in respect of this matter in order to arrive at an equitable resolution.

**D. PROPOSED REGULATORY PROCESS**

**D1. FAES Statements**

In Section 1.2 of the Draft Application [*Proposed Regulatory Process*], FAES states that:

The negotiated contracts and associated rights and obligations between DSD and FAES were approved subsequent to a comprehensive public review process in 2011 and 2012. No other parties, other than FAES and DSD, have an interest in establishing when to begin charging the COS Rate to DSD. As such, FAES believes that the review of this Application need only involve FAES, DSD, and the Commission. The Commission's decision in this matter does not trigger a public interest determination, as such, no other parties need be invited to be involved in the regulatory review process. Further, the inclusion of parties other than FAES and DSD would be inefficient, unnecessarily lengthen and complicate the process, and have cost implications that would serve to increase the DDA balance.

... FAES believes that the most efficient and cost effective regulatory review process for this Application is a written hearing process involving FAES, DSD, and the Commission consisting of one round of information requests (IRs) each, a final argument by FAES, a final argument by DSD, and reply argument from FAES. FAES proposes the following timetable for the regulatory review process:

ACTION	Date (2018)
DSD Submission of Evidence (if any)	Friday, February 23
Commission and DSD IRs to FAES	Friday, March 2
Commission and FAES IRs to DSD	Friday, March 16
FAES Response to IRs	Friday, March 23
DSD Response to IRs	Friday, April 6
FAES Final Argument	Friday, April 27
DSD Final Argument	Friday, May 4
FAES Reply Argument	Friday, May 18

**D2. DSD Comments**

DSD disagrees with the proposed regulatory process and procedural timeline set out above. It is evident that DSD and FAES are not the only parties who would be interested in the FAES' application for the Commission's approval to charge DSD the COS Rate.

In discharging its public duties under the *School Act*, DSD operates according to a co-governance model in conjunction with the B.C. Ministry of Education. As set out above, an order requiring DSD to pay the COS Rate will have a significant financial impact on DSD and will require DSD to impose cuts to services to the schools in its school district. Given the nature of the co-governance model and the impact of any service cuts on the delivery of education programs, DSD maintains that the B.C. Ministry of Education will have an interest in the issues relating to interpretation and administration of the RDA and as to the outcome of the relief sought by FAES.

Moreover, DSD notes that the B.C. Ministry of Environment and the B.C. Ministry of Energy and Mines were involved in the initiation of the business arrangements between DSD and FEI, through the Public Sector Energy Conservation Agreement (“PSECA”). FEI was a PSECA partner and a \$1.4 million grant was made in support of the FAES project. The B.C. Ministry of Energy and Mines was a registered intervener in the original Certificate of Public Convenience and Necessity proceedings and made submissions. Given this, DSD maintains that the B.C. Ministry of Environment and the B.C. Ministry of Energy and Mines will also have an interest in the issues relating to the interpretation and administration of the RDA and as to the outcome of the relief sought by FAES.

Other parties, such as the original intervenors in Commission proceedings concerning the approval of the RDA, or other persons with an interest in the provision of alternative energy services (“AES”) and the extent or manner of regulation of AES or who may be affected by the outcome of the proceeding, should also have the opportunity to participate in FAES’ application should they so choose.

DSD maintains that all of the foregoing parties should be provided with an opportunity to participate in any Commission proceedings in respect of the Draft Application. The inclusion of these parties in the application proceedings before the Commission would not, as FAES claims, “unnecessarily lengthen and complicate the process.” To the contrary, the Commission should have the benefit of such broader perspectives on both the principles that should guide it and the impact of its decision.

Moreover, DSD does not agree that the application should be heard by way of a written hearing. As set out above, for the purposes of determining whether DSD should be compelled to switch from the Market Rate to the COS Rate under the RDA, relevant factors will include: the factual matrix that gave rise to the RDA; certain oral representations made by FAES to DSD concerning the circumstances in which it would apply to the Commission to switch DSD to the COS Rate; and the prior submissions that FAES made to the Commission concerning the allocation of risk within the RDA and liability for the DDA. As a result, it is evident that credibility will be a live issue in this proceeding. Accordingly, DSD maintains that it will be necessary for the Commission to evaluate conflicting evidence between the parties by way of live testimony and cross-examination during an oral hearing.

Furthermore, DSD disputes the proposed procedural timeline set out in the Draft Application. Given the potential number of parties to the proceeding, the issues to be determined, and the

unknown number of witnesses to be examined, it is evident that additional time will be required to respond to the final version of the Draft Application upon it being filed.

**E. CONCLUDING REMARKS**

DSD is providing its comments on the Draft Application for the sole purpose of exercising its rights under section 1.1(rr)(ii)(b) of the RDA. As stated above, DSD retains the right to provide a full response to the final version of the Draft Application, upon FAES filing it with the Commission.

If you have any questions, please contact the undersigned directly.

Best regards,

Nicola Christ



Nicola Christ  
Secretary Treasurer  
Delta School District #37

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**Appendix D**  
**DRAFT ORDER**



**ORDER NUMBER**

**G-xx-xx**

IN THE MATTER OF

the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

FortisBC Alternative Energy Services Inc.

Application for Approval of the Fiscal 2018/19 Revenue Requirements and Cost of Service Rates  
for the Thermal Energy Service to Delta School District Number 37

**BEFORE:**

[Panel Chair]  
Commissioner  
Commissioner

on **Date**

**ORDER**

**WHEREAS:**

- A. On November 28, 2011, FortisBC Energy Inc. (FEI) applied to the British Columbia Utilities Commission (Commission) for a Certificate of Public Convenience and Necessity (CPCN) to construct and operate an energy system to provide thermal energy to Delta School District Number 37 (DSD). The application sought, among other things, the approval of rates and the rate design contained within the Energy System Rate Development Agreement;
- B. On March 9, 2012, the Commission approved the provision of thermal energy service to the DSD, subject to proof of assignment to FortisBC Alternative Energy Services Inc. (FAES), in Order G-31-12 and the accompanying decision. Proof of assignment was filed and on March 16, 2012, and the Commission issued Order C-3-12 granting a CPCN to FAES. The Commission also approved the annual rate setting mechanism proposed whereby FAES will file a revenue requirements application, including the forecast balance of the SD37 deferral account and the forecast of thermal demand to establish the cost of service (COS) rate for the upcoming contract year, which runs from July 1 through June 30;
- C. By Order G-71-12, dated June 5, 2012, the Commission approved the rate design but denied approval of the rate;
- D. By Order G-88-12, dated June 25, 2012, the Commission approved the market rate mechanism as well as the COS rate for 2012/13;
- E. By Order G-81-13, dated May 23, 2013, the Commission approved the COS rate for fiscal 2013/14;
- F. By Order G-100-14, dated July 24, 2014, the Commission approved the COS rate for fiscal 2014/15;

- G. By Order G-146-15A, dated September 18, 2015, the Commission directed FAES to file additional information and submissions on various issues as outlined in the Reasons for Decision in Appendix A to the order. By Order G-213-15, dated December 24, 2015, the Commission approved the Compliance Filing and the COS rate for fiscal 2015/16;
- H. By Order G-53-16, dated April 26, 2016, the Commission granted, among other things, a variance of Order G-100-14 abandoning the annual revenue requirement filings (as encouraged by the Commission in Order G-213-15) and the additional financial information outlined in directives 3 and 4 of Order G-100-14. The Commission instead accepted the proposal by FAES to file an estimate of the Deferral Account balance as of July 1 of that calendar year and the forecast cost of service rate for the next contract year starting on each July 1. This information shall be submitted to the Commission prior to July 1 of each year, commencing with the July 1, 2016 year, and will be accepted for information only;
- I. On February 8, 2018, pursuant to sections 59 to 61 of the *Utilities Commission Act*, FAES filed for approval of its revenue requirements and rates for the Thermal Energy Service to the DSD based on the switch to the COS rate of \$0.223 per kWh effective July 1, 2018, for the fiscal and contract year from July 1, 2018 to June 30, 2019, which included calculation of the balance in the DSD Deferral Account; and
- J. The Commission has reviewed the Application and finds approval is warranted.

**NOW THEREFORE** pursuant to sections 59 to 61 of the *Utilities Commission Act*, the Commission approves the forecast cost of service rate of \$0.213 per kWh to be charged to the Delta School District Number 37 (DSD) for the Thermal Energy Service effective July 1, 2018, for the fiscal and contract year from July 1, 2018 to June 30, 2019, based on the forecast revenue requirements and cost of service including the DSD Deferral Account balance.

**DATED** at the City of Vancouver, in the Province of British Columbia, this (XX) day of (Month Year).

BY ORDER

(X. X. last name)  
Commissioner

**Appendix E**

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**RATE DEVELOPMENT AGREEMENT AND  
ENERGY SYSTEM SERVICE AGREEMENTS**

(Provided in electronic format only due to  
document size and in order to conserve paper)

**ENERGY SYSTEM SERVICE AGREEMENT**

**ANNIEVILLE ELEMENTARY SCHOOL**

**THIS AGREEMENT** dated for reference the 26<sup>th</sup> day of September, 2011.

**BETWEEN:**

**THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 37 (DELTA)**  
a corporation established under the School Act R.S.B.C. 1996, c. 412 having an  
office at 4585 Harvest Drive, Delta, British Columbia, V4K 5B4

(the "District")

OF THE FIRST PART

**AND:**

**FORTISBC ENERGY INC.**, a company duly incorporated under the laws of the  
Province of British Columbia, having its registered office at 10th Floor, 1111  
West Georgia Street, Vancouver, B.C. V6E 4M3

("FEI")

OF THE SECOND PART

**WHEREAS:**

- A. The District is the owner of Annieville Elementary School (the "Building") and lands located at 9240 112<sup>th</sup> Street Delta, British Columbia, which lands are legally described as:

PID: 011-929-111 Property No: 118982

PARCEL E (REFERENCE PLAN 14993) EXCEPT FIRSTLY PARCEL K (REFERENCE PLAN 24116) SECONDLY PART ROAD ON PLAN LMP44456 OF THE NORTH 331 FEET OF LOT 3 DISTRICT LOT 15 GROUP 2 NEW WESTMINSTER DISTRICT PLAN 850

(the "Lands")

- B. FEI wishes to supply to the Building, and the District wishes to purchase, Thermal Energy generated by an Energy System that FEI will construct on the Lands, and which FEI will own and operate, all pursuant to the terms of this Agreement.
- C. The Thermal Energy supplied by FEI to the Building pursuant to this Agreement will be priced at the rate set forth in the Energy System Rate Development Agreement between the Parties dated September 26<sup>th</sup>, 2011.

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT** in consideration of the premises and the covenants, agreements, representations, warranties and payments set out herein, the receipt and sufficiency of which is hereby acknowledged by each Party, the Parties covenant and agree as follows:

## **ARTICLE 1 - INTERPRETATION**

### 1.1 DEFINITIONS

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

- (a) “Adjusted Energy System Purchase Price” means, as of the date on which a purchase of the Energy System pursuant to Article 15 is effective, either:
  - (i) the Rate Base Value; or
  - (ii) such other purchase price for the Energy System as is determined by the BCUC; plus all applicable taxes;
- (b) “Affiliate” has the meaning set out in the *Business Corporation Act, S.B.C. 2002, c.57* and includes FortisBC Inc.;
- (c) “Agreement” means this agreement, including the preamble hereto and any schedules attached hereto and the terms “this Agreement”, “hereof”, “herein”, “hereunder” and “hereinafter” and similar expressions refer to the Agreement and not to any particular Section or other portion thereof and includes any agreement supplementary or ancillary thereto;
- (d) “Acceptance Date” means the date of BCUC Acceptance;
- (e) “BCUC” means the British Columbia Utilities Commission, or any successor thereto;
- (f) “BCUC Acceptance” has the meaning assigned to that term in Section 11.1;
- (g) “Building” has the meaning assigned to that term on page one of this Agreement;
- (h) “Building System” means the space heating, cooling and ventilation, and domestic hot water distribution and control systems existing in the Building, to which the Energy System will be connected;
- (i) “Business Day” means any day except Saturday and Sunday or any day on which banks are generally not open for business in Vancouver, British Columbia;
- (j) “Capital Contribution” means \$ 59,000;
- (k) “Commissioned” means once the Energy System is certified complete and operating in accordance with the Specifications by a professional engineer under seal;

- (l) “Commission Date” means the day on which the Energy System is Commissioned;
- (m) “Contaminants” means, collectively, any contaminant, toxic substance, dangerous good, or pollutant or any other substance which when released to the natural environment is likely to cause, at some immediate or future time, material harm or degradation to the natural environment or material risk to human health, and includes any radioactive materials, asbestos materials, urea formaldehyde, underground or aboveground tanks, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive or toxic substances, hazardous waste or waste of any kind, pesticides, defoliants, or any other solid, liquid, gas, vapour, odour or any other substance .the storage, manufacture, disposal, handling, treatment, generation, use, transport, remediation or Release into the Environment of which is now or hereafter prohibited, controlled or regulated under Environmental Laws;
- (n) “Continuing Service Interruption Notice” has the meaning assigned to that term in Section 14.3(b);
- (o) “Contractor” means a prime contractor hired by FEI to oversee and complete the construction and installation of the Energy System;
- (p) “Design and Construction” means the total construction and related services required to design, construct and commission the Energy System and connected components of the Building System;
- (q) “Design Thermal Energy” means the maximum amount of Thermal Energy that the Energy System is capable of delivering through the Thermal Energy Meter and is included in the Specifications;
- (r) “Disclosed Contaminants” means Contaminants:
  - (i) the existence of which are specifically identified in the reports provided by the District to FEI and listed in Schedule C;
  - (ii) that were or ought to have been discovered, foreseen or anticipated upon reasonable inspection by FEI prior to the Effective Date; and
  - (iii) that were caused by FEI or any person for whom FEI is responsible at law;
- (s) “District” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (t) “District Losses” has the meaning assigned to that term in Section 12.6;
- (u) “District Site Rules for Contractors” means the rules set forth in Schedule “B”;
- (v) “Effective Date” means the date set out on page one of this Agreement;
- (w) “Energy System” means the equipment that FEI constructs and owns which will provide the Building with its energy needs for space heating, cooling and ventilation, and domestic hot water use, all as set forth in this Agreement;

- (x) “Energy System Service Agreement” has the meaning assigned to that term in the Energy System Rate Development Agreement;
- (y) “Energy System Rate Development Agreement” means that energy system rate development agreement between the District and FEI dated as of September 26<sup>th</sup>, 2011;
- (z) “Environment” includes the air (including all layers of the atmosphere), land (including soil, sediment deposited on land, fill, lands submerged under water, buildings, and improvements), water (including oceans, lakes, rivers, streams, groundwater, and surface water), and all other external conditions and influences under which humans, animals, and plants live or are developed and “Environmental” will have a corresponding meaning;
- (aa) “Environmental Attributes” means:
  - (i) all attributes associated with, or that may be derived from the Energy System installed having decreased environmental impacts relative to the use of conventional heating and cooling and hot water heating systems including any existing or future credit, allowance, certificate, right, benefit or advantage or proprietary or contractual right whether or not tradable;
  - (ii) any existing or future instrument, including without limitation any environmental emission allowances and environmental emission reduction credits, reduction right, allowance, certificate or other unit of any kind whatsoever, whether or not tradable and any other proprietary or contractual right, whether or not tradable, and any resulting from, or otherwise related to the actual assumed reduction, displacement or offset of emissions associated with, or that may be derived from the Energy System installed; and
  - (iii) all revenues, entitlement, benefits and other proceeds arising from or related to the foregoing;
- (bb) “Environmental Laws” means any and all statutes, laws, regulations, orders, bylaws, standards, guidelines, protocols, permits, and other lawful requirements of any Governmental Authority having jurisdiction over the Lands or the Energy System now or hereafter in force with respect in any way to the Environment, environmental assessment, health, occupational health and safety, protection of any form of plant or animal life, or transportation of dangerous goods, including the principles of common law and equity;
- (cc) “Expiry Date” means the earlier of:
  - (i) June 30, 2031, or the expiry of any renewal term thereof; and
  - (ii) the closure of the Building, or the Building otherwise ceasing to operate as a school (as defined under the *School Act* (British Columbia));
- (dd) “FEI” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (ee) “FEI Losses” has the meaning assigned to that term in Section 12.5;

- (ff) “Force Majeure” has the meaning assigned to that term in Section 17.2;
- (gg) “Governmental Authority” means any federal, provincial, regional, municipal, local or other government, governmental or public department, court, tribunal, arbitral body, commission, board, bureau or agency and any subdivision, agent, commission, board or authority thereof;
- (hh) “Lands” has the meaning assigned to that term in Recital A and includes the Building located on the Lands;
- (ii) “Laws” means laws, statutes, regulations, bylaws, Permits and orders of any Governmental Authority having jurisdiction, including without limitation, Environmental Laws;
- (jj) “Maintain” means to operate, service and maintain in a safe and reliable condition and “maintaining” and “maintenance” have corresponding meanings;
- (kk) “Monthly Charges” means that amount to be paid by the District to FEI with respect to the delivery of Thermal Energy to the Building pursuant to the Energy System Rate Development Agreement and any other payments due and owing by the District under this Agreement;
- (ll) “Notifying Party” has the meaning assigned to that term in Section 16.1;
- (mm) “Party” means a signatory to this Agreement, and the “Parties” means all of such signatories;
- (nn) “Permits” means all permits, licences, certificates, approvals, authorizations, consents and the like issued by any Governmental Authority;
- (oo) “Rate Base Value” means the value of the Energy System that the BCUC accepts from time to time in accordance with the Energy System Rate Development Agreement;
- (pp) “Release” includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, migration, disposal, or dumping;
- (qq) “Right of Access and Licence” means the right and licence granted herein by the District to FEI pursuant to Section 4.1 of this Agreement;
- (rr) “Service Failure Notice” has the meaning assigned to that term in Section 14.3(c);
- (ss) “Service Interruption” means, in any hour:
  - (i) a failure of the Energy System in that hour to deliver Thermal Energy at the Thermal Energy Meter sufficient to meet the Thermal Energy demand of the Building during that hour in accordance with the Specifications up to the Design Thermal Energy, and except where such failure is directly caused by:
    - a. the careless or wilful damage to the Energy System by the District or its agents or other persons for whom the District is responsible;

- b. damage caused to the Energy System as a result of the negligent acts or omissions of the District, its agents or those for whom in law the District is responsible;
  - c. an event of Force Majeure that triggers the suspension of FEI's obligations under the Agreement pursuant to Article 17; or
  - d. maintenance activities that FEI is performing on the Energy System that have been scheduled with the consent of the District (such consent not to be unreasonably withheld); and
- (ii) if the failure described in Section 1.1(rr)(i), FEI's failure in that hour to deliver to the Building through alternative means thermal energy sufficient to maintain an average temperature of 16 degrees Celsius in each room of the Building intended to be served by the Energy System (all as determined by the District, acting reasonably);
- (tt) "Service Interruption Notice" has the meaning assigned to that term in Section 14.3(a);
- (uu) "Services" means those services to be provided by FEI to supply Thermal Energy to a Building from an Energy System, and for greater certainty includes the services described in Articles 5 and 6, and excludes the Design and Construction;
- (vv) "Specifications" means the specifications for the Energy System prepared by FEI in consultation with the District in accordance with Section 2.3 and includes the Design Thermal Energy;
- (ww) "Term" has the meaning assigned to that term in Section 3.1;
- (xx) "Thermal Energy" means the amount of energy that FEI provides to the Building measured through a Thermal Energy Meter;
- (yy) "Thermal Energy Meter" means a device that complies with the International Organization of Legal Metrology recommendations for measuring thermal energy; and
- (zz) "UCA" means the *Utilities Commission Act*, R.S.B.C. 1996, c. 473 as may be amended from time to time.

## 1.2 SCHEDULES

The following Schedules, as may be amended from time to time, are incorporated by reference into this Agreement:

Schedule "A"	Energy System Description
Schedule "B"	Delta School District Site Rules for Contractors
Schedule "C"	List of Environmental Reports

### 1.3 AMENDMENTS TO SCHEDULES

The District and FEI acknowledge that during the construction phase of the Energy System there may be additions and alterations to the Specifications for the Energy System which would result in more efficient use and operation of the Energy System. If these additions or alterations result in changes to any of the above Schedules, the Parties mutually agree to amend the Schedules by way of a written amendment prior to the Commission Date.

### 1.4 INTERPRETATION

Except where the context requires otherwise or except as otherwise expressly provided, in this Agreement:

- (a) all references to a designated Article or Section are to the designated Article or Section of this Agreement unless otherwise specifically stated;
- (b) the singular of any term includes the plural, and vice versa, and the use of any term is equally applicable to any gender and, where applicable, body corporate;
- (c) any reference to a corporate entity includes and is also a reference to any corporate entity that is a successor by merger, amalgamation, consolidation or otherwise to such entity;
- (d) the preamble and all schedules referred to and attached to this Agreement are incorporated by reference and will form a part of this Agreement;
- (e) all sums of money which are referred to in this Agreement are in lawful money of Canada;
- (f) the headings of the Articles and Sections set out in this Agreement are for convenience only and will not be considered in any interpretation of this Agreement;

## **ARTICLE 2 - DESIGN AND CONSTRUCTION OF THE ENERGY SYSTEM**

### 2.1 CONSTRUCTION

FEI will perform the Design and Construction:

- (a) in accordance and in compliance with the Specifications;
- (b) in a good and workmanlike manner using qualified workers, and in accordance with sound and currently accepted industry standards and codes of practice normally employed, at the time and place of performance, in projects of a similar type and nature;
- (c) to ensure operational compatibility with the Building System;
- (d) in a safe and environmentally sound manner, and in accordance with all applicable Laws; and
- (e) in accordance with the terms of this Agreement.

## 2.2 CAPITAL CONTRIBUTION

The District will pay to FEI within 30 days of the Commission Date the Capital Contribution for the purpose of reducing the capital investment and the associated carrying cost of capital by FEI for provision of Service to the Building.

## 2.3 SPECIFICATIONS

Subject to and in accordance with this Section 2.3, FEI shall prepare and complete the Specifications promptly following the Acceptance Date.

FEI confirms the Energy System, as described in the Specifications and as contemplated by the Energy System description set out in Schedule A, will be designed to meet the thermal energy requirements of the Building and operational compatibility of the Building System based in part on information supplied by the District as to historical usage, which information has not been independently verified by FEI. FEI shall have no liability to the District for the failure of the Energy System to satisfy the requirements of the Building where such failure is attributable to the information supplied by the District being incorrect, inaccurate or incomplete.

FEI will prepare the Specifications in consultation with the District in order to ensure the Energy System can be appropriately accommodated within the Building and interface with the Building Systems. FEI will submit material changes to the Specifications, both before and during construction, to the District for review and comment prior to such changes taking place. If the District does not comment on the Specifications or material changes to the Specifications or advise that it has no comment within five (5) Business Days of receipt, FEI will be entitled to proceed on the basis of the information provided to the District. FEI will revise the Specifications based on the comments from the District provided that doing so will not impact FEI's costs or adversely affect system performance.

Review of and comment on the Specifications by the District does not impose any obligation on the District to verify the suitability of the Energy System or be construed as confirmation by the District that the Energy System satisfactorily meets the Building's energy requirements.

## 2.4 WORK SCHEDULE

Within ten (10) Business Days following the Acceptance Date, FEI will submit to the District for review and comment a Gantt chart schedule for the Design and Construction listing activities to be undertaken during the Design and Construction stages, key milestones and approval dates and other pertinent dates. Any revisions to the schedule must be reviewed and commented by the District, which review and comment will not be unreasonably withheld, conditioned or delayed.

In order to ensure that the Building System remains operational during normal school hours (as defined in Schedule B), the cut-over from the existing heating/cooling plant to the Energy System shall be performed outside normal school hours.

## 2.5 REPORTING

FEI shall produce and submit a monthly progress report for the Design and Construction to the District until the Energy System is Commissioned.

## 2.6 TESTING AND COMMISSIONING

FEI shall coordinate and supervise the start-up and testing of the Energy System to ensure the Energy System and other components of the Building System affected by the Design and Construction are operating in accordance with the Specifications, upon which the Energy System will be Commissioned. The District shall be invited to participate in the start-up and testing exercise.

# ARTICLE 3 - TERM AND RENEWAL

## 3.1 TERM

The term of this Agreement commences on the Effective Date and continues until the Expiry Date unless it is terminated earlier as authorized under this Agreement ("Term").

## 3.2 RENEWAL

This Agreement will automatically renew for periods of ten (10) years unless either Party provides written notice to the other Party no less than six (6) months prior to the Expiry Date, provided that there shall be no automatic renewal in the event that the Expiry Date arises as a result of the closure of the Building, or the Building otherwise ceases to operate as a school (as defined under the *School Act* (British Columbia)).

# ARTICLE 4 - ACCESS AND PERMITS

## 4.1 ACCESS RIGHTS

The District hereby grants to FEI, during the Term from and following the Acceptance Date, for so long as FEI shall require it, but subject to Section 4.4, a full, free and uninterrupted licence and right of way on, over and under the Lands and Building, for FEI, its assigns, employees, contractors, agents, invitees and licensees at all times hereafter for the purposes set out in this Agreement, provided FEI will avoid to the extent reasonably possible, and otherwise minimize interference with and inconvenience to, the occupants of the Building and the access rights of FEI will be limited to the extent reasonably necessary to fulfil FEI's obligations hereunder.

Without limiting the generality of the foregoing, but subject to Section 4.4, such right of way and licence shall include the full power, right and liberty to excavate for, install, place, construct, renew, alter, repair, maintain, operate, use, abandon, remove or replace its infrastructure, in whole or in part, and to enter upon, along, across, over or under the Lands or Building and have continual access to the Energy System, with or without vehicles, supplies, machinery or equipment, for any of the purposes set out in this Agreement, and to clear such portion of the Lands and keep it cleared of obstructions which, in the opinion of FEI, acting reasonably, may

interfere with any of the rights granted to FEI herein. The District may direct, in its discretion, FEI to use alternate routing for any Environmental or other reasonable purpose.

FEI covenants and agrees with the District not to do or knowingly permit to be done anything which may, in the opinion of the District acting reasonably, damage or interfere with the Building or impair the operating efficiency thereof or create any hazard.

#### 4.2 CONDITION OF LAND

The District represents and warrants to FEI that as of the Effective Date:

- (a) to the best of the District's knowledge, the Lands are free of Contaminants other than those specifically identified in the reports provided by the District to FEI and listed in Schedule C; and
- (b) there are no actions, proceedings, investigations, claims (including remediation cost recovery claims) pending, or to the knowledge of the District, threatened, that would interfere with FEI's access rights pursuant to Section 4.1.

#### 4.3 PERMITS

FEI will obtain and maintain at its own expense all Permits necessary for the Design and Construction and the Services.

#### 4.4 SAFETY, SECURITY AND BUILDING ACCESS

Notwithstanding anything to the contrary in this Agreement, FEI will adhere, and will cause all persons for whom it is responsible under this Agreement (including, without limitation, the Contractor) to adhere to the District Site Rules for Contractors.

#### 4.5 REMEDIATION

FEI shall promptly remediate any Disclosed Contaminants on the Lands as required by applicable Law that result from, or are Released as a result of the Design and Construction or the Services, except to the extent caused or contributed to by the District's negligence. In the event that Contaminants on the Lands, other than Disclosed Contaminants, are discovered by FEI, FEI will promptly notify the District of such discovery and the Parties will review the impact of such discovery, if any, on the Design and Construction or the Services.

### **ARTICLE 5 - SERVICE PROVISION**

#### 5.1 PROVISION OF SERVICE

Subject to the terms and conditions of the Agreement, FEI will provide the Services to the District throughout the Term.

## 5.2 SERVICE MONITORING AND REVIEW

The Parties acknowledge that FEI may be required from time to time to prepare and submit reports to the BCUC concerning the operation and performance of the Energy System, and the District shall provide FEI with reasonable cooperation in relation to the preparation of such reports.

## 5.3 STANDARD OF PERFORMANCE

In performing the Services, FEI will:

- (a) use only qualified personnel and exercise the same degree of care, skill and supervision as would be exercised by a reasonable and prudent owner experienced in performing like services;
- (b) perform the Services in accordance with all applicable Laws;
- (c) perform the Services in accordance with ongoing industry standards and codes of practice; and
- (d) without limiting the effect of the foregoing, abide by any standards of performance in relation to the Services that the BCUC may set from time to time according to the provisions of the UCA.

## 5.4 INTERRUPTION

No interruption of any of the on-site and off-site services, utilities and amenities provided by FEI to the Building will, except to the extent, if any, caused by any wrongful or negligent act of FEI or any person for whom FEI is responsible at law, render FEI liable to the District or any person claiming through or under the District, or relieve the District from any of its obligations under this Agreement. Notwithstanding the foregoing, FEI will use all reasonable diligence to remedy any such interruption if it is within its power and obligation to do so.

# **ARTICLE 6 - ENERGY SYSTEM MAINTENANCE AND OPERATION**

## 6.1 MAINTENANCE AND REPAIR OF ENERGY SYSTEM

Subject to Section 6.2, FEI will perform the Services and otherwise maintain or cause to be maintained and repaired the Energy System throughout the Term:

- (a) in accordance with the Energy System design and operating specifications and requirements as established by the qualified engineers engaged by FEI in the design and construction of the Energy System, and the equipment manufacturers;
- (b) in a good and workman-like manner using qualified workers, and in accordance with sound and currently accepted industry standards and codes of practice normally employed, at the time and place of performance, in projects of a similar type and nature;
- (c) to ensure operational compatibility with the Building System;

- (d) in a safe and environmentally sound manner, and in accordance with all applicable Laws; and
- (e) in accordance with the terms of this Agreement.

FEI will not delay repair of the Energy System for any reason, including as a result of a dispute with the District in relation to the costs and expenses of repair pursuant to Section 6.2.

## 6.2 REPAIR DAMAGE

The District will be responsible for all costs and expenses incurred by FEI in respect of any damage to the Energy System caused by or resulting from:

- (a) the careless or wilful damage to the Energy System by the District or its agents or other persons for whom at law the District is responsible; or
- (b) damage caused to the Energy System as a result of the negligent acts or omissions of the District, its agents or those for whom in law the District is responsible.

## ARTICLE 7 - CHARGES

### 7.1 MONTHLY CHARGES

The District throughout the Term commencing on the Commission Date in accordance with this Article 7 will pay to FEI when due for the Thermal Energy that FEI delivers and meters to the Building according to the rates set out in the Energy System Rate Development Agreement plus all applicable taxes (including harmonized sales tax applicable thereon) and any imposed taxes levied after the Commission Date by a government or regulatory agency that are related to the Energy System (including, but not limited to capital taxes or royalties) and any other payments due and owing by the District under this Agreement.

### 7.2 MONTHLY STATEMENT

FEI will, within 15 days following the end of each month, deliver to the District a statement setting out the Monthly Charges including all applicable taxes payable for that month.

### 7.3 PAYMENT

The District will pay the full amount specified in each statement provided to it in accordance with Section 7.2 within 30 days of receipt of such statement. All amounts payable to FEI will be made by cheque mailed to FEI at its address for service specified in Section 20.5.

### 7.4 PAYMENT DUE

Subject to Section 14.1, the obligation of the District to pay the Monthly Charges continues whether or not the Energy System is being used to provide the Building with its energy needs for space and ventilation heating, cooling and domestic hot water use.

#### 7.5 ARREARS TO BEAR INTEREST

If any amount owing to FEI or the District is not paid on or before the date on which it is due, a late payment charge of 1.5% per month will be assessed each month on all outstanding balances not paid by the due date.

### **ARTICLE 8 - OWNERSHIP OF THE ENERGY SYSTEM**

Notwithstanding the payments made by the District to FEI under this Article 8, any provision of this Agreement, any degree of annexation or affixation, or rule of law or equity to the contrary the District will have no proprietary interest in the Energy System which is, and shall remain, the property of FEI and may be used by FEI in its business or removed in whole or in part as it may see fit, and for any of such purposes, and FEI may enter in, upon and under all the Lands for the purposes of the maintenance, renewals, repair, removal or operation of the Energy System or any part thereof; provided that FEI shall not leave any part of the Energy System in such a state as to constitute a nuisance or a danger to the public through neglect, non-use and want of repair, and provided further that nothing in this clause shall nullify or otherwise impact or invalidate in any way the District's rights under Article 15 to purchase the Energy System.

### **ARTICLE 9 - ENVIRONMENTAL ATTRIBUTES**

#### 9.1 ENVIRONMENTAL ATTRIBUTES

All right, title and interest now existing or which may exist at any time in the future in the potential or actual commercial value of any Environmental Attributes that arise or accrue by virtue of the construction and operation of the Energy System will belong to the District. At the request of the District, FEI will reasonably cooperate with the District in applying for and assigning any Environmental Attributes to the District.

#### 9.2 GRANTS

Any grants from any Governmental Authority, a Crown Corporation or non-governmental authority that may be derived from a reduction in energy consumption by the Building will belong to the District.

### **ARTICLE 10 - REPRESENTATIONS AND WARRANTIES**

#### 10.1 DISTRICT'S REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties contained in this Agreement, the District hereby represents and warrants to FEI as follows and acknowledges that FEI is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) the District has the full right, power and authority to enter into this Agreement;

- (b) all necessary action on the part of the District has been taken to authorize and approve the execution and delivery of this Agreement and the performance by the District of its obligations hereunder;
- (c) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to the District as of the date of this Agreement;
- (d) the District is not party to any action, suit or legal proceeding, actual or, to the knowledge of the District, threatened, and there are no circumstances, matters or things known to the District which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or, to the knowledge of the District, threatened against the District before or by any Governmental Authority, which could affect the District's ability to perform its obligations under this Agreement; and
- (e) no person, firm or corporation has or will have as of the Commission Date, any agreement, right, or option or right capable of becoming an agreement, right, or option for the purchase or acquisition of the Energy System.

## 10.2 FEI'S REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties contained in this Agreement, FEI hereby represents and warrants to the District as follows and acknowledges that the District is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) FEI has the full right, power and authority to enter into this Agreement;
- (b) all necessary corporate action on the part of FEI has been taken to authorize and approve the execution and delivery of this Agreement and the performance by FEI of its obligations hereunder;
- (c) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to FEI as of the date of this Agreement;
- (d) FEI is not party to any action, suit or legal proceeding, actual or threatened, and there are no circumstances, matters or things known to FEI which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or threatened against FEI before or by any Governmental Authority, which could affect FEI's ability to perform its obligations under this Agreement; and
- (e) FEI has or will have all permits, licenses, authorizations and other documentation required for the operation of the Energy System after the Commission Date; and
- (f) FEI has all the required expertise to fulfill its obligations under this Agreement.

### 10.3 DELEGATION AND SUBCONTRACTING

FEI may delegate and subcontract its obligations under this Agreement with respect to Design and Construction and Services to any contractor, consultant, agent or representative provided that FEI shall be fully responsible for the acts and omissions of such persons and those either directly or indirectly employed by them to the same extent as FEI for its own acts or omissions.

## ARTICLE 11 - BCUC ACCEPTANCE

### 11.1 REGULATORY REVIEW TERMINATION

Subject to Section 11.3, either Party may terminate this Agreement if within 90 days following the Effective Date, this Agreement and the Energy System Rate Development Agreement, including the Market Rate and the SD37 Rate Rider as defined in that Agreement have not been accepted for filing by the BCUC (such acceptance being herein called "BCUC Acceptance").

### 11.2 REGULATORY FILING

FEI, on behalf of itself and the District, and at its own cost, shall file the Agreement with the BCUC within a reasonable time after the Effective Date. FEI shall take all steps reasonably required to secure BCUC Acceptance, which shall consist of those procedural steps related to filing the Agreement and providing argument and witnesses in support of filing.

### 11.3 TERMINATION

A Party entitled to terminate under Section 11.1 must do so by giving notice to terminate to the other Party at any time after the right to terminate arises pursuant to Section 11.1, and prior to:

- (a) the date of issuance of the BCUC Acceptance; and
- (b) the date that is 90 days after the Effective Date.

### 11.4 EFFECT OF BCUC ACCEPTANCE

The Parties acknowledge that upon BCUC Acceptance, the Services will be subject to regulation by the BCUC under the UCA, and will form another class of service that FEI provides as a public utility. The Parties acknowledge that the terms of the UCA may supersede the terms and conditions of this Agreement.

## ARTICLE 12 - INDEMNITY

### 12.1 FEI'S INDEMNITY

Without limiting any other obligations of FEI provided herein, FEI will indemnify, defend, and save harmless the District and its trustees, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including the full amount of all legal fees and expenses on a

solicitor-client basis) which may be paid by, incurred by, or asserted against the District or its directors, officers, employees, agents, successors, or assigns, arising from or in connection with:

- (a) the breach or non-performance by FEI of any of its obligations or warranties hereunder; or
- (b) the negligence or wilful misconduct of FEI, its employees, contractors or agents in respect of the Energy System, and in the performance of the obligations of FEI pursuant to this Agreement,

excluding only such of the foregoing as arise from the fraud, negligence or wilful misconduct of the District or its trustees, officers, directors, members, employees, contractors or agents, or the breach or non-performance by the District of any of its obligations or warranties hereunder.

## 12.2 DISTRICT'S INDEMNITY

Without limiting any other obligations of the District provided herein, the District will indemnify, defend, and save harmless FEI, its Affiliates and their respective shareholders, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including the full amount of all legal fees and expenses on a solicitor-client basis) which may be paid by, incurred by, or asserted against FEI, its Affiliates or their respective shareholders, directors, officers, employees, agents, successors, or assigns, arising from or in connection with:

- (a) the breach or non-performance by the District of any of its obligations or warranties hereunder; or
- (b) the negligence or wilful misconduct of the District, its employees, contractors or agents in respect of the Energy System, and in the performance of the obligations of the District pursuant to this Agreement,

excluding only such of the foregoing as arise from the fraud, negligence or wilful misconduct of FEI or its Affiliates or any of their respective officers, directors, members, employees, contractors or agents, or the breach or non-performance by FEI of any of its obligations or warranties hereunder.

## 12.3 CONSEQUENTIAL LOSS

In no event will the District or FEI or any of their respective officers, directors, employees, contractors or agents be liable to the other Party for any indirect or consequential loss, cost or expense whatsoever, including any loss of profits, revenues or other economic loss, suffered by the other Party or its officers, directors, employees, contractors or agents.

## 12.4 SURVIVAL OF INDEMNITY

The indemnity of each of the District and FEI provided under this Article 12 will survive the Term of this Agreement.

## 12.5 ENVIRONMENTAL INDEMNITY BY THE DISTRICT

The District will indemnify and save harmless FEI, its Affiliates, directors, officers, shareholders, employees, agents, successors and permitted assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants (but not including Disclosed Contaminants) and remediation of the Lands and any affected adjacent property) (collectively, "FEI Losses") which may be paid by, incurred by or asserted against FEI, its Affiliates and their respective directors, officers, shareholders, employees, agents, successors or permitted assigns, arising from or in connection with any Contaminants (but not including Disclosed Contaminants) existing on the Lands prior to the Commission Date or brought onto the Lands or Released onto the Lands by the District or any person for whom it is in law responsible, except to the extent the FEI Losses suffered were caused or contributed to by any act or omission of FEI or any person for whom FEI is in law responsible after FEI had knowledge of the Contaminants.

## 12.6 ENVIRONMENTAL INDEMNITY BY FEI

FEI will indemnify and save harmless the District, its Affiliates and their respective trustees, directors, officers, employees, agents, successors and permitted assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the Lands and any affected adjacent property) (collectively, "District Losses") which may be paid by, incurred by or asserted against the District, its Affiliates, and their respective trustees, directors, officers, employees, agents, successors or permitted assigns, arising from or in connection with any Contaminants brought onto the Lands or any Disclosed Contaminants Released onto the Lands by FEI or any person for whom it is in law responsible, except to the extent the District Losses suffered were caused or contributed to by any act or omission of the District or any person for whom the District is in law responsible after the District had knowledge of the Contaminants.

# ARTICLE 13 - INSURANCE

## 13.1 FEI INSURANCE COVERAGE.

- (a) FEI will obtain and maintain at its own expense throughout the Term, Commercial General Liability Insurance for bodily injury, death and property damage in the minimum amount of five million (\$5,000,000) dollars per occurrence. The policy will contain a cross liability provision and will be maintained for a period ending no sooner than 12 months after the expiry or termination of this Agreement.
- (b) FEI will be responsible for the full amount of all premiums and deductibles required under this Section 13.1. All policies required herein must be effective at the Commission Date. Insurance will be purchased from insurers registered and licensed to underwrite

insurance in British Columbia. Policies will contain waivers of subrogation against the District and all its officers, directors, members, employees, contractors and agents.

### 13.2 DISTRICT INSURANCE COVERAGE

- (a) The District will obtain and maintain at its own expense throughout the Term Commercial General Liability Insurance for bodily injury, death and property damage in the minimum amount of five million (\$5,000,000) dollars per occurrence. The policy will contain a cross liability provision and will be maintained for a period ending no sooner than 12 months after the expiry or termination of this Agreement.
- (b) The District will be responsible for the full amount of all premiums and deductibles required under this Section 13.2. All policies required herein must be effective at the date of this Agreement. Insurance will be provided by the Provincial self-insured program. Policies will contain waivers of subrogation against FEI and all its officers, directors, employees, contractors and agents.

### 13.3 PRIORITY

FEI will ensure that the District is an additional insured under the insurance to be obtained and maintained pursuant to Section 13.1. The District will ensure that FEI is an additional insured under the insurance to be obtained and maintained pursuant to Section 13.2. In the event of a claim, the insurance carried by the Party responsible for actions which give rise to such claim will be the primary insurance with respect to such claim.

## ARTICLE 14 - DEFAULT

### 14.1 DEFAULT BY FEI

- (a) FEI will be in default under this Agreement if FEI is in breach of a material term, covenant, agreement, condition or obligation imposed on it under this Agreement and fails to cure such default within ten (10) days after receipt of written notice thereof from the District, or, if such default is not capable of being cured within such ten (10) day notice period, fails to commence in good faith the curing of such default upon receipt of such written notice of default from the District and to continue to diligently pursue the curing of such default thereafter until cured. For the purposes of this Section 14.1, Section 4.4 is hereby deemed to be a material term of this Agreement.
- (b) If FEI is in default of this Agreement, the District may at its option and without liability therefore or prejudice to any other right or remedy it, including under the UCA, may have suspend or refuse to make any payments due hereunder until the default has been fully remedied, and no such suspension or refusal will relieve FEI from any of its obligations under this Agreement.
- (c) In the event the default is not fully remedied within thirty (30) days of receipt by FEI of written notice thereof from the District, the District may, at its option, undertake the necessary steps to remedy FEI's default at FEI's sole expense, which reasonable costs

shall be deducted from the Monthly Charges, and such actions will not relieve FEI from any of its obligations under this Agreement or, at its option, and without any liability, terminate this Agreement without prejudice to any other right the District may have hereunder or at law or otherwise.

#### 14.2 DEFAULT BY THE DISTRICT

- (a) The District will be in default under this Agreement if the District fails or refuses to make any payment due to FEI by the District under this Agreement within thirty (30) days of receiving written notice from FEI after the date that payment is due or if the District is in breach of a material term, covenant, agreement, condition or obligation imposed on it under this Agreement and fails to cure such default within ten (10) days after receipt by the District of written notice thereof from FEI or, if such default is not capable of being cured within such ten (10) day notice period, fails to commence in good faith the curing of such default forthwith upon receipt of such written notice thereof from FEI and to continue to diligently pursue the curing of such default thereafter until cured.
- (b) If the District is in default of this Agreement, FEI may at its option and without liability therefore or prejudice to any other right or remedy it may have, including under the UCA, cease performing the Services and no such actions will relieve the District from any of its obligations under this Agreement.
- (c) In the event the default by the District is not fully remedied within thirty (30) days of receipt by the District of written notice from FEI, FEI may undertake the necessary steps to remedy the District's default at the District's sole expense and such action will not relieve the District from any of its obligations under this Agreement or, at its option, and without any liability, take whatever steps necessary to shut down the Energy System and terminate this Agreement without prejudice to any other right FEI may have hereunder or at law or otherwise.

#### 14.3 CROSS DEFAULT

- (a) If any Building experiences a Service Interruption at any time, the District may deliver a notice of such Service Interruption to FEI (a "Service Interruption Notice" to FEI);
- (b) If a Service Interruption continues for a period of 48 consecutive hours after the delivery of a Service Interruption Notice pursuant to Section 14.3(a), the District may deliver a notice of such continuing Service Interruption to FEI (a "Continuing Service Interruption Notice");
- (c) If a Service Interruption continues for a period of 120 consecutive hours after the delivery of a Continuing Service Interruption Notice, the District may at its option deliver a notice of such continuing Service Interruption to FEI (a "Service Failure Notice"); Within 60 days of either:
  - (i) the District's delivery of a Service Failure Notice pursuant to Section 14.3(c); or

- (ii) the District's delivery of a Continuing Service Interruption Notice pursuant to Section 14.3(b) that constitutes the fifth or greater Continuing Service Interruption Notice delivered in that calendar year;

the District may, at its option and without liability:

- (iii) terminate this Agreement without prejudice to any other right the District may have hereunder at law or otherwise; or
  - (iv) terminate the Energy System Rate Development Agreement and all Energy System Service Agreements (inclusive of this Agreement), without prejudice to any other right the District may have hereunder at law or otherwise.
- (d) For greater certainty, this Agreement shall be deemed to be terminated in the event that the District exercises its right to terminate all Energy System Service Agreement under another Energy System Service Agreement.

#### 14.4 SURVIVAL

Upon expiry or earlier termination of this Agreement for any reason, all claims, causes of action or other outstanding obligations remaining or being unfulfilled as of the expiry or termination of this Agreement and all of the provisions of this Agreement relating to the obligation or either the Parties to account to or indemnify the other and to pay to the other any amounts owing as at the date of expiry or termination in connection with this Agreement will survive such expiry or termination.

### **ARTICLE 15 – EXPIRY AND TERMINATION**

#### 15.1 EXPIRY

Upon expiry of the Term, unless otherwise agreed between the Parties and subject to agreement by the BCUC (if required pursuant to applicable Laws), the District may, at its option and by written notice to FEI within 30 days following the termination:

- (a) require FEI to remove the Energy System at FEI's cost in accordance with Section 15.5; or
- (b) acquire the Energy System from FEI at the Adjusted Energy System Purchase Price.

#### 15.2 TERMINATION OF THE ENERGY SYSTEM RATE DEVELOPMENT AGREEMENT

- (a) If the Energy System Rate Development Agreement is terminated as a result of the adoption, approval or implementation of a thermal energy rate tariff by the BCUC, this Agreement will automatically terminate effective as of the date of termination of the Energy System Rate Development Agreement;
- (b) If the Energy System Rate Development Agreement is terminated for cause by the District, this Agreement will be deemed to have been terminated pursuant to Section

14.1(c) as of the date of termination of the Energy System Rate Development Agreement, and Section 15.3 shall apply; and

- (c) If the Energy System Rate Development Agreement is terminated for cause by FEI, this Agreement will be deemed to have been concurrently terminated pursuant to Section 14.2(c) as of the date of termination of the Energy System Rate Development Agreement, and Section 15.4 shall apply.

### 15.3 TERMINATION BY THE DISTRICT FOR CAUSE

If the District terminates this Agreement pursuant to Sections 14.1(c) or 14.3, the District may, at its option and by written notice to FEI within 30 days following the termination:

- (a) require FEI to remove the Energy System, at its own cost, in accordance with Section 15.5; or
- (b) acquire the Energy System from FEI at the Adjusted Energy System Purchase Price.

### 15.4 TERMINATION BY FEI FOR CAUSE

If FEI terminates this Agreement pursuant to Section 14.2(c), FEI may, at its option and by written notice to the District:

- (a) remove the Energy System, at its own cost, in accordance with Section 15.5; or
- (b) require the District to purchase the Energy System from FEI at the Adjusted Energy System Purchase Price.

### 15.5 REMOVAL OF THE ENERGY SYSTEM

If FEI is required to remove the Energy System pursuant to Sections 15.1(a), 15.3(a) or 15.4(a) or otherwise upon expiry of this Agreement, FEI shall promptly remove those portions of the Energy System located within the Building and at surface level at FEI's cost, and FEI shall perform such removal activities using standards of performance that are equivalent to those that apply to the performance of the Services under this Agreement. Any portion of the Energy System not removed by FEI prior to the 30<sup>th</sup> day following the termination or expiry of the Agreement will, as of such day, be deemed to be automatically transferred to the District, and become the property of the District, all at no cost to the District.

### 15.6 ACQUISITION OF THE ENERGY SYSTEM

If the District elects to acquire the Energy System pursuant to Sections 15.1(b), 15.3(b) or 15.4(b):

- (a) the District shall pay the Adjusted Energy System Purchase Price to FEI within the later of 30 days of (i) the effective date of expiration or termination, and (ii) confirmation of the Adjusted Energy System Purchase Price; and

- (b) FEI will promptly execute and deliver any documents and records reasonably required by the District to effect and facilitate the transfer of the Energy System to the District, including bills of sale, operation and maintenance manuals and warranties, and will use reasonable commercial efforts to obtain any consents and approvals that may be required in relation to the transfer (including, without limitation, BCUC approval), provided that (i) FEI's obligations under this Section 15.6(b) shall arise only upon FEI's receipt of all amounts due and owing to FEI from the District under this Agreement, and (ii) during the period between the expiration or termination of the Agreement and FEI's receipt of amounts due and owing to FEI from the District under this Agreement, FEI shall continue to maintain, or shall permit the District to maintain, the Energy System in good working order.

Notwithstanding the foregoing, the Parties acknowledge and agree that FEI's ability to sell or otherwise transfer its interest in and to the Energy System to the District may be subject to BCUC approval under applicable Laws.

## **ARTICLE 16 - NON-COMPLIANCE AND ENVIRONMENTAL**

### **16.1 NOTIFICATION OF NON-COMPLIANCE**

FEI or the District (as applicable, the "Notifying Party") will promptly, upon becoming aware thereof, notify the other Party in writing of:

- (a) a Release of a Contaminant or any other occurrence or condition in the Energy System, the Lands or any adjacent property which could subject the other Party to any fines, penalties, orders or proceedings under applicable Laws;
- (b) any charge, order, investigation or notice of violation or non-compliance issued against the Notifying Party relating to the Energy System, or the operation of the Energy System, under any applicable Laws; and
- (c) any notice, claim, action or other proceeding by any third party against the Notifying Party in respect of the Design and Construction or the Services or concerning the Release or alleged Release of any Contaminants at or from the Energy System or the Lands.

### **16.2 NOTIFICATION BY FEI**

FEI will notify the appropriate Governmental Authorities of any Release of any Contaminants at or from the Energy System in accordance with applicable Laws. The District may, but is not obligated to, notify the appropriate Governmental Authorities of any Release of any Contaminants at or from the Energy System in accordance with applicable Laws.

### **16.3 OWNERSHIP OF CONTAMINANTS**

Notwithstanding any rule of law to the contrary, any Disclosed Contaminant Released from the Energy System, or any top soil, earth or other material containing a Contaminant for which FEI is responsible pursuant to Section 4.5 that is removed from the Lands by FEI or any person for

whom it is in law responsible, will be and remain the sole and exclusive property and responsibility of FEI and will not become the property of the District, notwithstanding the degree of its affixation to the Lands and notwithstanding the expiry or earlier termination of this Agreement.

#### 16.4 SURVIVAL OF OBLIGATIONS

The obligations of the Parties under this Article 16 will survive the expiry or termination of this Agreement.

### **ARTICLE 17 - FORCE MAJEURE**

#### 17.1 SUSPENSION

Subject to the other provisions of this Article 17, if either Party is unable or fails by reason of Force Majeure to perform in whole or in part any obligation or covenant set forth in this Agreement, with the exception of unpaid financial obligations, such inability or failure will be deemed not to be a breach of such obligation or covenant and the obligations of both Parties under this Agreement will be suspended to the extent necessary during the continuation of any inability or failure so caused by such Force Majeure.

#### 17.2 DEFINITION OF FORCE MAJEURE

For purposes of this Agreement, the term "Force Majeure" means any event or occurrence not within the control of the Party claiming Force Majeure and which by the exercise of reasonable diligence such Party is unable to prevent or overcome, including any acts of God, including lightning, earthquakes, storms, washouts, landslides, avalanches, fires, epidemics and floods; strikes, lockouts or other industrial disturbances; acts of the Queen's or public enemies, sabotage, wars, blockades, insurrections, riots or civil disturbances, fires, explosions, breakages of or accidents to machinery or lines of pipe; the laws, orders, rules, regulations, acts or restraints of any court or governmental or regulatory authority. For the purposes of this Article 17, a Party is deemed to have control over the actions or omissions of those persons to which it, its agents, contractors or employees, have delegated, assigned or subcontracted its obligations and responsibilities. For greater certainty, a Force Majeure shall not include any weather related events that do not exceed 25 year events as recorded by Environment Canada or as otherwise may be determined by the BCUC from time to time.

#### 17.3 EXCEPTIONS

Neither Party will be entitled to the benefit of Section 17.1 under any of the following circumstances:

- (a) the Energy System not being Commissioned;
- (b) to the extent that the inability or failure was caused by the negligence or contributory negligence of the Party claiming Force Majeure;

- (c) to the extent that the inability or failure was caused by the Party claiming Force Majeure having failed to diligently attempt to remedy the condition by taking all reasonable acts and to resume the performance of such covenants and obligations with reasonable dispatch;
- (d) if the inability or failure was caused by lack of funds or is in respect of any amount due hereunder; or
- (e) unless, as soon as possible after the happening of the occurrence relied upon or as soon as possible after determining that the occurrence was in the nature of Force Majeure and would affect the claiming Party's ability to observe or perform any of its covenants or obligations under this Agreement, the claiming Party will have given to the other Party notice to the effect that the claiming Party is unable by reason of Force Majeure (the nature whereof will be therein specified) to perform the particular covenants or obligations.

#### 17.4 RESUMPTION OF OBLIGATIONS

The Party claiming Force Majeure will give notice to the other Party, as soon as possible after the Force Majeure condition is remedied, to the effect that the same had been remedied and that such Party has resumed, or is then in a position to resume, the performance of its suspended covenants and obligations hereunder either in whole or in part.

#### 17.5 SETTLEMENT OF LABOUR DISPUTES

Notwithstanding any of the provisions of this Article 17, and subject to Section 17.3, the settlement of labour disputes or industrial disturbances is entirely within the discretion of the particular Party involved and the Party may make settlement of it at the time and on terms and conditions as it may deem to be advisable and no delay in making settlement will deprive the Party of the benefit of Section 17.1.

### **ARTICLE 18 - CONDITIONS PRECEDENT**

#### 18.1 CONDITIONS PRECEDENT OF FEI

The obligation of FEI to carry out the transactions contemplated by this Agreement is subject to fulfillment of the following conditions on or before such date as may be specified, which is for the sole benefit of FEI, and which may be waived by FEI in accordance with Section 18.2:

- (a) FEI obtaining the approval by its board of directors of the terms and conditions of this Agreement on or before the 30th day following the Effective Date, provided that if such approval cannot be obtained by this date due to the fact that the board of directors has not yet considered the transaction FEI reserves the right to extend the period of time to that date when the board next convenes.

## 18.2 FEI NOTICE OF WAIVER

If a condition set out in Section 18.1 has not been satisfied on or before the date as may be specified for its fulfillment, FEI may waive compliance with the condition in whole or in part, in its sole discretion, by written notice to the District, failing which delivery of written notice of satisfaction or waiver of such condition, this Agreement will, to the extent any further obligations of the Parties which remain unfulfilled, be null and void, without liability between the Parties hereto, and, neither Party will be under any further obligation to the other to complete the transactions or future transactions, as the case may be, contemplated by this Agreement.

## **ARTICLE 19 - DISPUTE RESOLUTION**

### 19.1 REFERENCE TO ARBITRATION

The Parties will attempt to resolve all disputes which may arise under, out of, in connection with or in relation to this Agreement by negotiation. They will provide full and timely disclosure to one another of all facts relevant to the disputes to facilitate those negotiations. If any such dispute remains unresolved, for any reason, fifteen (15) days after either Party requested the other Party to enter into negotiations to resolve it, or if the Parties agree to waive negotiations in respect of it, then either Party may submit that dispute for final resolution by arbitration administered by the British Columbia International Commercial Arbitration Centre (“BCICAC”) under its “Shorter Rules for Domestic Commercial Arbitration”. The seat of that arbitration will be Vancouver, British Columbia, Canada. The language of that arbitration will be English. Alternatively, the Parties may agree, within the 15 days referred to above, to submit that dispute for final resolution by arbitration in another manner.

### 19.2 BINDING DECISION

The decision of the arbitrator, regardless of what arbitration procedure is used, will, for all purposes of this Agreement, be final and binding on the Parties.

### 19.3 CONTINUATION OF SERVICES

Each of the Parties will perform all of its respective obligations under this Agreement notwithstanding the existence of any dispute that arises from time to time between the Parties in respect of any matter related to this Agreement or during the resolution of any dispute in accordance with this Article 19.

### 19.4 COSTS

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 case, the non-prevailing Party shall pay all costs and expenses of the arbitration, but not those of the prevailing Party.

## ARTICLE 20 - GENERAL

### 20.1 RESPONSIBILITY FOR COSTS

FEI's performance of any of its obligations under this Agreement, including without limitation the obligation to design, construct and install the Energy System as provided in Section 2.1, shall be at FEI's sole cost and expense, unless expressly provided otherwise in this Agreement;

### 20.2 EXERCISE OF DISCRETION

Where anything in this Agreement is identified as being in either Party's discretion, such Party will have the right to exercise such discretion in its own best interest without regard for the interest of the other Party.

### 20.3 COOPERATION

FEI and the District will at all times extend co-operation to each other to ensure the orderly management and operation of the Energy System.

### 20.4 SOLICITATION

Nothing in this Agreement precludes either Party from soliciting or entering into, other contracts with the other Party.

### 20.5 NOTICES

Any notice or other communication required or permitted to be given under this Agreement will be effective only if in writing and when it is actually delivered (which delivery may be by telecopy or other telecommunications device) to the Party for whom it is intended at the following address or such other address in British Columbia as such Party may designate to the other Party by notice in writing delivered in accordance with this Section 20.5:

(a) if to FEI:

FortisBC Energy Inc.  
10th Floor, 1111 West Georgia Street  
Vancouver, B.C.  
V6E 4M3

Attention: Gareth Jones  
Telephone: 250-380-5972  
Telecopy: 250-388-6876

(b) if to the District:

Board of Education of School District No. 37 (Delta)  
4585 Harvest Drive  
Delta, B.C.  
V4K 5B4

Attention: Frank Geyer  
Telephone: 604-952-5336  
Telecopy: 604-952-5375

Notwithstanding the foregoing, notices with respect to Force Majeure will be given in writing by telecopy, or orally in person or by telephone (to be confirmed by telecopy), to the person or persons designated from time to time by the Parties as the person or persons authorized to receive such notices.

## 20.6 CONFIDENTIALITY

The District and FEI will treat as confidential the terms of this Agreement and all Confidential Information (as defined below) and will at all times during the term of this Agreement and for a reasonable time thereafter hold the terms of this Agreement and all Confidential Information in confidence and neither Party will, without the prior written consent of the other Party, disclose or divulge the terms of this Agreement or any Confidential Information to any person, provided that nothing in this Section 20.6 will restrict or prevent either Party from making any disclosure of such terms or any Confidential Information:

- (a) which is reasonably necessary or desirable for such Party to carry out and give full effect to the terms, conditions and intent of this Agreement and the matters contemplated hereby;
- (b) which is required by any Law, including the Freedom of Information and Protection of Privacy Act (British Columbia);
- (c) to any Governmental Authority;
- (d) to the British Columbia Utilities Commission or other regulatory agency as part or in support of any regulatory application or submission;
- (e) to the directors, officers or employees of such Party or to an Affiliate of such Party or to the directors, officers or employees of an Affiliate of such Party;
- (f) to the professional advisors of such Party on the same terms of confidentiality;
- (g) which is already in the public domain; or
- (h) in connection with legal proceedings or steps being taken to remedy a breach or default under this Agreement by the other Party.

For the purposes of this Section 20.6, “Confidential Information” means proprietary information of either Party such as data, plans, drawings, manuals, or specifications which have been provided by such Party, its employees, contractors, agents, subcontractors, Affiliates to the other Party pursuant to this Agreement or proprietary information either Party conceived or developed by or for such Party concerning construction practices, operation and maintenance practices, agreements, marketing plans and strategies, profits, costs, pricing and systems of procedure (provided that “Confidential Information” does not include information which was disclosed to the receiving Party by a third Party (unless, to the knowledge of the receiving Party, the third Party is under an obligation of confidentiality to the other Party) or any information developed or conceived by the receiving Party without using the “Confidential Information” of the other Party).

#### 20.7 SEVERABILITY

If any provision of this Agreement is found or determined to be invalid, illegal or unenforceable it will be construed to be separate and severable from this Agreement and will not impair the validity, legality or enforceability of any other provisions of this Agreement, and the remainder of this Agreement will continue to be binding on the Parties as if such provision had been deleted.

#### 20.8 NO WAIVER

No waiver by either Party of any default by the other in the performance of any of the provisions of this Agreement will operate or be construed as a waiver of any other or future default or defaults hereunder, whether of a like or a different character. To be binding, any waiver of any provision of this Agreement must be clearly expressed in writing to be signed by the waiving Party.

#### 20.9 BURDEN AND BENEFIT

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

#### 20.10 GOVERNING LAW

This Agreement and all matters arising hereunder will be governed by the laws of British Columbia and the federal laws of Canada applicable in British Columbia.

#### 20.11 ENTIRE AGREEMENT

This Agreement contains the whole agreement between the Parties in respect of the subject matter hereof and there are no terms, conditions or collateral agreements express, implied or statutory other than as expressly set forth in this Agreement and this Agreement supersedes all of the terms of any written or oral agreement or understanding between the Parties.

#### 20.12 TIME OF ESSENCE

Time is of the essence of this Agreement.

#### 20.13 FURTHER ASSURANCES

Each Party will, at all times hereafter on demand by the other, execute and deliver or cause to be executed and delivered all such further documents and do all such further acts and things as may be reasonably requested by the other Party to evidence, carry out and give full effect to the intent and meaning of this Agreement and to assure the completion of the transactions contemplated hereby.

#### 20.14 AMENDMENTS TO BE IN WRITING

Except as set out in this Agreement, no amendment or variation of this Agreement will be effective or binding upon the Parties unless such amendment or variation is set out in writing and duly executed by the Parties.

#### 20.15 FACSIMILE

This Agreement may be executed by the Parties and transmitted by facsimile transmission and, if so executed, transmitted and received, this Agreement will for all purposes be effective as if the Parties had delivered and executed the original Agreement and each Party undertakes to provide the other Party with a copy of this Agreement bearing original signatures forthwith upon demand.

#### 20.16 SUBJECT TO LEGISLATION

Notwithstanding any other provision hereof, this Agreement and the rights and obligations of FEI and the District under this Agreement are subject to all present and future laws, rules, regulations and orders of any legislative body, governmental agency or duly constituted authority now or hereafter having jurisdiction over FEI or the District.

#### 20.17 EXPENSES

Each Party to this Agreement shall be responsible for the payment of all costs, expenses, legal fees and disbursements incurred or to be incurred by it in negotiating and preparing this Agreement and all documents required to be delivered under this Agreement and otherwise relating to the transactions contemplated by this Agreement.

#### 20.18 NO CONTRARY AGREEMENT

No Party shall enter into an agreement or other commitment with any person if such agreement or commitment has terms or provisions in conflict with or inconsistent with the terms of this Agreement or which could reasonably be expected to lead to actions or consequences that would result in the Party being in breach of the commitments and obligations of the Party pursuant to this Agreement unless such other agreement or commitment is expressly approved by the other Parties.

#### 20.19 NO PARTNERSHIP

Nothing herein shall be deemed or construed to create a joint venture, partnership, employment or agency relationship between the Parties for any purpose.

20.20 ASSIGNMENT

Neither Party may assign this Agreement or any of its rights or obligations under this Agreement, and FEI may not assign, transfer or sell all or any part of the Energy System, except:

- (a) with the consent of the other Party, such consent not to be unreasonably withheld, delayed or conditioned; or
- (b) in the case of FEI, to an Affiliate of FEI which is a "public utility" as defined in the *UCA* on notice to, but without the consent of, the District.

20.21 COUNTERPARTS

This Agreement may be executed in counterparts with the same effect as if the Parties had signed the same document. All counterparts will be construed together and will constitute one agreement.

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

**FORTISBC ENERGY INC.**

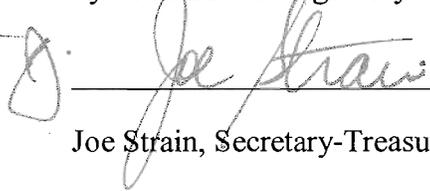
by its authorized signatory:

  
\_\_\_\_\_

Doug Stout,  
VP Energy Solutions & External Relations

**THE BOARD OF EDUCATION OF  
SCHOOL DISTRICT NO. 37 (DELTA)**

by its authorized signatory:

  
\_\_\_\_\_

Joe Strain, Secretary-Treasurer

# **SAMPLE SCHEDULE “A”**

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## **Energy System Description**

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### **Mechanical Equipment Plans and Specifications**

Equipment schedule:

- 2 boilers Mod Com 300 (By others)
- Pumps, piping, control valves and other equipment and accessories connected to the above equipment.
- BTU Meter
- Control systems for the above mentioned equipment.

Prior to commencement of the Mechanical Equipment construction, FEI shall provide detailed drawings to the District for review and acceptance.

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## **SCHEDULE “B”**

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# **Delta School District Site Rules for Contractors**

## **Delta School District Site Rules for Contractors**

### **1.0 Safety**

- 1.1 For the purposes of this section, “Safety Regulations” means the rules, regulations, and practices required by WorkSafeBC.
- 1.2 The Contractor shall be solely responsible for site safety during the execution of all assigned construction and maintenance activities, including work performed by subcontractors and suppliers, and for compliance with the Safety Regulations, and shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the work.
- 1.3 If the District is of the reasonable opinion that the Contractor has not taken such precautions as are necessary to ensure compliance with the requirements of Clause 1.2, the District may take or order any remedial measures which it deems necessary, including stopping the performance of all or any portion of the work, and the District may use the employees of itself, the Contractor, any subcontractor or any other contractors to perform such remedial measures. The Contractor acknowledges and agrees that any failure by the Contractor to comply with the Safety Regulations shall constitute a default of the Contractor's contractual obligations and the District may issue a written notice instructing the Contractor to correct the default in the two (2) working days immediately following receipt of such notice.
- 1.4 The Contractor shall file any notices or any similar document (including, without limitation, a Notice of Project where applicable) required pursuant to the Safety Regulations. This duty of the Contractor will be considered to be included in the work and no separate payment therefore will be made to the Contractor.
- 1.5 The Contractor shall develop, maintain and supervise for the duration of the work a comprehensive safety program that will effectively incorporate and implement all required safety precautions. The program shall, as a minimum, respond fully to the Safety Regulations and general construction practices for the safety of persons or property, including without limitation the WorkSafeBC regulations that may be applicable (e.g. WHMIS, dust control, etc.).
- 1.6 The Contractor shall provide a copy of the safety program described in Clause 1.5 to the District prior to the commencement of the work and shall, at all times require, as far as it is reasonably practical to do so, that every employer and worker performing work in respect of the project complies with such program.
- 1.7 The Contractor shall arrange regular safety meetings at its expense, record the minutes of such meetings and maintain a complete file for review by the appropriate authorities.
- 1.8 The Contractor shall supply and maintain, at its own expense, at its office or other well-known place at the work site, safety equipment necessary to protect the workers and general public against accident or injury as prescribed by the governing authorities.
- 1.9 The Contractor shall supply and maintain all articles necessary for giving first-aid to any person who may be injured on the work site and shall establish an emergency procedure for the immediate removal of any injured person to a hospital or a doctor's care in accordance with the Safety Regulations.
- 1.10 The Contractor shall, as required under the Safety Regulations, promptly report all accidents of any sort arising out of or in connection with the performance of the work whether on or adjacent to the work site, giving full details and statements of witnesses. The District shall be copied on all accident reports and investigation reports.

## **2.0 Security and Access**

- 2.1 **Site and Building Access:** The District's Maintenance Services Department will issue gate and building keys, electronic access cards (complete with instructions as to how to arm/disarm the building intrusion alarm system and how to contact the alarm monitoring station) and identification badges for the Contractor to enter the site and building, disarm/arm the building intrusion alarm system, and access the portions of the site where the Contractor's work is taking place. The Contractor and all subcontractors must check in at the school office (if occupied by District staff) prior to entering other parts of the building. The access cards, keys and identification badges shall be promptly returned to the District at the end of the contract.
- 2.2 **Security:** The Contractor shall assume all responsibility for the security of the work site. The Contractor must ensure that all windows, doors and gates are secure and the building intrusion alarm system is armed (unless District staff are still in the building) at the end of the workday. The Contractor must also safeguard the rest of the building and/or site from access through possible open construction areas. Security doors shall at all times remain closed and shall not be propped open, even for a short time. The Contractor is responsible for any costs arising when the District's security runner services is called to attend a work site for security matters resulting from the Contractor's negligence.
- 2.3 **Normal School Hours:** Normal hours of operation for the District are 0730h-1600h Monday to Friday, excluding statutory holidays. For after-hours and weekend work, the Contractor must notify the District's Maintenance Services Department at least one business day in advance of the work.

## **3.0 Conduct**

- 3.1 **Noise Due to Construction or Maintenance Activities:** In accordance with the Delta Noise Bylaw 1906, "no person shall carry on or cause to be carried any construction work, reconstruction, alteration, repair or demolition of a building or structure, the operation of machinery, or works in connection with any excavation or highway before 07:00h or after 1900h and day of the week from Monday to Friday, inclusive, before 0900h or after 1700h on Saturdays, or at any time Sundays. The Contractor shall respect the classroom operations in the vicinity of the work site and as such will make every attempt to limit noisy work to times outside of classroom operation or to adequately dampen, silence and/or soundproof equipment that generates noise to mitigate disruption to the classrooms.
- 3.2 **Communication devices:** Radio and cell phone volume shall be at the minimum volume which is consistent with the ability to operate the device.
- 3.3 **Roadways:** All speed limits and other traffic rules must be obeyed and access to the roadways should not be impeded. Parking and secure storage of materials and equipment by the Contractor and subcontractors shall only be in designated areas only.
- 3.4 **Cleanliness:** The work site must be maintained for an orderly appearance on a daily basis. Trash and construction debris shall be contained at all times and removed from the work site weekly.
- 3.5 **Toilets:** All temporary toilets shall have their doors faced away from streets. In no cases shall a worker utilize any staff washroom or other staff facilities at the work site, except as otherwise agreed in writing by the District. Under no circumstances will workers be permitted to use student washrooms.
- 3.6 **Identification Badges:** All workers shall have a District-assigned identification badge that clearly indicates the company's name and the worker's name. It is to be worn whenever at the work site.

- 3.7 **Smoking:** Smoking is not permitted on District property.
- 3.8 **Alcohol/Drugs:** No alcoholic beverages or non-prescription drugs shall be brought or consumed at the work site.
- 3.9 **Animals:** No dogs or other animals, are permitted at the work site without the written consent of the District.
- 3.10 **Fitness for Work:** All workers must be fit for work at all times. The District retains the right to request individuals leave the work site if unfit for any reason including, without limitation, inebriation, taking drugs, injury, fatigue, rudeness or any other reason that may affect the quality of the work or represents a breach of these rules.
- 3.11 **Theft:** Workers who steal from occupants or the District shall be immediately ejected from the work site. The Contractor is responsible for all such thefts irrespective of whether the worker is an employee of the Contractor or a subcontractor.
- 3.12 **Discrimination and Harassment:** The District actively promotes a safe and secure school environment and as such does not tolerate violations of human rights legislation, including:
  - (a) discriminatory acts against any person with respect to the work or school environment or any educational program or service provided to or by that person because of race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age of that person, or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person;
  - (b) all forms of actual, attempted or threatened physical harm directed at any person; or
  - (c) any form of sexual harassment such as unwelcome sexual advances with actual or implied work related consequences; unwelcome remarks, questions, jokes or innuendo of a sexual nature including sexist comments or sexual invitations; verbal abuse, intimidation or threats of a sexual nature; unwelcome leering, staring or making sexual gestures; whistling or catcalls; display of pornographic or other sexual materials; offensive pictures, graffiti, cartoons or sayings; unwanted physical contact such as touching, patting, pinching or hugging; and physical assault of a sexual nature

## **SCHEDULE “C”**

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### **List of Environmental Reports**



**ASBESTOS MATERIALS SURVEY  
AND RISK ASSESSMENT**

**OF**

**ANNIEVILLE ELEMENTARY SCHOOL  
9240 – 112<sup>th</sup> Street  
Delta, BC**

**PREPARED FOR:**

**DELTA SCHOOL DISTRICT  
Maintenance Facility  
7186 Brown Street  
Delta, BC  
V4G 1G8**

**PREPARED BY:**

**ACM ENVIRONMENTAL CORPORATION  
#217 -2323 Quebec Street  
Vancouver, BC  
V5T 4S7  
604-873-8599**

**September 2005**

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## **EXECUTIVE SUMMARY**

A.C.M. Environmental Corporation (ACM) was retained by the Delta School District to perform an Asbestos Materials Survey and Risk Assessment for Annieville Elementary located at 9240 – 112<sup>th</sup> Street, Delta, BC.

The assessment involved an inspection of all areas of the building. The objective of the assessment was to identify the types and extent of asbestos containing materials within the building and any risks associated with the materials and the regular usage of the building.

The assessment was conducted using both visual and physical assessment techniques. Samples of materials suspected of containing asbestos were collected and forwarded, using proper chain of custody protocols, to Prezant Associates, Inc. for asbestos analysis. Asbestos sample results are located in Appendix A of this report.

Previous asbestos sampling information for the building was reviewed prior to conducting the survey assessment. ACM previously collected several bulk samples from the school on June 22<sup>nd</sup>, 1990. The sampling identified the boiler tank insulation, pipe elbows and fittings to be asbestos containing and was not re-sampled during the latest survey.

In summary, the findings from the assessment conclude that asbestos was found within the construction materials of the building, however, no PCB or Mercury containing materials were found within the equipment of the building.

One type of asbestos containing material was observed which includes vinyl floor tile materials. Within the context of the report, areas have been detailed as to the locations of the asbestos containing materials, the content of asbestos where applicable, and the required procedures to be followed for removal of these materials, as required.

The hazardous materials survey was conducted using non-destructive and some limited destructive testing methods. Areas within walls were not inspected as access was not possible without causing extensive damage to the walls. It should be noted that there is a possibility of asbestos containing materials existing within inaccessible wall and ceiling cavities, and under sub-floors. Possible asbestos-containing materials which may exist in these areas may include but are not limited to: insulation materials (mechanical or construction), secondary layers of drywall or flooring, etc.

Roofing materials were not sampled at this time as the integrity of the waterproof membrane would be compromised, possibly voiding insurance coverage in the event of a water leak. If the roofing materials are to be disturbed during a renovation project, they must be sampled prior to the work taking place.

A random number of fluorescent lighting fixtures were opened up and inspected for possible PCB containing ballasts. No PCB containing ballasts were observed within the fluorescent lighting fixtures inspected, although some may exist, as not all fixtures were opened. No Mercury containing thermostat switches were observed within the building.

## **INTRODUCTION**

A.C.M. Environmental Corporation (ACM) was retained by the Delta School District to perform an Asbestos Materials Survey and Risk Assessment for Annieville Elementary located at 11447 – 82nd Street, Delta, BC. The building is to undergo renovations in the near future and all areas of the building were inspected and/or sampled during this survey.

The objective of the assessment was to identify the types and extent of asbestos containing construction materials within the accessible areas of the building. The assessment at this time involved an inspection of all areas of the building not including the roofing materials.

The survey and assessment was conducted on September 6<sup>th</sup>, 2005 by Mr. Barry O'Regan, BST, ISO14001, EMS, IA, Project Manager, for ACM. Seventeen (17) representative bulk samples of materials suspected of containing asbestos were collected for analysis and are included as Appendix A of this report.

Previous asbestos sampling information for the building was reviewed prior to conducting the survey assessment. ACM previously collected bulk samples from the school on June 22<sup>nd</sup>, 1990. The sampling identified the boiler tank insulation, pipe elbows and fittings to be asbestos containing and was not re-sampled during the September 6<sup>th</sup>, 2005 survey.

## **METHODOLOGY**

The hazardous materials survey was conducted using non-destructive and some limited destructive testing methods. Areas within walls were not inspected as access was not possible without causing extensive damage to the walls. It should be noted that there is a possibility of asbestos containing materials existing within inaccessible wall and ceiling cavities, and under sub-floors. Possible asbestos-containing materials which may exist in these areas may include but are not limited to: insulation materials (mechanical or construction), secondary layers of drywall or flooring, etc.

The U.S. Environmental Protection Agency (USEPA) Guidance Document was selected for use in this study (1). The document identifies factors associated with the "condition" and the "potential for disturbance or erosion" of asbestos containing materials. These factors help to define the fibre release potential of the suspect asbestos containing materials and were used in a qualitative evaluation of materials found in the surveyed areas. Recommendations have been substantiated by additional information utilized from other documentation cited in the Reference Section of this report.

The bulk samples of suspect asbestos containing materials were forwarded, using proper chain of custody protocols, to Prezant Associates, Inc. for asbestos analysis. The samples were analyzed using polarized light microscopy (PLM) with dispersion staining in accordance with U.S. EPA method 600/R-93/116, "Method for Determination of Asbestos in Bulk Building Materials".

Other hazardous materials were visually inspected and are noted in this report.

The survey relied on the abilities and experience of the surveyor to gain access and identify possible asbestos containing materials. All areas of the building were accessed during the assessment excluding the roof.

## **RESULTS & ASSOCIATED RISK LEVELS**

### **ASBESTOS**

One type of asbestos containing material was identified during this survey which will or could be affected by any potential renovation or demolition activities: vinyl floor tiles. A breakdown for each type of material is as follows:

#### **Vinyl Floor Tile Materials:**

Asbestos containing vinyl floor tile materials were observed on the lower northeast stairwell landing and lower level area. These areas include the hallway, music room (Room 6) and Room 7. All of the asbestos containing vinyl floor tile materials were older 9" vinyl floor tiles which were either blue or brown in color, with dark and white streaks. Three bulk samples of these vinyl floor tile materials were found to contain 2%, <1% and 5% Chrysotile asbestos respectively in the tiles. All 9" vinyl floor tiles are to be treated as asbestos containing materials. The materials are presently in good condition.

Prior to any activities taking place which could disturb the asbestos containing vinyl floor tile materials, they must first be removed and disposed of in accordance with applicable regulations. The removal of the vinyl floor tile materials will pose a moderate risk of asbestos exposure to the workers involved, therefore as a minimum, MODERATE RISK asbestos work procedures will be required for the removal of the asbestos containing...

### **POLYCHLORINATED BIPHENYLS (PCBs)**

A random number of fluorescent light ballasts were visually inspected for possible PCB containing ballasts. No PCB containing ballasts were observed within the fluorescent lighting fixtures inspected in both buildings, although some may exist, as not all fixtures were opened up.

PCB containing fluorescent light ballasts do not pose a risk to occupants of the building. If any PCB containing ballasts are encountered during any renovations of the building, they must be separated from the fixtures and disposed of properly in accordance with applicable regulations.

### **MERCURY THERMOSTATS**

No thermostats observed within the building were found to have Mercury containing switches within them. If any Mercury containing thermostat switches are encountered within the building during renovation or repair activities, they

must be removed intact from the thermostats and disposed of properly in accordance with applicable regulations.

### **RECOMMENDATIONS**

Prior to beginning any work that may impinge upon the hazardous materials within the building, the following must be performed:

- 1.) Any affected asbestos containing vinyl floor tile materials in the building must be removed and disposed of in accordance with applicable regulations. The removal of the asbestos containing vinyl floor tile materials will require MODERATE RISK asbestos work procedures to be followed.
- 2.) If any Mercury containing thermostat switches are encountered during any renovation or repair activities within the building, they must be removed and disposed of in accordance with applicable regulations.
- 3.) If any PCB containing ballasts are encountered during any renovation or repair activities within the building, they must be removed and disposed of in accordance with applicable regulations.
- 4.) If any suspect asbestos containing materials are encountered within inaccessible wall or ceiling cavities, or under floors, during renovation or demolition activities, the work in the immediate area must stop and the supervisor contacted for further direction.

**STATEMENT OF LIMITATIONS**

The ACM report is intended to direct the Client's attention to recognised environmental conditions and to potential sources of environmental contamination. The findings and conclusion regarding contamination of the property are based solely on the extent of observations and information gathered during the assessment. Nothing in the report is intended to express any legal opinion upon environmental liabilities relating to the site or whether operations legally conformed with relevant legislative requirements.

Furthermore, it must be understood that changing circumstances in the physical environment, the use of the property, as well in changes in any substances stored, used, handled at the property, could alter radically the conclusions and information contained in this report. Therefore, it is important that the property is periodically re-evaluated and the client kept informed as to developments, which may impact the property. This report is not intended to be used as contract specifications.

**A.C.M. ENVIRONMENTAL CORPORATION**

---

James McArthur, ASCT  
Environmental Technician

**REFERENCES**

- 1) USEPA. 1985. U.S. Environmental Protection Agency. "Guidance for Controlling Asbestos-Containing Materials in Buildings". Washington, DC: Office of Toxic Substances, USEPA.
- 2) Lory EE, Coin DC. 1981. "Management Procedure for Assessment of Friable Asbestos Insulating Material". Port Hueneme, CA: Civil Engineering Laboratory, Naval Construction Battalion Center.
- 3) Workers' Compensation Board of British Columbia, effective 15 April 1998, and all current amendments. Occupational Health and Safety Regulations.
- 4) 2002 Edition - Workers' Compensation Board of British Columbia. Safe Work Practices for Handling Asbestos.

**APPENDIX A**  
**Bulk Sample Results**



NVLAP LAB CODE 200613-0



330 6th Ave. North, Suite 200 Seattle, WA 98109  
OFFICE: (206) 281-8858 FAX: (206) 281-8922

### Bulk Asbestos Fiber Analysis

**ACM Environmental**  
2323 Quebec Street, Suite 211  
Vancouver, BC

Project Location: Annieville Elementary  
3048-20

PAI Batch Number: **05-2340**  
Client Job Number:  
Number of Samples: **17**  
Turn Around Time: **10 day**

Batch Number:	05-2340	<b>ACM Environmental</b>
Lab Sample Number:	05012889	
Client Sample Number:	<b>3048.180</b>	<i>Annieville Elementary</i> <b>3048-20</b>

**L-1 Gray shiny glossy hard tile material**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
45% Calcite Filler and Binder  
40% Mineral Filler and Binder  
10% Vinyl Filler and Binder  
5% Plastic Particles

**Comments:**

**L-2 Dull black mastic**

**Asbestos Fibrous Components:**  
**2% Chrysotile**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
90% Asphalt Filler and Binder  
5% Sand  
3% Mineral Fragments

**Comments:**

Batch Number:	05-2340	<b>ACM Environmental</b>
Lab Sample Number:	05012890	
Client Sample Number:	<b>3048.181</b>	<i>Annieville Elementary</i> <b>3048-20</b>

Sampled By: James McArthur  
Received By: John McCaslin  
Reviewed By: George McCaslin

9/22/2005  
9/23/2005

*Deitrie Hanson*  
Analyzed By: Deitrie Hanson

9/23/2005



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### Bulk Asbestos Fiber Analysis

**L-1 Gray glossy hard tile material**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

**Non-Asbestos Fibrous Components:**

**Non-Fibrous Components:**  
45% Calcite Filler and Binder  
40% Mineral Filler and Binder  
10% Vinyl Filler and Binder  
5% Plastic Particles

**Comments:**

**L-2 Black shiny mastic**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

**Non-Asbestos Fibrous Components:**

**Non-Fibrous Components:**  
92% Asphalt Filler and Binder  
5% Mineral Fragments  
3% Filler and Binder

**Comments:**

Batch Number: 05-2340  
Lab Sample Number: 05012891  
Client Sample Number: 3048.182

**ACM Environmental**  
*Annieville Elementary*  
*3048-20*

**L-1 White paint**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

**Non-Asbestos Fibrous Components:**

**Non-Fibrous Components:**  
100% Paint

**Comments:**

Sampled By: James McArthur  
Received By: John McCaslin 9/22/2005  
Reviewed By: George McCaslin 9/23/2005

Analyzed By: Deitrie Hanson 9/23/2005



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## Bulk Asbestos Fiber Analysis

### L-2 White crystalline powdery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		92% Calcite Filler and Binder
		5% Mineral Fragments
		3% Filler and Binder

**Comments:**

### L-3 Dull brown fibrous papery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
	99% Cellulose	1% Filler and Binder

**Comments:**

### L-4 Off-white fine powdery fibrous material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
	8% Cellulose	90% Talc Filler and Binder
		2% Mineral Fragments

**Comments:**

Batch Number: 05-2340	<b>ACM Environmental</b>
Lab Sample Number: 05012892	
Client Sample Number: 3048.183	<i>Annieville Elementary</i> 3048-20

### L-1 Dull gray pliable rubbery material with white, gray, and black swirls

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Rubber Particles
		10% Resin and Binder

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/22/2005  
 9/23/2005

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9/23/2005



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## Bulk Asbestos Fiber Analysis

**L-2      Transparent resinous mastic**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 90%    Resin and Binder 10%    Mineral Fragments
---	---	---

**Comments:**

**L-3      Dull off-gray opaque pliable material**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 80%    Rubber Particles 15%    Calcite Filler and Binder 5%      Resin and Binder
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**Comments:**

**L-4      Golden orange mastic**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 95%    Resin and Binder 5%      Mineral Fragments
---	---	--

**Comments:**

**L-5      Dull pink thick pliable rubbery material**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 45%    Rubber Particles 40%    Mineral Particles 10%    Resin and Binder 5%      Mineral Fragments
---	---	---

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

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 9/23/2005

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Analyzed By: Deitrie Hanson      9/23/2005



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### Bulk Asbestos Fiber Analysis

#### L-6 Dark orange opaque mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		97% Resin and Binder
		3% Filler and Binder

Comments:

Batch Number: 05-2340	<b>ACM Environmental</b>
Lab Sample Number: 05012893	
Client Sample Number: 3048.184	<i>Annieville Elementary</i> 3048-20

#### L-1 Dull gray hard tile material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		55% Calcite Filler and Binder
		40% Mineral Filler and Binder
		5% Vinyl Filler and Binder

Comments:

#### L-2 Tan opaque mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		96% Resin and Binder
		4% Mineral Fragments

Comments:

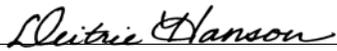
#### L-3 Black thick rubbery mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Asphalt Filler and Binder
		5% Mineral Fragments
		5% Filler and Binder

Comments:

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/22/2005  
9/23/2005

  
 Analyzed By: Deitrie Hanson

9/23/2005



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### Bulk Asbestos Fiber Analysis

#### L-4 Tan fine powdery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Talc Filler and Binder
		8% Resin and Binder
		2% Mineral Fragments

**Comments:**

Batch Number: 05-2340	<b>ACM Environmental</b>
Lab Sample Number: 05012894	
Client Sample Number: <b>3048.185</b>	<b>Annieville Elementary</b> <b>3048-20</b>

#### L-1 Pale beige hard tile material

<b>Asbestos Fibrous Components:</b> <b>&lt;1% Chrysotile</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		>4% Lizardite

**Comments:**

This tile contains <1% chrysotile asbestos.

#### L-2 Black shiny resinous mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Asphalt Filler and Binder
		5% Mineral Fragments
		5% Filler and Binder

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/22/2005  
 9/23/2005

*Deitrie Hanson*  
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9/23/2005



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### Bulk Asbestos Fiber Analysis

#### L-3 Gray hard granular powdery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		80% Sand
		15% Mineral Filler and Binder
		5% Filler and Binder

Comments:

#### L-4 White chalky powdery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		95% Talc Filler and Binder
		5% Mineral Fragments

Comments:

Batch Number: 05-2340	<b>ACM Environmental</b>
Lab Sample Number: 05012895	
Client Sample Number: <b>3048.186</b>	<b>Annieville Elementary</b> <b>3048-20</b>

#### L-1 Pale gray paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		100% Paint

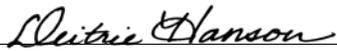
Comments:

#### L-2 White fine crystalline powdery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		95% Calcite Filler and Binder
		3% Vermiculite
		2% Mineral Fragments

Comments:

Sampled By: James McArthur  
 Received By: John McCaslin 9/22/2005  
 Reviewed By: George McCaslin 9/23/2005

  
 Analyzed By: Deitrie Hanson 9/23/2005



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## Bulk Asbestos Fiber Analysis

### L-3 Off-white fibrous papery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	97% Cellulose	3% Filler and Binder

**Comments:**

Batch Number:	05-2340	<b>ACM Environmental</b>
Lab Sample Number:	05012896	
Client Sample Number:	<b>3048.187</b>	<i>Annieville Elementary</i> <b>3048-20</b>

### White chalky powdery granular material on gray granular brittle material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		80% Sand
		15% Calcite Filler and Binder
		3% Mineral Fragments
		2% Paint

**Comments:**

Batch Number:	05-2340	<b>ACM Environmental</b>
Lab Sample Number:	05012897	
Client Sample Number:	<b>3048.188</b>	<i>Annieville Elementary</i> <b>3048-20</b>

### L-1 White fine crystalline powdery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		80% Talc Filler and Binder
		15% Mineral Particles
		5% Filler and Binder

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/22/2005  
 9/23/2005

*Deitrie Hanson*  
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9/23/2005



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## Bulk Asbestos Fiber Analysis

### L-2 Pale yellowish white fibrous papery material

<b>Asbestos Fibrous Components:</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
<b>No Asbestos Detected</b>	97% Cellulose	3% Filler and Binder

Comments:

### L-3 White fine crystalline powdery material

<b>Asbestos Fibrous Components:</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
<b>No Asbestos Detected</b>		92% Talc Filler and Binder
		5% Mineral Fragments
		3% Filler and Binder

Comments:

### L-4 Brown fibrous papery material

<b>Asbestos Fibrous Components:</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
<b>No Asbestos Detected</b>	99% Cellulose	1% Filler and Binder

Comments:

### L-5 White powdery fibrous material

<b>Asbestos Fibrous Components:</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
<b>No Asbestos Detected</b>	15% Cellulose	80% Talc Filler and Binder
		5% Mineral Fragments

Comments:

Batch Number:	05-2340	<b>ACM Environmental</b>
Lab Sample Number:	05012898	
Client Sample Number:	<b>3048.189</b>	<i>Annieville Elementary</i> 3048-20

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/22/2005  
 9/23/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson

9/23/2005



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### Bulk Asbestos Fiber Analysis

**L-1 Off-white paint**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
100% Paint

Comments:

**L-2 Pale tan fine powdery flaky material with golden brown flakes**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
55% Vermiculite  
40% Talc Filler and Binder  
5% Mineral Fragments

Comments:

Batch Number: 05-2340  
Lab Sample Number: 05012899  
Client Sample Number: 3048.190

**ACM Environmental**

*Annieville Elementary*  
*3048-20*

**L-1 White opaque mastic**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
90% Resin and Binder  
10% Calcite Filler and Binder

Comments:

**L-2 Dull orange thick pliable rubbery material**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
65% Rubber Particles  
30% Mineral Particles  
5% Filler and Binder

Comments:

Sampled By: James McArthur  
Received By: John McCaslin  
Reviewed By: George McCaslin

9/22/2005  
9/23/2005

Analyzed By: Deitrie Hanson

9/23/2005



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## Bulk Asbestos Fiber Analysis

**L-3 Gray rubbery material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 65% Rubber Particles 30% Calcite Filler and Binder 5% Mineral Fragments
--	----------------------------------	--

**Comments:**

**L-4 Orange wooden splinter material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components: 98% Cellulose	Non-Fibrous Components: 2% Resin and Binder
--	---	--

**Comments:**

Batch Number: 05-2340	<b>ACM Environmental</b>
Lab Sample Number: 05012900	
Client Sample Number: <b>3048.191</b>	<i>Annieville Elementary</i> 3048-20

**L-1 White opaque mastic**

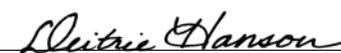
<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 90% Resin and Binder 10% Calcite Filler and Binder
--	----------------------------------	--

**Comments:**

**L-2 Dull orange thick pliable rubbery material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 65% Rubber Particles 30% Mineral Particles 5% Filler and Binder
--	----------------------------------	--

**Comments:**

Sampled By: James McArthur		
Received By: John McCaslin	9/22/2005	
Reviewed By: George McCaslin	9/23/2005	Analyzed By: Deitrie Hanson 9/23/2005



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### Bulk Asbestos Fiber Analysis

#### L-3 Tan mastic on orange wooden splinter material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	90% Cellulose	6% Resin and Binder
		4% Mineral Fragments

Comments:

Batch Number:	05-2340	<b>ACM Environmental</b>
Lab Sample Number:	05012901	
Client Sample Number:	<b>3048.192</b>	<i>Annieville Elementary</i> <b>3048-20</b>

#### L-1 Gray and orange opaque pliable rubbery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		65% Rubber Particles
		30% Mineral Filler and Binder
		5% Filler and Binder

Comments:

#### L-2 Golden orange twisted fiber bundles on white paint

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	92% Cotton	5% Paint
		3% Mineral Fragments

Comments:

Batch Number:	05-2340	<b>ACM Environmental</b>
Lab Sample Number:	05012902	
Client Sample Number:	<b>3048.193</b>	<i>Annieville Elementary</i> <b>3048-20</b>

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/22/2005  
 9/23/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson

9/23/2005



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### Bulk Asbestos Fiber Analysis

**L-1 Pale gray pliable rubbery material with white, gray, and dark gray swirls**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Rubber Particles
		5% Vinyl Filler and Binder
		5% Mineral Fragments

**Comments:**

**L-2 Golden yellow resinous mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Resin and Binder
		10% Mineral Fragments

**Comments:**

**L-3 Orange wooden splinter material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
	90% Cellulose	5% Resin and Binder
		5% Mineral Fragments

**Comments:**

Batch Number:	05-2340	<b>ACM Environmental</b>
Lab Sample Number:	05012903	
Client Sample Number:	<b>3048.194</b>	<i>Annieville Elementary</i> <b>3048-20</b>

**L-1 White and pale gray paint**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		100% Paint

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/22/2005  
 9/23/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson

9/23/2005



NVLAP LAB CODE 200613-0



330 6th Ave. North, Suite 200 Seattle, WA 98109  
OFFICE: (206) 281-8858 FAX: (206) 281-8922

### Bulk Asbestos Fiber Analysis

#### L-2 Golden tan fibrous opaque material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	97% Cellulose	3% Filler and Binder

**Comments:**

Batch Number:	05-2340	<b>ACM Environmental</b>
Lab Sample Number:	05012904	
Client Sample Number:	<b>3048.195</b>	<i>Annieville Elementary</i> <b>3048-20</b>

#### White opaque crystalline powdery material and rubbery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		60% Rubber Particles
		35% Calcite Filler and Binder
		5% Mineral Fragments

**Comments:**

Batch Number:	05-2340	<b>ACM Environmental</b>
Lab Sample Number:	05012905	
Client Sample Number:	<b>3048.196</b>	<i>Annieville Elementary</i> <b>3048-20</b>

#### L-1 Dark pink dull hard tile material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		5% Mineral Fragments

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/22/2005  
 9/23/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson

9/23/2005



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## Bulk Asbestos Fiber Analysis

L-2      **Black mastic**

**Asbestos Fibrous Components:**

5%      **Chrysotile**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:

90%      Asphalt Filler and Binder

5%      Mineral Fragments

**Comments:**

Sampled By: James McArthur  
Received By: John McCaslin  
Reviewed By: George McCaslin

9/22/2005

9/23/2005

Analyzed By: Deitrie Hanson

9/23/2005

**APPENDIX B**  
**Photographs**



Asbestos containing 9" Grey floor tiles with dark & white streaks



Asbestos containing 9" Brown floor tiles with dark & white streaks

**ENERGY SYSTEM SERVICE AGREEMENT**

**BEACH GROVE ELEMENTARY SCHOOL**

**THIS AGREEMENT** dated for reference the 26<sup>th</sup> day of September, 2011.

**BETWEEN:**

**THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 37 (DELTA)**  
a corporation established under the School Act R.S.B.C. 1996, c. 412 having an  
office at 4585 Harvest Drive, Delta, British Columbia, V4K 5B4

(the "District")

OF THE FIRST PART

**AND:**

**FORTISBC ENERGY INC.**, a company duly incorporated under the laws of the  
Province of British Columbia, having its registered office at 10th Floor, 1111  
West Georgia Street, Vancouver, B.C. V6E 4M3

("FEI")

OF THE SECOND PART

**WHEREAS:**

- A. The District is the owner of Beach Grove Elementary School (the "Building") and lands located at 5955 17A Avenue, Delta, British Columbia, which lands are legally described as:

PID: 011-255-170 Property No: 117578

PARCEL D (REFERENCE PLAN 30362) OF LOT 8 EXCEPT PART DEDICATED ROAD ON PLAN 77962 DISTRICT LOT 170 GROUP 2 AND SECTION 14 TOWNSHIP 5 NEW WESTMINSTER DISTRICT PLAN 857

(the "Lands")

- B. FEI wishes to supply to the Building, and the District wishes to purchase, Thermal Energy generated by an Energy System that FEI will construct on the Lands, and which FEI will own and operate, all pursuant to the terms of this Agreement.
- C. The Thermal Energy supplied by FEI to the Building pursuant to this Agreement will be priced at the rate set forth in the Energy System Rate Development Agreement between the Parties dated September 26<sup>th</sup>, 2011.

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT** in consideration of the premises and the covenants, agreements, representations, warranties and payments set out herein, the receipt and sufficiency of which is hereby acknowledged by each Party, the Parties covenant and agree as follows:

## **ARTICLE 1 - INTERPRETATION**

### 1.1 DEFINITIONS

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

- (a) “Adjusted Energy System Purchase Price” means, as of the date on which a purchase of the Energy System pursuant to Article 15 is effective, either:
  - (i) the Rate Base Value; or
  - (ii) such other purchase price for the Energy System as is determined by the BCUC; plus all applicable taxes;
- (b) “Affiliate” has the meaning set out in the *Business Corporation Act*, S.B.C. 2002, c.57 and includes FortisBC Inc.;
- (c) “Agreement” means this agreement, including the preamble hereto and any schedules attached hereto and the terms “this Agreement”, “hereof”, “herein”, “hereunder” and “hereinafter” and similar expressions refer to the Agreement and not to any particular Section or other portion thereof and includes any agreement supplementary or ancillary thereto;
- (d) “Acceptance Date” means the date of BCUC Acceptance;
- (e) “BCUC” means the British Columbia Utilities Commission, or any successor thereto;
- (f) “BCUC Acceptance” has the meaning assigned to that term in Section 11.1;
- (g) “Building” has the meaning assigned to that term on page one of this Agreement;
- (h) “Building System” means the space heating, cooling and ventilation, and domestic hot water distribution and control systems existing in the Building, to which the Energy System will be connected;
- (i) “Business Day” means any day except Saturday and Sunday or any day on which banks are generally not open for business in Vancouver, British Columbia;
- (j) “Capital Contribution” means \$ 46,000;
- (k) “Commissioned” means once the Energy System is certified complete and operating in accordance with the Specifications by a professional engineer under seal;

- (l) “Commission Date” means the day on which the Energy System is Commissioned;
- (m) “Contaminants” means, collectively, any contaminant, toxic substance, dangerous good, or pollutant or any other substance which when released to the natural environment is likely to cause, at some immediate or future time, material harm or degradation to the natural environment or material risk to human health, and includes any radioactive materials, asbestos materials, urea formaldehyde, underground or aboveground tanks, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive or toxic substances, hazardous waste or waste of any kind, pesticides, defoliants, or any other solid, liquid, gas, vapour, odour or any other substance .the storage, manufacture, disposal, handling, treatment, generation, use, transport, remediation or Release into the Environment of which is now or hereafter prohibited, controlled or regulated under Environmental Laws;
- (n) “Continuing Service Interruption Notice” has the meaning assigned to that term in Section 14.3(b);
- (o) “Contractor” means a prime contractor hired by FEI to oversee and complete the construction and installation of the Energy System;
- (p) “Design and Construction” means the total construction and related services required to design, construct and commission the Energy System and connected components of the Building System;
- (q) “Design Thermal Energy” means the maximum amount of Thermal Energy that the Energy System is capable of delivering through the Thermal Energy Meter and is included in the Specifications;
- (r) “Disclosed Contaminants” means Contaminants:
  - (i) the existence of which are specifically identified in the reports provided by the District to FEI and listed in Schedule C;
  - (ii) that were or ought to have been discovered, foreseen or anticipated upon reasonable inspection by FEI prior to the Effective Date; and
  - (iii) that were caused by FEI or any person for whom FEI is responsible at law;
- (s) “District” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (t) “District Losses” has the meaning assigned to that term in Section 12.6;
- (u) “District Site Rules for Contractors” means the rules set forth in Schedule “B”;
- (v) “Effective Date” means the date set out on page one of this Agreement;
- (w) “Energy System” means the equipment that FEI constructs and owns which will provide the Building with its energy needs for space heating, cooling and ventilation, and domestic hot water use, all as set forth in this Agreement;

- (x) “Energy System Service Agreement” has the meaning assigned to that term in the Energy System Rate Development Agreement;
- (y) “Energy System Rate Development Agreement” means that energy system rate development agreement between the District and FEI dated as of September 26<sup>th</sup>, 2011;
- (z) “Environment” includes the air (including all layers of the atmosphere), land (including soil, sediment deposited on land, fill, lands submerged under water, buildings, and improvements), water (including oceans, lakes, rivers, streams, groundwater, and surface water), and all other external conditions and influences under which humans, animals, and plants live or are developed and “Environmental” will have a corresponding meaning;
- (aa) “Environmental Attributes” means:
  - (i) all attributes associated with, or that may be derived from the Energy System installed having decreased environmental impacts relative to the use of conventional heating and cooling and hot water heating systems including any existing or future credit, allowance, certificate, right, benefit or advantage or proprietary or contractual right whether or not tradable;
  - (ii) any existing or future instrument, including without limitation any environmental emission allowances and environmental emission reduction credits, reduction right, allowance, certificate or other unit of any kind whatsoever, whether or not tradable and any other proprietary or contractual right, whether or not tradable, and any resulting from, or otherwise related to the actual assumed reduction, displacement or offset of emissions associated with, or that may be derived from the Energy System installed; and
  - (iii) all revenues, entitlement, benefits and other proceeds arising from or related to the foregoing;
- (bb) “Environmental Laws” means any and all statutes, laws, regulations, orders, bylaws, standards, guidelines, protocols, permits, and other lawful requirements of any Governmental Authority having jurisdiction over the Lands or the Energy System now or hereafter in force with respect in any way to the Environment, environmental assessment, health, occupational health and safety, protection of any form of plant or animal life, or transportation of dangerous goods, including the principles of common law and equity;
- (cc) “Expiry Date” means the earlier of:
  - (i) June 30, 2031, or the expiry of any renewal term thereof; and
  - (ii) the closure of the Building, or the Building otherwise ceasing to operate as a school (as defined under the *School Act* (British Columbia));
- (dd) “FEI” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (ee) “FEI Losses” has the meaning assigned to that term in Section 12.5;

- (ff) “Force Majeure” has the meaning assigned to that term in Section 17.2;
- (gg) “Governmental Authority” means any federal, provincial, regional, municipal, local or other government, governmental or public department, court, tribunal, arbitral body, commission, board, bureau or agency and any subdivision, agent, commission, board or authority thereof;
- (hh) “Lands” has the meaning assigned to that term in Recital A and includes the Building located on the Lands;
- (ii) “Laws” means laws, statutes, regulations, bylaws, Permits and orders of any Governmental Authority having jurisdiction, including without limitation, Environmental Laws;
- (jj) “Maintain” means to operate, service and maintain in a safe and reliable condition and “maintaining” and “maintenance” have corresponding meanings;
- (kk) “Monthly Charges” means that amount to be paid by the District to FEI with respect to the delivery of Thermal Energy to the Building pursuant to the Energy System Rate Development Agreement and any other payments due and owing by the District under this Agreement;
- (ll) “Notifying Party” has the meaning assigned to that term in Section 16.1;
- (mm) “Party” means a signatory to this Agreement, and the “Parties” means all of such signatories;
- (nn) “Permits” means all permits, licences, certificates, approvals, authorizations, consents and the like issued by any Governmental Authority;
- (oo) “Rate Base Value” means the value of the Energy System that the BCUC accepts from time to time in accordance with the Energy System Rate Development Agreement;
- (pp) “Release” includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, migration, disposal, or dumping;
- (qq) “Right of Access and Licence” means the right and licence granted herein by the District to FEI pursuant to Section 4.1 of this Agreement;
- (rr) “Service Failure Notice” has the meaning assigned to that term in Section 14.3(c);
- (ss) “Service Interruption” means, in any hour:
  - (i) a failure of the Energy System in that hour to deliver Thermal Energy at the Thermal Energy Meter sufficient to meet the Thermal Energy demand of the Building during that hour in accordance with the Specifications up to the Design Thermal Energy, and except where such failure is directly caused by:
    - a. the careless or wilful damage to the Energy System by the District or its agents or other persons for whom the District is responsible;

- b. damage caused to the Energy System as a result of the negligent acts or omissions of the District, its agents or those for whom in law the District is responsible;
  - c. an event of Force Majeure that triggers the suspension of FEI's obligations under the Agreement pursuant to Article 17; or
  - d. maintenance activities that FEI is performing on the Energy System that have been scheduled with the consent of the District (such consent not to be unreasonably withheld); and
- (ii) if the failure described in Section 1.1(rr)(i), FEI's failure in that hour to deliver to the Building through alternative means thermal energy sufficient to maintain an average temperature of 16 degrees Celsius in each room of the Building intended to be served by the Energy System (all as determined by the District, acting reasonably);
- (tt) "Service Interruption Notice" has the meaning assigned to that term in Section 14.3(a);
- (uu) "Services" means those services to be provided by FEI to supply Thermal Energy to a Building from an Energy System, and for greater certainty includes the services described in Articles 5 and 6, and excludes the Design and Construction;
- (vv) "Specifications" means the specifications for the Energy System prepared by FEI in consultation with the District in accordance with Section 2.3 and includes the Design Thermal Energy;
- (ww) "Term" has the meaning assigned to that term in Section 3.1;
- (xx) "Thermal Energy" means the amount of energy that FEI provides to the Building measured through a Thermal Energy Meter;
- (yy) "Thermal Energy Meter" means a device that complies with the International Organization of Legal Metrology recommendations for measuring thermal energy; and
- (zz) "UCA" means the *Utilities Commission Act*, R.S.B.C. 1996, c. 473 as may be amended from time to time.

## 1.2 SCHEDULES

The following Schedules, as may be amended from time to time, are incorporated by reference into this Agreement:

Schedule "A"	Energy System Description
Schedule "B"	Delta School District Site Rules for Contractors
Schedule "C"	List of Environmental Reports

### 1.3 AMENDMENTS TO SCHEDULES

The District and FEI acknowledge that during the construction phase of the Energy System there may be additions and alterations to the Specifications for the Energy System which would result in more efficient use and operation of the Energy System. If these additions or alterations result in changes to any of the above Schedules, the Parties mutually agree to amend the Schedules by way of a written amendment prior to the Commission Date.

### 1.4 INTERPRETATION

Except where the context requires otherwise or except as otherwise expressly provided, in this Agreement:

- (a) all references to a designated Article or Section are to the designated Article or Section of this Agreement unless otherwise specifically stated;
- (b) the singular of any term includes the plural, and vice versa, and the use of any term is equally applicable to any gender and, where applicable, body corporate;
- (c) any reference to a corporate entity includes and is also a reference to any corporate entity that is a successor by merger, amalgamation, consolidation or otherwise to such entity;
- (d) the preamble and all schedules referred to and attached to this Agreement are incorporated by reference and will form a part of this Agreement;
- (e) all sums of money which are referred to in this Agreement are in lawful money of Canada;
- (f) the headings of the Articles and Sections set out in this Agreement are for convenience only and will not be considered in any interpretation of this Agreement;

## **ARTICLE 2 - DESIGN AND CONSTRUCTION OF THE ENERGY SYSTEM**

### 2.1 CONSTRUCTION

FEI will perform the Design and Construction:

- (a) in accordance and in compliance with the Specifications;
- (b) in a good and workmanlike manner using qualified workers, and in accordance with sound and currently accepted industry standards and codes of practice normally employed, at the time and place of performance, in projects of a similar type and nature;
- (c) to ensure operational compatibility with the Building System;
- (d) in a safe and environmentally sound manner, and in accordance with all applicable Laws; and
- (e) in accordance with the terms of this Agreement.

## 2.2 CAPITAL CONTRIBUTION

The District will pay to FEI within 30 days of the Commission Date the Capital Contribution for the purpose of reducing the capital investment and the associated carrying cost of capital by FEI for provision of Service to the Building.

## 2.3 SPECIFICATIONS

Subject to and in accordance with this Section 2.3, FEI shall prepare and complete the Specifications promptly following the Acceptance Date.

FEI confirms the Energy System, as described in the Specifications and as contemplated by the Energy System description set out in Schedule A, will be designed to meet the thermal energy requirements of the Building and operational compatibility of the Building System based in part on information supplied by the District as to historical usage, which information has not been independently verified by FEI. FEI shall have no liability to the District for the failure of the Energy System to satisfy the requirements of the Building where such failure is attributable to the information supplied by the District being incorrect, inaccurate or incomplete.

FEI will prepare the Specifications in consultation with the District in order to ensure the Energy System can be appropriately accommodated within the Building and interface with the Building Systems. FEI will submit material changes to the Specifications, both before and during construction, to the District for review and comment prior to such changes taking place. If the District does not comment on the Specifications or material changes to the Specifications or advise that it has no comment within five (5) Business Days of receipt, FEI will be entitled to proceed on the basis of the information provided to the District. FEI will revise the Specifications based on the comments from the District provided that doing so will not impact FEI's costs or adversely affect system performance.

Review of and comment on the Specifications by the District does not impose any obligation on the District to verify the suitability of the Energy System or be construed as confirmation by the District that the Energy System satisfactorily meets the Building's energy requirements.

## 2.4 WORK SCHEDULE

Within ten (10) Business Days following the Acceptance Date, FEI will submit to the District for review and comment a Gantt chart schedule for the Design and Construction listing activities to be undertaken during the Design and Construction stages, key milestones and approval dates and other pertinent dates. Any revisions to the schedule must be reviewed and commented by the District, which review and comment will not be unreasonably withheld, conditioned or delayed.

In order to ensure that the Building System remains operational during normal school hours (as defined in Schedule B), the cut-over from the existing heating/cooling plant to the Energy System shall be performed outside normal school hours.

## 2.5 REPORTING

FEI shall produce and submit a monthly progress report for the Design and Construction to the District until the Energy System is Commissioned.

## 2.6 TESTING AND COMMISSIONING

FEI shall coordinate and supervise the start-up and testing of the Energy System to ensure the Energy System and other components of the Building System affected by the Design and Construction are operating in accordance with the Specifications, upon which the Energy System will be Commissioned. The District shall be invited to participate in the start-up and testing exercise.

# ARTICLE 3 - TERM AND RENEWAL

## 3.1 TERM

The term of this Agreement commences on the Effective Date and continues until the Expiry Date unless it is terminated earlier as authorized under this Agreement ("Term").

## 3.2 RENEWAL

This Agreement will automatically renew for periods of ten (10) years unless either Party provides written notice to the other Party no less than six (6) months prior to the Expiry Date, provided that there shall be no automatic renewal in the event that the Expiry Date arises as a result of the closure of the Building, or the Building otherwise ceases to operate as a school (as defined under the *School Act* (British Columbia)).

# ARTICLE 4 - ACCESS AND PERMITS

## 4.1 ACCESS RIGHTS

The District hereby grants to FEI, during the Term from and following the Acceptance Date, for so long as FEI shall require it, but subject to Section 4.4, a full, free and uninterrupted licence and right of way on, over and under the Lands and Building, for FEI, its assigns, employees, contractors, agents, invitees and licensees at all times hereafter for the purposes set out in this Agreement, provided FEI will avoid to the extent reasonably possible, and otherwise minimize interference with and inconvenience to, the occupants of the Building and the access rights of FEI will be limited to the extent reasonably necessary to fulfil FEI's obligations hereunder.

Without limiting the generality of the foregoing, but subject to Section 4.4, such right of way and licence shall include the full power, right and liberty to excavate for, install, place, construct, renew, alter, repair, maintain, operate, use, abandon, remove or replace its infrastructure, in whole or in part, and to enter upon, along, across, over or under the Lands or Building and have continual access to the Energy System, with or without vehicles, supplies, machinery or equipment, for any of the purposes set out in this Agreement, and to clear such portion of the Lands and keep it cleared of obstructions which, in the opinion of FEI, acting reasonably, may

interfere with any of the rights granted to FEI herein. The District may direct, in its discretion, FEI to use alternate routing for any Environmental or other reasonable purpose.

FEI covenants and agrees with the District not to do or knowingly permit to be done anything which may, in the opinion of the District acting reasonably, damage or interfere with the Building or impair the operating efficiency thereof or create any hazard.

#### 4.2 CONDITION OF LAND

The District represents and warrants to FEI that as of the Effective Date:

- (a) to the best of the District's knowledge, the Lands are free of Contaminants other than those specifically identified in the reports provided by the District to FEI and listed in Schedule C; and
- (b) there are no actions, proceedings, investigations, claims (including remediation cost recovery claims) pending, or to the knowledge of the District, threatened, that would interfere with FEI's access rights pursuant to Section 4.1.

#### 4.3 PERMITS

FEI will obtain and maintain at its own expense all Permits necessary for the Design and Construction and the Services.

#### 4.4 SAFETY, SECURITY AND BUILDING ACCESS

Notwithstanding anything to the contrary in this Agreement, FEI will adhere, and will cause all persons for whom it is responsible under this Agreement (including, without limitation, the Contractor) to adhere to the District Site Rules for Contractors.

#### 4.5 REMEDIATION

FEI shall promptly remediate any Disclosed Contaminants on the Lands as required by applicable Law that result from, or are Released as a result of the Design and Construction or the Services, except to the extent caused or contributed to by the District's negligence. In the event that Contaminants on the Lands, other than Disclosed Contaminants, are discovered by FEI, FEI will promptly notify the District of such discovery and the Parties will review the impact of such discovery, if any, on the Design and Construction or the Services.

### **ARTICLE 5 - SERVICE PROVISION**

#### 5.1 PROVISION OF SERVICE

Subject to the terms and conditions of the Agreement, FEI will provide the Services to the District throughout the Term.

## 5.2 SERVICE MONITORING AND REVIEW

The Parties acknowledge that FEI may be required from time to time to prepare and submit reports to the BCUC concerning the operation and performance of the Energy System, and the District shall provide FEI with reasonable cooperation in relation to the preparation of such reports.

## 5.3 STANDARD OF PERFORMANCE

In performing the Services, FEI will:

- (a) use only qualified personnel and exercise the same degree of care, skill and supervision as would be exercised by a reasonable and prudent owner experienced in performing like services;
- (b) perform the Services in accordance with all applicable Laws;
- (c) perform the Services in accordance with ongoing industry standards and codes of practice; and
- (d) without limiting the effect of the foregoing, abide by any standards of performance in relation to the Services that the BCUC may set from time to time according to the provisions of the UCA.

## 5.4 INTERRUPTION

No interruption of any of the on-site and off-site services, utilities and amenities provided by FEI to the Building will, except to the extent, if any, caused by any wrongful or negligent act of FEI or any person for whom FEI is responsible at law, render FEI liable to the District or any person claiming through or under the District, or relieve the District from any of its obligations under this Agreement. Notwithstanding the foregoing, FEI will use all reasonable diligence to remedy any such interruption if it is within its power and obligation to do so.

# **ARTICLE 6 - ENERGY SYSTEM MAINTENANCE AND OPERATION**

## 6.1 MAINTENANCE AND REPAIR OF ENERGY SYSTEM

Subject to Section 6.2, FEI will perform the Services and otherwise maintain or cause to be maintained and repaired the Energy System throughout the Term:

- (a) in accordance with the Energy System design and operating specifications and requirements as established by the qualified engineers engaged by FEI in the design and construction of the Energy System, and the equipment manufacturers;
- (b) in a good and workman-like manner using qualified workers, and in accordance with sound and currently accepted industry standards and codes of practice normally employed, at the time and place of performance, in projects of a similar type and nature;
- (c) to ensure operational compatibility with the Building System;

- (d) in a safe and environmentally sound manner, and in accordance with all applicable Laws; and
- (e) in accordance with the terms of this Agreement.

FEI will not delay repair of the Energy System for any reason, including as a result of a dispute with the District in relation to the costs and expenses of repair pursuant to Section 6.2.

## 6.2 REPAIR DAMAGE

The District will be responsible for all costs and expenses incurred by FEI in respect of any damage to the Energy System caused by or resulting from:

- (a) the careless or wilful damage to the Energy System by the District or its agents or other persons for whom at law the District is responsible; or
- (b) damage caused to the Energy System as a result of the negligent acts or omissions of the District, its agents or those for whom in law the District is responsible.

## **ARTICLE 7 - CHARGES**

### 7.1 MONTHLY CHARGES

The District throughout the Term commencing on the Commission Date in accordance with this Article 7 will pay to FEI when due for the Thermal Energy that FEI delivers and meters to the Building according to the rates set out in the Energy System Rate Development Agreement plus all applicable taxes (including harmonized sales tax applicable thereon) and any imposed taxes levied after the Commission Date by a government or regulatory agency that are related to the Energy System (including, but not limited to capital taxes or royalties) and any other payments due and owing by the District under this Agreement.

### 7.2 MONTHLY STATEMENT

FEI will, within 15 days following the end of each month, deliver to the District a statement setting out the Monthly Charges including all applicable taxes payable for that month.

### 7.3 PAYMENT

The District will pay the full amount specified in each statement provided to it in accordance with Section 7.2 within 30 days of receipt of such statement. All amounts payable to FEI will be made by cheque mailed to FEI at its address for service specified in Section 20.5.

### 7.4 PAYMENT DUE

Subject to Section 14.1, the obligation of the District to pay the Monthly Charges continues whether or not the Energy System is being used to provide the Building with its energy needs for space and ventilation heating, cooling and domestic hot water use.

#### 7.5 ARREARS TO BEAR INTEREST

If any amount owing to FEI or the District is not paid on or before the date on which it is due, a late payment charge of 1.5% per month will be assessed each month on all outstanding balances not paid by the due date.

### **ARTICLE 8 - OWNERSHIP OF THE ENERGY SYSTEM**

Notwithstanding the payments made by the District to FEI under this Article 8, any provision of this Agreement, any degree of annexation or affixation, or rule of law or equity to the contrary the District will have no proprietary interest in the Energy System which is, and shall remain, the property of FEI and may be used by FEI in its business or removed in whole or in part as it may see fit, and for any of such purposes, and FEI may enter in, upon and under all the Lands for the purposes of the maintenance, renewals, repair, removal or operation of the Energy System or any part thereof; provided that FEI shall not leave any part of the Energy System in such a state as to constitute a nuisance or a danger to the public through neglect, non-use and want of repair, and provided further that nothing in this clause shall nullify or otherwise impact or invalidate in any way the District's rights under Article 15 to purchase the Energy System.

### **ARTICLE 9 - ENVIRONMENTAL ATTRIBUTES**

#### 9.1 ENVIRONMENTAL ATTRIBUTES

All right, title and interest now existing or which may exist at any time in the future in the potential or actual commercial value of any Environmental Attributes that arise or accrue by virtue of the construction and operation of the Energy System will belong to the District. At the request of the District, FEI will reasonably cooperate with the District in applying for and assigning any Environmental Attributes to the District.

#### 9.2 GRANTS

Any grants from any Governmental Authority, a Crown Corporation or non-governmental authority that may be derived from a reduction in energy consumption by the Building will belong to the District.

### **ARTICLE 10 - REPRESENTATIONS AND WARRANTIES**

#### 10.1 DISTRICT'S REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties contained in this Agreement, the District hereby represents and warrants to FEI as follows and acknowledges that FEI is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) the District has the full right, power and authority to enter into this Agreement;

- (b) all necessary action on the part of the District has been taken to authorize and approve the execution and delivery of this Agreement and the performance by the District of its obligations hereunder;
- (c) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to the District as of the date of this Agreement;
- (d) the District is not party to any action, suit or legal proceeding, actual or, to the knowledge of the District, threatened, and there are no circumstances, matters or things known to the District which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or, to the knowledge of the District, threatened against the District before or by any Governmental Authority, which could affect the District's ability to perform its obligations under this Agreement; and
- (e) no person, firm or corporation has or will have as of the Commission Date, any agreement, right, or option or right capable of becoming an agreement, right, or option for the purchase or acquisition of the Energy System.

## 10.2 FEI'S REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties contained in this Agreement, FEI hereby represents and warrants to the District as follows and acknowledges that the District is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) FEI has the full right, power and authority to enter into this Agreement;
- (b) all necessary corporate action on the part of FEI has been taken to authorize and approve the execution and delivery of this Agreement and the performance by FEI of its obligations hereunder;
- (c) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to FEI as of the date of this Agreement;
- (d) FEI is not party to any action, suit or legal proceeding, actual or threatened, and there are no circumstances, matters or things known to FEI which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or threatened against FEI before or by any Governmental Authority, which could affect FEI's ability to perform its obligations under this Agreement; and
- (e) FEI has or will have all permits, licenses, authorizations and other documentation required for the operation of the Energy System after the Commission Date; and
- (f) FEI has all the required expertise to fulfill its obligations under this Agreement.

### 10.3 DELEGATION AND SUBCONTRACTING

FEI may delegate and subcontract its obligations under this Agreement with respect to Design and Construction and Services to any contractor, consultant, agent or representative provided that FEI shall be fully responsible for the acts and omissions of such persons and those either directly or indirectly employed by them to the same extent as FEI for its own acts or omissions.

## **ARTICLE 11 - BCUC ACCEPTANCE**

### 11.1 REGULATORY REVIEW TERMINATION

Subject to Section 11.3, either Party may terminate this Agreement if within 90 days following the Effective Date, this Agreement and the Energy System Rate Development Agreement, including the Market Rate and the SD37 Rate Rider as defined in that Agreement have not been accepted for filing by the BCUC (such acceptance being herein called "BCUC Acceptance").

### 11.2 REGULATORY FILING

FEI, on behalf of itself and the District, and at its own cost, shall file the Agreement with the BCUC within a reasonable time after the Effective Date. FEI shall take all steps reasonably required to secure BCUC Acceptance, which shall consist of those procedural steps related to filing the Agreement and providing argument and witnesses in support of filing.

### 11.3 TERMINATION

A Party entitled to terminate under Section 11.1 must do so by giving notice to terminate to the other Party at any time after the right to terminate arises pursuant to Section 11.1, and prior to:

- (a) the date of issuance of the BCUC Acceptance; and
- (b) the date that is 90 days after the Effective Date.

### 11.4 EFFECT OF BCUC ACCEPTANCE

The Parties acknowledge that upon BCUC Acceptance, the Services will be subject to regulation by the BCUC under the UCA, and will form another class of service that FEI provides as a public utility. The Parties acknowledge that the terms of the UCA may supersede the terms and conditions of this Agreement.

## **ARTICLE 12 - INDEMNITY**

### 12.1 FEI'S INDEMNITY

Without limiting any other obligations of FEI provided herein, FEI will indemnify, defend, and save harmless the District and its trustees, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including the full amount of all legal fees and expenses on a

solicitor-client basis) which may be paid by, incurred by, or asserted against the District or its directors, officers, employees, agents, successors, or assigns, arising from or in connection with:

- (a) the breach or non-performance by FEI of any of its obligations or warranties hereunder; or
- (b) the negligence or wilful misconduct of FEI, its employees, contractors or agents in respect of the Energy System, and in the performance of the obligations of FEI pursuant to this Agreement,

excluding only such of the foregoing as arise from the fraud, negligence or wilful misconduct of the District or its trustees, officers, directors, members, employees, contractors or agents, or the breach or non-performance by the District of any of its obligations or warranties hereunder.

## 12.2 DISTRICT'S INDEMNITY

Without limiting any other obligations of the District provided herein, the District will indemnify, defend, and save harmless FEI, its Affiliates and their respective shareholders, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including the full amount of all legal fees and expenses on a solicitor-client basis) which may be paid by, incurred by, or asserted against FEI, its Affiliates or their respective shareholders, directors, officers, employees, agents, successors, or assigns, arising from or in connection with:

- (a) the breach or non-performance by the District of any of its obligations or warranties hereunder; or
- (b) the negligence or wilful misconduct of the District, its employees, contractors or agents in respect of the Energy System, and in the performance of the obligations of the District pursuant to this Agreement,

excluding only such of the foregoing as arise from the fraud, negligence or wilful misconduct of FEI or its Affiliates or any of their respective officers, directors, members, employees, contractors or agents, or the breach or non-performance by FEI of any of its obligations or warranties hereunder.

## 12.3 CONSEQUENTIAL LOSS

In no event will the District or FEI or any of their respective officers, directors, employees, contractors or agents be liable to the other Party for any indirect or consequential loss, cost or expense whatsoever, including any loss of profits, revenues or other economic loss, suffered by the other Party or its officers, directors, employees, contractors or agents.

## 12.4 SURVIVAL OF INDEMNITY

The indemnity of each of the District and FEI provided under this Article 12 will survive the Term of this Agreement.

## 12.5 ENVIRONMENTAL INDEMNITY BY THE DISTRICT

The District will indemnify and save harmless FEI, its Affiliates, directors, officers, shareholders, employees, agents, successors and permitted assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants (but not including Disclosed Contaminants) and remediation of the Lands and any affected adjacent property) (collectively, "FEI Losses") which may be paid by, incurred by or asserted against FEI, its Affiliates and their respective directors, officers, shareholders, employees, agents, successors or permitted assigns, arising from or in connection with any Contaminants (but not including Disclosed Contaminants) existing on the Lands prior to the Commission Date or brought onto the Lands or Released onto the Lands by the District or any person for whom it is in law responsible, except to the extent the FEI Losses suffered were caused or contributed to by any act or omission of FEI or any person for whom FEI is in law responsible after FEI had knowledge of the Contaminants.

## 12.6 ENVIRONMENTAL INDEMNITY BY FEI

FEI will indemnify and save harmless the District, its Affiliates and their respective trustees, directors, officers, employees, agents, successors and permitted assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the Lands and any affected adjacent property) (collectively, "District Losses") which may be paid by, incurred by or asserted against the District, its Affiliates, and their respective trustees, directors, officers, employees, agents, successors or permitted assigns, arising from or in connection with any Contaminants brought onto the Lands or any Disclosed Contaminants Released onto the Lands by FEI or any person for whom it is in law responsible, except to the extent the District Losses suffered were caused or contributed to by any act or omission of the District or any person for whom the District is in law responsible after the District had knowledge of the Contaminants.

# ARTICLE 13 - INSURANCE

## 13.1 FEI INSURANCE COVERAGE.

- (a) FEI will obtain and maintain at its own expense throughout the Term, Commercial General Liability Insurance for bodily injury, death and property damage in the minimum amount of five million (\$5,000,000) dollars per occurrence. The policy will contain a cross liability provision and will be maintained for a period ending no sooner than 12 months after the expiry or termination of this Agreement.
- (b) FEI will be responsible for the full amount of all premiums and deductibles required under this Section 13.1. All policies required herein must be effective at the Commission Date. Insurance will be purchased from insurers registered and licensed to underwrite

insurance in British Columbia. Policies will contain waivers of subrogation against the District and all its officers, directors, members, employees, contractors and agents.

### 13.2 DISTRICT INSURANCE COVERAGE

- (a) The District will obtain and maintain at its own expense throughout the Term Commercial General Liability Insurance for bodily injury, death and property damage in the minimum amount of five million (\$5,000,000) dollars per occurrence. The policy will contain a cross liability provision and will be maintained for a period ending no sooner than 12 months after the expiry or termination of this Agreement.
- (b) The District will be responsible for the full amount of all premiums and deductibles required under this Section 13.2. All policies required herein must be effective at the date of this Agreement. Insurance will be provided by the Provincial self-insured program. Policies will contain waivers of subrogation against FEI and all its officers, directors, employees, contractors and agents.

### 13.3 PRIORITY

FEI will ensure that the District is an additional insured under the insurance to be obtained and maintained pursuant to Section 13.1. The District will ensure that FEI is an additional insured under the insurance to be obtained and maintained pursuant to Section 13.2. In the event of a claim, the insurance carried by the Party responsible for actions which give rise to such claim will be the primary insurance with respect to such claim.

## **ARTICLE 14 - DEFAULT**

### 14.1 DEFAULT BY FEI

- (a) FEI will be in default under this Agreement if FEI is in breach of a material term, covenant, agreement, condition or obligation imposed on it under this Agreement and fails to cure such default within ten (10) days after receipt of written notice thereof from the District, or, if such default is not capable of being cured within such ten (10) day notice period, fails to commence in good faith the curing of such default upon receipt of such written notice of default from the District and to continue to diligently pursue the curing of such default thereafter until cured. For the purposes of this Section 14.1, Section 4.4 is hereby deemed to be a material term of this Agreement.
- (b) If FEI is in default of this Agreement, the District may at its option and without liability therefore or prejudice to any other right or remedy it, including under the UCA, may have suspend or refuse to make any payments due hereunder until the default has been fully remedied, and no such suspension or refusal will relieve FEI from any of its obligations under this Agreement.
- (c) In the event the default is not fully remedied within thirty (30) days of receipt by FEI of written notice thereof from the District, the District may, at its option, undertake the necessary steps to remedy FEI's default at FEI's sole expense, which reasonable costs

shall be deducted from the Monthly Charges, and such actions will not relieve FEI from any of its obligations under this Agreement or, at its option, and without any liability, terminate this Agreement without prejudice to any other right the District may have hereunder or at law or otherwise.

#### 14.2 DEFAULT BY THE DISTRICT

- (a) The District will be in default under this Agreement if the District fails or refuses to make any payment due to FEI by the District under this Agreement within thirty (30) days of receiving written notice from FEI after the date that payment is due or if the District is in breach of a material term, covenant, agreement, condition or obligation imposed on it under this Agreement and fails to cure such default within ten (10) days after receipt by the District of written notice thereof from FEI or, if such default is not capable of being cured within such ten (10) day notice period, fails to commence in good faith the curing of such default forthwith upon receipt of such written notice thereof from FEI and to continue to diligently pursue the curing of such default thereafter until cured.
- (b) If the District is in default of this Agreement, FEI may at its option and without liability therefore or prejudice to any other right or remedy it may have, including under the UCA, cease performing the Services and no such actions will relieve the District from any of its obligations under this Agreement.
- (c) In the event the default by the District is not fully remedied within thirty (30) days of receipt by the District of written notice from FEI, FEI may undertake the necessary steps to remedy the District's default at the District's sole expense and such action will not relieve the District from any of its obligations under this Agreement or, at its option, and without any liability, take whatever steps necessary to shut down the Energy System and terminate this Agreement without prejudice to any other right FEI may have hereunder or at law or otherwise.

#### 14.3 CROSS DEFAULT

- (a) If any Building experiences a Service Interruption at any time, the District may deliver a notice of such Service Interruption to FEI (a "Service Interruption Notice" to FEI);
- (b) If a Service Interruption continues for a period of 48 consecutive hours after the delivery of a Service Interruption Notice pursuant to Section 14.3(a), the District may deliver a notice of such continuing Service Interruption to FEI (a "Continuing Service Interruption Notice");
- (c) If a Service Interruption continues for a period of 120 consecutive hours after the delivery of a Continuing Service Interruption Notice, the District may at its option deliver a notice of such continuing Service Interruption to FEI (a "Service Failure Notice"); Within 60 days of either:
  - (i) the District's delivery of a Service Failure Notice pursuant to Section 14.3(c); or

- (ii) the District's delivery of a Continuing Service Interruption Notice pursuant to Section 14.3(b) that constitutes the fifth or greater Continuing Service Interruption Notice delivered in that calendar year;

the District may, at its option and without liability:

- (iii) terminate this Agreement without prejudice to any other right the District may have hereunder at law or otherwise; or
  - (iv) terminate the Energy System Rate Development Agreement and all Energy System Service Agreements (inclusive of this Agreement), without prejudice to any other right the District may have hereunder at law or otherwise.
- (d) For greater certainty, this Agreement shall be deemed to be terminated in the event that the District exercises its right to terminate all Energy System Service Agreement under another Energy System Service Agreement.

#### 14.4 SURVIVAL

Upon expiry or earlier termination of this Agreement for any reason, all claims, causes of action or other outstanding obligations remaining or being unfulfilled as of the expiry or termination of this Agreement and all of the provisions of this Agreement relating to the obligation or either the Parties to account to or indemnify the other and to pay to the other any amounts owing as at the date of expiry or termination in connection with this Agreement will survive such expiry or termination.

### **ARTICLE 15 – EXPIRY AND TERMINATION**

#### 15.1 EXPIRY

Upon expiry of the Term, unless otherwise agreed between the Parties and subject to agreement by the BCUC (if required pursuant to applicable Laws), the District may, at its option and by written notice to FEI within 30 days following the termination:

- (a) require FEI to remove the Energy System at FEI's cost in accordance with Section 15.5; or
- (b) acquire the Energy System from FEI at the Adjusted Energy System Purchase Price.

#### 15.2 TERMINATION OF THE ENERGY SYSTEM RATE DEVELOPMENT AGREEMENT

- (a) If the Energy System Rate Development Agreement is terminated as a result of the adoption, approval or implementation of a thermal energy rate tariff by the BCUC, this Agreement will automatically terminate effective as of the date of termination of the Energy System Rate Development Agreement;
- (b) If the Energy System Rate Development Agreement is terminated for cause by the District, this Agreement will be deemed to have been terminated pursuant to Section

14.1(c) as of the date of termination of the Energy System Rate Development Agreement, and Section 15.3 shall apply; and

- (c) If the Energy System Rate Development Agreement is terminated for cause by FEI, this Agreement will be deemed to have been concurrently terminated pursuant to Section 14.2(c) as of the date of termination of the Energy System Rate Development Agreement, and Section 15.4 shall apply.

### 15.3 TERMINATION BY THE DISTRICT FOR CAUSE

If the District terminates this Agreement pursuant to Sections 14.1(c) or 14.3, the District may, at its option and by written notice to FEI within 30 days following the termination:

- (a) require FEI to remove the Energy System, at its own cost, in accordance with Section 15.5; or
- (b) acquire the Energy System from FEI at the Adjusted Energy System Purchase Price.

### 15.4 TERMINATION BY FEI FOR CAUSE

If FEI terminates this Agreement pursuant to Section 14.2(c), FEI may, at its option and by written notice to the District:

- (a) remove the Energy System, at its own cost, in accordance with Section 15.5; or
- (b) require the District to purchase the Energy System from FEI at the Adjusted Energy System Purchase Price.

### 15.5 REMOVAL OF THE ENERGY SYSTEM

If FEI is required to remove the Energy System pursuant to Sections 15.1(a), 15.3(a) or 15.4(a) or otherwise upon expiry of this Agreement, FEI shall promptly remove those portions of the Energy System located within the Building and at surface level at FEI's cost, and FEI shall perform such removal activities using standards of performance that are equivalent to those that apply to the performance of the Services under this Agreement. Any portion of the Energy System not removed by FEI prior to the 30<sup>th</sup> day following the termination or expiry of the Agreement will, as of such day, be deemed to be automatically transferred to the District, and become the property of the District, all at no cost to the District.

### 15.6 ACQUISITION OF THE ENERGY SYSTEM

If the District elects to acquire the Energy System pursuant to Sections 15.1(b), 15.3(b) or 15.4(b):

- (a) the District shall pay the Adjusted Energy System Purchase Price to FEI within the later of 30 days of (i) the effective date of expiration or termination, and (ii) confirmation of the Adjusted Energy System Purchase Price; and

- (b) FEI will promptly execute and deliver any documents and records reasonably required by the District to effect and facilitate the transfer of the Energy System to the District, including bills of sale, operation and maintenance manuals and warranties, and will use reasonable commercial efforts to obtain any consents and approvals that may be required in relation to the transfer (including, without limitation, BCUC approval), provided that (i) FEI's obligations under this Section 15.6(b) shall arise only upon FEI's receipt of all amounts due and owing to FEI from the District under this Agreement, and (ii) during the period between the expiration or termination of the Agreement and FEI's receipt of amounts due and owing to FEI from the District under this Agreement, FEI shall continue to maintain, or shall permit the District to maintain, the Energy System in good working order.

Notwithstanding the foregoing, the Parties acknowledge and agree that FEI's ability to sell or otherwise transfer its interest in and to the Energy System to the District may be subject to BCUC approval under applicable Laws.

## **ARTICLE 16 - NON-COMPLIANCE AND ENVIRONMENTAL**

### 16.1 NOTIFICATION OF NON-COMPLIANCE

FEI or the District (as applicable, the "Notifying Party") will promptly, upon becoming aware thereof, notify the other Party in writing of:

- (a) a Release of a Contaminant or any other occurrence or condition in the Energy System, the Lands or any adjacent property which could subject the other Party to any fines, penalties, orders or proceedings under applicable Laws;
- (b) any charge, order, investigation or notice of violation or non-compliance issued against the Notifying Party relating to the Energy System, or the operation of the Energy System, under any applicable Laws; and
- (c) any notice, claim, action or other proceeding by any third party against the Notifying Party in respect of the Design and Construction or the Services or concerning the Release or alleged Release of any Contaminants at or from the Energy System or the Lands.

### 16.2 NOTIFICATION BY FEI

FEI will notify the appropriate Governmental Authorities of any Release of any Contaminants at or from the Energy System in accordance with applicable Laws. The District may, but is not obligated to, notify the appropriate Governmental Authorities of any Release of any Contaminants at or from the Energy System in accordance with applicable Laws.

### 16.3 OWNERSHIP OF CONTAMINANTS

Notwithstanding any rule of law to the contrary, any Disclosed Contaminant Released from the Energy System, or any top soil, earth or other material containing a Contaminant for which FEI is responsible pursuant to Section 4.5 that is removed from the Lands by FEI or any person for

whom it is in law responsible, will be and remain the sole and exclusive property and responsibility of FEI and will not become the property of the District, notwithstanding the degree of its affixation to the Lands and notwithstanding the expiry or earlier termination of this Agreement.

#### 16.4 SURVIVAL OF OBLIGATIONS

The obligations of the Parties under this Article 16 will survive the expiry or termination of this Agreement.

### **ARTICLE 17 - FORCE MAJEURE**

#### 17.1 SUSPENSION

Subject to the other provisions of this Article 17, if either Party is unable or fails by reason of Force Majeure to perform in whole or in part any obligation or covenant set forth in this Agreement, with the exception of unpaid financial obligations, such inability or failure will be deemed not to be a breach of such obligation or covenant and the obligations of both Parties under this Agreement will be suspended to the extent necessary during the continuation of any inability or failure so caused by such Force Majeure.

#### 17.2 DEFINITION OF FORCE MAJEURE

For purposes of this Agreement, the term "Force Majeure" means any event or occurrence not within the control of the Party claiming Force Majeure and which by the exercise of reasonable diligence such Party is unable to prevent or overcome, including any acts of God, including lightning, earthquakes, storms, washouts, landslides, avalanches, fires, epidemics and floods; strikes, lockouts or other industrial disturbances; acts of the Queen's or public enemies, sabotage, wars, blockades, insurrections, riots or civil disturbances, fires, explosions, breakages of or accidents to machinery or lines of pipe; the laws, orders, rules, regulations, acts or restraints of any court or governmental or regulatory authority. For the purposes of this Article 17, a Party is deemed to have control over the actions or omissions of those persons to which it, its agents, contractors or employees, have delegated, assigned or subcontracted its obligations and responsibilities. For greater certainty, a Force Majeure shall not include any weather related events that do not exceed 25 year events as recorded by Environment Canada or as otherwise may be determined by the BCUC from time to time.

#### 17.3 EXCEPTIONS

Neither Party will be entitled to the benefit of Section 17.1 under any of the following circumstances:

- (a) the Energy System not being Commissioned;
- (b) to the extent that the inability or failure was caused by the negligence or contributory negligence of the Party claiming Force Majeure;

- (c) to the extent that the inability or failure was caused by the Party claiming Force Majeure having failed to diligently attempt to remedy the condition by taking all reasonable acts and to resume the performance of such covenants and obligations with reasonable dispatch;
- (d) if the inability or failure was caused by lack of funds or is in respect of any amount due hereunder; or
- (e) unless, as soon as possible after the happening of the occurrence relied upon or as soon as possible after determining that the occurrence was in the nature of Force Majeure and would affect the claiming Party's ability to observe or perform any of its covenants or obligations under this Agreement, the claiming Party will have given to the other Party notice to the effect that the claiming Party is unable by reason of Force Majeure (the nature whereof will be therein specified) to perform the particular covenants or obligations.

#### 17.4 RESUMPTION OF OBLIGATIONS

The Party claiming Force Majeure will give notice to the other Party, as soon as possible after the Force Majeure condition is remedied, to the effect that the same had been remedied and that such Party has resumed, or is then in a position to resume, the performance of its suspended covenants and obligations hereunder either in whole or in part.

#### 17.5 SETTLEMENT OF LABOUR DISPUTES

Notwithstanding any of the provisions of this Article 17, and subject to Section 17.3, the settlement of labour disputes or industrial disturbances is entirely within the discretion of the particular Party involved and the Party may make settlement of it at the time and on terms and conditions as it may deem to be advisable and no delay in making settlement will deprive the Party of the benefit of Section 17.1.

### **ARTICLE 18 - CONDITIONS PRECEDENT**

#### 18.1 CONDITIONS PRECEDENT OF FEI

The obligation of FEI to carry out the transactions contemplated by this Agreement is subject to fulfillment of the following conditions on or before such date as may be specified, which is for the sole benefit of FEI, and which may be waived by FEI in accordance with Section 18.2:

- (a) FEI obtaining the approval by its board of directors of the terms and conditions of this Agreement on or before the 30th day following the Effective Date, provided that if such approval cannot be obtained by this date due to the fact that the board of directors has not yet considered the transaction FEI reserves the right to extend the period of time to that date when the board next convenes.

## 18.2 FEI NOTICE OF WAIVER

If a condition set out in Section 18.1 has not been satisfied on or before the date as may be specified for its fulfillment, FEI may waive compliance with the condition in whole or in part, in its sole discretion, by written notice to the District, failing which delivery of written notice of satisfaction or waiver of such condition, this Agreement will, to the extent any further obligations of the Parties which remain unfulfilled, be null and void, without liability between the Parties hereto, and, neither Party will be under any further obligation to the other to complete the transactions or future transactions, as the case may be, contemplated by this Agreement.

## **ARTICLE 19 - DISPUTE RESOLUTION**

### 19.1 REFERENCE TO ARBITRATION

The Parties will attempt to resolve all disputes which may arise under, out of, in connection with or in relation to this Agreement by negotiation. They will provide full and timely disclosure to one another of all facts relevant to the disputes to facilitate those negotiations. If any such dispute remains unresolved, for any reason, fifteen (15) days after either Party requested the other Party to enter into negotiations to resolve it, or if the Parties agree to waive negotiations in respect of it, then either Party may submit that dispute for final resolution by arbitration administered by the British Columbia International Commercial Arbitration Centre (“BCICAC”) under its “Shorter Rules for Domestic Commercial Arbitration”. The seat of that arbitration will be Vancouver, British Columbia, Canada. The language of that arbitration will be English. Alternatively, the Parties may agree, within the 15 days referred to above, to submit that dispute for final resolution by arbitration in another manner.

### 19.2 BINDING DECISION

The decision of the arbitrator, regardless of what arbitration procedure is used, will, for all purposes of this Agreement, be final and binding on the Parties.

### 19.3 CONTINUATION OF SERVICES

Each of the Parties will perform all of its respective obligations under this Agreement notwithstanding the existence of any dispute that arises from time to time between the Parties in respect of any matter related to this Agreement or during the resolution of any dispute in accordance with this Article 19.

### 19.4 COSTS

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 case, the non-prevailing Party shall pay all costs and expenses of the arbitration, but not those of the prevailing Party.

## ARTICLE 20 - GENERAL

### 20.1 RESPONSIBILITY FOR COSTS

FEI's performance of any of its obligations under this Agreement, including without limitation the obligation to design, construct and install the Energy System as provided in Section 2.1, shall be at FEI's sole cost and expense, unless expressly provided otherwise in this Agreement;

### 20.2 EXERCISE OF DISCRETION

Where anything in this Agreement is identified as being in either Party's discretion, such Party will have the right to exercise such discretion in its own best interest without regard for the interest of the other Party.

### 20.3 COOPERATION

FEI and the District will at all times extend co-operation to each other to ensure the orderly management and operation of the Energy System.

### 20.4 SOLICITATION

Nothing in this Agreement precludes either Party from soliciting or entering into, other contracts with the other Party.

### 20.5 NOTICES

Any notice or other communication required or permitted to be given under this Agreement will be effective only if in writing and when it is actually delivered (which delivery may be by telecopy or other telecommunications device) to the Party for whom it is intended at the following address or such other address in British Columbia as such Party may designate to the other Party by notice in writing delivered in accordance with this Section 20.5:

(a) if to FEI:

FortisBC Energy Inc.  
10th Floor, 1111 West Georgia Street  
Vancouver, B.C.  
V6E 4M3

Attention: Gareth Jones  
Telephone: 250-380-5972  
Telecopy: 250-388-6876

(b) if to the District:

Board of Education of School District No. 37 (Delta)  
4585 Harvest Drive  
Delta, B.C.  
V4K 5B4

Attention: Frank Geyer  
Telephone: 604-952-5336  
Telecopy: 604-952-5375

Notwithstanding the foregoing, notices with respect to Force Majeure will be given in writing by telecopy, or orally in person or by telephone (to be confirmed by telecopy), to the person or persons designated from time to time by the Parties as the person or persons authorized to receive such notices.

## 20.6 CONFIDENTIALITY

The District and FEI will treat as confidential the terms of this Agreement and all Confidential Information (as defined below) and will at all times during the term of this Agreement and for a reasonable time thereafter hold the terms of this Agreement and all Confidential Information in confidence and neither Party will, without the prior written consent of the other Party, disclose or divulge the terms of this Agreement or any Confidential Information to any person, provided that nothing in this Section 20.6 will restrict or prevent either Party from making any disclosure of such terms or any Confidential Information:

- (a) which is reasonably necessary or desirable for such Party to carry out and give full effect to the terms, conditions and intent of this Agreement and the matters contemplated hereby;
- (b) which is required by any Law, including the Freedom of Information and Protection of Privacy Act (British Columbia);
- (c) to any Governmental Authority;
- (d) to the British Columbia Utilities Commission or other regulatory agency as part or in support of any regulatory application or submission;
- (e) to the directors, officers or employees of such Party or to an Affiliate of such Party or to the directors, officers or employees of an Affiliate of such Party;
- (f) to the professional advisors of such Party on the same terms of confidentiality;
- (g) which is already in the public domain; or
- (h) in connection with legal proceedings or steps being taken to remedy a breach or default under this Agreement by the other Party.

For the purposes of this Section 20.6, “Confidential Information” means proprietary information of either Party such as data, plans, drawings, manuals, or specifications which have been provided by such Party, its employees, contractors, agents, subcontractors, Affiliates to the other Party pursuant to this Agreement or proprietary information either Party conceived or developed by or for such Party concerning construction practices, operation and maintenance practices, agreements, marketing plans and strategies, profits, costs, pricing and systems of procedure (provided that “Confidential Information” does not include information which was disclosed to the receiving Party by a third Party (unless, to the knowledge of the receiving Party, the third Party is under an obligation of confidentiality to the other Party) or any information developed or conceived by the receiving Party without using the “Confidential Information” of the other Party).

#### 20.7 SEVERABILITY

If any provision of this Agreement is found or determined to be invalid, illegal or unenforceable it will be construed to be separate and severable from this Agreement and will not impair the validity, legality or enforceability of any other provisions of this Agreement, and the remainder of this Agreement will continue to be binding on the Parties as if such provision had been deleted.

#### 20.8 NO WAIVER

No waiver by either Party of any default by the other in the performance of any of the provisions of this Agreement will operate or be construed as a waiver of any other or future default or defaults hereunder, whether of a like or a different character. To be binding, any waiver of any provision of this Agreement must be clearly expressed in writing to be signed by the waiving Party.

#### 20.9 BURDEN AND BENEFIT

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

#### 20.10 GOVERNING LAW

This Agreement and all matters arising hereunder will be governed by the laws of British Columbia and the federal laws of Canada applicable in British Columbia.

#### 20.11 ENTIRE AGREEMENT

This Agreement contains the whole agreement between the Parties in respect of the subject matter hereof and there are no terms, conditions or collateral agreements express, implied or statutory other than as expressly set forth in this Agreement and this Agreement supersedes all of the terms of any written or oral agreement or understanding between the Parties.

#### 20.12 TIME OF ESSENCE

Time is of the essence of this Agreement.

#### 20.13 FURTHER ASSURANCES

Each Party will, at all times hereafter on demand by the other, execute and deliver or cause to be executed and delivered all such further documents and do all such further acts and things as may be reasonably requested by the other Party to evidence, carry out and give full effect to the intent and meaning of this Agreement and to assure the completion of the transactions contemplated hereby.

#### 20.14 AMENDMENTS TO BE IN WRITING

Except as set out in this Agreement, no amendment or variation of this Agreement will be effective or binding upon the Parties unless such amendment or variation is set out in writing and duly executed by the Parties.

#### 20.15 FACSIMILE

This Agreement may be executed by the Parties and transmitted by facsimile transmission and, if so executed, transmitted and received, this Agreement will for all purposes be effective as if the Parties had delivered and executed the original Agreement and each Party undertakes to provide the other Party with a copy of this Agreement bearing original signatures forthwith upon demand.

#### 20.16 SUBJECT TO LEGISLATION

Notwithstanding any other provision hereof, this Agreement and the rights and obligations of FEI and the District under this Agreement are subject to all present and future laws, rules, regulations and orders of any legislative body, governmental agency or duly constituted authority now or hereafter having jurisdiction over FEI or the District.

#### 20.17 EXPENSES

Each Party to this Agreement shall be responsible for the payment of all costs, expenses, legal fees and disbursements incurred or to be incurred by it in negotiating and preparing this Agreement and all documents required to be delivered under this Agreement and otherwise relating to the transactions contemplated by this Agreement.

#### 20.18 NO CONTRARY AGREEMENT

No Party shall enter into an agreement or other commitment with any person if such agreement or commitment has terms or provisions in conflict with or inconsistent with the terms of this Agreement or which could reasonably be expected to lead to actions or consequences that would result in the Party being in breach of the commitments and obligations of the Party pursuant to this Agreement unless such other agreement or commitment is expressly approved by the other Parties.

#### 20.19 NO PARTNERSHIP

Nothing herein shall be deemed or construed to create a joint venture, partnership, employment or agency relationship between the Parties for any purpose.

20.20 ASSIGNMENT

Neither Party may assign this Agreement or any of its rights or obligations under this Agreement, and FEI may not assign, transfer or sell all or any part of the Energy System, except:

- (a) with the consent of the other Party, such consent not to be unreasonably withheld, delayed or conditioned; or
- (b) in the case of FEI, to an Affiliate of FEI which is a "public utility" as defined in the *UCA* on notice to, but without the consent of, the District.

20.21 COUNTERPARTS

This Agreement may be executed in counterparts with the same effect as if the Parties had signed the same document. All counterparts will be construed together and will constitute one agreement.

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

**FORTISBC ENERGY INC.**

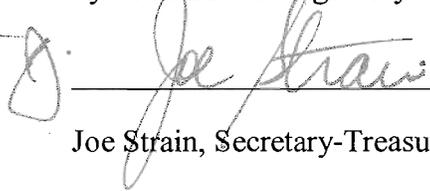
by its authorized signatory:

  
\_\_\_\_\_

Doug Stout,  
VP Energy Solutions & External Relations

**THE BOARD OF EDUCATION OF  
SCHOOL DISTRICT NO. 37 (DELTA)**

by its authorized signatory:

  
\_\_\_\_\_

Joe Strain, Secretary-Treasurer

# **SAMPLE SCHEDULE “A”**

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## **Energy System Description**

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### **Mechanical Equipment Plans and Specifications**

Equipment schedule:

- 2 boilers Mod Com 300;
- Pumps, piping, control valves and other equipment and accessories connected to the above equipment;
- BTU Meter; and
- Control systems for the above mentioned equipment.

Prior to commencement of the Mechanical Equipment construction, FEI shall provide detailed drawings to the District for review and acceptance.

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## **SCHEDULE “B”**

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# **Delta School District Site Rules for Contractors**

## **Delta School District Site Rules for Contractors**

### **1.0 Safety**

- 1.1 For the purposes of this section, “Safety Regulations” means the rules, regulations, and practices required by WorkSafeBC.
- 1.2 The Contractor shall be solely responsible for site safety during the execution of all assigned construction and maintenance activities, including work performed by subcontractors and suppliers, and for compliance with the Safety Regulations, and shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the work.
- 1.3 If the District is of the reasonable opinion that the Contractor has not taken such precautions as are necessary to ensure compliance with the requirements of Clause 1.2, the District may take or order any remedial measures which it deems necessary, including stopping the performance of all or any portion of the work, and the District may use the employees of itself, the Contractor, any subcontractor or any other contractors to perform such remedial measures. The Contractor acknowledges and agrees that any failure by the Contractor to comply with the Safety Regulations shall constitute a default of the Contractor's contractual obligations and the District may issue a written notice instructing the Contractor to correct the default in the two (2) working days immediately following receipt of such notice.
- 1.4 The Contractor shall file any notices or any similar document (including, without limitation, a Notice of Project where applicable) required pursuant to the Safety Regulations. This duty of the Contractor will be considered to be included in the work and no separate payment therefore will be made to the Contractor.
- 1.5 The Contractor shall develop, maintain and supervise for the duration of the work a comprehensive safety program that will effectively incorporate and implement all required safety precautions. The program shall, as a minimum, respond fully to the Safety Regulations and general construction practices for the safety of persons or property, including without limitation the WorkSafeBC regulations that may be applicable (e.g. WHMIS, dust control, etc.).
- 1.6 The Contractor shall provide a copy of the safety program described in Clause 1.5 to the District prior to the commencement of the work and shall, at all times require, as far as it is reasonably practical to do so, that every employer and worker performing work in respect of the project complies with such program.
- 1.7 The Contractor shall arrange regular safety meetings at its expense, record the minutes of such meetings and maintain a complete file for review by the appropriate authorities.
- 1.8 The Contractor shall supply and maintain, at its own expense, at its office or other well-known place at the work site, safety equipment necessary to protect the workers and general public against accident or injury as prescribed by the governing authorities.
- 1.9 The Contractor shall supply and maintain all articles necessary for giving first-aid to any person who may be injured on the work site and shall establish an emergency procedure for the immediate removal of any injured person to a hospital or a doctor's care in accordance with the Safety Regulations.
- 1.10 The Contractor shall, as required under the Safety Regulations, promptly report all accidents of any sort arising out of or in connection with the performance of the work whether on or adjacent to the work site, giving full details and statements of witnesses. The District shall be copied on all accident reports and investigation reports.

## **2.0 Security and Access**

- 2.1 **Site and Building Access:** The District's Maintenance Services Department will issue gate and building keys, electronic access cards (complete with instructions as to how to arm/disarm the building intrusion alarm system and how to contact the alarm monitoring station) and identification badges for the Contractor to enter the site and building, disarm/arm the building intrusion alarm system, and access the portions of the site where the Contractor's work is taking place. The Contractor and all subcontractors must check in at the school office (if occupied by District staff) prior to entering other parts of the building. The access cards, keys and identification badges shall be promptly returned to the District at the end of the contract.
- 2.2 **Security:** The Contractor shall assume all responsibility for the security of the work site. The Contractor must ensure that all windows, doors and gates are secure and the building intrusion alarm system is armed (unless District staff are still in the building) at the end of the workday. The Contractor must also safeguard the rest of the building and/or site from access through possible open construction areas. Security doors shall at all times remain closed and shall not be propped open, even for a short time. The Contractor is responsible for any costs arising when the District's security runner services is called to attend a work site for security matters resulting from the Contractor's negligence.
- 2.3 **Normal School Hours:** Normal hours of operation for the District are 0730h-1600h Monday to Friday, excluding statutory holidays. For after-hours and weekend work, the Contractor must notify the District's Maintenance Services Department at least one business day in advance of the work.

## **3.0 Conduct**

- 3.1 **Noise Due to Construction or Maintenance Activities:** In accordance with the Delta Noise Bylaw 1906, "no person shall carry on or cause to be carried any construction work, reconstruction, alteration, repair or demolition of a building or structure, the operation of machinery, or works in connection with any excavation or highway before 07:00h or after 1900h and day of the week from Monday to Friday, inclusive, before 0900h or after 1700h on Saturdays, or at any time Sundays. The Contractor shall respect the classroom operations in the vicinity of the work site and as such will make every attempt to limit noisy work to times outside of classroom operation or to adequately dampen, silence and/or soundproof equipment that generates noise to mitigate disruption to the classrooms.
- 3.2 **Communication devices:** Radio and cell phone volume shall be at the minimum volume which is consistent with the ability to operate the device.
- 3.3 **Roadways:** All speed limits and other traffic rules must be obeyed and access to the roadways should not be impeded. Parking and secure storage of materials and equipment by the Contractor and subcontractors shall only be in designated areas only.
- 3.4 **Cleanliness:** The work site must be maintained for an orderly appearance on a daily basis. Trash and construction debris shall be contained at all times and removed from the work site weekly.
- 3.5 **Toilets:** All temporary toilets shall have their doors faced away from streets. In no cases shall a worker utilize any staff washroom or other staff facilities at the work site, except as otherwise agreed in writing by the District. Under no circumstances will workers be permitted to use student washrooms.
- 3.6 **Identification Badges:** All workers shall have a District-assigned identification badge that clearly indicates the company's name and the worker's name. It is to be worn whenever at the work site.

- 3.7 **Smoking:** Smoking is not permitted on District property.
- 3.8 **Alcohol/Drugs:** No alcoholic beverages or non-prescription drugs shall be brought or consumed at the work site.
- 3.9 **Animals:** No dogs or other animals, are permitted at the work site without the written consent of the District.
- 3.10 **Fitness for Work:** All workers must be fit for work at all times. The District retains the right to request individuals leave the work site if unfit for any reason including, without limitation, inebriation, taking drugs, injury, fatigue, rudeness or any other reason that may affect the quality of the work or represents a breach of these rules.
- 3.11 **Theft:** Workers who steal from occupants or the District shall be immediately ejected from the work site. The Contractor is responsible for all such thefts irrespective of whether the worker is an employee of the Contractor or a subcontractor.
- 3.12 **Discrimination and Harassment:** The District actively promotes a safe and secure school environment and as such does not tolerate violations of human rights legislation, including:
  - (a) discriminatory acts against any person with respect to the work or school environment or any educational program or service provided to or by that person because of race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age of that person, or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person;
  - (b) all forms of actual, attempted or threatened physical harm directed at any person; or
  - (c) any form of sexual harassment such as unwelcome sexual advances with actual or implied work related consequences; unwelcome remarks, questions, jokes or innuendo of a sexual nature including sexist comments or sexual invitations; verbal abuse, intimidation or threats of a sexual nature; unwelcome leering, staring or making sexual gestures; whistling or catcalls; display of pornographic or other sexual materials; offensive pictures, graffiti, cartoons or sayings; unwanted physical contact such as touching, patting, pinching or hugging; and physical assault of a sexual nature

## **SCHEDULE “C”**

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### **List of Environmental Reports**



**ASBESTOS MATERIALS SURVEY  
AND RISK ASSESSMENT**

**OF**

**BEACH GROVE ELEMENTARY SCHOOL  
5955 – 17A Avenue  
Delta, BC**

**PREPARED FOR:**

**DELTA SCHOOL DISTRICT  
Maintenance Facility  
7186 Brown Street  
Delta, BC  
V4G 1G8**

**PREPARED BY:**

**ACM ENVIRONMENTAL CORPORATION  
#217 -2323 Quebec Street  
Vancouver, BC  
V5T 4S7  
604-873-8599**

**September 2005**

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## **EXECUTIVE SUMMARY**

A.C.M. Environmental Corporation (ACM) was retained by the Delta School District to perform an Asbestos Materials Survey and Risk Assessment for Beach Grove Elementary located at 5955 – 17A Avenue, Delta, BC.

The assessment involved an inspection of all areas of the building. The objective of the assessment was to identify the types and extent of asbestos containing materials within the building and any risks associated with the materials and the regular usage of the building.

The assessment was conducted using both visual and physical assessment techniques. Samples of materials suspected of containing asbestos were collected and forwarded, using proper chain of custody protocols, to Prezant Associates, Inc. for asbestos analysis. Asbestos sample results are located in Appendix A of this report.

Previous asbestos sampling information for the building was reviewed prior to conducting the survey assessment. ACM previously collected 7 bulk samples from the school on December 12th, 1990. The sampling mainly identified the mechanical pipe insulation to be asbestos containing but has since been abated and replaced with fibreglass insulation.

In summary, the findings from the assessment conclude that asbestos was found within the construction materials of the building, however, no PCB or Mercury containing materials were found within the equipment of the building.

One type of asbestos containing materials was observed as vinyl floor tile materials. Within the context of the report, areas have been detailed as to the locations of the asbestos containing materials, the content of asbestos where applicable, and the required procedures to be followed for removal of these materials, as required.

The hazardous materials survey was conducted using non-destructive and some limited destructive testing methods. Areas within walls were not inspected as access was not possible without causing extensive damage to the walls. It should be noted that there is a possibility of asbestos containing materials existing within inaccessible wall and ceiling cavities, and under sub-floors. Possible asbestos-containing materials which may exist in these areas may include but are not limited to: insulation materials (mechanical or construction), secondary layers of drywall or flooring, etc.

Roofing materials were not sampled at this time as the integrity of the waterproof membrane would be compromised, possibly voiding insurance coverage in the event of a water leak. If the roofing materials are to be disturbed during a renovation project, they must be sampled prior to the work taking place.

A random number of fluorescent lighting fixtures were opened up and inspected for possible PCB containing ballasts. No PCB containing ballasts were observed within the fluorescent lighting fixtures inspected, although some may exist, as not all fixtures were opened. No Mercury containing thermostat switches were observed within the building.

## **INTRODUCTION**

A.C.M. Environmental Corporation (ACM) was retained by the Delta School District to perform an Asbestos Materials Survey and Risk Assessment for Beach Grove Elementary located at 5955 – 17A Avenue, Delta, BC. All areas of the building were inspected and/or sampled during this survey.

The objective of the assessment was to identify the types and extent of asbestos containing construction materials within the accessible areas of the building. The assessment at this time involved an inspection of all areas of the building not including the roofing materials.

The survey and assessment was conducted on September 7<sup>th</sup>, 2005 by Mr. Barry O'Regan, BST, ISO14001, EMS, IA, Project Manager, for ACM. Twenty-four (24) representative bulk samples of materials suspected of containing asbestos were collected for analysis and are included as Appendix A of this report.

Previous asbestos sampling information for the building was reviewed prior to conducting the survey assessment. ACM previously collected 7 bulk samples from the school on December 12<sup>th</sup>, 1990. The sampling identified mainly mechanical insulation materials as asbestos containing, however, these materials have been abated and replaced with non-asbestos containing materials.

## **METHODOLOGY**

The hazardous materials survey was conducted using non-destructive and some limited destructive testing methods. Areas within walls were not inspected as access was not possible without causing extensive damage to the walls. It should be noted that there is a possibility of asbestos containing materials existing within inaccessible wall and ceiling cavities, and under sub-floors. Possible asbestos-containing materials which may exist in these areas may include but are not limited to: insulation materials (mechanical or construction), secondary layers of drywall or flooring, etc.

The U.S. Environmental Protection Agency (USEPA) Guidance Document was selected for use in this study (1). The document identifies factors associated with the "condition" and the "potential for disturbance or erosion" of asbestos containing materials. These factors help to define the fibre release potential of the suspect asbestos containing materials and were used in a qualitative evaluation of materials found in the surveyed areas. Recommendations have been substantiated by additional information utilized from other documentation cited in the Reference Section of this report.

The bulk samples of suspect asbestos containing materials were forwarded, using proper chain of custody protocols, to Prezant Associates, Inc. for asbestos analysis. The samples were analyzed using polarized light microscopy (PLM) with dispersion staining in accordance with U.S. EPA method 600/R-93/116, "Method for Determination of Asbestos in Bulk Building Materials".

Other hazardous materials were visually inspected and are noted in this report.

The survey relied on the abilities and experience of the surveyor to gain access and identify possible asbestos containing materials. All areas of the building were accessed during the assessment excluding the roof.

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## **RESULTS & ASSOCIATED RISK LEVELS**

### **ASBESTOS**

One type of asbestos containing material was identified during this survey which could be affected by any potential renovation or demolition activities: vinyl floor tiles. A breakdown for the type of material is as follows:

#### **Vinyl Floor Tile Materials:**

Asbestos containing 12" vinyl floor tile materials were observed in several locations of the school. These include vinyl floor tiles which were beige in color with brown & white streaks observed in the gym storage room – 51, paper storage room and the Boy's and Girl's change rooms. Asbestos containing vinyl floor tiles which were beige in color with small brown streaks were observed in the East corridor adjacent to classrooms 26 through 32. Asbestos containing vinyl floor tiles which were beige in color with large red/brown streaks were observed in storage rooms 41, 42 and 43. The bulk samples of these vinyl floor tile materials were found to contain <1% Chrysotile asbestos in the tiles. Other asbestos containing 12" vinyl floor tiles observed were grey/green in color with dark & white streaks. These were observed in the HUB -13 room, entrance to the gymnasium and all corridors excluding the previously mentioned East corridor. The bulk sample of this vinyl floor tile material was found to contain 2% Chrysotile asbestos in the tiles. The materials are presently in good condition.

Prior to any demolition activities taking place which could disturb the asbestos containing vinyl floor tile materials (which contain more than 1% Chrysotile asbestos), it must first be removed and disposed of in accordance with applicable regulations. The removal of the asbestos containing vinyl floor tile materials will pose a moderate risk of asbestos exposure to the workers involved, therefore as a minimum, MODERATE RISK asbestos work procedures will be required for the removal of the asbestos containing vinyl floor tile materials.

WCB Regulations do not treat any materials with less than 1% asbestos as asbestos containing. Workers should still use moderate risk procedures when exposed to the vinyl floor tile materials, even in materials with less than 1% asbestos concentrations. The WCB states that workers must be properly protected from any potential exposure to airborne asbestos fibres. It is recommended that any work affecting the materials be done using a minimum of moderate risk asbestos work procedures. The vinyl floor tile materials do not have to be disposed in accordance with applicable regulations as asbestos waste.

### **POLYCHLORINATED BIPHENYLS (PCBs)**

A random number of fluorescent light ballasts were visually inspected for possible PCB containing ballasts. No PCB containing ballasts were observed within the fluorescent lighting fixtures inspected in both buildings, although some may exist, as not all fixtures were opened up.

PCB containing fluorescent light ballasts do not pose a risk to occupants of the building. If any PCB containing ballasts are encountered during any renovations of the building, they must be separated from the fixtures and disposed of properly in accordance with applicable regulations.

### **MERCURY THERMOSTATS**

No thermostats observed within the building were found to have Mercury containing switches within them. If any Mercury containing thermostat switches are encountered within the building during renovation or repair activities, they must be removed intact from the thermostats and disposed of properly in accordance with applicable regulations.

## **RECOMMENDATIONS**

Prior to beginning any work that may impinge upon the hazardous materials within the building, the following must be performed:

- 1.) All asbestos containing materials must be removed from the building, utilizing as a minimum, the risk levels and/or procedures discussed in the results section of this report.
- 2.) If any Mercury containing thermostat switches are encountered during any renovation or repair activities within the building, they must be removed and disposed of in accordance with applicable regulations.
- 3.) If any PCB containing ballasts are encountered during any renovation or repair activities within the building, they must be removed and disposed of in accordance with applicable regulations.
- 4.) If any suspect asbestos containing materials are encountered within inaccessible wall or ceiling cavities, or under floors, during renovation or demolition activities, the work in the immediate area must stop and the supervisor contacted for further direction.

### **STATEMENT OF LIMITATIONS**

The ACM report is intended to direct the Client's attention to recognised environmental conditions and to potential sources of environmental contamination. The findings and conclusion regarding contamination of the property are based solely on the extent of observations and information gathered during the assessment. Nothing in the report is intended to express any legal opinion upon environmental liabilities relating to the site or whether operations legally conformed with relevant legislative requirements.

Furthermore, it must be understood that changing circumstances in the physical environment, the use of the property, as well in changes in any substances stored, used, handled at the property, could alter radically the conclusions and information contained in this report. Therefore, it is important that the property is periodically re-evaluated and the client kept informed as to developments, which may impact the property. This report is not intended to be used as contract specifications.

### **A.C.M. ENVIRONMENTAL CORPORATION**

---

James McArthur, ASCT  
Environmental Technician

**REFERENCES**

- 1) USEPA. 1985. U.S. Environmental Protection Agency. "Guidance for Controlling Asbestos-Containing Materials in Buildings". Washington, DC: Office of Toxic Substances, USEPA.
- 2) Lory EE, Coin DC. 1981. "Management Procedure for Assessment of Friable Asbestos Insulating Material". Port Hueneme, CA: Civil Engineering Laboratory, Naval Construction Battalion Center.
- 3) Workers' Compensation Board of British Columbia, effective 15 April 1998, and all current amendments. Occupational Health and Safety Regulations.
- 4) 2002 Edition - Workers' Compensation Board of British Columbia. Safe Work Practices for Handling Asbestos.

## **APPENDIX A**

### **Bulk Sample Results**



NVLAP LAB CODE 200613-0



330 6th Ave. North, Suite 200 Seattle, WA 98109  
OFFICE: (206) 281-8858 FAX: (206) 281-8922

### Bulk Asbestos Fiber Analysis

**ACM Environmental**  
2323 Quebec Street, Suite 211  
Vancouver, BC  
Project Location: Beach Grove School

PAI Batch Number: **05-2337**  
Client Job Number:  
Number of Samples: **24**  
Turn Around Time: **10 day**

Batch Number:	05-2337	<b>ACM Environmental</b>
Lab Sample Number:	05012801	
Client Sample Number:	<b>3048-197</b>	<i>Beach Grove School</i>

**L-1 Beige hard tile material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		55% Calcite Filler and Binder
		40% Mineral Filler and Binder
		3% Vinyl Filler and Binder
		2% Miscellaneous Particles

**Comments:**

**L-2 Tan mastic with black debris**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
	65% Cellulose	20% Asphalt Filler and Binder
		10% Resin and Binder
		5% Mineral Fragments

**Comments:**

Batch Number:	05-2337	<b>ACM Environmental</b>
Lab Sample Number:	05012802	
Client Sample Number:	<b>3048-198</b>	<i>Beach Grove School</i>

Sampled By: James McArthur  
Received By: John McCaslin 9/22/2005  
Reviewed By: George McCaslin 10/7/2005

Analyzed By: Deitrie Hanson 10/7/2005



NVLAP LAB CODE 200613-0



330 6th Ave. North, Suite 200 Seattle, WA 98109  
OFFICE: (206) 281-8858 FAX: (206) 281-8922

### Bulk Asbestos Fiber Analysis

**L-1 Black pliable rubbery material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		85% Rubber Particles
		10% Calcite Filler and Binder
		5% Resin and Binder

**Comments:**

**L-2 Off-white opaque pliable mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		80% Resin and Binder
		17% Calcite Filler and Binder
		3% Mineral Fragments

**Comments:**

**L-3 White paint**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		100% Paint

**Comments:**

**L-4 Pale tan fibrous papery material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
	97% Cellulose	3% Filler and Binder

**Comments:**

Batch Number:	05-2337	<b>ACM Environmental</b>
Lab Sample Number:	05012803	
Client Sample Number:	<b>3048-199</b>	<i>Beach Grove School</i>

Sampled By: James McArthur				
Received By: John McCaslin	9/22/2005			
Reviewed By: George McCaslin	10/7/2005	Analyzed By: Deitrie Hanson		10/7/2005



NVLAP LAB CODE 200613-0



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OFFICE: (206) 281-8858 FAX: (206) 281-8922

### Bulk Asbestos Fiber Analysis

#### L-1 Off-white hard vinyl tile material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		5% Miscellaneous Particles

Comments:

#### L-2 Black mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		95% Asphalt Filler and Binder
		5% Mineral Fragments

Comments:

Batch Number: 05-2337	<b>ACM Environmental</b>
Lab Sample Number: 05012804	
Client Sample Number: 3048-200	<i>Beach Grove School</i>

#### L-1 Off-white papery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
	97% Cellulose	3% Filler and Binder

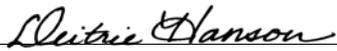
Comments:

#### L-2 White crystalline powdery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		80% Calcite Filler and Binder
		15% Perlite
		5% Mineral Fragments

Comments:

Sampled By: James McArthur  
 Received By: John McCaslin 9/22/2005  
 Reviewed By: George McCaslin 10/7/2005

  
 Analyzed By: Deitrie Hanson 10/7/2005



NVLAP LAB CODE 200613-0



330 6th Ave. North, Suite 200 Seattle, WA 98109  
OFFICE: (206) 281-8858 FAX: (206) 281-8922

### Bulk Asbestos Fiber Analysis

#### L-3 Tan fibrous papery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	97% Cellulose	3% Filler and Binder

Comments:

#### L-4 White powdery fibrous material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	10% Cellulose	87% Talc Filler and Binder 3% Mineral Fragments

Comments:

Batch Number: 05-2337	<b>ACM Environmental</b>
Lab Sample Number: 05012805	
Client Sample Number: 3048-201	<i>Beach Grove School</i>

#### L-1 Pale gray hard vinyl tile material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		55% Calcite Filler and Binder 40% Mineral Particles 5% Vinyl Filler and Binder

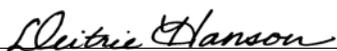
Comments:

#### L-2 Golden tan and black mastic

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		65% Resin and Binder 30% Asphalt Filler and Binder 5% Mineral Fragments

Comments:

Sampled By: James McArthur  
 Received By: John McCaslin 9/22/2005  
 Reviewed By: George McCaslin 10/7/2005

  
 Analyzed By: Deitrie Hanson 10/7/2005



NVLAP LAB CODE 200613-0



330 6th Ave. North, Suite 200 Seattle, WA 98109  
OFFICE: (206) 281-8858 FAX: (206) 281-8922

### Bulk Asbestos Fiber Analysis

Batch Number:	05-2337	<b>ACM Environmental</b>
Lab Sample Number:	05012806	
Client Sample Number:	<b>3048-202</b>	<i>Beach Grove School</i>

#### L-1 Dull pale purple-gray hard tile material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		55% Calcite Filler and Binder
		40% Mineral Filler and Binder
		5% Vinyl Filler and Binder

Comments:

#### L-2 Golden tan mastic on black resinous mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		65% Resin and Binder
		30% Asphalt Filler and Binder
		5% Mineral Particles

Comments:

Batch Number:	05-2337	<b>ACM Environmental</b>
Lab Sample Number:	05012807	
Client Sample Number:	<b>3048-203</b>	<i>Beach Grove School</i>

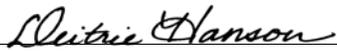
#### L-1 Pink, tan, brown, and black speckled opaque sheet vinyl tile

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		80% Rubber Particles
		10% Resin and Binder
		5% Mineral Fragments
		5% Plastic Particles

Comments:

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/22/2005  
10/7/2005

  
 Analyzed By: Deitrie Hanson

10/7/2005



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### Bulk Asbestos Fiber Analysis

**L-2 Brown mastic**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

**Non-Asbestos Fibrous Components:**

**Non-Fibrous Components:**  
80% Resin and Binder  
15% Mineral Fragments  
5% Filler and Binder

**Comments:**

**L-3 Pale blue hard brittle material with blue spots**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

**Non-Asbestos Fibrous Components:**

**Non-Fibrous Components:**  
100% Rocks

**Comments:**

Batch Number: 05-2337

**ACM Environmental**

Lab Sample Number: 05012808

*Beach Grove School*

Client Sample Number: 3048-204

**L-1 White paint**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

**Non-Asbestos Fibrous Components:**

**Non-Fibrous Components:**  
100% Paint

**Comments:**

**L-2 Tan fibrous opaque material with pink backing**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

**Non-Asbestos Fibrous Components:**  
75% Cellulose  
20% Mineral Wool

**Non-Fibrous Components:**  
5% Mineral Fragments

**Comments:**

Sampled By: James McArthur  
Received By: John McCaslin  
Reviewed By: George McCaslin

9/22/2005  
10/7/2005

*Deitrie Hanson*  
Analyzed By: Deitrie Hanson

10/7/2005



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### Bulk Asbestos Fiber Analysis

Batch Number:	05-2337	<b>ACM Environmental</b>
Lab Sample Number:	05012809	
Client Sample Number:	<b>3048-205</b>	<i>Beach Grove School</i>

**L-1 Dull purple-gray hard tile material with gray streaks**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		5% Filler and Binder

**Comments:**

**L-2 Golden tan mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		97% Resin and Binder
		3% Mineral Fragments

**Comments:**

**L-3 Black resinous mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Asphalt Filler and Binder
		5% Mineral Fragments
		5% Filler and Binder

**Comments:**

Batch Number:	05-2337	<b>ACM Environmental</b>
Lab Sample Number:	05012810	
Client Sample Number:	<b>3048-206</b>	<i>Beach Grove School</i>

Sampled By: James McArthur  
 Received By: John McCaslin 9/22/2005  
 Reviewed By: George McCaslin 10/7/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 10/7/2005



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### Bulk Asbestos Fiber Analysis

**L-1 Pale aqua blue hard tile material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		5% Miscellaneous Particles

**Comments:**

**L-2 Golden yellow resinous mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		95% Resin and Binder
		5% Mineral Fragments

**Comments:**

Batch Number: 05-2337	<b>ACM Environmental</b>
Lab Sample Number: 05012811	
Client Sample Number: 3048-207	<i>Beach Grove School</i>

**L-1 Dull greenish gray hard thin tile material**

<b>Asbestos Fibrous Components:</b> <b>2% Chrysotile</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		65% Calcite Filler and Binder
		30% Mineral Filler and Binder
		3% Vinyl Filler and Binder

**Comments:**

Sampled By: James McArthur				
Received By: John McCaslin	9/22/2005			
Reviewed By: George McCaslin	10/7/2005	Analyzed By: Deitrie Hanson		10/7/2005



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### Bulk Asbestos Fiber Analysis

**L-2 Black thick mastic**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
90% Asphalt Filler and Binder  
5% Mineral Fragments  
5% Filler and Binder

**Comments:**

Batch Number:	05-2337	<b>ACM Environmental</b>
Lab Sample Number:	05012812	
Client Sample Number:	<b>3048-208</b>	<i>Beach Grove School</i>

**L-1 Pale purple hard tile material**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
45% Calcite Filler and Binder  
40% Mineral Filler and Binder  
10% Vinyl Filler and Binder  
5% Filler and Binder

**Comments:**

**L-2 Tan resinous mastic**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
90% Resin and Binder  
5% Mineral Fragments  
5% Filler and Binder

**Comments:**

Batch Number:	05-2337	<b>ACM Environmental</b>
Lab Sample Number:	05012813	
Client Sample Number:	<b>3048-209</b>	<i>Beach Grove School</i>

Sampled By: James McArthur  
Received By: John McCaslin  
Reviewed By: George McCaslin

9/22/2005  
10/7/2005

*Deitrie Hanson*  
Analyzed By: Deitrie Hanson

10/7/2005



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### Bulk Asbestos Fiber Analysis

**L-1 Pale gray paint**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
100% Paint

**Comments:**

**L-2 White crystalline powdery material**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
92% Calcite Filler and Binder  
6% Perlite  
2% Mineral Fragments

**Comments:**

Batch Number: 05-2337  
Lab Sample Number: 05012814  
Client Sample Number: 3048-210

**ACM Environmental**

*Beach Grove School*

**L-1 Pale gray paint**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
100% Paint

**Comments:**

**L-2 White crystalline powdery material**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
92% Calcite Filler and Binder  
5% Mineral Fragments  
3% Perlite

**Comments:**

Sampled By: James McArthur  
Received By: John McCaslin  
Reviewed By: George McCaslin

9/22/2005  
10/7/2005

Analyzed By: Deitrie Hanson

10/7/2005



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## Bulk Asbestos Fiber Analysis

### L-3 Pale yellowish white fibrous tape-like material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	97% Cellulose	3% Filler and Binder

Comments:

### L-4 White powdery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	15% Cellulose	80% Talc Filler and Binder 5% Mineral Fragments

Comments:

Batch Number: 05-2337	<b>ACM Environmental</b>
Lab Sample Number: 05012815	
Client Sample Number: 3048-211	<i>Beach Grove School</i>

### L-1 Pale blue, turquoise, pink, and white mosaic opaque sheet vinyl tile material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Plastic Particles 10% Vinyl Filler and Binder

Comments:

### L-2 Pale gray fibrous papery backing

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	75% Cellulose	20% Filler and Binder 5% Mineral Fragments

Comments:

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/22/2005  
 10/7/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson

10/7/2005



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### Bulk Asbestos Fiber Analysis

#### L-3 Transparent resinous mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		92% Resin and Binder
		4% Mineral Fragments
		4% Filler and Binder

Comments:

#### L-4 Black mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Asphalt Filler and Binder
		5% Mineral Fragments
		5% Filler and Binder

Comments:

Batch Number: 05-2337	<b>ACM Environmental</b>
Lab Sample Number: 05012816	
Client Sample Number: 3048-212	<i>Beach Grove School</i>

#### L-1 White paint on pale beige paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		100% Paint

Comments:

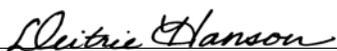
#### L-2 Pale gray and beige fibrous opaque material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
	65% Cellulose	10% Perlite
	20% Mineral Wool	5% Mineral Fragments

Comments:

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/22/2005  
10/7/2005

  
 Analyzed By: Deitrie Hanson

10/7/2005



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### Bulk Asbestos Fiber Analysis

Batch Number:	05-2337	<b>ACM Environmental</b>
Lab Sample Number:	05012817	
Client Sample Number:	<b>3048-213</b>	<i>Beach Grove School</i>

#### L-1 Pale beige paint

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 100% Paint
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Comments:

#### L-2 White crystalline powdery material

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 85% Calcite Filler and Binder 12% Perlite 3% Vermiculite
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Comments:

#### L-3 Pale yellowish white fibrous tape-like papery material

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	Non-Asbestos Fibrous Components: 97% Cellulose	Non-Fibrous Components: 3% Filler and Binder
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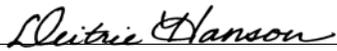
Comments:

#### L-4 White crystalline powdery material

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 92% Calcite Filler and Binder 5% Perlite 3% Vermiculite
---	----------------------------------	--

Comments:

Sampled By: James McArthur  
Received By: John McCaslin 9/22/2005  
Reviewed By: George McCaslin 10/7/2005

  
Analyzed By: Deitrie Hanson 10/7/2005



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## Bulk Asbestos Fiber Analysis

### L-5 Brown fibrous papery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	99% Cellulose	1% Filler and Binder

Comments:

### L-6 White powdery fibrous material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	15% Cellulose	80% Talc Filler and Binder 5% Mineral Fragments

Comments:

Batch Number: 05-2337	<b>ACM Environmental</b>
Lab Sample Number: 05012818	<i>Beach Grove School</i>
Client Sample Number: 3048-214	

### L-1 Pale grayish white hard tile material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		55% Calcite Filler and Binder 40% Mineral Filler and Binder 5% Vinyl Filler and Binder

Comments:

### L-2 Pale yellow resinous mastic

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		95% Resin and Binder 5% Mineral Fragments

Comments:

Sampled By: James McArthur  
Received By: John McCaslin  
Reviewed By: George McCaslin

9/22/2005  
10/7/2005

*Deitrie Hanson*  
Analyzed By: Deitrie Hanson

10/7/2005



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### Bulk Asbestos Fiber Analysis

Batch Number:	05-2337	<b>ACM Environmental</b>
Lab Sample Number:	05012819	
Client Sample Number:	<b>3048-215</b>	<i>Beach Grove School</i>

**L-1 Pale grayish white hard tile material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		55% Calcite Filler and Binder
		40% Mineral Filler and Binder
		5% Vinyl Filler and Binder

**Comments:**

**L-2 Black mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		97% Asphalt Filler and Binder
		3% Mineral Fragments

**Comments:**

Batch Number:	05-2337	<b>ACM Environmental</b>
Lab Sample Number:	05012820	
Client Sample Number:	<b>3048-216</b>	<i>Beach Grove School</i>

**L-1 Pale gray hard tile material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		5% Filler and Binder

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin 9/22/2005  
 Reviewed By: George McCaslin 10/7/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 10/7/2005



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### Bulk Asbestos Fiber Analysis

**L-2 Black resinous mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		96% Asphalt Filler and Binder
		4% Mineral Fragments

**Comments:**

Batch Number: 05-2337	<b>ACM Environmental</b>
Lab Sample Number: 05012821	
Client Sample Number: 3048-217	<i>Beach Grove School</i>

**L-1 Pale pink paint**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		100% Paint

**Comments:**

**L-2 White crystalline powdery material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		87% Calcite Filler and Binder
		10% Perlite
		3% Mineral Fragments

**Comments:**

Batch Number: 05-2337	<b>ACM Environmental</b>
Lab Sample Number: 05012822	
Client Sample Number: 3048-218	<i>Beach Grove School</i>

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/22/2005  
 10/7/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson

10/7/2005



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## Bulk Asbestos Fiber Analysis

**L-1 Dull gray thin hard tile material**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 55% Calcite Filler and Binder 40% Mineral Filler and Binder 5% Vinyl Filler and Binder
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**Comments:**

**L-2 Golden yellow resinous mastic with gray granular material**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 90% Resin and Binder 10% Sand
---	---	--

**Comments:**

**L-3 Pale beige hard tile material with brown streaks**

<b>Asbestos Fibrous Components:</b> <1% Chrysotile	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 45% Calcite Filler and Binder 40% Mineral Filler and Binder 10% Vinyl Filler and Binder >4% Mineral Fragments
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**Comments:**

This layer contains <1% chrysotile asbestos.

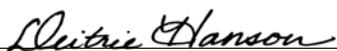
**L-4 Black mastic**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 95% Asphalt Filler and Binder 3% Mineral Fragments 2% Filler and Binder
---	---	---

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/22/2005  
 10/7/2005

  
 Analyzed By: Deitrie Hanson

10/7/2005



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### Bulk Asbestos Fiber Analysis

Batch Number:	05-2337	<b>ACM Environmental</b>
Lab Sample Number:	05012823	
Client Sample Number:	<b>3048-219</b>	<i>Beach Grove School</i>

**L-1 Pink pliable thick opaque sheet vinyl tile material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		55% Vinyl Filler and Binder
		40% Calcite Filler and Binder
		5% Mineral Fragments

**Comments:**

**L-2 Dull brown opaque mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Resin and Binder
		5% Mineral Filler and Binder
		5% Filler and Binder

**Comments:**

**L-3 Orange woven twisted fiber bundles**

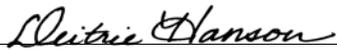
<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		98% Straw
		2% Resin and Binder

**Comments:**

Batch Number:	05-2337	<b>ACM Environmental</b>
Lab Sample Number:	05012824	
Client Sample Number:	<b>3048-220</b>	<i>Beach Grove School</i>

Sampled By: James McArthur  
Received By: John McCaslin  
Reviewed By: George McCaslin

9/22/2005  
10/7/2005

  
Analyzed By: Deitrie Hanson

10/7/2005



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## Bulk Asbestos Fiber Analysis

**L-1 Dull greenish tan hard tile material with brown streaks**

<b>Asbestos Fibrous Components:</b> <1% Chrysotile	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 45% Calcite Filler and Binder 40% Mineral Filler and Binder 10% Vinyl Filler and Binder >4% Mineral Fragments
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**Comments:**  
 This tile contains <1% chrysotile asbestos.

**L-2 Black mastic**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 92% Asphalt Filler and Binder 5% Mineral Fragments 3% Filler and Binder
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**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin 9/22/2005  
 Reviewed By: George McCaslin 10/7/2005

*Deitrie Hanson*

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Analyzed By: Deitrie Hanson 10/7/2005

## **APPENDIX B**

### **Photographs**



Asbestos containing 12" olive floor tiles with dark & white streaks



Asbestos containing 12" beige floor tiles with brown & white streaks



Asbestos containing 12" beige VFT with small brown streaks

**ENERGY SYSTEM SERVICE AGREEMENT**

**CHALMERS ELEMENTARY SCHOOL**

**THIS AGREEMENT** dated for reference the 26<sup>th</sup> day of September, 2011.

**BETWEEN:**

**THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 37 (DELTA)**  
a corporation established under the School Act R.S.B.C. 1996, c. 412 having an  
office at 4585 Harvest Drive, Delta, British Columbia, V4K 5B4

(the "District")

OF THE FIRST PART

**AND:**

**FORTISBC ENERGY INC.,** a company duly incorporated under the laws of the  
Province of British Columbia, having its registered office at 10th Floor, 1111  
West Georgia Street, Vancouver, B.C. V6E 4M3

("FEI")

OF THE SECOND PART

**WHEREAS:**

- A. The District is the owner of Chalmers Elementary School (the "Building") and lands located at 11315 75<sup>th</sup> Avenue, Delta, British Columbia, which lands are legally described as:

PID: 007-365-799 Property No: 106569

LOT 371 SECTION 24 TOWNSHIP 4 NEW WESTMINSTER DISTRICT PLAN 36382

(the "Lands")

- B. FEI wishes to supply to the Building, and the District wishes to purchase, Thermal Energy generated by an Energy System that FEI will construct on the Lands, and which FEI will own and operate, all pursuant to the terms of this Agreement.
- C. The Thermal Energy supplied by FEI to the Building pursuant to this Agreement will be priced at the rate set forth in the Energy System Rate Development Agreement between the Parties dated September 26<sup>th</sup>, 2011.

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT** in consideration of the premises and the covenants, agreements, representations, warranties and payments set out herein, the receipt and sufficiency of which is hereby acknowledged by each Party, the Parties covenant and agree as follows:

## **ARTICLE 1 - INTERPRETATION**

### 1.1 DEFINITIONS

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

- (a) “Adjusted Energy System Purchase Price” means, as of the date on which a purchase of the Energy System pursuant to Article 15 is effective, either:
  - (i) the Rate Base Value; or
  - (ii) such other purchase price for the Energy System as is determined by the BCUC; plus all applicable taxes;
- (b) “Affiliate” has the meaning set out in the *Business Corporation Act*, S.B.C. 2002, c.57 and includes FortisBC Inc.;
- (c) “Agreement” means this agreement, including the preamble hereto and any schedules attached hereto and the terms “this Agreement”, “hereof”, “herein”, “hereunder” and “hereinafter” and similar expressions refer to the Agreement and not to any particular Section or other portion thereof and includes any agreement supplementary or ancillary thereto;
- (d) “Acceptance Date” means the date of BCUC Acceptance;
- (e) “BCUC” means the British Columbia Utilities Commission, or any successor thereto;
- (f) “BCUC Acceptance” has the meaning assigned to that term in Section 11.1;
- (g) “Building” has the meaning assigned to that term on page one of this Agreement;
- (h) “Building System” means the space heating, cooling and ventilation, and domestic hot water distribution and control systems existing in the Building, to which the Energy System will be connected;
- (i) “Business Day” means any day except Saturday and Sunday or any day on which banks are generally not open for business in Vancouver, British Columbia;
- (j) “Capital Contribution” means \$ 67,000;
- (k) “Commissioned” means once the Energy System is certified complete and operating in accordance with the Specifications by a professional engineer under seal;

- (l) “Commission Date” means the day on which the Energy System is Commissioned;
- (m) “Contaminants” means, collectively, any contaminant, toxic substance, dangerous good, or pollutant or any other substance which when released to the natural environment is likely to cause, at some immediate or future time, material harm or degradation to the natural environment or material risk to human health, and includes any radioactive materials, asbestos materials, urea formaldehyde, underground or aboveground tanks, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive or toxic substances, hazardous waste or waste of any kind, pesticides, defoliants, or any other solid, liquid, gas, vapour, odour or any other substance .the storage, manufacture, disposal, handling, treatment, generation, use, transport, remediation or Release into the Environment of which is now or hereafter prohibited, controlled or regulated under Environmental Laws;
- (n) “Continuing Service Interruption Notice” has the meaning assigned to that term in Section 14.3(b);
- (o) “Contractor” means a prime contractor hired by FEI to oversee and complete the construction and installation of the Energy System;
- (p) “Design and Construction” means the total construction and related services required to design, construct and commission the Energy System and connected components of the Building System;
- (q) “Design Thermal Energy” means the maximum amount of Thermal Energy that the Energy System is capable of delivering through the Thermal Energy Meter and is included in the Specifications;
- (r) “Disclosed Contaminants” means Contaminants:
  - (i) the existence of which are specifically identified in the reports provided by the District to FEI and listed in Schedule C;
  - (ii) that were or ought to have been discovered, foreseen or anticipated upon reasonable inspection by FEI prior to the Effective Date; and
  - (iii) that were caused by FEI or any person for whom FEI is responsible at law;
- (s) “District” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (t) “District Losses” has the meaning assigned to that term in Section 12.6;
- (u) “District Site Rules for Contractors” means the rules set forth in Schedule “B”;
- (v) “Effective Date” means the date set out on page one of this Agreement;
- (w) “Energy System” means the equipment that FEI constructs and owns which will provide the Building with its energy needs for space heating, cooling and ventilation, and domestic hot water use, all as set forth in this Agreement;

- (x) “Energy System Service Agreement” has the meaning assigned to that term in the Energy System Rate Development Agreement;
- (y) “Energy System Rate Development Agreement” means that energy system rate development agreement between the District and FEI dated as of September 26<sup>th</sup>, 2011;
- (z) “Environment” includes the air (including all layers of the atmosphere), land (including soil, sediment deposited on land, fill, lands submerged under water, buildings, and improvements), water (including oceans, lakes, rivers, streams, groundwater, and surface water), and all other external conditions and influences under which humans, animals, and plants live or are developed and “Environmental” will have a corresponding meaning;
- (aa) “Environmental Attributes” means:
  - (i) all attributes associated with, or that may be derived from the Energy System installed having decreased environmental impacts relative to the use of conventional heating and cooling and hot water heating systems including any existing or future credit, allowance, certificate, right, benefit or advantage or proprietary or contractual right whether or not tradable;
  - (ii) any existing or future instrument, including without limitation any environmental emission allowances and environmental emission reduction credits, reduction right, allowance, certificate or other unit of any kind whatsoever, whether or not tradable and any other proprietary or contractual right, whether or not tradable, and any resulting from, or otherwise related to the actual assumed reduction, displacement or offset of emissions associated with, or that may be derived from the Energy System installed; and
  - (iii) all revenues, entitlement, benefits and other proceeds arising from or related to the foregoing;
- (bb) “Environmental Laws” means any and all statutes, laws, regulations, orders, bylaws, standards, guidelines, protocols, permits, and other lawful requirements of any Governmental Authority having jurisdiction over the Lands or the Energy System now or hereafter in force with respect in any way to the Environment, environmental assessment, health, occupational health and safety, protection of any form of plant or animal life, or transportation of dangerous goods, including the principles of common law and equity;
- (cc) “Expiry Date” means the earlier of:
  - (i) June 30, 2031, or the expiry of any renewal term thereof; and
  - (ii) the closure of the Building, or the Building otherwise ceasing to operate as a school (as defined under the *School Act* (British Columbia));
- (dd) “FEI” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (ee) “FEI Losses” has the meaning assigned to that term in Section 12.5;

- (ff) “Force Majeure” has the meaning assigned to that term in Section 17.2;
- (gg) “Governmental Authority” means any federal, provincial, regional, municipal, local or other government, governmental or public department, court, tribunal, arbitral body, commission, board, bureau or agency and any subdivision, agent, commission, board or authority thereof;
- (hh) “Lands” has the meaning assigned to that term in Recital A and includes the Building located on the Lands;
- (ii) “Laws” means laws, statutes, regulations, bylaws, Permits and orders of any Governmental Authority having jurisdiction, including without limitation, Environmental Laws;
- (jj) “Maintain” means to operate, service and maintain in a safe and reliable condition and “maintaining” and “maintenance” have corresponding meanings;
- (kk) “Monthly Charges” means that amount to be paid by the District to FEI with respect to the delivery of Thermal Energy to the Building pursuant to the Energy System Rate Development Agreement and any other payments due and owing by the District under this Agreement;
- (ll) “Notifying Party” has the meaning assigned to that term in Section 16.1;
- (mm) “Party” means a signatory to this Agreement, and the “Parties” means all of such signatories;
- (nn) “Permits” means all permits, licences, certificates, approvals, authorizations, consents and the like issued by any Governmental Authority;
- (oo) “Rate Base Value” means the value of the Energy System that the BCUC accepts from time to time in accordance with the Energy System Rate Development Agreement;
- (pp) “Release” includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, migration, disposal, or dumping;
- (qq) “Right of Access and Licence” means the right and licence granted herein by the District to FEI pursuant to Section 4.1 of this Agreement;
- (rr) “Service Failure Notice” has the meaning assigned to that term in Section 14.3(c);
- (ss) “Service Interruption” means, in any hour:
  - (i) a failure of the Energy System in that hour to deliver Thermal Energy at the Thermal Energy Meter sufficient to meet the Thermal Energy demand of the Building during that hour in accordance with the Specifications up to the Design Thermal Energy, and except where such failure is directly caused by:
    - a. the careless or wilful damage to the Energy System by the District or its agents or other persons for whom the District is responsible;

- b. damage caused to the Energy System as a result of the negligent acts or omissions of the District, its agents or those for whom in law the District is responsible;
  - c. an event of Force Majeure that triggers the suspension of FEI's obligations under the Agreement pursuant to Article 17; or
  - d. maintenance activities that FEI is performing on the Energy System that have been scheduled with the consent of the District (such consent not to be unreasonably withheld); and
- (ii) if the failure described in Section 1.1(rr)(i), FEI's failure in that hour to deliver to the Building through alternative means thermal energy sufficient to maintain an average temperature of 16 degrees Celsius in each room of the Building intended to be served by the Energy System (all as determined by the District, acting reasonably);
- (tt) "Service Interruption Notice" has the meaning assigned to that term in Section 14.3(a);
- (uu) "Services" means those services to be provided by FEI to supply Thermal Energy to a Building from an Energy System, and for greater certainty includes the services described in Articles 5 and 6, and excludes the Design and Construction;
- (vv) "Specifications" means the specifications for the Energy System prepared by FEI in consultation with the District in accordance with Section 2.3 and includes the Design Thermal Energy;
- (ww) "Term" has the meaning assigned to that term in Section 3.1;
- (xx) "Thermal Energy" means the amount of energy that FEI provides to the Building measured through a Thermal Energy Meter;
- (yy) "Thermal Energy Meter" means a device that complies with the International Organization of Legal Metrology recommendations for measuring thermal energy; and
- (zz) "UCA" means the *Utilities Commission Act*, R.S.B.C. 1996, c. 473 as may be amended from time to time.

## 1.2 SCHEDULES

The following Schedules, as may be amended from time to time, are incorporated by reference into this Agreement:

Schedule "A"	Energy System Description
Schedule "B"	Delta School District Site Rules for Contractors
Schedule "C"	List of Environmental Reports

### 1.3 AMENDMENTS TO SCHEDULES

The District and FEI acknowledge that during the construction phase of the Energy System there may be additions and alterations to the Specifications for the Energy System which would result in more efficient use and operation of the Energy System. If these additions or alterations result in changes to any of the above Schedules, the Parties mutually agree to amend the Schedules by way of a written amendment prior to the Commission Date.

### 1.4 INTERPRETATION

Except where the context requires otherwise or except as otherwise expressly provided, in this Agreement:

- (a) all references to a designated Article or Section are to the designated Article or Section of this Agreement unless otherwise specifically stated;
- (b) the singular of any term includes the plural, and vice versa, and the use of any term is equally applicable to any gender and, where applicable, body corporate;
- (c) any reference to a corporate entity includes and is also a reference to any corporate entity that is a successor by merger, amalgamation, consolidation or otherwise to such entity;
- (d) the preamble and all schedules referred to and attached to this Agreement are incorporated by reference and will form a part of this Agreement;
- (e) all sums of money which are referred to in this Agreement are in lawful money of Canada;
- (f) the headings of the Articles and Sections set out in this Agreement are for convenience only and will not be considered in any interpretation of this Agreement;

## **ARTICLE 2 - DESIGN AND CONSTRUCTION OF THE ENERGY SYSTEM**

### 2.1 CONSTRUCTION

FEI will perform the Design and Construction:

- (a) in accordance and in compliance with the Specifications;
- (b) in a good and workmanlike manner using qualified workers, and in accordance with sound and currently accepted industry standards and codes of practice normally employed, at the time and place of performance, in projects of a similar type and nature;
- (c) to ensure operational compatibility with the Building System;
- (d) in a safe and environmentally sound manner, and in accordance with all applicable Laws; and
- (e) in accordance with the terms of this Agreement.

## 2.2 CAPITAL CONTRIBUTION

The District will pay to FEI within 30 days of the Commission Date the Capital Contribution for the purpose of reducing the capital investment and the associated carrying cost of capital by FEI for provision of Service to the Building.

## 2.3 SPECIFICATIONS

Subject to and in accordance with this Section 2.3, FEI shall prepare and complete the Specifications promptly following the Acceptance Date.

FEI confirms the Energy System, as described in the Specifications and as contemplated by the Energy System description set out in Schedule A, will be designed to meet the thermal energy requirements of the Building and operational compatibility of the Building System based in part on information supplied by the District as to historical usage, which information has not been independently verified by FEI. FEI shall have no liability to the District for the failure of the Energy System to satisfy the requirements of the Building where such failure is attributable to the information supplied by the District being incorrect, inaccurate or incomplete.

FEI will prepare the Specifications in consultation with the District in order to ensure the Energy System can be appropriately accommodated within the Building and interface with the Building Systems. FEI will submit material changes to the Specifications, both before and during construction, to the District for review and comment prior to such changes taking place. If the District does not comment on the Specifications or material changes to the Specifications or advise that it has no comment within five (5) Business Days of receipt, FEI will be entitled to proceed on the basis of the information provided to the District. FEI will revise the Specifications based on the comments from the District provided that doing so will not impact FEI's costs or adversely affect system performance.

Review of and comment on the Specifications by the District does not impose any obligation on the District to verify the suitability of the Energy System or be construed as confirmation by the District that the Energy System satisfactorily meets the Building's energy requirements.

## 2.4 WORK SCHEDULE

Within ten (10) Business Days following the Acceptance Date, FEI will submit to the District for review and comment a Gantt chart schedule for the Design and Construction listing activities to be undertaken during the Design and Construction stages, key milestones and approval dates and other pertinent dates. Any revisions to the schedule must be reviewed and commented by the District, which review and comment will not be unreasonably withheld, conditioned or delayed.

In order to ensure that the Building System remains operational during normal school hours (as defined in Schedule B), the cut-over from the existing heating/cooling plant to the Energy System shall be performed outside normal school hours.

## 2.5 REPORTING

FEI shall produce and submit a monthly progress report for the Design and Construction to the District until the Energy System is Commissioned.

## 2.6 TESTING AND COMMISSIONING

FEI shall coordinate and supervise the start-up and testing of the Energy System to ensure the Energy System and other components of the Building System affected by the Design and Construction are operating in accordance with the Specifications, upon which the Energy System will be Commissioned. The District shall be invited to participate in the start-up and testing exercise.

# ARTICLE 3 - TERM AND RENEWAL

## 3.1 TERM

The term of this Agreement commences on the Effective Date and continues until the Expiry Date unless it is terminated earlier as authorized under this Agreement ("Term").

## 3.2 RENEWAL

This Agreement will automatically renew for periods of ten (10) years unless either Party provides written notice to the other Party no less than six (6) months prior to the Expiry Date, provided that there shall be no automatic renewal in the event that the Expiry Date arises as a result of the closure of the Building, or the Building otherwise ceases to operate as a school (as defined under the *School Act* (British Columbia)).

# ARTICLE 4 - ACCESS AND PERMITS

## 4.1 ACCESS RIGHTS

The District hereby grants to FEI, during the Term from and following the Acceptance Date, for so long as FEI shall require it, but subject to Section 4.4, a full, free and uninterrupted licence and right of way on, over and under the Lands and Building, for FEI, its assigns, employees, contractors, agents, invitees and licensees at all times hereafter for the purposes set out in this Agreement, provided FEI will avoid to the extent reasonably possible, and otherwise minimize interference with and inconvenience to, the occupants of the Building and the access rights of FEI will be limited to the extent reasonably necessary to fulfil FEI's obligations hereunder.

Without limiting the generality of the foregoing, but subject to Section 4.4, such right of way and licence shall include the full power, right and liberty to excavate for, install, place, construct, renew, alter, repair, maintain, operate, use, abandon, remove or replace its infrastructure, in whole or in part, and to enter upon, along, across, over or under the Lands or Building and have continual access to the Energy System, with or without vehicles, supplies, machinery or equipment, for any of the purposes set out in this Agreement, and to clear such portion of the Lands and keep it cleared of obstructions which, in the opinion of FEI, acting reasonably, may

interfere with any of the rights granted to FEI herein. The District may direct, in its discretion, FEI to use alternate routing for any Environmental or other reasonable purpose.

FEI covenants and agrees with the District not to do or knowingly permit to be done anything which may, in the opinion of the District acting reasonably, damage or interfere with the Building or impair the operating efficiency thereof or create any hazard.

#### 4.2 CONDITION OF LAND

The District represents and warrants to FEI that as of the Effective Date:

- (a) to the best of the District's knowledge, the Lands are free of Contaminants other than those specifically identified in the reports provided by the District to FEI and listed in Schedule C; and
- (b) there are no actions, proceedings, investigations, claims (including remediation cost recovery claims) pending, or to the knowledge of the District, threatened, that would interfere with FEI's access rights pursuant to Section 4.1.

#### 4.3 PERMITS

FEI will obtain and maintain at its own expense all Permits necessary for the Design and Construction and the Services.

#### 4.4 SAFETY, SECURITY AND BUILDING ACCESS

Notwithstanding anything to the contrary in this Agreement, FEI will adhere, and will cause all persons for whom it is responsible under this Agreement (including, without limitation, the Contractor) to adhere to the District Site Rules for Contractors.

#### 4.5 REMEDIATION

FEI shall promptly remediate any Disclosed Contaminants on the Lands as required by applicable Law that result from, or are Released as a result of the Design and Construction or the Services, except to the extent caused or contributed to by the District's negligence. In the event that Contaminants on the Lands, other than Disclosed Contaminants, are discovered by FEI, FEI will promptly notify the District of such discovery and the Parties will review the impact of such discovery, if any, on the Design and Construction or the Services.

### **ARTICLE 5 - SERVICE PROVISION**

#### 5.1 PROVISION OF SERVICE

Subject to the terms and conditions of the Agreement, FEI will provide the Services to the District throughout the Term.

## 5.2 SERVICE MONITORING AND REVIEW

The Parties acknowledge that FEI may be required from time to time to prepare and submit reports to the BCUC concerning the operation and performance of the Energy System, and the District shall provide FEI with reasonable cooperation in relation to the preparation of such reports.

## 5.3 STANDARD OF PERFORMANCE

In performing the Services, FEI will:

- (a) use only qualified personnel and exercise the same degree of care, skill and supervision as would be exercised by a reasonable and prudent owner experienced in performing like services;
- (b) perform the Services in accordance with all applicable Laws;
- (c) perform the Services in accordance with ongoing industry standards and codes of practice; and
- (d) without limiting the effect of the foregoing, abide by any standards of performance in relation to the Services that the BCUC may set from time to time according to the provisions of the UCA.

## 5.4 INTERRUPTION

No interruption of any of the on-site and off-site services, utilities and amenities provided by FEI to the Building will, except to the extent, if any, caused by any wrongful or negligent act of FEI or any person for whom FEI is responsible at law, render FEI liable to the District or any person claiming through or under the District, or relieve the District from any of its obligations under this Agreement. Notwithstanding the foregoing, FEI will use all reasonable diligence to remedy any such interruption if it is within its power and obligation to do so.

# **ARTICLE 6 - ENERGY SYSTEM MAINTENANCE AND OPERATION**

## 6.1 MAINTENANCE AND REPAIR OF ENERGY SYSTEM

Subject to Section 6.2, FEI will perform the Services and otherwise maintain or cause to be maintained and repaired the Energy System throughout the Term:

- (a) in accordance with the Energy System design and operating specifications and requirements as established by the qualified engineers engaged by FEI in the design and construction of the Energy System, and the equipment manufacturers;
- (b) in a good and workman-like manner using qualified workers, and in accordance with sound and currently accepted industry standards and codes of practice normally employed, at the time and place of performance, in projects of a similar type and nature;
- (c) to ensure operational compatibility with the Building System;

- (d) in a safe and environmentally sound manner, and in accordance with all applicable Laws; and
- (e) in accordance with the terms of this Agreement.

FEI will not delay repair of the Energy System for any reason, including as a result of a dispute with the District in relation to the costs and expenses of repair pursuant to Section 6.2.

## 6.2 REPAIR DAMAGE

The District will be responsible for all costs and expenses incurred by FEI in respect of any damage to the Energy System caused by or resulting from:

- (a) the careless or wilful damage to the Energy System by the District or its agents or other persons for whom at law the District is responsible; or
- (b) damage caused to the Energy System as a result of the negligent acts or omissions of the District, its agents or those for whom in law the District is responsible.

## **ARTICLE 7 - CHARGES**

### 7.1 MONTHLY CHARGES

The District throughout the Term commencing on the Commission Date in accordance with this Article 7 will pay to FEI when due for the Thermal Energy that FEI delivers and meters to the Building according to the rates set out in the Energy System Rate Development Agreement plus all applicable taxes (including harmonized sales tax applicable thereon) and any imposed taxes levied after the Commission Date by a government or regulatory agency that are related to the Energy System (including, but not limited to capital taxes or royalties) and any other payments due and owing by the District under this Agreement.

### 7.2 MONTHLY STATEMENT

FEI will, within 15 days following the end of each month, deliver to the District a statement setting out the Monthly Charges including all applicable taxes payable for that month.

### 7.3 PAYMENT

The District will pay the full amount specified in each statement provided to it in accordance with Section 7.2 within 30 days of receipt of such statement. All amounts payable to FEI will be made by cheque mailed to FEI at its address for service specified in Section 20.5.

### 7.4 PAYMENT DUE

Subject to Section 14.1, the obligation of the District to pay the Monthly Charges continues whether or not the Energy System is being used to provide the Building with its energy needs for space and ventilation heating, cooling and domestic hot water use.

#### 7.5 ARREARS TO BEAR INTEREST

If any amount owing to FEI or the District is not paid on or before the date on which it is due, a late payment charge of 1.5% per month will be assessed each month on all outstanding balances not paid by the due date.

### **ARTICLE 8 - OWNERSHIP OF THE ENERGY SYSTEM**

Notwithstanding the payments made by the District to FEI under this Article 8, any provision of this Agreement, any degree of annexation or affixation, or rule of law or equity to the contrary the District will have no proprietary interest in the Energy System which is, and shall remain, the property of FEI and may be used by FEI in its business or removed in whole or in part as it may see fit, and for any of such purposes, and FEI may enter in, upon and under all the Lands for the purposes of the maintenance, renewals, repair, removal or operation of the Energy System or any part thereof; provided that FEI shall not leave any part of the Energy System in such a state as to constitute a nuisance or a danger to the public through neglect, non-use and want of repair, and provided further that nothing in this clause shall nullify or otherwise impact or invalidate in any way the District's rights under Article 15 to purchase the Energy System.

### **ARTICLE 9 - ENVIRONMENTAL ATTRIBUTES**

#### 9.1 ENVIRONMENTAL ATTRIBUTES

All right, title and interest now existing or which may exist at any time in the future in the potential or actual commercial value of any Environmental Attributes that arise or accrue by virtue of the construction and operation of the Energy System will belong to the District. At the request of the District, FEI will reasonably cooperate with the District in applying for and assigning any Environmental Attributes to the District.

#### 9.2 GRANTS

Any grants from any Governmental Authority, a Crown Corporation or non-governmental authority that may be derived from a reduction in energy consumption by the Building will belong to the District.

### **ARTICLE 10 - REPRESENTATIONS AND WARRANTIES**

#### 10.1 DISTRICT'S REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties contained in this Agreement, the District hereby represents and warrants to FEI as follows and acknowledges that FEI is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) the District has the full right, power and authority to enter into this Agreement;

- (b) all necessary action on the part of the District has been taken to authorize and approve the execution and delivery of this Agreement and the performance by the District of its obligations hereunder;
- (c) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to the District as of the date of this Agreement;
- (d) the District is not party to any action, suit or legal proceeding, actual or, to the knowledge of the District, threatened, and there are no circumstances, matters or things known to the District which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or, to the knowledge of the District, threatened against the District before or by any Governmental Authority, which could affect the District's ability to perform its obligations under this Agreement; and
- (e) no person, firm or corporation has or will have as of the Commission Date, any agreement, right, or option or right capable of becoming an agreement, right, or option for the purchase or acquisition of the Energy System.

## 10.2 FEI'S REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties contained in this Agreement, FEI hereby represents and warrants to the District as follows and acknowledges that the District is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) FEI has the full right, power and authority to enter into this Agreement;
- (b) all necessary corporate action on the part of FEI has been taken to authorize and approve the execution and delivery of this Agreement and the performance by FEI of its obligations hereunder;
- (c) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to FEI as of the date of this Agreement;
- (d) FEI is not party to any action, suit or legal proceeding, actual or threatened, and there are no circumstances, matters or things known to FEI which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or threatened against FEI before or by any Governmental Authority, which could affect FEI's ability to perform its obligations under this Agreement; and
- (e) FEI has or will have all permits, licenses, authorizations and other documentation required for the operation of the Energy System after the Commission Date; and
- (f) FEI has all the required expertise to fulfill its obligations under this Agreement.

### 10.3 DELEGATION AND SUBCONTRACTING

FEI may delegate and subcontract its obligations under this Agreement with respect to Design and Construction and Services to any contractor, consultant, agent or representative provided that FEI shall be fully responsible for the acts and omissions of such persons and those either directly or indirectly employed by them to the same extent as FEI for its own acts or omissions.

## **ARTICLE 11 - BCUC ACCEPTANCE**

### 11.1 REGULATORY REVIEW TERMINATION

Subject to Section 11.3, either Party may terminate this Agreement if within 90 days following the Effective Date, this Agreement and the Energy System Rate Development Agreement, including the Market Rate and the SD37 Rate Rider as defined in that Agreement have not been accepted for filing by the BCUC (such acceptance being herein called "BCUC Acceptance").

### 11.2 REGULATORY FILING

FEI, on behalf of itself and the District, and at its own cost, shall file the Agreement with the BCUC within a reasonable time after the Effective Date. FEI shall take all steps reasonably required to secure BCUC Acceptance, which shall consist of those procedural steps related to filing the Agreement and providing argument and witnesses in support of filing.

### 11.3 TERMINATION

A Party entitled to terminate under Section 11.1 must do so by giving notice to terminate to the other Party at any time after the right to terminate arises pursuant to Section 11.1, and prior to:

- (a) the date of issuance of the BCUC Acceptance; and
- (b) the date that is 90 days after the Effective Date.

### 11.4 EFFECT OF BCUC ACCEPTANCE

The Parties acknowledge that upon BCUC Acceptance, the Services will be subject to regulation by the BCUC under the UCA, and will form another class of service that FEI provides as a public utility. The Parties acknowledge that the terms of the UCA may supersede the terms and conditions of this Agreement.

## **ARTICLE 12 - INDEMNITY**

### 12.1 FEI'S INDEMNITY

Without limiting any other obligations of FEI provided herein, FEI will indemnify, defend, and save harmless the District and its trustees, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including the full amount of all legal fees and expenses on a

solicitor-client basis) which may be paid by, incurred by, or asserted against the District or its directors, officers, employees, agents, successors, or assigns, arising from or in connection with:

- (a) the breach or non-performance by FEI of any of its obligations or warranties hereunder; or
- (b) the negligence or wilful misconduct of FEI, its employees, contractors or agents in respect of the Energy System, and in the performance of the obligations of FEI pursuant to this Agreement,

excluding only such of the foregoing as arise from the fraud, negligence or wilful misconduct of the District or its trustees, officers, directors, members, employees, contractors or agents, or the breach or non-performance by the District of any of its obligations or warranties hereunder.

## 12.2 DISTRICT'S INDEMNITY

Without limiting any other obligations of the District provided herein, the District will indemnify, defend, and save harmless FEI, its Affiliates and their respective shareholders, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including the full amount of all legal fees and expenses on a solicitor-client basis) which may be paid by, incurred by, or asserted against FEI, its Affiliates or their respective shareholders, directors, officers, employees, agents, successors, or assigns, arising from or in connection with:

- (a) the breach or non-performance by the District of any of its obligations or warranties hereunder; or
- (b) the negligence or wilful misconduct of the District, its employees, contractors or agents in respect of the Energy System, and in the performance of the obligations of the District pursuant to this Agreement,

excluding only such of the foregoing as arise from the fraud, negligence or wilful misconduct of FEI or its Affiliates or any of their respective officers, directors, members, employees, contractors or agents, or the breach or non-performance by FEI of any of its obligations or warranties hereunder.

## 12.3 CONSEQUENTIAL LOSS

In no event will the District or FEI or any of their respective officers, directors, employees, contractors or agents be liable to the other Party for any indirect or consequential loss, cost or expense whatsoever, including any loss of profits, revenues or other economic loss, suffered by the other Party or its officers, directors, employees, contractors or agents.

## 12.4 SURVIVAL OF INDEMNITY

The indemnity of each of the District and FEI provided under this Article 12 will survive the Term of this Agreement.

## 12.5 ENVIRONMENTAL INDEMNITY BY THE DISTRICT

The District will indemnify and save harmless FEI, its Affiliates, directors, officers, shareholders, employees, agents, successors and permitted assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants (but not including Disclosed Contaminants) and remediation of the Lands and any affected adjacent property) (collectively, "FEI Losses") which may be paid by, incurred by or asserted against FEI, its Affiliates and their respective directors, officers, shareholders, employees, agents, successors or permitted assigns, arising from or in connection with any Contaminants (but not including Disclosed Contaminants) existing on the Lands prior to the Commission Date or brought onto the Lands or Released onto the Lands by the District or any person for whom it is in law responsible, except to the extent the FEI Losses suffered were caused or contributed to by any act or omission of FEI or any person for whom FEI is in law responsible after FEI had knowledge of the Contaminants.

## 12.6 ENVIRONMENTAL INDEMNITY BY FEI

FEI will indemnify and save harmless the District, its Affiliates and their respective trustees, directors, officers, employees, agents, successors and permitted assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the Lands and any affected adjacent property) (collectively, "District Losses") which may be paid by, incurred by or asserted against the District, its Affiliates, and their respective trustees, directors, officers, employees, agents, successors or permitted assigns, arising from or in connection with any Contaminants brought onto the Lands or any Disclosed Contaminants Released onto the Lands by FEI or any person for whom it is in law responsible, except to the extent the District Losses suffered were caused or contributed to by any act or omission of the District or any person for whom the District is in law responsible after the District had knowledge of the Contaminants.

# **ARTICLE 13 - INSURANCE**

## 13.1 FEI INSURANCE COVERAGE.

- (a) FEI will obtain and maintain at its own expense throughout the Term, Commercial General Liability Insurance for bodily injury, death and property damage in the minimum amount of five million (\$5,000,000) dollars per occurrence. The policy will contain a cross liability provision and will be maintained for a period ending no sooner than 12 months after the expiry or termination of this Agreement.
- (b) FEI will be responsible for the full amount of all premiums and deductibles required under this Section 13.1. All policies required herein must be effective at the Commission Date. Insurance will be purchased from insurers registered and licensed to underwrite

insurance in British Columbia. Policies will contain waivers of subrogation against the District and all its officers, directors, members, employees, contractors and agents.

### 13.2 DISTRICT INSURANCE COVERAGE

- (a) The District will obtain and maintain at its own expense throughout the Term Commercial General Liability Insurance for bodily injury, death and property damage in the minimum amount of five million (\$5,000,000) dollars per occurrence. The policy will contain a cross liability provision and will be maintained for a period ending no sooner than 12 months after the expiry or termination of this Agreement.
- (b) The District will be responsible for the full amount of all premiums and deductibles required under this Section 13.2. All policies required herein must be effective at the date of this Agreement. Insurance will be provided by the Provincial self-insured program. Policies will contain waivers of subrogation against FEI and all its officers, directors, employees, contractors and agents.

### 13.3 PRIORITY

FEI will ensure that the District is an additional insured under the insurance to be obtained and maintained pursuant to Section 13.1. The District will ensure that FEI is an additional insured under the insurance to be obtained and maintained pursuant to Section 13.2. In the event of a claim, the insurance carried by the Party responsible for actions which give rise to such claim will be the primary insurance with respect to such claim.

## **ARTICLE 14 - DEFAULT**

### 14.1 DEFAULT BY FEI

- (a) FEI will be in default under this Agreement if FEI is in breach of a material term, covenant, agreement, condition or obligation imposed on it under this Agreement and fails to cure such default within ten (10) days after receipt of written notice thereof from the District, or, if such default is not capable of being cured within such ten (10) day notice period, fails to commence in good faith the curing of such default upon receipt of such written notice of default from the District and to continue to diligently pursue the curing of such default thereafter until cured. For the purposes of this Section 14.1, Section 4.4 is hereby deemed to be a material term of this Agreement.
- (b) If FEI is in default of this Agreement, the District may at its option and without liability therefore or prejudice to any other right or remedy it, including under the UCA, may have suspend or refuse to make any payments due hereunder until the default has been fully remedied, and no such suspension or refusal will relieve FEI from any of its obligations under this Agreement.
- (c) In the event the default is not fully remedied within thirty (30) days of receipt by FEI of written notice thereof from the District, the District may, at its option, undertake the necessary steps to remedy FEI's default at FEI's sole expense, which reasonable costs

shall be deducted from the Monthly Charges, and such actions will not relieve FEI from any of its obligations under this Agreement or, at its option, and without any liability, terminate this Agreement without prejudice to any other right the District may have hereunder or at law or otherwise.

#### 14.2 DEFAULT BY THE DISTRICT

- (a) The District will be in default under this Agreement if the District fails or refuses to make any payment due to FEI by the District under this Agreement within thirty (30) days of receiving written notice from FEI after the date that payment is due or if the District is in breach of a material term, covenant, agreement, condition or obligation imposed on it under this Agreement and fails to cure such default within ten (10) days after receipt by the District of written notice thereof from FEI or, if such default is not capable of being cured within such ten (10) day notice period, fails to commence in good faith the curing of such default forthwith upon receipt of such written notice thereof from FEI and to continue to diligently pursue the curing of such default thereafter until cured.
- (b) If the District is in default of this Agreement, FEI may at its option and without liability therefore or prejudice to any other right or remedy it may have, including under the UCA, cease performing the Services and no such actions will relieve the District from any of its obligations under this Agreement.
- (c) In the event the default by the District is not fully remedied within thirty (30) days of receipt by the District of written notice from FEI, FEI may undertake the necessary steps to remedy the District's default at the District's sole expense and such action will not relieve the District from any of its obligations under this Agreement or, at its option, and without any liability, take whatever steps necessary to shut down the Energy System and terminate this Agreement without prejudice to any other right FEI may have hereunder or at law or otherwise.

#### 14.3 CROSS DEFAULT

- (a) If any Building experiences a Service Interruption at any time, the District may deliver a notice of such Service Interruption to FEI (a "Service Interruption Notice" to FEI);
- (b) If a Service Interruption continues for a period of 48 consecutive hours after the delivery of a Service Interruption Notice pursuant to Section 14.3(a), the District may deliver a notice of such continuing Service Interruption to FEI (a "Continuing Service Interruption Notice");
- (c) If a Service Interruption continues for a period of 120 consecutive hours after the delivery of a Continuing Service Interruption Notice, the District may at its option deliver a notice of such continuing Service Interruption to FEI (a "Service Failure Notice"); Within 60 days of either:
  - (i) the District's delivery of a Service Failure Notice pursuant to Section 14.3(c); or

- (ii) the District's delivery of a Continuing Service Interruption Notice pursuant to Section 14.3(b) that constitutes the fifth or greater Continuing Service Interruption Notice delivered in that calendar year;

the District may, at its option and without liability:

- (iii) terminate this Agreement without prejudice to any other right the District may have hereunder at law or otherwise; or
  - (iv) terminate the Energy System Rate Development Agreement and all Energy System Service Agreements (inclusive of this Agreement), without prejudice to any other right the District may have hereunder at law or otherwise.
- (d) For greater certainty, this Agreement shall be deemed to be terminated in the event that the District exercises its right to terminate all Energy System Service Agreement under another Energy System Service Agreement.

#### 14.4 SURVIVAL

Upon expiry or earlier termination of this Agreement for any reason, all claims, causes of action or other outstanding obligations remaining or being unfulfilled as of the expiry or termination of this Agreement and all of the provisions of this Agreement relating to the obligation or either the Parties to account to or indemnify the other and to pay to the other any amounts owing as at the date of expiry or termination in connection with this Agreement will survive such expiry or termination.

### **ARTICLE 15 – EXPIRY AND TERMINATION**

#### 15.1 EXPIRY

Upon expiry of the Term, unless otherwise agreed between the Parties and subject to agreement by the BCUC (if required pursuant to applicable Laws), the District may, at its option and by written notice to FEI within 30 days following the termination:

- (a) require FEI to remove the Energy System at FEI's cost in accordance with Section 15.5; or
- (b) acquire the Energy System from FEI at the Adjusted Energy System Purchase Price.

#### 15.2 TERMINATION OF THE ENERGY SYSTEM RATE DEVELOPMENT AGREEMENT

- (a) If the Energy System Rate Development Agreement is terminated as a result of the adoption, approval or implementation of a thermal energy rate tariff by the BCUC, this Agreement will automatically terminate effective as of the date of termination of the Energy System Rate Development Agreement;
- (b) If the Energy System Rate Development Agreement is terminated for cause by the District, this Agreement will be deemed to have been terminated pursuant to Section

14.1(c) as of the date of termination of the Energy System Rate Development Agreement, and Section 15.3 shall apply; and

- (c) If the Energy System Rate Development Agreement is terminated for cause by FEI, this Agreement will be deemed to have been concurrently terminated pursuant to Section 14.2(c) as of the date of termination of the Energy System Rate Development Agreement, and Section 15.4 shall apply.

### 15.3 TERMINATION BY THE DISTRICT FOR CAUSE

If the District terminates this Agreement pursuant to Sections 14.1(c) or 14.3, the District may, at its option and by written notice to FEI within 30 days following the termination:

- (a) require FEI to remove the Energy System, at its own cost, in accordance with Section 15.5; or
- (b) acquire the Energy System from FEI at the Adjusted Energy System Purchase Price.

### 15.4 TERMINATION BY FEI FOR CAUSE

If FEI terminates this Agreement pursuant to Section 14.2(c), FEI may, at its option and by written notice to the District:

- (a) remove the Energy System, at its own cost, in accordance with Section 15.5; or
- (b) require the District to purchase the Energy System from FEI at the Adjusted Energy System Purchase Price.

### 15.5 REMOVAL OF THE ENERGY SYSTEM

If FEI is required to remove the Energy System pursuant to Sections 15.1(a), 15.3(a) or 15.4(a) or otherwise upon expiry of this Agreement, FEI shall promptly remove those portions of the Energy System located within the Building and at surface level at FEI's cost, and FEI shall perform such removal activities using standards of performance that are equivalent to those that apply to the performance of the Services under this Agreement. Any portion of the Energy System not removed by FEI prior to the 30<sup>th</sup> day following the termination or expiry of the Agreement will, as of such day, be deemed to be automatically transferred to the District, and become the property of the District, all at no cost to the District.

### 15.6 ACQUISITION OF THE ENERGY SYSTEM

If the District elects to acquire the Energy System pursuant to Sections 15.1(b), 15.3(b) or 15.4(b):

- (a) the District shall pay the Adjusted Energy System Purchase Price to FEI within the later of 30 days of (i) the effective date of expiration or termination, and (ii) confirmation of the Adjusted Energy System Purchase Price; and

- (b) FEI will promptly execute and deliver any documents and records reasonably required by the District to effect and facilitate the transfer of the Energy System to the District, including bills of sale, operation and maintenance manuals and warranties, and will use reasonable commercial efforts to obtain any consents and approvals that may be required in relation to the transfer (including, without limitation, BCUC approval), provided that (i) FEI's obligations under this Section 15.6(b) shall arise only upon FEI's receipt of all amounts due and owing to FEI from the District under this Agreement, and (ii) during the period between the expiration or termination of the Agreement and FEI's receipt of amounts due and owing to FEI from the District under this Agreement, FEI shall continue to maintain, or shall permit the District to maintain, the Energy System in good working order.

Notwithstanding the foregoing, the Parties acknowledge and agree that FEI's ability to sell or otherwise transfer its interest in and to the Energy System to the District may be subject to BCUC approval under applicable Laws.

## **ARTICLE 16 - NON-COMPLIANCE AND ENVIRONMENTAL**

### 16.1 NOTIFICATION OF NON-COMPLIANCE

FEI or the District (as applicable, the "Notifying Party") will promptly, upon becoming aware thereof, notify the other Party in writing of:

- (a) a Release of a Contaminant or any other occurrence or condition in the Energy System, the Lands or any adjacent property which could subject the other Party to any fines, penalties, orders or proceedings under applicable Laws;
- (b) any charge, order, investigation or notice of violation or non-compliance issued against the Notifying Party relating to the Energy System, or the operation of the Energy System, under any applicable Laws; and
- (c) any notice, claim, action or other proceeding by any third party against the Notifying Party in respect of the Design and Construction or the Services or concerning the Release or alleged Release of any Contaminants at or from the Energy System or the Lands.

### 16.2 NOTIFICATION BY FEI

FEI will notify the appropriate Governmental Authorities of any Release of any Contaminants at or from the Energy System in accordance with applicable Laws. The District may, but is not obligated to, notify the appropriate Governmental Authorities of any Release of any Contaminants at or from the Energy System in accordance with applicable Laws.

### 16.3 OWNERSHIP OF CONTAMINANTS

Notwithstanding any rule of law to the contrary, any Disclosed Contaminant Released from the Energy System, or any top soil, earth or other material containing a Contaminant for which FEI is responsible pursuant to Section 4.5 that is removed from the Lands by FEI or any person for

whom it is in law responsible, will be and remain the sole and exclusive property and responsibility of FEI and will not become the property of the District, notwithstanding the degree of its affixation to the Lands and notwithstanding the expiry or earlier termination of this Agreement.

#### 16.4 SURVIVAL OF OBLIGATIONS

The obligations of the Parties under this Article 16 will survive the expiry or termination of this Agreement.

### **ARTICLE 17 - FORCE MAJEURE**

#### 17.1 SUSPENSION

Subject to the other provisions of this Article 17, if either Party is unable or fails by reason of Force Majeure to perform in whole or in part any obligation or covenant set forth in this Agreement, with the exception of unpaid financial obligations, such inability or failure will be deemed not to be a breach of such obligation or covenant and the obligations of both Parties under this Agreement will be suspended to the extent necessary during the continuation of any inability or failure so caused by such Force Majeure.

#### 17.2 DEFINITION OF FORCE MAJEURE

For purposes of this Agreement, the term "Force Majeure" means any event or occurrence not within the control of the Party claiming Force Majeure and which by the exercise of reasonable diligence such Party is unable to prevent or overcome, including any acts of God, including lightning, earthquakes, storms, washouts, landslides, avalanches, fires, epidemics and floods; strikes, lockouts or other industrial disturbances; acts of the Queen's or public enemies, sabotage, wars, blockades, insurrections, riots or civil disturbances, fires, explosions, breakages of or accidents to machinery or lines of pipe; the laws, orders, rules, regulations, acts or restraints of any court or governmental or regulatory authority. For the purposes of this Article 17, a Party is deemed to have control over the actions or omissions of those persons to which it, its agents, contractors or employees, have delegated, assigned or subcontracted its obligations and responsibilities. For greater certainty, a Force Majeure shall not include any weather related events that do not exceed 25 year events as recorded by Environment Canada or as otherwise may be determined by the BCUC from time to time.

#### 17.3 EXCEPTIONS

Neither Party will be entitled to the benefit of Section 17.1 under any of the following circumstances:

- (a) the Energy System not being Commissioned;
- (b) to the extent that the inability or failure was caused by the negligence or contributory negligence of the Party claiming Force Majeure;

- (c) to the extent that the inability or failure was caused by the Party claiming Force Majeure having failed to diligently attempt to remedy the condition by taking all reasonable acts and to resume the performance of such covenants and obligations with reasonable dispatch;
- (d) if the inability or failure was caused by lack of funds or is in respect of any amount due hereunder; or
- (e) unless, as soon as possible after the happening of the occurrence relied upon or as soon as possible after determining that the occurrence was in the nature of Force Majeure and would affect the claiming Party's ability to observe or perform any of its covenants or obligations under this Agreement, the claiming Party will have given to the other Party notice to the effect that the claiming Party is unable by reason of Force Majeure (the nature whereof will be therein specified) to perform the particular covenants or obligations.

#### 17.4 RESUMPTION OF OBLIGATIONS

The Party claiming Force Majeure will give notice to the other Party, as soon as possible after the Force Majeure condition is remedied, to the effect that the same had been remedied and that such Party has resumed, or is then in a position to resume, the performance of its suspended covenants and obligations hereunder either in whole or in part.

#### 17.5 SETTLEMENT OF LABOUR DISPUTES

Notwithstanding any of the provisions of this Article 17, and subject to Section 17.3, the settlement of labour disputes or industrial disturbances is entirely within the discretion of the particular Party involved and the Party may make settlement of it at the time and on terms and conditions as it may deem to be advisable and no delay in making settlement will deprive the Party of the benefit of Section 17.1.

### **ARTICLE 18 - CONDITIONS PRECEDENT**

#### 18.1 CONDITIONS PRECEDENT OF FEI

The obligation of FEI to carry out the transactions contemplated by this Agreement is subject to fulfillment of the following conditions on or before such date as may be specified, which is for the sole benefit of FEI, and which may be waived by FEI in accordance with Section 18.2:

- (a) FEI obtaining the approval by its board of directors of the terms and conditions of this Agreement on or before the 30th day following the Effective Date, provided that if such approval cannot be obtained by this date due to the fact that the board of directors has not yet considered the transaction FEI reserves the right to extend the period of time to that date when the board next convenes.

## 18.2 FEI NOTICE OF WAIVER

If a condition set out in Section 18.1 has not been satisfied on or before the date as may be specified for its fulfillment, FEI may waive compliance with the condition in whole or in part, in its sole discretion, by written notice to the District, failing which delivery of written notice of satisfaction or waiver of such condition, this Agreement will, to the extent any further obligations of the Parties which remain unfulfilled, be null and void, without liability between the Parties hereto, and, neither Party will be under any further obligation to the other to complete the transactions or future transactions, as the case may be, contemplated by this Agreement.

## **ARTICLE 19 - DISPUTE RESOLUTION**

### 19.1 REFERENCE TO ARBITRATION

The Parties will attempt to resolve all disputes which may arise under, out of, in connection with or in relation to this Agreement by negotiation. They will provide full and timely disclosure to one another of all facts relevant to the disputes to facilitate those negotiations. If any such dispute remains unresolved, for any reason, fifteen (15) days after either Party requested the other Party to enter into negotiations to resolve it, or if the Parties agree to waive negotiations in respect of it, then either Party may submit that dispute for final resolution by arbitration administered by the British Columbia International Commercial Arbitration Centre (“BCICAC”) under its “Shorter Rules for Domestic Commercial Arbitration”. The seat of that arbitration will be Vancouver, British Columbia, Canada. The language of that arbitration will be English. Alternatively, the Parties may agree, within the 15 days referred to above, to submit that dispute for final resolution by arbitration in another manner.

### 19.2 BINDING DECISION

The decision of the arbitrator, regardless of what arbitration procedure is used, will, for all purposes of this Agreement, be final and binding on the Parties.

### 19.3 CONTINUATION OF SERVICES

Each of the Parties will perform all of its respective obligations under this Agreement notwithstanding the existence of any dispute that arises from time to time between the Parties in respect of any matter related to this Agreement or during the resolution of any dispute in accordance with this Article 19.

### 19.4 COSTS

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 case, the non-prevailing Party shall pay all costs and expenses of the arbitration, but not those of the prevailing Party.

## ARTICLE 20 - GENERAL

### 20.1 RESPONSIBILITY FOR COSTS

FEI's performance of any of its obligations under this Agreement, including without limitation the obligation to design, construct and install the Energy System as provided in Section 2.1, shall be at FEI's sole cost and expense, unless expressly provided otherwise in this Agreement;

### 20.2 EXERCISE OF DISCRETION

Where anything in this Agreement is identified as being in either Party's discretion, such Party will have the right to exercise such discretion in its own best interest without regard for the interest of the other Party.

### 20.3 COOPERATION

FEI and the District will at all times extend co-operation to each other to ensure the orderly management and operation of the Energy System.

### 20.4 SOLICITATION

Nothing in this Agreement precludes either Party from soliciting or entering into, other contracts with the other Party.

### 20.5 NOTICES

Any notice or other communication required or permitted to be given under this Agreement will be effective only if in writing and when it is actually delivered (which delivery may be by telecopy or other telecommunications device) to the Party for whom it is intended at the following address or such other address in British Columbia as such Party may designate to the other Party by notice in writing delivered in accordance with this Section 20.5:

(a) if to FEI:

FortisBC Energy Inc.  
10th Floor, 1111 West Georgia Street  
Vancouver, B.C.  
V6E 4M3

Attention: Gareth Jones  
Telephone: 250-380-5972  
Telecopy: 250-388-6876

(b) if to the District:

Board of Education of School District No. 37 (Delta)  
4585 Harvest Drive  
Delta, B.C.  
V4K 5B4

Attention: Frank Geyer  
Telephone: 604-952-5336  
Telecopy: 604-952-5375

Notwithstanding the foregoing, notices with respect to Force Majeure will be given in writing by telecopy, or orally in person or by telephone (to be confirmed by telecopy), to the person or persons designated from time to time by the Parties as the person or persons authorized to receive such notices.

## 20.6 CONFIDENTIALITY

The District and FEI will treat as confidential the terms of this Agreement and all Confidential Information (as defined below) and will at all times during the term of this Agreement and for a reasonable time thereafter hold the terms of this Agreement and all Confidential Information in confidence and neither Party will, without the prior written consent of the other Party, disclose or divulge the terms of this Agreement or any Confidential Information to any person, provided that nothing in this Section 20.6 will restrict or prevent either Party from making any disclosure of such terms or any Confidential Information:

- (a) which is reasonably necessary or desirable for such Party to carry out and give full effect to the terms, conditions and intent of this Agreement and the matters contemplated hereby;
- (b) which is required by any Law, including the Freedom of Information and Protection of Privacy Act (British Columbia);
- (c) to any Governmental Authority;
- (d) to the British Columbia Utilities Commission or other regulatory agency as part or in support of any regulatory application or submission;
- (e) to the directors, officers or employees of such Party or to an Affiliate of such Party or to the directors, officers or employees of an Affiliate of such Party;
- (f) to the professional advisors of such Party on the same terms of confidentiality;
- (g) which is already in the public domain; or
- (h) in connection with legal proceedings or steps being taken to remedy a breach or default under this Agreement by the other Party.

For the purposes of this Section 20.6, “Confidential Information” means proprietary information of either Party such as data, plans, drawings, manuals, or specifications which have been provided by such Party, its employees, contractors, agents, subcontractors, Affiliates to the other Party pursuant to this Agreement or proprietary information either Party conceived or developed by or for such Party concerning construction practices, operation and maintenance practices, agreements, marketing plans and strategies, profits, costs, pricing and systems of procedure (provided that “Confidential Information” does not include information which was disclosed to the receiving Party by a third Party (unless, to the knowledge of the receiving Party, the third Party is under an obligation of confidentiality to the other Party) or any information developed or conceived by the receiving Party without using the “Confidential Information” of the other Party).

#### 20.7 SEVERABILITY

If any provision of this Agreement is found or determined to be invalid, illegal or unenforceable it will be construed to be separate and severable from this Agreement and will not impair the validity, legality or enforceability of any other provisions of this Agreement, and the remainder of this Agreement will continue to be binding on the Parties as if such provision had been deleted.

#### 20.8 NO WAIVER

No waiver by either Party of any default by the other in the performance of any of the provisions of this Agreement will operate or be construed as a waiver of any other or future default or defaults hereunder, whether of a like or a different character. To be binding, any waiver of any provision of this Agreement must be clearly expressed in writing to be signed by the waiving Party.

#### 20.9 BURDEN AND BENEFIT

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

#### 20.10 GOVERNING LAW

This Agreement and all matters arising hereunder will be governed by the laws of British Columbia and the federal laws of Canada applicable in British Columbia.

#### 20.11 ENTIRE AGREEMENT

This Agreement contains the whole agreement between the Parties in respect of the subject matter hereof and there are no terms, conditions or collateral agreements express, implied or statutory other than as expressly set forth in this Agreement and this Agreement supersedes all of the terms of any written or oral agreement or understanding between the Parties.

#### 20.12 TIME OF ESSENCE

Time is of the essence of this Agreement.

#### 20.13 FURTHER ASSURANCES

Each Party will, at all times hereafter on demand by the other, execute and deliver or cause to be executed and delivered all such further documents and do all such further acts and things as may be reasonably requested by the other Party to evidence, carry out and give full effect to the intent and meaning of this Agreement and to assure the completion of the transactions contemplated hereby.

#### 20.14 AMENDMENTS TO BE IN WRITING

Except as set out in this Agreement, no amendment or variation of this Agreement will be effective or binding upon the Parties unless such amendment or variation is set out in writing and duly executed by the Parties.

#### 20.15 FACSIMILE

This Agreement may be executed by the Parties and transmitted by facsimile transmission and, if so executed, transmitted and received, this Agreement will for all purposes be effective as if the Parties had delivered and executed the original Agreement and each Party undertakes to provide the other Party with a copy of this Agreement bearing original signatures forthwith upon demand.

#### 20.16 SUBJECT TO LEGISLATION

Notwithstanding any other provision hereof, this Agreement and the rights and obligations of FEI and the District under this Agreement are subject to all present and future laws, rules, regulations and orders of any legislative body, governmental agency or duly constituted authority now or hereafter having jurisdiction over FEI or the District.

#### 20.17 EXPENSES

Each Party to this Agreement shall be responsible for the payment of all costs, expenses, legal fees and disbursements incurred or to be incurred by it in negotiating and preparing this Agreement and all documents required to be delivered under this Agreement and otherwise relating to the transactions contemplated by this Agreement.

#### 20.18 NO CONTRARY AGREEMENT

No Party shall enter into an agreement or other commitment with any person if such agreement or commitment has terms or provisions in conflict with or inconsistent with the terms of this Agreement or which could reasonably be expected to lead to actions or consequences that would result in the Party being in breach of the commitments and obligations of the Party pursuant to this Agreement unless such other agreement or commitment is expressly approved by the other Parties.

#### 20.19 NO PARTNERSHIP

Nothing herein shall be deemed or construed to create a joint venture, partnership, employment or agency relationship between the Parties for any purpose.

20.20 ASSIGNMENT

Neither Party may assign this Agreement or any of its rights or obligations under this Agreement, and FEI may not assign, transfer or sell all or any part of the Energy System, except:

- (a) with the consent of the other Party, such consent not to be unreasonably withheld, delayed or conditioned; or
- (b) in the case of FEI, to an Affiliate of FEI which is a "public utility" as defined in the *UCA* on notice to, but without the consent of, the District.

20.21 COUNTERPARTS

This Agreement may be executed in counterparts with the same effect as if the Parties had signed the same document. All counterparts will be construed together and will constitute one agreement.

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

**FORTISBC ENERGY INC.**

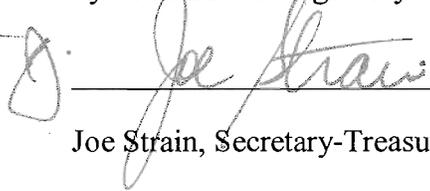
by its authorized signatory:

  
\_\_\_\_\_

Doug Stout,  
VP Energy Solutions & External Relations

**THE BOARD OF EDUCATION OF  
SCHOOL DISTRICT NO. 37 (DELTA)**

by its authorized signatory:

  
\_\_\_\_\_

Joe Strain, Secretary-Treasurer

# **SAMPLE SCHEDULE “A”**

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## **Energy System Description**

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### **Mechanical Equipment Plans and Specifications**

Equipment schedule:

- 2 boilers Mod Com 300;
- Pumps, piping, control valves and other equipment and accessories connected to the above equipment;
- BTU Meter; and
- Control systems for the above mentioned equipment.

Prior to commencement of the Mechanical Equipment construction, FEI shall provide detailed drawings to the District for review and acceptance.

---

## **SCHEDULE “B”**

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# **Delta School District Site Rules for Contractors**

## **Delta School District Site Rules for Contractors**

### **1.0 Safety**

- 1.1 For the purposes of this section, “Safety Regulations” means the rules, regulations, and practices required by WorkSafeBC.
- 1.2 The Contractor shall be solely responsible for site safety during the execution of all assigned construction and maintenance activities, including work performed by subcontractors and suppliers, and for compliance with the Safety Regulations, and shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the work.
- 1.3 If the District is of the reasonable opinion that the Contractor has not taken such precautions as are necessary to ensure compliance with the requirements of Clause 1.2, the District may take or order any remedial measures which it deems necessary, including stopping the performance of all or any portion of the work, and the District may use the employees of itself, the Contractor, any subcontractor or any other contractors to perform such remedial measures. The Contractor acknowledges and agrees that any failure by the Contractor to comply with the Safety Regulations shall constitute a default of the Contractor's contractual obligations and the District may issue a written notice instructing the Contractor to correct the default in the two (2) working days immediately following receipt of such notice.
- 1.4 The Contractor shall file any notices or any similar document (including, without limitation, a Notice of Project where applicable) required pursuant to the Safety Regulations. This duty of the Contractor will be considered to be included in the work and no separate payment therefore will be made to the Contractor.
- 1.5 The Contractor shall develop, maintain and supervise for the duration of the work a comprehensive safety program that will effectively incorporate and implement all required safety precautions. The program shall, as a minimum, respond fully to the Safety Regulations and general construction practices for the safety of persons or property, including without limitation the WorkSafeBC regulations that may be applicable (e.g. WHMIS, dust control, etc.).
- 1.6 The Contractor shall provide a copy of the safety program described in Clause 1.5 to the District prior to the commencement of the work and shall, at all times require, as far as it is reasonably practical to do so, that every employer and worker performing work in respect of the project complies with such program.
- 1.7 The Contractor shall arrange regular safety meetings at its expense, record the minutes of such meetings and maintain a complete file for review by the appropriate authorities.
- 1.8 The Contractor shall supply and maintain, at its own expense, at its office or other well-known place at the work site, safety equipment necessary to protect the workers and general public against accident or injury as prescribed by the governing authorities.
- 1.9 The Contractor shall supply and maintain all articles necessary for giving first-aid to any person who may be injured on the work site and shall establish an emergency procedure for the immediate removal of any injured person to a hospital or a doctor's care in accordance with the Safety Regulations.
- 1.10 The Contractor shall, as required under the Safety Regulations, promptly report all accidents of any sort arising out of or in connection with the performance of the work whether on or adjacent to the work site, giving full details and statements of witnesses. The District shall be copied on all accident reports and investigation reports.

## **2.0 Security and Access**

- 2.1 **Site and Building Access:** The District's Maintenance Services Department will issue gate and building keys, electronic access cards (complete with instructions as to how to arm/disarm the building intrusion alarm system and how to contact the alarm monitoring station) and identification badges for the Contractor to enter the site and building, disarm/arm the building intrusion alarm system, and access the portions of the site where the Contractor's work is taking place. The Contractor and all subcontractors must check in at the school office (if occupied by District staff) prior to entering other parts of the building. The access cards, keys and identification badges shall be promptly returned to the District at the end of the contract.
- 2.2 **Security:** The Contractor shall assume all responsibility for the security of the work site. The Contractor must ensure that all windows, doors and gates are secure and the building intrusion alarm system is armed (unless District staff are still in the building) at the end of the workday. The Contractor must also safeguard the rest of the building and/or site from access through possible open construction areas. Security doors shall at all times remain closed and shall not be propped open, even for a short time. The Contractor is responsible for any costs arising when the District's security runner services is called to attend a work site for security matters resulting from the Contractor's negligence.
- 2.3 **Normal School Hours:** Normal hours of operation for the District are 0730h-1600h Monday to Friday, excluding statutory holidays. For after-hours and weekend work, the Contractor must notify the District's Maintenance Services Department at least one business day in advance of the work.

## **3.0 Conduct**

- 3.1 **Noise Due to Construction or Maintenance Activities:** In accordance with the Delta Noise Bylaw 1906, "no person shall carry on or cause to be carried any construction work, reconstruction, alteration, repair or demolition of a building or structure, the operation of machinery, or works in connection with any excavation or highway before 07:00h or after 1900h and day of the week from Monday to Friday, inclusive, before 0900h or after 1700h on Saturdays, or at any time Sundays. The Contractor shall respect the classroom operations in the vicinity of the work site and as such will make every attempt to limit noisy work to times outside of classroom operation or to adequately dampen, silence and/or soundproof equipment that generates noise to mitigate disruption to the classrooms.
- 3.2 **Communication devices:** Radio and cell phone volume shall be at the minimum volume which is consistent with the ability to operate the device.
- 3.3 **Roadways:** All speed limits and other traffic rules must be obeyed and access to the roadways should not be impeded. Parking and secure storage of materials and equipment by the Contractor and subcontractors shall only be in designated areas only.
- 3.4 **Cleanliness:** The work site must be maintained for an orderly appearance on a daily basis. Trash and construction debris shall be contained at all times and removed from the work site weekly.
- 3.5 **Toilets:** All temporary toilets shall have their doors faced away from streets. In no cases shall a worker utilize any staff washroom or other staff facilities at the work site, except as otherwise agreed in writing by the District. Under no circumstances will workers be permitted to use student washrooms.
- 3.6 **Identification Badges:** All workers shall have a District-assigned identification badge that clearly indicates the company's name and the worker's name. It is to be worn whenever at the work site.

- 3.7 **Smoking:** Smoking is not permitted on District property.
- 3.8 **Alcohol/Drugs:** No alcoholic beverages or non-prescription drugs shall be brought or consumed at the work site.
- 3.9 **Animals:** No dogs or other animals, are permitted at the work site without the written consent of the District.
- 3.10 **Fitness for Work:** All workers must be fit for work at all times. The District retains the right to request individuals leave the work site if unfit for any reason including, without limitation, inebriation, taking drugs, injury, fatigue, rudeness or any other reason that may affect the quality of the work or represents a breach of these rules.
- 3.11 **Theft:** Workers who steal from occupants or the District shall be immediately ejected from the work site. The Contractor is responsible for all such thefts irrespective of whether the worker is an employee of the Contractor or a subcontractor.
- 3.12 **Discrimination and Harassment:** The District actively promotes a safe and secure school environment and as such does not tolerate violations of human rights legislation, including:
- (a) discriminatory acts against any person with respect to the work or school environment or any educational program or service provided to or by that person because of race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age of that person, or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person;
  - (b) all forms of actual, attempted or threatened physical harm directed at any person; or
  - (c) any form of sexual harassment such as unwelcome sexual advances with actual or implied work related consequences; unwelcome remarks, questions, jokes or innuendo of a sexual nature including sexist comments or sexual invitations; verbal abuse, intimidation or threats of a sexual nature; unwelcome leering, staring or making sexual gestures; whistling or catcalls; display of pornographic or other sexual materials; offensive pictures, graffiti, cartoons or sayings; unwanted physical contact such as touching, patting, pinching or hugging; and physical assault of a sexual nature

## **SCHEDULE “C”**

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### **List of Environmental Reports**

**ASBESTOS MATERIALS SURVEY  
AND RISK ASSESSMENT**

**OF**

**CHALMERS ELEMENTARY  
11315 – 75<sup>th</sup> Avenue  
Delta, BC**

**PREPARED FOR:**

**DELTA SCHOOL DISTRICT  
Maintenance Facility  
7186 Brown Street  
Delta, BC  
V4G 1G8**

**PREPARED BY:**

**ACM ENVIRONMENTAL CORPORATION  
#217 - 2323 Quebec Street  
Vancouver, BC  
V5T 4S7  
604-873-8599**

**December 2005**

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## **EXECUTIVE SUMMARY**

A.C.M. Environmental Corporation (ACM) was retained by the Delta School District to perform an Asbestos Materials Survey and Risk Assessment for Chalmers Elementary located at 11315 – 75<sup>th</sup> Avenue, Delta, BC.

The assessment involved an inspection of all areas of the building. The objective of the assessment was to identify the types and extent of asbestos containing materials within the building and any risks associated with the materials and the regular usage of the building.

The assessment was conducted using both visual and physical assessment techniques. Samples of materials suspected of containing asbestos were collected and forwarded, using proper chain of custody protocols, to Prezant Associates, Inc. for asbestos analysis. Asbestos sample results are located in Appendix A of this report.

Previous asbestos sampling information for the building was reviewed prior to conducting the survey assessment. ACM previously collected bulk samples from the school on December 11, 1990. The sampling previously identified asbestos containing mechanical pipe insulation materials which still exist within some areas.

In summary, the findings from the assessment conclude that asbestos was found within the construction materials of the building, however, no PCB or Mercury containing materials were found within the equipment of the building.

Three types of asbestos containing materials were observed during the survey. These include vinyl floor tile materials, mechanical pipe insulation materials and drywall taping compound materials. Within the context of the report, areas have been detailed as to the locations of the asbestos containing materials, the content of asbestos where applicable, and the required procedures to be followed for removal of these materials, as required.

The hazardous materials survey was conducted using non-destructive and some limited destructive testing methods. Areas within walls were not inspected as access was not possible without causing extensive damage to the walls. It should be noted that there is a possibility of asbestos containing materials existing within inaccessible wall and ceiling cavities, and under sub-floors. Possible asbestos-containing materials which may exist in these areas may include but are not limited to: insulation materials (mechanical or construction), secondary layers of drywall or flooring, etc.

Roofing materials were not sampled at this time as the integrity of the waterproof membrane would be compromised, possibly voiding insurance coverage in the event of a water leak. If the roofing materials are to be disturbed during a renovation project, they must be sampled prior to the work taking place.

A random number of fluorescent lighting fixtures were opened up and inspected for possible PCB containing ballasts. No PCB containing ballasts were observed within the fluorescent lighting fixtures inspected, although some may exist, as not all fixtures were opened. No Mercury containing thermostat switches were observed within the building.

## **INTRODUCTION**

A.C.M. Environmental Corporation (ACM) was retained by the Delta School District to perform an Asbestos Materials Survey and Risk Assessment for the Chalmers Elementary located at 11315 – 75<sup>th</sup> Avenue, Delta, BC. All areas of the building were inspected and/or sampled during this survey and photographs are included as Appendix B.

The objective of the assessment was to identify the types and extent of asbestos containing construction materials within the accessible areas of the building. The assessment at this time involved an inspection of all areas of the building not including the roofing materials.

The survey and assessment was conducted on September 10, 2005 by Mr. Barry O'Regan, BST, ISO14001, EMS, IA, Project Manager for ACM. Thirty three (33) representative bulk samples of materials suspected of containing asbestos were collected from the survey and are included as Appendix A of this report.

## **METHODOLOGY**

The hazardous materials survey was conducted using non-destructive and some limited destructive testing methods. Areas within walls were not inspected as access was not possible without causing extensive damage to the walls. It should be noted that there is a possibility of asbestos containing materials existing within inaccessible wall and ceiling cavities, and under sub-floors. Possible asbestos-containing materials which may exist in these areas may include but are not limited to: insulation materials (mechanical or construction), secondary layers of drywall or flooring, etc.

The U.S. Environmental Protection Agency (USEPA) Guidance Document was selected for use in this study (1). The document identifies factors associated with the "condition" and the "potential for disturbance or erosion" of asbestos containing materials. These factors help to define the fibre release potential of the suspect asbestos containing materials and were used in a qualitative evaluation of materials found in the surveyed areas. Recommendations have been substantiated by additional information utilized from other documentation cited in the Reference Section of this report.

The bulk samples of suspect asbestos containing materials were forwarded, using proper chain of custody protocols, to Prezant Associates, Inc. for asbestos analysis. The samples were analyzed using polarized light microscopy (PLM) with dispersion staining in accordance with U.S. EPA method 600/R-93/116, "Method for Determination of Asbestos in Bulk Building Materials".

Other hazardous materials were visually inspected and are noted in this report.

The survey relied on the abilities and experience of the surveyor to gain access and identify possible asbestos containing materials. All areas of the building were accessed during the assessment excluding the roof.

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## **RESULTS & ASSOCIATED RISK LEVELS**

### **ASBESTOS**

Three types of asbestos containing materials were identified during the two surveys which could be affected by any potential renovation or demolition activities. These materials are mechanical pipe insulation, vinyl floor tiles and drywall taping compound materials. A breakdown for each type of material is as follows:

#### **Mechanical Pipe Insulation Materials:**

Pipe insulation was observed in several sizes within the boiler room and Gymnasium change rooms of the building. The majority of the elbows and fittings observed within these areas were labelled with yellow 'A' tags to identify the asbestos containing pipe insulation materials. A hot water supply line pipe elbow and a condensate line elbow within the boiler room was sampled found to contain 7% and 5% Chrysotile asbestos in the insulating cement, respectively. The asbestos containing elbows and fittings were observed to be in fair to good condition. All pipe insulating cements within the building are to be treated as asbestos containing.

Prior to any demolition activities taking place which could disturb the asbestos containing mechanical pipe insulating cement materials, they must first be removed and disposed of in accordance with applicable regulations. The removal of the asbestos containing pipe insulating cement materials will pose a moderate risk of asbestos exposure to the workers involved, provided that the glove bag or wrap and cut methods of removal are used. Therefore as a minimum, MODERATE RISK glove bag or wrap and cut asbestos removal work procedures will be required for the removal of the asbestos containing mechanical pipe insulating cement materials.

#### **Vinyl Floor Tile Materials:**

Asbestos containing vinyl floor tile materials were observed within several rooms and corridors of the school. Asbestos containing 12" Olive coloured vinyl floor tile materials with white streaks was observed within all of the corridors (100,116,121, 154,153,138), cloakroom 139 and gym storage room 109. Asbestos containing Beige 12" vinyl floor tile materials with orange & white streaks were observed within the AV room 131, adjacent counselling room 130, Medical room 160, HUB 102 and nearby custodian storage room. Asbestos containing light brown 12" vinyl floor tile materials with large red streaks were observed within storage room 101C, Kindergarten Rooms 151 and 152, Music

room 150, LA 149, and classrooms 140 through 145. A sample of the vinyl floor tile materials was found to contain <1% Chrysotile asbestos in the tiles. The materials are presently in good condition. All other vinyl floor tile materials were observed to be non-asbestos containing materials.

WCB Regulations do not treat any materials with less than 1% asbestos as asbestos containing. Workers should still use moderate risk procedures when exposed to the vinyl floor tile materials, even in materials with less than 1% asbestos concentrations. The WCB states that workers must be properly protected from any potential exposure to airborne asbestos fibres. It is recommended that any work affecting the materials be done using a minimum of moderate risk asbestos work procedures. The vinyl floor tile materials do not have to be disposed in accordance with applicable regulations as asbestos waste.

Drywall Taping Compound Materials:

Asbestos containing drywall taping compound materials were observed within the staff room of the building and was found to contain <1% Chrysotile asbestos. The asbestos containing drywall taping compound materials are mostly concealed behind vinyl wall covering materials and are in good condition. Other samples of drywall taping compound materials collected from Rooms 134 and 156 and were found to be non-asbestos containing. All original drywall materials encountered within the building are to be treated as asbestos containing until further sampling determines otherwise.

WCB Regulations do not treat any materials with less than 1% asbestos as asbestos containing. Prior to any activities taking place which could disturb the asbestos containing drywall materials, workers should still use moderate risk procedures when exposed to the asbestos containing drywall materials, even in materials with less than 1% asbestos concentrations. The WCB states that workers must be properly protected from any potential exposure to airborne asbestos fibres. It is recommended that any work affecting the asbestos containing drywall materials be done using a minimum of moderate risk asbestos work procedures. Therefore as a minimum, MODERATE RISK asbestos work procedures will be required for the removal of the asbestos containing materials. The drywall materials which are less than 1% do not have to be disposed of in accordance with applicable regulations as asbestos waste.

### **POLYCHLORINATED BIPHENYLS (PCBs)**

A random number of fluorescent light ballasts were visually inspected for possible PCB containing ballasts. No PCB containing ballasts were observed within the fluorescent lighting fixtures inspected in both buildings, although some may exist, as not all fixtures were opened up.

PCB containing fluorescent light ballasts do not pose a risk to occupants of the building. If any PCB containing ballasts are encountered during any renovations of the building, they must be separated from the fixtures and disposed of properly in accordance with applicable regulations.

### **MERCURY THERMOSTATS**

No thermostats observed within the building were found to have Mercury containing switches within them. If any Mercury containing thermostat switches are encountered within the building during renovation or repair activities, they must be removed intact from the thermostats and disposed of properly in accordance with applicable regulations.

### **RECOMMENDATIONS**

Prior to beginning any work that may impinge upon the hazardous materials within the building, the following must be performed:

- 1.) All asbestos containing materials must be removed from the building, utilizing as a minimum, the risk levels and/or procedures discussed in the results section of this report.
- 2.) If any Mercury containing thermostat switches are encountered during any renovation or repair activities within the building, they must be removed and disposed of in accordance with applicable regulations.
- 3.) If any PCB containing ballasts are encountered during any renovation or repair activities within the building, they must be removed and disposed of in accordance with applicable regulations.
- 4.) If any suspect asbestos containing materials are encountered within inaccessible wall or ceiling cavities, or under floors, during renovation or demolition activities, the work in the immediate area must stop and the supervisor contacted for further direction.

### **STATEMENT OF LIMITATIONS**

The ACM report is intended to direct the Client's attention to recognised environmental conditions and to potential sources of environmental contamination. The findings and conclusion regarding contamination of the property are based solely on the extent of observations and information gathered during the assessment. Nothing in the report is intended to express any legal opinion upon environmental liabilities relating to the site or whether operations legally conformed with relevant legislative requirements.

Furthermore, it must be understood that changing circumstances in the physical environment, the use of the property, as well in changes in any substances stored, used, handled at the property, could alter radically the conclusions and information contained in this report. Therefore, it is important that the property is periodically re-evaluated and the client kept informed as to developments, which may impact the property. This report is not intended to be used as contract specifications.

### **A.C.M. ENVIRONMENTAL CORPORATION**

---

James McArthur, ASCT  
Environmental Technician

**REFERENCES**

- 1) USEPA. 1985. U.S. Environmental Protection Agency. "Guidance for Controlling Asbestos-Containing Materials in Buildings". Washington, DC: Office of Toxic Substances, USEPA.
- 2) Lory EE, Coin DC. 1981. "Management Procedure for Assessment of Friable Asbestos Insulating Material". Port Hueneme, CA: Civil Engineering Laboratory, Naval Construction Battalion Center.
- 3) Workers' Compensation Board of British Columbia, effective 15 April 1998, and all current amendments. Occupational Health and Safety Regulations.
- 4) 2002 Edition - Workers' Compensation Board of British Columbia. Safe Work Practices for Handling Asbestos.

## **APPENDIX A**

### **Bulk Sample Results**



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

**ACM Environmental**  
2323 Quebec Street, Suite 211  
Vancouver, BC

Project Location: Chalmers Elementary School

PAI Batch Number: **05-2399**  
Client Job Number:  
Number of Samples: **33**  
Turn Around Time: **10 day**

Batch Number: 05-2399  
Lab Sample Number: 05013252  
Client Sample Number: **3048-254**

**ACM Environmental**  
  
*Chalmers Elementary School*

#### L-1 Pale beige paint

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
100% Paint

Comments:

#### L-2 White crystalline hard powdery material

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
80% Calcite Filler and Binder  
15% Mineral Filler and Binder  
5% Filler and Binder

Comments:

#### L-3 Dull gray hard granular material

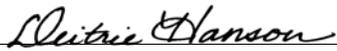
**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
92% Sand  
5% Mineral Filler and Binder  
3% Filler and Binder

Comments:

Sampled By: James McArthur  
Received By: John McCaslin 9/29/2005  
Reviewed By: George McCaslin 11/4/2005

  
Analyzed By: Deitrie Hanson 11/4/2005



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
 OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

## Bulk Asbestos Fiber Analysis

Batch Number:	05-2399	<b>ACM Environmental</b>
Lab Sample Number:	05013253	
Client Sample Number:	<b>3048-255</b>	<i>Chalmers Elementary School</i>

### L-1 Pale grayish white hard tile material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		5% Mineral Fragments

**Comments:**

### L-2 Golden tan opaque pliable mastic

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		95% Resin and Binder
		5% Mineral Fragments

**Comments:**

Batch Number:	05-2399	<b>ACM Environmental</b>
Lab Sample Number:	05013254	
Client Sample Number:	<b>3048-256</b>	<i>Chalmers Elementary School</i>

### L-1 Dull olive green hard thin tile material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>&lt;1% Chrysotile</b>		50% Calcite Filler and Binder
		45% Mineral Filler and Binder
		>4% Vinyl Filler and Binder

**Comments:**

This tile contains <1% chrysotile asbestos.

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/29/2005  
 11/4/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson

11/4/2005



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

#### L-2 Black mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		92% Asphalt Filler and Binder
		5% Mineral Particles
		3% Filler and Binder

**Comments:**

Batch Number:	05-2399	<b>ACM Environmental</b>
Lab Sample Number:	05013255	
Client Sample Number:	<b>3048-257</b>	<i>Chalmers Elementary School</i>

#### White topped brown brittle material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
	65% Cellulose	30% Resin and Binder
		5% Plastic Particles

**Comments:**

Batch Number:	05-2399	<b>ACM Environmental</b>
Lab Sample Number:	05013256	
Client Sample Number:	<b>3048-258</b>	<i>Chalmers Elementary School</i>

#### L-1 Dull olive green hard thin tile material

<b>Asbestos Fibrous Components:</b> <b>&lt;1% Chrysotile</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		50% Calcite Filler and Binder
		45% Mineral Filler and Binder
		>4% Vinyl Filler and Binder

**Comments:**

This tile contains <1% chrysotile asbestos.

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/29/2005  
 11/4/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson

11/4/2005



NVLAP LAB CODE 200613-0



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OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

#### L-2 Dark brown pliable opaque mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Resin and Binder
		5% Mineral Fragments
		5% Filler and Binder

**Comments:**

Batch Number: 05-2399	<b>ACM Environmental</b>
Lab Sample Number: 05013257	
Client Sample Number: <b>3048-259</b>	<i>Chalmers Elementary School</i>

#### L-1 Dull olive green thin hard tile material

<b>Asbestos Fibrous Components:</b> <b>&lt;1% Chrysotile</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		50% Calcite Filler and Binder
		45% Mineral Filler and Binder
		>4% Vinyl Filler and Binder

**Comments:**

This tile contains <1% chrysotile asbestos.

#### L-2 Black mastic

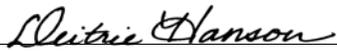
<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		92% Asphalt Filler and Binder
		5% Mineral Particles
		3% Filler and Binder

**Comments:**

Batch Number: 05-2399	<b>ACM Environmental</b>
Lab Sample Number: 05013258	
Client Sample Number: <b>3048-260</b>	<i>Chalmers Elementary School</i>

Sampled By: James McArthur  
Received By: John McCaslin  
Reviewed By: George McCaslin

9/29/2005  
11/4/2005

  
Analyzed By: Deitrie Hanson

11/4/2005



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
 OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

## Bulk Asbestos Fiber Analysis

### L-1 White paint on white powdery material

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		65% Clay Filler and Binder
		30% Paint
		5% Filler and Binder

Comments:

### L-2 Dark reddish orange fibrous opaque material

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
	96% Cellulose	4% Filler and Binder

Comments:

Batch Number: 05-2399	<b>ACM Environmental</b>
Lab Sample Number: 05013259	
Client Sample Number: 3048-261	<i>Chalmers Elementary School</i>

### L-1 Pale grayish white hard vinyl tile material

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		5% Filler and Binder

Comments:

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/29/2005  
 11/4/2005

*Deitrie Hanson*

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Analyzed By: Deitrie Hanson 11/4/2005



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### Bulk Asbestos Fiber Analysis

**L-2 Black mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		92% Asphalt Filler and Binder
		5% Mineral Fragments
		3% Filler and Binder

**Comments:**

Batch Number: 05-2399	<b>ACM Environmental</b>
Lab Sample Number: 05013260	<i>Chalmers Elementary School</i>
Client Sample Number: 3048-262	

**L-1 Dull gray rubbery pliable material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		92% Rubber Particles
		5% Calcite Filler and Binder
		3% Resin and Binder

**Comments:**

**L-2 Dark golden brown opaque pliable mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		95% Resin and Binder
		3% Mineral Fragments
		2% Filler and Binder

**Comments:**

Batch Number: 05-2399	<b>ACM Environmental</b>
Lab Sample Number: 05013261	<i>Chalmers Elementary School</i>
Client Sample Number: 3048-263	

Sampled By: James McArthur				
Received By: John McCaslin	9/29/2005			
Reviewed By: George McCaslin	11/4/2005	Analyzed By: Deitrie Hanson		11/4/2005



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## Bulk Asbestos Fiber Analysis

### L-1 White shiny paint

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 100% Paint
---	---	--

**Comments:**

### L-2 Off-white woven twisted fiber bundles

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b> 99% Cotton	<b>Non-Fibrous Components:</b> 1% Filler and Binder
---	---	--

**Comments:**

### L-3 White paint

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 100% Paint
---	---	--

**Comments:**

### L-4 White crystalline powdery material

<b>Asbestos Fibrous Components:</b> <1% Chrysotile	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 92% Calcite Filler and Binder 5% Vermiculite >2% Mineral Fragments
---	---	--

**Comments:**

This layer contains <1% chrysotile asbestos.

### L-5 Pale pink and tan fibrous tape-like papery material

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b> 97% Cellulose	<b>Non-Fibrous Components:</b> 3% Filler and Binder
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**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

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 11/4/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson

11/4/2005



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### Bulk Asbestos Fiber Analysis

#### L-6 Brown fibrous papery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	99% Cellulose	1% Filler and Binder

Comments:

#### L-7 White chalky powdery fibrous material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	15% Cellulose	80% Talc Filler and Binder 5% Mineral Fragments

Comments:

Batch Number: 05-2399	<b>ACM Environmental</b>
Lab Sample Number: 05013262	
Client Sample Number: 3048-264	<i>Chalmers Elementary School</i>

#### L-1 Pale grayish white paint

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		100% Paint

Comments:

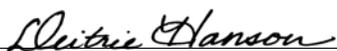
#### L-2 White fine crystalline powdery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		92% Calcite Filler and Binder 5% Mineral Fragments 3% Filler and Binder

Comments:

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 Received By: John McCaslin  
 Reviewed By: George McCaslin

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 Analyzed By: Deitrie Hanson

11/4/2005  
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**Bulk Asbestos Fiber Analysis**

Batch Number: 05-2399 **ACM Environmental**  
 Lab Sample Number: 05013263  
 Client Sample Number: **3048-265** *Chalmers Elementary School*

**L-1 Black pliable rubbery material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 90% Rubber Particles 10% Calcite Filler and Binder
--	----------------------------------	--

**Comments:**

**L-2 Pale beige opaque pliable mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 92% Resin and Binder 5% Mineral Fragments 3% Filler and Binder
--	----------------------------------	---

**Comments:**

**L-3 Dark brown opaque mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 92% Resin and Binder 8% Mineral Fragments
--	----------------------------------	---

**Comments:**

Batch Number: 05-2399 **ACM Environmental**  
 Lab Sample Number: 05013264  
 Client Sample Number: **3048-266** *Chalmers Elementary School*

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 Received By: John McCaslin  
 Reviewed By: George McCaslin

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 11/4/2005

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 Analyzed By: Deitrie Hanson

11/4/2005



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## Bulk Asbestos Fiber Analysis

### L-1 Gray dull hard tile material with white swirls

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 44% Calcite Filler and Binder 40% Mineral Filler and Binder 10% Vinyl Filler and Binder 4% Filler and Binder 2% Miscellaneous Particles
--	----------------------------------	--

**Comments:**

### L-2 Black pliable mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 92% Asphalt Filler and Binder 5% Mineral Fragments 3% Filler and Binder
--	----------------------------------	--

**Comments:**

Batch Number: 05-2399	<b>ACM Environmental</b>
Lab Sample Number: 05013265	
Client Sample Number: 3048-267	<i>Chalmers Elementary School</i>

### L-1 Pale beige hard tile material

<b>Asbestos Fibrous Components:</b> <b>&lt;1% Chrysotile</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 45% Calcite Filler and Binder 40% Mineral Filler and Binder 10% Vinyl Filler and Binder >4% Lizardite
---	----------------------------------	---

**Comments:**

This tile contains <1% chrysotile asbestos.

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

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Analyzed By: Deitrie Hanson 11/4/2005



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### Bulk Asbestos Fiber Analysis

**L-2 Black mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		92% Asphalt Filler and Binder
		5% Mineral Fragments
		3% Filler and Binder

**Comments:**

Batch Number: 05-2399	<b>ACM Environmental</b>
Lab Sample Number: 05013266	<i>Chalmers Elementary School</i>
Client Sample Number: 3048-268	

**L-1 Pale pink pliable thick rubbery sheet vinyl tile material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		65% Rubber Particles
		30% Calcite Filler and Binder
		5% Plastic Particles

**Comments:**

**L-2 Golden tan mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		95% Resin and Binder
		5% Mineral Fragments

**Comments:**

**L-3 Golden tan woven twisted fiber bundles**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		95% Straw
		5% Filler and Binder

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin 9/29/2005  
 Reviewed By: George McCaslin 11/4/2005

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 Analyzed By: Deitrie Hanson 11/4/2005



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### Bulk Asbestos Fiber Analysis

Batch Number:	05-2399	<b>ACM Environmental</b>
Lab Sample Number:	05013267	
Client Sample Number:	<b>3048-269</b>	<i>Chalmers Elementary School</i>

#### L-1 White thick opaque pliable rubbery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Rubber Particles
		10% Calcite Filler and Binder

Comments:

#### L-2 Dark orange wooden splinter material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
	95% Cellulose	3% Resin and Binder
		2% Filler and Binder

Comments:

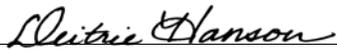
Batch Number:	05-2399	<b>ACM Environmental</b>
Lab Sample Number:	05013268	
Client Sample Number:	<b>3048-270</b>	<i>Chalmers Elementary School</i>

#### L-1 Pale grayish white hard shiny tile material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		55% Calcite Filler and Binder
		40% Mineral Filler and Binder
		5% Vinyl Filler and Binder

Comments:

Sampled By: James McArthur  
 Received By: John McCaslin 9/29/2005  
 Reviewed By: George McCaslin 11/4/2005

  
 Analyzed By: Deitrie Hanson 11/4/2005



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### Bulk Asbestos Fiber Analysis

#### L-2 Dark golden orange pliable mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		95% Resin and Binder
		3% Mineral Fragments
		2% Filler and Binder

Comments:

Batch Number: 05-2399	<b>ACM Environmental</b>
Lab Sample Number: 05013269	
Client Sample Number: 3048-271	<i>Chalmers Elementary School</i>

#### L-1 White paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		100% Paint

Comments:

#### L-2 White crystalline powdery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		80% Talc Filler and Binder
		15% Calcite Filler and Binder
		5% Mineral Fragments

Comments:

#### L-3 White paper on brown papery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
	99% Cellulose	1% Filler and Binder

Comments:

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/29/2005  
 11/4/2005

*Deitrie Hanson*  
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11/4/2005



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## Bulk Asbestos Fiber Analysis

### L-4 Off-white chalky powdery fibrous material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components: 12% Cellulose 8% Synthetic	Non-Fibrous Components: 80% Talc Filler and Binder
--	---	---

**Comments:**

Batch Number:	05-2399	<b>ACM Environmental</b>
Lab Sample Number:	05013270	<i>Chalmers Elementary School</i>
Client Sample Number:	<b>3048-272</b>	

### L-1 Pale beige hard tile material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 45% Calcite Filler and Binder 40% Mineral Filler and Binder 10% Vinyl Filler and Binder 5% Filler and Binder
--	----------------------------------	--

**Comments:**

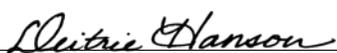
### L-2 Black resinous pliable mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 92% Resin and Binder 5% Asphalt Filler and Binder 3% Mineral Fragments
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**Comments:**

Batch Number:	05-2399	<b>ACM Environmental</b>
Lab Sample Number:	05013271	<i>Chalmers Elementary School</i>
Client Sample Number:	<b>3048-273</b>	

Sampled By: James McArthur  
 Received By: John McCaslin 9/29/2005  
 Reviewed By: George McCaslin 11/4/2005

  
 Analyzed By: Deitrie Hanson 11/4/2005



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## Bulk Asbestos Fiber Analysis

### L-1 Black pliable rubbery material

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 91% Rubber Particles 6% Mineral Fragments 3% Filler and Binder
---	---	--

Comments:

### L-2 Yellow tinted transparent sticky mastic with blue, green, and red glitter

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 92% Resin and Binder 5% Mineral Fragments 3% Metal
---	---	--

Comments:

Batch Number: 05-2399	<b>ACM Environmental</b>
Lab Sample Number: 05013272	
Client Sample Number: 3048-274	<i>Chalmers Elementary School</i>

### L-1 Pale grayish white paint

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 100% Paint
---	---	--

Comments:

### L-2 White powdery granular material

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 80% Calcite Filler and Binder 15% Talc Filler and Binder 5% Mineral Fragments
---	---	---

Comments:

Sampled By: James McArthur  
 Received By: John McCaslin 9/29/2005  
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### Bulk Asbestos Fiber Analysis

#### L-3 Dull brown fibrous papery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	99% Cellulose	1% Filler and Binder

**Comments:**

Batch Number:	05-2399	<b>ACM Environmental</b>
Lab Sample Number:	05013273	<i>Chalmers Elementary School</i>
Client Sample Number:	<b>3048-275</b>	

#### L-1 White paint

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		100% Paint

**Comments:**

#### L-2 Pale brown and white opaque fibrous material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	50% Cellulose	10% Perlite
	35% Mineral Wool	5% Filler and Binder

**Comments:**

Batch Number:	05-2399	<b>ACM Environmental</b>
Lab Sample Number:	05013274	<i>Chalmers Elementary School</i>
Client Sample Number:	<b>3048-276</b>	

#### L-1 White paint

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		100% Paint

**Comments:**

Sampled By: James McArthur				
Received By: John McCaslin	9/29/2005			
Reviewed By: George McCaslin	11/4/2005	Analyzed By: Deitrie Hanson		11/4/2005



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### Bulk Asbestos Fiber Analysis

**L-2 Pale brown and white opaque fibrous material**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	45% Cellulose	10% Perlite
	40% Mineral Wool	5% Filler and Binder

**Comments:**

Batch Number:	05-2399	<b>ACM Environmental</b>
Lab Sample Number:	05013275	<i>Chalmers Elementary School</i>
Client Sample Number:	<b>3048-277</b>	

**L-1 Off-white textured pliable rubbery material**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		92% Rubber Particles
		8% Filler and Binder

**Comments:**

**L-2 Tan fibrous papery material**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	97% Cellulose	3% Filler and Binder

**Comments:**

Batch Number:	05-2399	<b>ACM Environmental</b>
Lab Sample Number:	05013276	<i>Chalmers Elementary School</i>
Client Sample Number:	<b>3048-278</b>	

Sampled By: James McArthur  
Received By: John McCaslin  
Reviewed By: George McCaslin

9/29/2005  
11/4/2005

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11/4/2005



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## Bulk Asbestos Fiber Analysis

### L-1 Tan fibrous papery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	99% Cellulose	1% Filler and Binder

Comments:

### L-2 Off-white fine powdery fibrous material with brown flakes

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	12% Glass Fiber	85% Talc Filler and Binder 3% Vermiculite

Comments:

Batch Number: 05-2399	<b>ACM Environmental</b>
Lab Sample Number: 05013277	
Client Sample Number: 3048-279	<i>Chalmers Elementary School</i>

### L-1 White paint chips

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		100% Paint

Comments:

### L-2 Tan fibrous papery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	97% Cellulose	3% Filler and Binder

Comments:

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/29/2005  
 11/4/2005

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11/4/2005



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## Bulk Asbestos Fiber Analysis

### L-3 Dull gray fine powdery material

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 95% Sand 3% Mineral Fragments 2% Filler and Binder
---	---	--

**Comments:**

Batch Number:	05-2399	<b>ACM Environmental</b>
Lab Sample Number:	05013278	
Client Sample Number:	<b>3048-280</b>	<i>Chalmers Elementary School</i>

### L-1 White paint

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 100% Paint
---	---	--

**Comments:**

### L-2 Pale grayish tan fibrous papery material

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b> 60% Mineral Wool 30% Cellulose	<b>Non-Fibrous Components:</b> 5% Perlite 5% Filler and Binder
---	--	--

**Comments:**

### L-3 Pale gray fine powdery fibrous material

<b>Asbestos Fibrous Components:</b> 7% Chrysotile	<b>Non-Asbestos Fibrous Components:</b> 50% Mineral Wool	<b>Non-Fibrous Components:</b> 40% Talc Filler and Binder 3% Mineral Fragments
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**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/29/2005  
 11/4/2005

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Analyzed By: Deitrie Hanson

11/4/2005



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
 OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

## Bulk Asbestos Fiber Analysis

Batch Number:	05-2399	<b>ACM Environmental</b>
Lab Sample Number:	05013279	
Client Sample Number:	<b>3048-281</b>	<i>Chalmers Elementary School</i>

**L-1 White paint**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		100% Paint

**Comments:**

**L-2 Dull pale gray fine fibrous powdery material**

<b>Asbestos Fibrous Components:</b> <b>5% Chrysotile</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
	65% Mineral Wool 30% Cellulose	

**Comments:**

Batch Number:	05-2399	<b>ACM Environmental</b>
Lab Sample Number:	05013280	
Client Sample Number:	<b>3048-282</b>	<i>Chalmers Elementary School</i>

**L-1 Dull pink pliable rubbery material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		90% Rubber Particles 10% Calcite Filler and Binder

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/29/2005  
 11/4/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson

11/4/2005



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
 OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

## Bulk Asbestos Fiber Analysis

### L-2 White woven twisted fiber bundles

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	97% Synthetic	3% Filler and Binder

Comments:

### L-3 Golden tan opaque brittle mastic

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		96% Resin and Binder
		2% Mineral Fragments
		2% Filler and Binder

Comments:

Batch Number: 05-2399	<b>ACM Environmental</b>
Lab Sample Number: 05013281	
Client Sample Number: 3048-283	<i>Chalmers Elementary School</i>

### L-1 White paint

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		100% Paint

Comments:

### L-2 Pale brown fibrous opaque material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	45% Cellulose	15% Perlite
	35% Mineral Wool	5% Filler and Binder

Comments:

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/29/2005  
 11/4/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson

11/4/2005



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
 OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

## Bulk Asbestos Fiber Analysis

Batch Number:	05-2399	<b>ACM Environmental</b>
Lab Sample Number:	05013282	
Client Sample Number:	<b>3048-284</b>	<i>Chalmers Elementary School</i>

**L-1 Golden tan mastic on pale blue textured pliable rubbery material with purple streaks**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Rubber Particles
		6% Resin and Binder
		4% Filler and Binder

**Comments:**

**L-2 White glossy woven twisted fiber bundles**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
	98% Synthetic	2% Filler and Binder

**Comments:**

**L-3 Pale tan opaque mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Resin and Binder
		10% Mineral Fragments

**Comments:**

Batch Number:	05-2399	<b>ACM Environmental</b>
Lab Sample Number:	05013283	
Client Sample Number:	<b>3048-285</b>	<i>Chalmers Elementary School</i>

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/29/2005  
 11/4/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson

11/4/2005



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

**L-1 Dull gray pliable rubbery material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Rubber Particles
		10% Calcite Filler and Binder

**Comments:**

**L-2 Tan opaque mastic with dark golden tan sticky mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		95% Resin and Binder
		3% Mineral Fragments
		2% Filler and Binder

**Comments:**

Batch Number: 05-2399	<b>ACM Environmental</b>
Lab Sample Number: 05013284	
Client Sample Number: 3048-286	<i>Chalmers Elementary School</i>

**L-1 Pale beige hard thin tile material with orange streaks**

<b>Asbestos Fibrous Components:</b> <b>&lt;1% Chrysotile</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		60% Calcite Filler and Binder
		35% Mineral Filler and Binder
		>4% Vinyl Filler and Binder

**Comments:**

This tile contains <1% chrysotile asbestos.

**L-2 Tan mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		98% Resin and Binder
		2% Mineral Fragments

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin 9/29/2005  
 Reviewed By: George McCaslin 11/4/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 11/4/2005

## **APPENDIX B**

### **Photographs**



Asbestos containing 12" Olive VFT with dark & white streaks



Asbestos containing 12" Light brown VFT with large red streaks



Asbestos containing drywall joint compound found behind wall coverings



Asbestos containing (labeled) mechanical elbow and fitting insulation materials

# DELTA SCHOOL DISTRICT ASBESTOS MANAGEMENT PROGRAM

Building: Chalmers Elementary

Date: September 10, 2005

Surveyor: Barry O'Regan (ACM Environmental Corporation)

Room No.	AREA CONTAINS WRAPPED OR NON-FRIABLE ASBESTOS, DO NOT DISTURB								AREA CONTAMINATED WITH ASBESTOS, SPECIAL ENTRY PROCEDURES REQUIRED								Comments
	1	2	3	4	5	6	7	8	1	2	3	4	5	6	7	8	
All	X				X												Mechanical Pipe Insulation
100						X											Olive Vinyl Floor Tile with White Streaks (<1%)
101			X														Drywall Joint compound (<1%)
101C						X											Light Brown Vinyl Floor Tile with large Red Streaks (<1%)
102						X											Beige Vinyl Floor Tile with Orange and White Streaks (<1%)
107					X												Mechanical Pipe Insulation
108					X												Mechanical Pipe Insulation
109						X											Olive Vinyl Floor Tile with White Streaks (<1%)
116						X											Olive Vinyl Floor Tile with White Streaks (<1%)
121						X											Olive Vinyl Floor Tile with White Streaks (<1%)
130						X											Beige Vinyl Floor Tile with Orange and White Streaks (<1%)
131						X											Beige Vinyl Floor Tile with Orange and White Streaks (<1%)
134C						X											Beige Vinyl Floor Tile with Orange and White Streaks (<1%)
138						X											Olive Vinyl Floor Tile with White Streaks (<1%)
139						X											Olive Vinyl Floor Tile with White Streaks (<1%)
140						X											Light Brown Vinyl Floor Tile with large Red Streaks (<1%)
141						X											Light Brown Vinyl Floor Tile with large Red Streaks (<1%)
142						X											Light Brown Vinyl Floor Tile with large Red Streaks (<1%)
143						X											Light Brown Vinyl Floor Tile with large Red Streaks (<1%)
144						X											Light Brown Vinyl Floor Tile with large Red Streaks (<1%)
145						X											Light Brown Vinyl Floor Tile with large Red Streaks (<1%)
149						X											Light Brown Vinyl Floor Tile with large Red Streaks (<1%)
150						X											Light Brown Vinyl Floor Tile with large Red Streaks (<1%)

**Legend**

- |   |   |   |   |
|---|---|---|---|
| 1 | ASBESTOS IN ABOVE-CEILING SPACES            | 5 | ASBESTOS ON VISIBLE PIPING AND/OR DUCTING |
| 2 | ASBESTOS ON CEILING SURFACES                | 6 | ASBESTOS IN FLOORING MATERIAL             |
| 3 | ASBESTOS ON WALLS (DRYWALL OR CEMENT BOARD) | 7 | ASBESTOS IN FIRE DOORS                    |
| 4 | ASBESTOS IN BELOW-FLOOR AREAS               | 8 | ASBESTOS IN WINDOW PUTTY                  |

**ENERGY SYSTEM SERVICE AGREEMENT**

**CLIFF DRIVE ELEMENTARY SCHOOL**

**THIS AGREEMENT** dated for reference the 26<sup>th</sup> day of September, 2011.

**BETWEEN:**

**THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 37 (DELTA)**  
a corporation established under the School Act R.S.B.C. 1996, c. 412 having an  
office at 4585 Harvest Drive, Delta, British Columbia, V4K 5B4

(the "District")

OF THE FIRST PART

**AND:**

**FORTISBC ENERGY INC.,** a company duly incorporated under the laws of the  
Province of British Columbia, having its registered office at 10th Floor, 1111  
West Georgia Street, Vancouver, B.C. V6E 4M3

("FEI")

OF THE SECOND PART

**WHEREAS:**

- A. The District is the owner of Cliff Drive Elementary School (the "Building") and lands located at 5025, 12<sup>th</sup> Avenue, Delta, Delta, British Columbia, which lands are legally described as:

PID: 007-365-799 Property No: 106569

LOT 371 SECTION 24 TOWNSHIP 4 NEW WESTMINSTER DISTRICT PLAN 36382

(the "Lands")

- B. FEI wishes to supply to the Building, and the District wishes to purchase, Thermal Energy generated by an Energy System that FEI will construct on the Lands, and which FEI will own and operate, all pursuant to the terms of this Agreement.
- C. The Thermal Energy supplied by FEI to the Building pursuant to this Agreement will be priced at the rate set forth in the Energy System Rate Development Agreement between the Parties dated September 26<sup>th</sup>, 2011.

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT** in consideration of the premises and the covenants, agreements, representations, warranties and payments set out herein, the receipt and sufficiency of which is hereby acknowledged by each Party, the Parties covenant and agree as follows:

## **ARTICLE 1 - INTERPRETATION**

### 1.1 DEFINITIONS

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

- (a) “Adjusted Energy System Purchase Price” means, as of the date on which a purchase of the Energy System pursuant to Article 15 is effective, either:
  - (i) the Rate Base Value; or
  - (ii) such other purchase price for the Energy System as is determined by the BCUC; plus all applicable taxes;
- (b) “Affiliate” has the meaning set out in the *Business Corporation Act*, S.B.C. 2002, c.57 and includes FortisBC Inc.;
- (c) “Agreement” means this agreement, including the preamble hereto and any schedules attached hereto and the terms “this Agreement”, “hereof”, “herein”, “hereunder” and “hereinafter” and similar expressions refer to the Agreement and not to any particular Section or other portion thereof and includes any agreement supplementary or ancillary thereto;
- (d) “Acceptance Date” means the date of BCUC Acceptance;
- (e) “BCUC” means the British Columbia Utilities Commission, or any successor thereto;
- (f) “BCUC Acceptance” has the meaning assigned to that term in Section 11.1;
- (g) “Building” has the meaning assigned to that term on page one of this Agreement;
- (h) “Building System” means the space heating, cooling and ventilation, and domestic hot water distribution and control systems existing in the Building, to which the Energy System will be connected;
- (i) “Business Day” means any day except Saturday and Sunday or any day on which banks are generally not open for business in Vancouver, British Columbia;
- (j) “Capital Contribution” means \$ 64,000;
- (k) “Commissioned” means once the Energy System is certified complete and operating in accordance with the Specifications by a professional engineer under seal;

- (l) “Commission Date” means the day on which the Energy System is Commissioned;
- (m) “Contaminants” means, collectively, any contaminant, toxic substance, dangerous good, or pollutant or any other substance which when released to the natural environment is likely to cause, at some immediate or future time, material harm or degradation to the natural environment or material risk to human health, and includes any radioactive materials, asbestos materials, urea formaldehyde, underground or aboveground tanks, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive or toxic substances, hazardous waste or waste of any kind, pesticides, defoliants, or any other solid, liquid, gas, vapour, odour or any other substance .the storage, manufacture, disposal, handling, treatment, generation, use, transport, remediation or Release into the Environment of which is now or hereafter prohibited, controlled or regulated under Environmental Laws;
- (n) “Continuing Service Interruption Notice” has the meaning assigned to that term in Section 14.3(b);
- (o) “Contractor” means a prime contractor hired by FEI to oversee and complete the construction and installation of the Energy System;
- (p) “Design and Construction” means the total construction and related services required to design, construct and commission the Energy System and connected components of the Building System;
- (q) “Design Thermal Energy” means the maximum amount of Thermal Energy that the Energy System is capable of delivering through the Thermal Energy Meter and is included in the Specifications;
- (r) “Disclosed Contaminants” means Contaminants:
  - (i) the existence of which are specifically identified in the reports provided by the District to FEI and listed in Schedule C;
  - (ii) that were or ought to have been discovered, foreseen or anticipated upon reasonable inspection by FEI prior to the Effective Date; and
  - (iii) that were caused by FEI or any person for whom FEI is responsible at law;
- (s) “District” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (t) “District Losses” has the meaning assigned to that term in Section 12.6;
- (u) “District Site Rules for Contractors” means the rules set forth in Schedule “B”;
- (v) “Effective Date” means the date set out on page one of this Agreement;
- (w) “Energy System” means the equipment that FEI constructs and owns which will provide the Building with its energy needs for space heating, cooling and ventilation, and domestic hot water use, all as set forth in this Agreement;

- (x) “Energy System Service Agreement” has the meaning assigned to that term in the Energy System Rate Development Agreement;
- (y) “Energy System Rate Development Agreement” means that energy system rate development agreement between the District and FEI dated as of September 26<sup>th</sup>, 2011;
- (z) “Environment” includes the air (including all layers of the atmosphere), land (including soil, sediment deposited on land, fill, lands submerged under water, buildings, and improvements), water (including oceans, lakes, rivers, streams, groundwater, and surface water), and all other external conditions and influences under which humans, animals, and plants live or are developed and “Environmental” will have a corresponding meaning;
- (aa) “Environmental Attributes” means:
  - (i) all attributes associated with, or that may be derived from the Energy System installed having decreased environmental impacts relative to the use of conventional heating and cooling and hot water heating systems including any existing or future credit, allowance, certificate, right, benefit or advantage or proprietary or contractual right whether or not tradable;
  - (ii) any existing or future instrument, including without limitation any environmental emission allowances and environmental emission reduction credits, reduction right, allowance, certificate or other unit of any kind whatsoever, whether or not tradable and any other proprietary or contractual right, whether or not tradable, and any resulting from, or otherwise related to the actual assumed reduction, displacement or offset of emissions associated with, or that may be derived from the Energy System installed; and
  - (iii) all revenues, entitlement, benefits and other proceeds arising from or related to the foregoing;
- (bb) “Environmental Laws” means any and all statutes, laws, regulations, orders, bylaws, standards, guidelines, protocols, permits, and other lawful requirements of any Governmental Authority having jurisdiction over the Lands or the Energy System now or hereafter in force with respect in any way to the Environment, environmental assessment, health, occupational health and safety, protection of any form of plant or animal life, or transportation of dangerous goods, including the principles of common law and equity;
- (cc) “Expiry Date” means the earlier of:
  - (i) June 30, 2031, or the expiry of any renewal term thereof; and
  - (ii) the closure of the Building, or the Building otherwise ceasing to operate as a school (as defined under the *School Act* (British Columbia));
- (dd) “FEI” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (ee) “FEI Losses” has the meaning assigned to that term in Section 12.5;

- (ff) “Force Majeure” has the meaning assigned to that term in Section 17.2;
- (gg) “Governmental Authority” means any federal, provincial, regional, municipal, local or other government, governmental or public department, court, tribunal, arbitral body, commission, board, bureau or agency and any subdivision, agent, commission, board or authority thereof;
- (hh) “Lands” has the meaning assigned to that term in Recital A and includes the Building located on the Lands;
- (ii) “Laws” means laws, statutes, regulations, bylaws, Permits and orders of any Governmental Authority having jurisdiction, including without limitation, Environmental Laws;
- (jj) “Maintain” means to operate, service and maintain in a safe and reliable condition and “maintaining” and “maintenance” have corresponding meanings;
- (kk) “Monthly Charges” means that amount to be paid by the District to FEI with respect to the delivery of Thermal Energy to the Building pursuant to the Energy System Rate Development Agreement and any other payments due and owing by the District under this Agreement;
- (ll) “Notifying Party” has the meaning assigned to that term in Section 16.1;
- (mm) “Party” means a signatory to this Agreement, and the “Parties” means all of such signatories;
- (nn) “Permits” means all permits, licences, certificates, approvals, authorizations, consents and the like issued by any Governmental Authority;
- (oo) “Rate Base Value” means the value of the Energy System that the BCUC accepts from time to time in accordance with the Energy System Rate Development Agreement;
- (pp) “Release” includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, migration, disposal, or dumping;
- (qq) “Right of Access and Licence” means the right and licence granted herein by the District to FEI pursuant to Section 4.1 of this Agreement;
- (rr) “Service Failure Notice” has the meaning assigned to that term in Section 14.3(c);
- (ss) “Service Interruption” means, in any hour:
  - (i) a failure of the Energy System in that hour to deliver Thermal Energy at the Thermal Energy Meter sufficient to meet the Thermal Energy demand of the Building during that hour in accordance with the Specifications up to the Design Thermal Energy, and except where such failure is directly caused by:
    - a. the careless or wilful damage to the Energy System by the District or its agents or other persons for whom the District is responsible;

- b. damage caused to the Energy System as a result of the negligent acts or omissions of the District, its agents or those for whom in law the District is responsible;
  - c. an event of Force Majeure that triggers the suspension of FEI's obligations under the Agreement pursuant to Article 17; or
  - d. maintenance activities that FEI is performing on the Energy System that have been scheduled with the consent of the District (such consent not to be unreasonably withheld); and
- (ii) if the failure described in Section 1.1(rr)(i), FEI's failure in that hour to deliver to the Building through alternative means thermal energy sufficient to maintain an average temperature of 16 degrees Celsius in each room of the Building intended to be served by the Energy System (all as determined by the District, acting reasonably);
- (tt) "Service Interruption Notice" has the meaning assigned to that term in Section 14.3(a);
- (uu) "Services" means those services to be provided by FEI to supply Thermal Energy to a Building from an Energy System, and for greater certainty includes the services described in Articles 5 and 6, and excludes the Design and Construction;
- (vv) "Specifications" means the specifications for the Energy System prepared by FEI in consultation with the District in accordance with Section 2.3 and includes the Design Thermal Energy;
- (ww) "Term" has the meaning assigned to that term in Section 3.1;
- (xx) "Thermal Energy" means the amount of energy that FEI provides to the Building measured through a Thermal Energy Meter;
- (yy) "Thermal Energy Meter" means a device that complies with the International Organization of Legal Metrology recommendations for measuring thermal energy; and
- (zz) "UCA" means the *Utilities Commission Act*, R.S.B.C. 1996, c. 473 as may be amended from time to time.

## 1.2 SCHEDULES

The following Schedules, as may be amended from time to time, are incorporated by reference into this Agreement:

Schedule "A"	Energy System Description
Schedule "B"	Delta School District Site Rules for Contractors
Schedule "C"	List of Environmental Reports

### 1.3 AMENDMENTS TO SCHEDULES

The District and FEI acknowledge that during the construction phase of the Energy System there may be additions and alterations to the Specifications for the Energy System which would result in more efficient use and operation of the Energy System. If these additions or alterations result in changes to any of the above Schedules, the Parties mutually agree to amend the Schedules by way of a written amendment prior to the Commission Date.

### 1.4 INTERPRETATION

Except where the context requires otherwise or except as otherwise expressly provided, in this Agreement:

- (a) all references to a designated Article or Section are to the designated Article or Section of this Agreement unless otherwise specifically stated;
- (b) the singular of any term includes the plural, and vice versa, and the use of any term is equally applicable to any gender and, where applicable, body corporate;
- (c) any reference to a corporate entity includes and is also a reference to any corporate entity that is a successor by merger, amalgamation, consolidation or otherwise to such entity;
- (d) the preamble and all schedules referred to and attached to this Agreement are incorporated by reference and will form a part of this Agreement;
- (e) all sums of money which are referred to in this Agreement are in lawful money of Canada;
- (f) the headings of the Articles and Sections set out in this Agreement are for convenience only and will not be considered in any interpretation of this Agreement;

## **ARTICLE 2 - DESIGN AND CONSTRUCTION OF THE ENERGY SYSTEM**

### 2.1 CONSTRUCTION

FEI will perform the Design and Construction:

- (a) in accordance and in compliance with the Specifications;
- (b) in a good and workmanlike manner using qualified workers, and in accordance with sound and currently accepted industry standards and codes of practice normally employed, at the time and place of performance, in projects of a similar type and nature;
- (c) to ensure operational compatibility with the Building System;
- (d) in a safe and environmentally sound manner, and in accordance with all applicable Laws; and
- (e) in accordance with the terms of this Agreement.

## 2.2 CAPITAL CONTRIBUTION

The District will pay to FEI within 30 days of the Commission Date the Capital Contribution for the purpose of reducing the capital investment and the associated carrying cost of capital by FEI for provision of Service to the Building.

## 2.3 SPECIFICATIONS

Subject to and in accordance with this Section 2.3, FEI shall prepare and complete the Specifications promptly following the Acceptance Date.

FEI confirms the Energy System, as described in the Specifications and as contemplated by the Energy System description set out in Schedule A, will be designed to meet the thermal energy requirements of the Building and operational compatibility of the Building System based in part on information supplied by the District as to historical usage, which information has not been independently verified by FEI. FEI shall have no liability to the District for the failure of the Energy System to satisfy the requirements of the Building where such failure is attributable to the information supplied by the District being incorrect, inaccurate or incomplete.

FEI will prepare the Specifications in consultation with the District in order to ensure the Energy System can be appropriately accommodated within the Building and interface with the Building Systems. FEI will submit material changes to the Specifications, both before and during construction, to the District for review and comment prior to such changes taking place. If the District does not comment on the Specifications or material changes to the Specifications or advise that it has no comment within five (5) Business Days of receipt, FEI will be entitled to proceed on the basis of the information provided to the District. FEI will revise the Specifications based on the comments from the District provided that doing so will not impact FEI's costs or adversely affect system performance.

Review of and comment on the Specifications by the District does not impose any obligation on the District to verify the suitability of the Energy System or be construed as confirmation by the District that the Energy System satisfactorily meets the Building's energy requirements.

## 2.4 WORK SCHEDULE

Within ten (10) Business Days following the Acceptance Date, FEI will submit to the District for review and comment a Gantt chart schedule for the Design and Construction listing activities to be undertaken during the Design and Construction stages, key milestones and approval dates and other pertinent dates. Any revisions to the schedule must be reviewed and commented by the District, which review and comment will not be unreasonably withheld, conditioned or delayed.

In order to ensure that the Building System remains operational during normal school hours (as defined in Schedule B), the cut-over from the existing heating/cooling plant to the Energy System shall be performed outside normal school hours.

## 2.5 REPORTING

FEI shall produce and submit a monthly progress report for the Design and Construction to the District until the Energy System is Commissioned.

## 2.6 TESTING AND COMMISSIONING

FEI shall coordinate and supervise the start-up and testing of the Energy System to ensure the Energy System and other components of the Building System affected by the Design and Construction are operating in accordance with the Specifications, upon which the Energy System will be Commissioned. The District shall be invited to participate in the start-up and testing exercise.

# ARTICLE 3 - TERM AND RENEWAL

## 3.1 TERM

The term of this Agreement commences on the Effective Date and continues until the Expiry Date unless it is terminated earlier as authorized under this Agreement ("Term").

## 3.2 RENEWAL

This Agreement will automatically renew for periods of ten (10) years unless either Party provides written notice to the other Party no less than six (6) months prior to the Expiry Date, provided that there shall be no automatic renewal in the event that the Expiry Date arises as a result of the closure of the Building, or the Building otherwise ceases to operate as a school (as defined under the *School Act* (British Columbia)).

# ARTICLE 4 - ACCESS AND PERMITS

## 4.1 ACCESS RIGHTS

The District hereby grants to FEI, during the Term from and following the Acceptance Date, for so long as FEI shall require it, but subject to Section 4.4, a full, free and uninterrupted licence and right of way on, over and under the Lands and Building, for FEI, its assigns, employees, contractors, agents, invitees and licensees at all times hereafter for the purposes set out in this Agreement, provided FEI will avoid to the extent reasonably possible, and otherwise minimize interference with and inconvenience to, the occupants of the Building and the access rights of FEI will be limited to the extent reasonably necessary to fulfil FEI's obligations hereunder.

Without limiting the generality of the foregoing, but subject to Section 4.4, such right of way and licence shall include the full power, right and liberty to excavate for, install, place, construct, renew, alter, repair, maintain, operate, use, abandon, remove or replace its infrastructure, in whole or in part, and to enter upon, along, across, over or under the Lands or Building and have continual access to the Energy System, with or without vehicles, supplies, machinery or equipment, for any of the purposes set out in this Agreement, and to clear such portion of the Lands and keep it cleared of obstructions which, in the opinion of FEI, acting reasonably, may

interfere with any of the rights granted to FEI herein. The District may direct, in its discretion, FEI to use alternate routing for any Environmental or other reasonable purpose.

FEI covenants and agrees with the District not to do or knowingly permit to be done anything which may, in the opinion of the District acting reasonably, damage or interfere with the Building or impair the operating efficiency thereof or create any hazard.

#### 4.2 CONDITION OF LAND

The District represents and warrants to FEI that as of the Effective Date:

- (a) to the best of the District's knowledge, the Lands are free of Contaminants other than those specifically identified in the reports provided by the District to FEI and listed in Schedule C; and
- (b) there are no actions, proceedings, investigations, claims (including remediation cost recovery claims) pending, or to the knowledge of the District, threatened, that would interfere with FEI's access rights pursuant to Section 4.1.

#### 4.3 PERMITS

FEI will obtain and maintain at its own expense all Permits necessary for the Design and Construction and the Services.

#### 4.4 SAFETY, SECURITY AND BUILDING ACCESS

Notwithstanding anything to the contrary in this Agreement, FEI will adhere, and will cause all persons for whom it is responsible under this Agreement (including, without limitation, the Contractor) to adhere to the District Site Rules for Contractors.

#### 4.5 REMEDIATION

FEI shall promptly remediate any Disclosed Contaminants on the Lands as required by applicable Law that result from, or are Released as a result of the Design and Construction or the Services, except to the extent caused or contributed to by the District's negligence. In the event that Contaminants on the Lands, other than Disclosed Contaminants, are discovered by FEI, FEI will promptly notify the District of such discovery and the Parties will review the impact of such discovery, if any, on the Design and Construction or the Services.

### **ARTICLE 5 - SERVICE PROVISION**

#### 5.1 PROVISION OF SERVICE

Subject to the terms and conditions of the Agreement, FEI will provide the Services to the District throughout the Term.

## 5.2 SERVICE MONITORING AND REVIEW

The Parties acknowledge that FEI may be required from time to time to prepare and submit reports to the BCUC concerning the operation and performance of the Energy System, and the District shall provide FEI with reasonable cooperation in relation to the preparation of such reports.

## 5.3 STANDARD OF PERFORMANCE

In performing the Services, FEI will:

- (a) use only qualified personnel and exercise the same degree of care, skill and supervision as would be exercised by a reasonable and prudent owner experienced in performing like services;
- (b) perform the Services in accordance with all applicable Laws;
- (c) perform the Services in accordance with ongoing industry standards and codes of practice; and
- (d) without limiting the effect of the foregoing, abide by any standards of performance in relation to the Services that the BCUC may set from time to time according to the provisions of the UCA.

## 5.4 INTERRUPTION

No interruption of any of the on-site and off-site services, utilities and amenities provided by FEI to the Building will, except to the extent, if any, caused by any wrongful or negligent act of FEI or any person for whom FEI is responsible at law, render FEI liable to the District or any person claiming through or under the District, or relieve the District from any of its obligations under this Agreement. Notwithstanding the foregoing, FEI will use all reasonable diligence to remedy any such interruption if it is within its power and obligation to do so.

# **ARTICLE 6 - ENERGY SYSTEM MAINTENANCE AND OPERATION**

## 6.1 MAINTENANCE AND REPAIR OF ENERGY SYSTEM

Subject to Section 6.2, FEI will perform the Services and otherwise maintain or cause to be maintained and repaired the Energy System throughout the Term:

- (a) in accordance with the Energy System design and operating specifications and requirements as established by the qualified engineers engaged by FEI in the design and construction of the Energy System, and the equipment manufacturers;
- (b) in a good and workman-like manner using qualified workers, and in accordance with sound and currently accepted industry standards and codes of practice normally employed, at the time and place of performance, in projects of a similar type and nature;
- (c) to ensure operational compatibility with the Building System;

- (d) in a safe and environmentally sound manner, and in accordance with all applicable Laws; and
- (e) in accordance with the terms of this Agreement.

FEI will not delay repair of the Energy System for any reason, including as a result of a dispute with the District in relation to the costs and expenses of repair pursuant to Section 6.2.

## 6.2 REPAIR DAMAGE

The District will be responsible for all costs and expenses incurred by FEI in respect of any damage to the Energy System caused by or resulting from:

- (a) the careless or wilful damage to the Energy System by the District or its agents or other persons for whom at law the District is responsible; or
- (b) damage caused to the Energy System as a result of the negligent acts or omissions of the District, its agents or those for whom in law the District is responsible.

## **ARTICLE 7 - CHARGES**

### 7.1 MONTHLY CHARGES

The District throughout the Term commencing on the Commission Date in accordance with this Article 7 will pay to FEI when due for the Thermal Energy that FEI delivers and meters to the Building according to the rates set out in the Energy System Rate Development Agreement plus all applicable taxes (including harmonized sales tax applicable thereon) and any imposed taxes levied after the Commission Date by a government or regulatory agency that are related to the Energy System (including, but not limited to capital taxes or royalties) and any other payments due and owing by the District under this Agreement.

### 7.2 MONTHLY STATEMENT

FEI will, within 15 days following the end of each month, deliver to the District a statement setting out the Monthly Charges including all applicable taxes payable for that month.

### 7.3 PAYMENT

The District will pay the full amount specified in each statement provided to it in accordance with Section 7.2 within 30 days of receipt of such statement. All amounts payable to FEI will be made by cheque mailed to FEI at its address for service specified in Section 20.5.

### 7.4 PAYMENT DUE

Subject to Section 14.1, the obligation of the District to pay the Monthly Charges continues whether or not the Energy System is being used to provide the Building with its energy needs for space and ventilation heating, cooling and domestic hot water use.

#### 7.5 ARREARS TO BEAR INTEREST

If any amount owing to FEI or the District is not paid on or before the date on which it is due, a late payment charge of 1.5% per month will be assessed each month on all outstanding balances not paid by the due date.

### **ARTICLE 8 - OWNERSHIP OF THE ENERGY SYSTEM**

Notwithstanding the payments made by the District to FEI under this Article 8, any provision of this Agreement, any degree of annexation or affixation, or rule of law or equity to the contrary the District will have no proprietary interest in the Energy System which is, and shall remain, the property of FEI and may be used by FEI in its business or removed in whole or in part as it may see fit, and for any of such purposes, and FEI may enter in, upon and under all the Lands for the purposes of the maintenance, renewals, repair, removal or operation of the Energy System or any part thereof; provided that FEI shall not leave any part of the Energy System in such a state as to constitute a nuisance or a danger to the public through neglect, non-use and want of repair, and provided further that nothing in this clause shall nullify or otherwise impact or invalidate in any way the District's rights under Article 15 to purchase the Energy System.

### **ARTICLE 9 - ENVIRONMENTAL ATTRIBUTES**

#### 9.1 ENVIRONMENTAL ATTRIBUTES

All right, title and interest now existing or which may exist at any time in the future in the potential or actual commercial value of any Environmental Attributes that arise or accrue by virtue of the construction and operation of the Energy System will belong to the District. At the request of the District, FEI will reasonably cooperate with the District in applying for and assigning any Environmental Attributes to the District.

#### 9.2 GRANTS

Any grants from any Governmental Authority, a Crown Corporation or non-governmental authority that may be derived from a reduction in energy consumption by the Building will belong to the District.

### **ARTICLE 10 - REPRESENTATIONS AND WARRANTIES**

#### 10.1 DISTRICT'S REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties contained in this Agreement, the District hereby represents and warrants to FEI as follows and acknowledges that FEI is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) the District has the full right, power and authority to enter into this Agreement;

- (b) all necessary action on the part of the District has been taken to authorize and approve the execution and delivery of this Agreement and the performance by the District of its obligations hereunder;
- (c) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to the District as of the date of this Agreement;
- (d) the District is not party to any action, suit or legal proceeding, actual or, to the knowledge of the District, threatened, and there are no circumstances, matters or things known to the District which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or, to the knowledge of the District, threatened against the District before or by any Governmental Authority, which could affect the District's ability to perform its obligations under this Agreement; and
- (e) no person, firm or corporation has or will have as of the Commission Date, any agreement, right, or option or right capable of becoming an agreement, right, or option for the purchase or acquisition of the Energy System.

## 10.2 FEI'S REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties contained in this Agreement, FEI hereby represents and warrants to the District as follows and acknowledges that the District is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) FEI has the full right, power and authority to enter into this Agreement;
- (b) all necessary corporate action on the part of FEI has been taken to authorize and approve the execution and delivery of this Agreement and the performance by FEI of its obligations hereunder;
- (c) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to FEI as of the date of this Agreement;
- (d) FEI is not party to any action, suit or legal proceeding, actual or threatened, and there are no circumstances, matters or things known to FEI which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or threatened against FEI before or by any Governmental Authority, which could affect FEI's ability to perform its obligations under this Agreement; and
- (e) FEI has or will have all permits, licenses, authorizations and other documentation required for the operation of the Energy System after the Commission Date; and
- (f) FEI has all the required expertise to fulfill its obligations under this Agreement.

### 10.3 DELEGATION AND SUBCONTRACTING

FEI may delegate and subcontract its obligations under this Agreement with respect to Design and Construction and Services to any contractor, consultant, agent or representative provided that FEI shall be fully responsible for the acts and omissions of such persons and those either directly or indirectly employed by them to the same extent as FEI for its own acts or omissions.

## **ARTICLE 11 - BCUC ACCEPTANCE**

### 11.1 REGULATORY REVIEW TERMINATION

Subject to Section 11.3, either Party may terminate this Agreement if within 90 days following the Effective Date, this Agreement and the Energy System Rate Development Agreement, including the Market Rate and the SD37 Rate Rider as defined in that Agreement have not been accepted for filing by the BCUC (such acceptance being herein called "BCUC Acceptance").

### 11.2 REGULATORY FILING

FEI, on behalf of itself and the District, and at its own cost, shall file the Agreement with the BCUC within a reasonable time after the Effective Date. FEI shall take all steps reasonably required to secure BCUC Acceptance, which shall consist of those procedural steps related to filing the Agreement and providing argument and witnesses in support of filing.

### 11.3 TERMINATION

A Party entitled to terminate under Section 11.1 must do so by giving notice to terminate to the other Party at any time after the right to terminate arises pursuant to Section 11.1, and prior to:

- (a) the date of issuance of the BCUC Acceptance; and
- (b) the date that is 90 days after the Effective Date.

### 11.4 EFFECT OF BCUC ACCEPTANCE

The Parties acknowledge that upon BCUC Acceptance, the Services will be subject to regulation by the BCUC under the UCA, and will form another class of service that FEI provides as a public utility. The Parties acknowledge that the terms of the UCA may supersede the terms and conditions of this Agreement.

## **ARTICLE 12 - INDEMNITY**

### 12.1 FEI'S INDEMNITY

Without limiting any other obligations of FEI provided herein, FEI will indemnify, defend, and save harmless the District and its trustees, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including the full amount of all legal fees and expenses on a

solicitor-client basis) which may be paid by, incurred by, or asserted against the District or its directors, officers, employees, agents, successors, or assigns, arising from or in connection with:

- (a) the breach or non-performance by FEI of any of its obligations or warranties hereunder; or
- (b) the negligence or wilful misconduct of FEI, its employees, contractors or agents in respect of the Energy System, and in the performance of the obligations of FEI pursuant to this Agreement,

excluding only such of the foregoing as arise from the fraud, negligence or wilful misconduct of the District or its trustees, officers, directors, members, employees, contractors or agents, or the breach or non-performance by the District of any of its obligations or warranties hereunder.

## 12.2 DISTRICT'S INDEMNITY

Without limiting any other obligations of the District provided herein, the District will indemnify, defend, and save harmless FEI, its Affiliates and their respective shareholders, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including the full amount of all legal fees and expenses on a solicitor-client basis) which may be paid by, incurred by, or asserted against FEI, its Affiliates or their respective shareholders, directors, officers, employees, agents, successors, or assigns, arising from or in connection with:

- (a) the breach or non-performance by the District of any of its obligations or warranties hereunder; or
- (b) the negligence or wilful misconduct of the District, its employees, contractors or agents in respect of the Energy System, and in the performance of the obligations of the District pursuant to this Agreement,

excluding only such of the foregoing as arise from the fraud, negligence or wilful misconduct of FEI or its Affiliates or any of their respective officers, directors, members, employees, contractors or agents, or the breach or non-performance by FEI of any of its obligations or warranties hereunder.

## 12.3 CONSEQUENTIAL LOSS

In no event will the District or FEI or any of their respective officers, directors, employees, contractors or agents be liable to the other Party for any indirect or consequential loss, cost or expense whatsoever, including any loss of profits, revenues or other economic loss, suffered by the other Party or its officers, directors, employees, contractors or agents.

## 12.4 SURVIVAL OF INDEMNITY

The indemnity of each of the District and FEI provided under this Article 12 will survive the Term of this Agreement.

## 12.5 ENVIRONMENTAL INDEMNITY BY THE DISTRICT

The District will indemnify and save harmless FEI, its Affiliates, directors, officers, shareholders, employees, agents, successors and permitted assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants (but not including Disclosed Contaminants) and remediation of the Lands and any affected adjacent property) (collectively, "FEI Losses") which may be paid by, incurred by or asserted against FEI, its Affiliates and their respective directors, officers, shareholders, employees, agents, successors or permitted assigns, arising from or in connection with any Contaminants (but not including Disclosed Contaminants) existing on the Lands prior to the Commission Date or brought onto the Lands or Released onto the Lands by the District or any person for whom it is in law responsible, except to the extent the FEI Losses suffered were caused or contributed to by any act or omission of FEI or any person for whom FEI is in law responsible after FEI had knowledge of the Contaminants.

## 12.6 ENVIRONMENTAL INDEMNITY BY FEI

FEI will indemnify and save harmless the District, its Affiliates and their respective trustees, directors, officers, employees, agents, successors and permitted assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the Lands and any affected adjacent property) (collectively, "District Losses") which may be paid by, incurred by or asserted against the District, its Affiliates, and their respective trustees, directors, officers, employees, agents, successors or permitted assigns, arising from or in connection with any Contaminants brought onto the Lands or any Disclosed Contaminants Released onto the Lands by FEI or any person for whom it is in law responsible, except to the extent the District Losses suffered were caused or contributed to by any act or omission of the District or any person for whom the District is in law responsible after the District had knowledge of the Contaminants.

# ARTICLE 13 - INSURANCE

## 13.1 FEI INSURANCE COVERAGE.

- (a) FEI will obtain and maintain at its own expense throughout the Term, Commercial General Liability Insurance for bodily injury, death and property damage in the minimum amount of five million (\$5,000,000) dollars per occurrence. The policy will contain a cross liability provision and will be maintained for a period ending no sooner than 12 months after the expiry or termination of this Agreement.
- (b) FEI will be responsible for the full amount of all premiums and deductibles required under this Section 13.1. All policies required herein must be effective at the Commission Date. Insurance will be purchased from insurers registered and licensed to underwrite

insurance in British Columbia. Policies will contain waivers of subrogation against the District and all its officers, directors, members, employees, contractors and agents.

### 13.2 DISTRICT INSURANCE COVERAGE

- (a) The District will obtain and maintain at its own expense throughout the Term Commercial General Liability Insurance for bodily injury, death and property damage in the minimum amount of five million (\$5,000,000) dollars per occurrence. The policy will contain a cross liability provision and will be maintained for a period ending no sooner than 12 months after the expiry or termination of this Agreement.
- (b) The District will be responsible for the full amount of all premiums and deductibles required under this Section 13.2. All policies required herein must be effective at the date of this Agreement. Insurance will be provided by the Provincial self-insured program. Policies will contain waivers of subrogation against FEI and all its officers, directors, employees, contractors and agents.

### 13.3 PRIORITY

FEI will ensure that the District is an additional insured under the insurance to be obtained and maintained pursuant to Section 13.1. The District will ensure that FEI is an additional insured under the insurance to be obtained and maintained pursuant to Section 13.2. In the event of a claim, the insurance carried by the Party responsible for actions which give rise to such claim will be the primary insurance with respect to such claim.

## **ARTICLE 14 - DEFAULT**

### 14.1 DEFAULT BY FEI

- (a) FEI will be in default under this Agreement if FEI is in breach of a material term, covenant, agreement, condition or obligation imposed on it under this Agreement and fails to cure such default within ten (10) days after receipt of written notice thereof from the District, or, if such default is not capable of being cured within such ten (10) day notice period, fails to commence in good faith the curing of such default upon receipt of such written notice of default from the District and to continue to diligently pursue the curing of such default thereafter until cured. For the purposes of this Section 14.1, Section 4.4 is hereby deemed to be a material term of this Agreement.
- (b) If FEI is in default of this Agreement, the District may at its option and without liability therefore or prejudice to any other right or remedy it, including under the UCA, may have suspend or refuse to make any payments due hereunder until the default has been fully remedied, and no such suspension or refusal will relieve FEI from any of its obligations under this Agreement.
- (c) In the event the default is not fully remedied within thirty (30) days of receipt by FEI of written notice thereof from the District, the District may, at its option, undertake the necessary steps to remedy FEI's default at FEI's sole expense, which reasonable costs

shall be deducted from the Monthly Charges, and such actions will not relieve FEI from any of its obligations under this Agreement or, at its option, and without any liability, terminate this Agreement without prejudice to any other right the District may have hereunder or at law or otherwise.

#### 14.2 DEFAULT BY THE DISTRICT

- (a) The District will be in default under this Agreement if the District fails or refuses to make any payment due to FEI by the District under this Agreement within thirty (30) days of receiving written notice from FEI after the date that payment is due or if the District is in breach of a material term, covenant, agreement, condition or obligation imposed on it under this Agreement and fails to cure such default within ten (10) days after receipt by the District of written notice thereof from FEI or, if such default is not capable of being cured within such ten (10) day notice period, fails to commence in good faith the curing of such default forthwith upon receipt of such written notice thereof from FEI and to continue to diligently pursue the curing of such default thereafter until cured.
- (b) If the District is in default of this Agreement, FEI may at its option and without liability therefore or prejudice to any other right or remedy it may have, including under the UCA, cease performing the Services and no such actions will relieve the District from any of its obligations under this Agreement.
- (c) In the event the default by the District is not fully remedied within thirty (30) days of receipt by the District of written notice from FEI, FEI may undertake the necessary steps to remedy the District's default at the District's sole expense and such action will not relieve the District from any of its obligations under this Agreement or, at its option, and without any liability, take whatever steps necessary to shut down the Energy System and terminate this Agreement without prejudice to any other right FEI may have hereunder or at law or otherwise.

#### 14.3 CROSS DEFAULT

- (a) If any Building experiences a Service Interruption at any time, the District may deliver a notice of such Service Interruption to FEI (a "Service Interruption Notice" to FEI);
- (b) If a Service Interruption continues for a period of 48 consecutive hours after the delivery of a Service Interruption Notice pursuant to Section 14.3(a), the District may deliver a notice of such continuing Service Interruption to FEI (a "Continuing Service Interruption Notice");
- (c) If a Service Interruption continues for a period of 120 consecutive hours after the delivery of a Continuing Service Interruption Notice, the District may at its option deliver a notice of such continuing Service Interruption to FEI (a "Service Failure Notice"); Within 60 days of either:
  - (i) the District's delivery of a Service Failure Notice pursuant to Section 14.3(c); or

- (ii) the District's delivery of a Continuing Service Interruption Notice pursuant to Section 14.3(b) that constitutes the fifth or greater Continuing Service Interruption Notice delivered in that calendar year;

the District may, at its option and without liability:

- (iii) terminate this Agreement without prejudice to any other right the District may have hereunder at law or otherwise; or
  - (iv) terminate the Energy System Rate Development Agreement and all Energy System Service Agreements (inclusive of this Agreement), without prejudice to any other right the District may have hereunder at law or otherwise.
- (d) For greater certainty, this Agreement shall be deemed to be terminated in the event that the District exercises its right to terminate all Energy System Service Agreement under another Energy System Service Agreement.

#### 14.4 SURVIVAL

Upon expiry or earlier termination of this Agreement for any reason, all claims, causes of action or other outstanding obligations remaining or being unfulfilled as of the expiry or termination of this Agreement and all of the provisions of this Agreement relating to the obligation or either the Parties to account to or indemnify the other and to pay to the other any amounts owing as at the date of expiry or termination in connection with this Agreement will survive such expiry or termination.

### **ARTICLE 15 – EXPIRY AND TERMINATION**

#### 15.1 EXPIRY

Upon expiry of the Term, unless otherwise agreed between the Parties and subject to agreement by the BCUC (if required pursuant to applicable Laws), the District may, at its option and by written notice to FEI within 30 days following the termination:

- (a) require FEI to remove the Energy System at FEI's cost in accordance with Section 15.5; or
- (b) acquire the Energy System from FEI at the Adjusted Energy System Purchase Price.

#### 15.2 TERMINATION OF THE ENERGY SYSTEM RATE DEVELOPMENT AGREEMENT

- (a) If the Energy System Rate Development Agreement is terminated as a result of the adoption, approval or implementation of a thermal energy rate tariff by the BCUC, this Agreement will automatically terminate effective as of the date of termination of the Energy System Rate Development Agreement;
- (b) If the Energy System Rate Development Agreement is terminated for cause by the District, this Agreement will be deemed to have been terminated pursuant to Section

14.1(c) as of the date of termination of the Energy System Rate Development Agreement, and Section 15.3 shall apply; and

- (c) If the Energy System Rate Development Agreement is terminated for cause by FEI, this Agreement will be deemed to have been concurrently terminated pursuant to Section 14.2(c) as of the date of termination of the Energy System Rate Development Agreement, and Section 15.4 shall apply.

### 15.3 TERMINATION BY THE DISTRICT FOR CAUSE

If the District terminates this Agreement pursuant to Sections 14.1(c) or 14.3, the District may, at its option and by written notice to FEI within 30 days following the termination:

- (a) require FEI to remove the Energy System, at its own cost, in accordance with Section 15.5; or
- (b) acquire the Energy System from FEI at the Adjusted Energy System Purchase Price.

### 15.4 TERMINATION BY FEI FOR CAUSE

If FEI terminates this Agreement pursuant to Section 14.2(c), FEI may, at its option and by written notice to the District:

- (a) remove the Energy System, at its own cost, in accordance with Section 15.5; or
- (b) require the District to purchase the Energy System from FEI at the Adjusted Energy System Purchase Price.

### 15.5 REMOVAL OF THE ENERGY SYSTEM

If FEI is required to remove the Energy System pursuant to Sections 15.1(a), 15.3(a) or 15.4(a) or otherwise upon expiry of this Agreement, FEI shall promptly remove those portions of the Energy System located within the Building and at surface level at FEI's cost, and FEI shall perform such removal activities using standards of performance that are equivalent to those that apply to the performance of the Services under this Agreement. Any portion of the Energy System not removed by FEI prior to the 30<sup>th</sup> day following the termination or expiry of the Agreement will, as of such day, be deemed to be automatically transferred to the District, and become the property of the District, all at no cost to the District.

### 15.6 ACQUISITION OF THE ENERGY SYSTEM

If the District elects to acquire the Energy System pursuant to Sections 15.1(b), 15.3(b) or 15.4(b):

- (a) the District shall pay the Adjusted Energy System Purchase Price to FEI within the later of 30 days of (i) the effective date of expiration or termination, and (ii) confirmation of the Adjusted Energy System Purchase Price; and

- (b) FEI will promptly execute and deliver any documents and records reasonably required by the District to effect and facilitate the transfer of the Energy System to the District, including bills of sale, operation and maintenance manuals and warranties, and will use reasonable commercial efforts to obtain any consents and approvals that may be required in relation to the transfer (including, without limitation, BCUC approval), provided that (i) FEI's obligations under this Section 15.6(b) shall arise only upon FEI's receipt of all amounts due and owing to FEI from the District under this Agreement, and (ii) during the period between the expiration or termination of the Agreement and FEI's receipt of amounts due and owing to FEI from the District under this Agreement, FEI shall continue to maintain, or shall permit the District to maintain, the Energy System in good working order.

Notwithstanding the foregoing, the Parties acknowledge and agree that FEI's ability to sell or otherwise transfer its interest in and to the Energy System to the District may be subject to BCUC approval under applicable Laws.

## **ARTICLE 16 - NON-COMPLIANCE AND ENVIRONMENTAL**

### **16.1 NOTIFICATION OF NON-COMPLIANCE**

FEI or the District (as applicable, the "Notifying Party") will promptly, upon becoming aware thereof, notify the other Party in writing of:

- (a) a Release of a Contaminant or any other occurrence or condition in the Energy System, the Lands or any adjacent property which could subject the other Party to any fines, penalties, orders or proceedings under applicable Laws;
- (b) any charge, order, investigation or notice of violation or non-compliance issued against the Notifying Party relating to the Energy System, or the operation of the Energy System, under any applicable Laws; and
- (c) any notice, claim, action or other proceeding by any third party against the Notifying Party in respect of the Design and Construction or the Services or concerning the Release or alleged Release of any Contaminants at or from the Energy System or the Lands.

### **16.2 NOTIFICATION BY FEI**

FEI will notify the appropriate Governmental Authorities of any Release of any Contaminants at or from the Energy System in accordance with applicable Laws. The District may, but is not obligated to, notify the appropriate Governmental Authorities of any Release of any Contaminants at or from the Energy System in accordance with applicable Laws.

### **16.3 OWNERSHIP OF CONTAMINANTS**

Notwithstanding any rule of law to the contrary, any Disclosed Contaminant Released from the Energy System, or any top soil, earth or other material containing a Contaminant for which FEI is responsible pursuant to Section 4.5 that is removed from the Lands by FEI or any person for

whom it is in law responsible, will be and remain the sole and exclusive property and responsibility of FEI and will not become the property of the District, notwithstanding the degree of its affixation to the Lands and notwithstanding the expiry or earlier termination of this Agreement.

#### 16.4 SURVIVAL OF OBLIGATIONS

The obligations of the Parties under this Article 16 will survive the expiry or termination of this Agreement.

### **ARTICLE 17 - FORCE MAJEURE**

#### 17.1 SUSPENSION

Subject to the other provisions of this Article 17, if either Party is unable or fails by reason of Force Majeure to perform in whole or in part any obligation or covenant set forth in this Agreement, with the exception of unpaid financial obligations, such inability or failure will be deemed not to be a breach of such obligation or covenant and the obligations of both Parties under this Agreement will be suspended to the extent necessary during the continuation of any inability or failure so caused by such Force Majeure.

#### 17.2 DEFINITION OF FORCE MAJEURE

For purposes of this Agreement, the term "Force Majeure" means any event or occurrence not within the control of the Party claiming Force Majeure and which by the exercise of reasonable diligence such Party is unable to prevent or overcome, including any acts of God, including lightning, earthquakes, storms, washouts, landslides, avalanches, fires, epidemics and floods; strikes, lockouts or other industrial disturbances; acts of the Queen's or public enemies, sabotage, wars, blockades, insurrections, riots or civil disturbances, fires, explosions, breakages of or accidents to machinery or lines of pipe; the laws, orders, rules, regulations, acts or restraints of any court or governmental or regulatory authority. For the purposes of this Article 17, a Party is deemed to have control over the actions or omissions of those persons to which it, its agents, contractors or employees, have delegated, assigned or subcontracted its obligations and responsibilities. For greater certainty, a Force Majeure shall not include any weather related events that do not exceed 25 year events as recorded by Environment Canada or as otherwise may be determined by the BCUC from time to time.

#### 17.3 EXCEPTIONS

Neither Party will be entitled to the benefit of Section 17.1 under any of the following circumstances:

- (a) the Energy System not being Commissioned;
- (b) to the extent that the inability or failure was caused by the negligence or contributory negligence of the Party claiming Force Majeure;

- (c) to the extent that the inability or failure was caused by the Party claiming Force Majeure having failed to diligently attempt to remedy the condition by taking all reasonable acts and to resume the performance of such covenants and obligations with reasonable dispatch;
- (d) if the inability or failure was caused by lack of funds or is in respect of any amount due hereunder; or
- (e) unless, as soon as possible after the happening of the occurrence relied upon or as soon as possible after determining that the occurrence was in the nature of Force Majeure and would affect the claiming Party's ability to observe or perform any of its covenants or obligations under this Agreement, the claiming Party will have given to the other Party notice to the effect that the claiming Party is unable by reason of Force Majeure (the nature whereof will be therein specified) to perform the particular covenants or obligations.

#### 17.4 RESUMPTION OF OBLIGATIONS

The Party claiming Force Majeure will give notice to the other Party, as soon as possible after the Force Majeure condition is remedied, to the effect that the same had been remedied and that such Party has resumed, or is then in a position to resume, the performance of its suspended covenants and obligations hereunder either in whole or in part.

#### 17.5 SETTLEMENT OF LABOUR DISPUTES

Notwithstanding any of the provisions of this Article 17, and subject to Section 17.3, the settlement of labour disputes or industrial disturbances is entirely within the discretion of the particular Party involved and the Party may make settlement of it at the time and on terms and conditions as it may deem to be advisable and no delay in making settlement will deprive the Party of the benefit of Section 17.1.

### **ARTICLE 18 - CONDITIONS PRECEDENT**

#### 18.1 CONDITIONS PRECEDENT OF FEI

The obligation of FEI to carry out the transactions contemplated by this Agreement is subject to fulfillment of the following conditions on or before such date as may be specified, which is for the sole benefit of FEI, and which may be waived by FEI in accordance with Section 18.2:

- (a) FEI obtaining the approval by its board of directors of the terms and conditions of this Agreement on or before the 30th day following the Effective Date, provided that if such approval cannot be obtained by this date due to the fact that the board of directors has not yet considered the transaction FEI reserves the right to extend the period of time to that date when the board next convenes.

## 18.2 FEI NOTICE OF WAIVER

If a condition set out in Section 18.1 has not been satisfied on or before the date as may be specified for its fulfillment, FEI may waive compliance with the condition in whole or in part, in its sole discretion, by written notice to the District, failing which delivery of written notice of satisfaction or waiver of such condition, this Agreement will, to the extent any further obligations of the Parties which remain unfulfilled, be null and void, without liability between the Parties hereto, and, neither Party will be under any further obligation to the other to complete the transactions or future transactions, as the case may be, contemplated by this Agreement.

## **ARTICLE 19 - DISPUTE RESOLUTION**

### 19.1 REFERENCE TO ARBITRATION

The Parties will attempt to resolve all disputes which may arise under, out of, in connection with or in relation to this Agreement by negotiation. They will provide full and timely disclosure to one another of all facts relevant to the disputes to facilitate those negotiations. If any such dispute remains unresolved, for any reason, fifteen (15) days after either Party requested the other Party to enter into negotiations to resolve it, or if the Parties agree to waive negotiations in respect of it, then either Party may submit that dispute for final resolution by arbitration administered by the British Columbia International Commercial Arbitration Centre (“BCICAC”) under its “Shorter Rules for Domestic Commercial Arbitration”. The seat of that arbitration will be Vancouver, British Columbia, Canada. The language of that arbitration will be English. Alternatively, the Parties may agree, within the 15 days referred to above, to submit that dispute for final resolution by arbitration in another manner.

### 19.2 BINDING DECISION

The decision of the arbitrator, regardless of what arbitration procedure is used, will, for all purposes of this Agreement, be final and binding on the Parties.

### 19.3 CONTINUATION OF SERVICES

Each of the Parties will perform all of its respective obligations under this Agreement notwithstanding the existence of any dispute that arises from time to time between the Parties in respect of any matter related to this Agreement or during the resolution of any dispute in accordance with this Article 19.

### 19.4 COSTS

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 case, the non-prevailing Party shall pay all costs and expenses of the arbitration, but not those of the prevailing Party.

## ARTICLE 20 - GENERAL

### 20.1 RESPONSIBILITY FOR COSTS

FEI's performance of any of its obligations under this Agreement, including without limitation the obligation to design, construct and install the Energy System as provided in Section 2.1, shall be at FEI's sole cost and expense, unless expressly provided otherwise in this Agreement;

### 20.2 EXERCISE OF DISCRETION

Where anything in this Agreement is identified as being in either Party's discretion, such Party will have the right to exercise such discretion in its own best interest without regard for the interest of the other Party.

### 20.3 COOPERATION

FEI and the District will at all times extend co-operation to each other to ensure the orderly management and operation of the Energy System.

### 20.4 SOLICITATION

Nothing in this Agreement precludes either Party from soliciting or entering into, other contracts with the other Party.

### 20.5 NOTICES

Any notice or other communication required or permitted to be given under this Agreement will be effective only if in writing and when it is actually delivered (which delivery may be by telecopy or other telecommunications device) to the Party for whom it is intended at the following address or such other address in British Columbia as such Party may designate to the other Party by notice in writing delivered in accordance with this Section 20.5:

(a) if to FEI:

FortisBC Energy Inc.  
10th Floor, 1111 West Georgia Street  
Vancouver, B.C.  
V6E 4M3

Attention: Gareth Jones  
Telephone: 250-380-5972  
Telecopy: 250-388-6876

(b) if to the District:

Board of Education of School District No. 37 (Delta)  
4585 Harvest Drive  
Delta, B.C.  
V4K 5B4

Attention: Frank Geyer  
Telephone: 604-952-5336  
Telecopy: 604-952-5375

Notwithstanding the foregoing, notices with respect to Force Majeure will be given in writing by telecopy, or orally in person or by telephone (to be confirmed by telecopy), to the person or persons designated from time to time by the Parties as the person or persons authorized to receive such notices.

## 20.6 CONFIDENTIALITY

The District and FEI will treat as confidential the terms of this Agreement and all Confidential Information (as defined below) and will at all times during the term of this Agreement and for a reasonable time thereafter hold the terms of this Agreement and all Confidential Information in confidence and neither Party will, without the prior written consent of the other Party, disclose or divulge the terms of this Agreement or any Confidential Information to any person, provided that nothing in this Section 20.6 will restrict or prevent either Party from making any disclosure of such terms or any Confidential Information:

- (a) which is reasonably necessary or desirable for such Party to carry out and give full effect to the terms, conditions and intent of this Agreement and the matters contemplated hereby;
- (b) which is required by any Law, including the Freedom of Information and Protection of Privacy Act (British Columbia);
- (c) to any Governmental Authority;
- (d) to the British Columbia Utilities Commission or other regulatory agency as part or in support of any regulatory application or submission;
- (e) to the directors, officers or employees of such Party or to an Affiliate of such Party or to the directors, officers or employees of an Affiliate of such Party;
- (f) to the professional advisors of such Party on the same terms of confidentiality;
- (g) which is already in the public domain; or
- (h) in connection with legal proceedings or steps being taken to remedy a breach or default under this Agreement by the other Party.

For the purposes of this Section 20.6, “Confidential Information” means proprietary information of either Party such as data, plans, drawings, manuals, or specifications which have been provided by such Party, its employees, contractors, agents, subcontractors, Affiliates to the other Party pursuant to this Agreement or proprietary information either Party conceived or developed by or for such Party concerning construction practices, operation and maintenance practices, agreements, marketing plans and strategies, profits, costs, pricing and systems of procedure (provided that “Confidential Information” does not include information which was disclosed to the receiving Party by a third Party (unless, to the knowledge of the receiving Party, the third Party is under an obligation of confidentiality to the other Party) or any information developed or conceived by the receiving Party without using the “Confidential Information” of the other Party).

#### 20.7 SEVERABILITY

If any provision of this Agreement is found or determined to be invalid, illegal or unenforceable it will be construed to be separate and severable from this Agreement and will not impair the validity, legality or enforceability of any other provisions of this Agreement, and the remainder of this Agreement will continue to be binding on the Parties as if such provision had been deleted.

#### 20.8 NO WAIVER

No waiver by either Party of any default by the other in the performance of any of the provisions of this Agreement will operate or be construed as a waiver of any other or future default or defaults hereunder, whether of a like or a different character. To be binding, any waiver of any provision of this Agreement must be clearly expressed in writing to be signed by the waiving Party.

#### 20.9 BURDEN AND BENEFIT

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

#### 20.10 GOVERNING LAW

This Agreement and all matters arising hereunder will be governed by the laws of British Columbia and the federal laws of Canada applicable in British Columbia.

#### 20.11 ENTIRE AGREEMENT

This Agreement contains the whole agreement between the Parties in respect of the subject matter hereof and there are no terms, conditions or collateral agreements express, implied or statutory other than as expressly set forth in this Agreement and this Agreement supersedes all of the terms of any written or oral agreement or understanding between the Parties.

#### 20.12 TIME OF ESSENCE

Time is of the essence of this Agreement.

#### 20.13 FURTHER ASSURANCES

Each Party will, at all times hereafter on demand by the other, execute and deliver or cause to be executed and delivered all such further documents and do all such further acts and things as may be reasonably requested by the other Party to evidence, carry out and give full effect to the intent and meaning of this Agreement and to assure the completion of the transactions contemplated hereby.

#### 20.14 AMENDMENTS TO BE IN WRITING

Except as set out in this Agreement, no amendment or variation of this Agreement will be effective or binding upon the Parties unless such amendment or variation is set out in writing and duly executed by the Parties.

#### 20.15 FACSIMILE

This Agreement may be executed by the Parties and transmitted by facsimile transmission and, if so executed, transmitted and received, this Agreement will for all purposes be effective as if the Parties had delivered and executed the original Agreement and each Party undertakes to provide the other Party with a copy of this Agreement bearing original signatures forthwith upon demand.

#### 20.16 SUBJECT TO LEGISLATION

Notwithstanding any other provision hereof, this Agreement and the rights and obligations of FEI and the District under this Agreement are subject to all present and future laws, rules, regulations and orders of any legislative body, governmental agency or duly constituted authority now or hereafter having jurisdiction over FEI or the District.

#### 20.17 EXPENSES

Each Party to this Agreement shall be responsible for the payment of all costs, expenses, legal fees and disbursements incurred or to be incurred by it in negotiating and preparing this Agreement and all documents required to be delivered under this Agreement and otherwise relating to the transactions contemplated by this Agreement.

#### 20.18 NO CONTRARY AGREEMENT

No Party shall enter into an agreement or other commitment with any person if such agreement or commitment has terms or provisions in conflict with or inconsistent with the terms of this Agreement or which could reasonably be expected to lead to actions or consequences that would result in the Party being in breach of the commitments and obligations of the Party pursuant to this Agreement unless such other agreement or commitment is expressly approved by the other Parties.

#### 20.19 NO PARTNERSHIP

Nothing herein shall be deemed or construed to create a joint venture, partnership, employment or agency relationship between the Parties for any purpose.

20.20 ASSIGNMENT

Neither Party may assign this Agreement or any of its rights or obligations under this Agreement, and FEI may not assign, transfer or sell all or any part of the Energy System, except:

- (a) with the consent of the other Party, such consent not to be unreasonably withheld, delayed or conditioned; or
- (b) in the case of FEI, to an Affiliate of FEI which is a "public utility" as defined in the *UCA* on notice to, but without the consent of, the District.

20.21 COUNTERPARTS

This Agreement may be executed in counterparts with the same effect as if the Parties had signed the same document. All counterparts will be construed together and will constitute one agreement.

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

**FORTISBC ENERGY INC.**

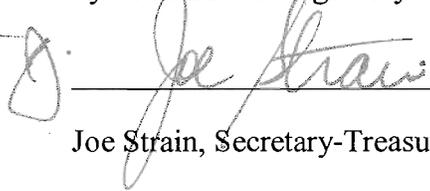
by its authorized signatory:

  
\_\_\_\_\_

Doug Stout,  
VP Energy Solutions & External Relations

**THE BOARD OF EDUCATION OF  
SCHOOL DISTRICT NO. 37 (DELTA)**

by its authorized signatory:

  
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Joe Strain, Secretary-Treasurer

# **SAMPLE SCHEDULE “A”**

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## **Energy System Description**

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### **Mechanical Equipment Plans and Specifications**

Equipment schedule:

- 2 boilers Mod Com 300;
- Pumps, piping, control valves and other equipment and accessories connected to the above equipment;
- BTU Meter; and
- Control systems for the above mentioned equipment.

Prior to commencement of the Mechanical Equipment construction, FEI shall provide detailed drawings to the District for review and acceptance.

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## **SCHEDULE “B”**

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# **Delta School District Site Rules for Contractors**

## **Delta School District Site Rules for Contractors**

### **1.0 Safety**

- 1.1 For the purposes of this section, “Safety Regulations” means the rules, regulations, and practices required by WorkSafeBC.
- 1.2 The Contractor shall be solely responsible for site safety during the execution of all assigned construction and maintenance activities, including work performed by subcontractors and suppliers, and for compliance with the Safety Regulations, and shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the work.
- 1.3 If the District is of the reasonable opinion that the Contractor has not taken such precautions as are necessary to ensure compliance with the requirements of Clause 1.2, the District may take or order any remedial measures which it deems necessary, including stopping the performance of all or any portion of the work, and the District may use the employees of itself, the Contractor, any subcontractor or any other contractors to perform such remedial measures. The Contractor acknowledges and agrees that any failure by the Contractor to comply with the Safety Regulations shall constitute a default of the Contractor's contractual obligations and the District may issue a written notice instructing the Contractor to correct the default in the two (2) working days immediately following receipt of such notice.
- 1.4 The Contractor shall file any notices or any similar document (including, without limitation, a Notice of Project where applicable) required pursuant to the Safety Regulations. This duty of the Contractor will be considered to be included in the work and no separate payment therefore will be made to the Contractor.
- 1.5 The Contractor shall develop, maintain and supervise for the duration of the work a comprehensive safety program that will effectively incorporate and implement all required safety precautions. The program shall, as a minimum, respond fully to the Safety Regulations and general construction practices for the safety of persons or property, including without limitation the WorkSafeBC regulations that may be applicable (e.g. WHMIS, dust control, etc.).
- 1.6 The Contractor shall provide a copy of the safety program described in Clause 1.5 to the District prior to the commencement of the work and shall, at all times require, as far as it is reasonably practical to do so, that every employer and worker performing work in respect of the project complies with such program.
- 1.7 The Contractor shall arrange regular safety meetings at its expense, record the minutes of such meetings and maintain a complete file for review by the appropriate authorities.
- 1.8 The Contractor shall supply and maintain, at its own expense, at its office or other well-known place at the work site, safety equipment necessary to protect the workers and general public against accident or injury as prescribed by the governing authorities.
- 1.9 The Contractor shall supply and maintain all articles necessary for giving first-aid to any person who may be injured on the work site and shall establish an emergency procedure for the immediate removal of any injured person to a hospital or a doctor's care in accordance with the Safety Regulations.
- 1.10 The Contractor shall, as required under the Safety Regulations, promptly report all accidents of any sort arising out of or in connection with the performance of the work whether on or adjacent to the work site, giving full details and statements of witnesses. The District shall be copied on all accident reports and investigation reports.

## **2.0 Security and Access**

- 2.1 **Site and Building Access:** The District's Maintenance Services Department will issue gate and building keys, electronic access cards (complete with instructions as to how to arm/disarm the building intrusion alarm system and how to contact the alarm monitoring station) and identification badges for the Contractor to enter the site and building, disarm/arm the building intrusion alarm system, and access the portions of the site where the Contractor's work is taking place. The Contractor and all subcontractors must check in at the school office (if occupied by District staff) prior to entering other parts of the building. The access cards, keys and identification badges shall be promptly returned to the District at the end of the contract.
- 2.2 **Security:** The Contractor shall assume all responsibility for the security of the work site. The Contractor must ensure that all windows, doors and gates are secure and the building intrusion alarm system is armed (unless District staff are still in the building) at the end of the workday. The Contractor must also safeguard the rest of the building and/or site from access through possible open construction areas. Security doors shall at all times remain closed and shall not be propped open, even for a short time. The Contractor is responsible for any costs arising when the District's security runner services is called to attend a work site for security matters resulting from the Contractor's negligence.
- 2.3 **Normal School Hours:** Normal hours of operation for the District are 0730h-1600h Monday to Friday, excluding statutory holidays. For after-hours and weekend work, the Contractor must notify the District's Maintenance Services Department at least one business day in advance of the work.

## **3.0 Conduct**

- 3.1 **Noise Due to Construction or Maintenance Activities:** In accordance with the Delta Noise Bylaw 1906, "no person shall carry on or cause to be carried any construction work, reconstruction, alteration, repair or demolition of a building or structure, the operation of machinery, or works in connection with any excavation or highway before 07:00h or after 1900h and day of the week from Monday to Friday, inclusive, before 0900h or after 1700h on Saturdays, or at any time Sundays. The Contractor shall respect the classroom operations in the vicinity of the work site and as such will make every attempt to limit noisy work to times outside of classroom operation or to adequately dampen, silence and/or soundproof equipment that generates noise to mitigate disruption to the classrooms.
- 3.2 **Communication devices:** Radio and cell phone volume shall be at the minimum volume which is consistent with the ability to operate the device.
- 3.3 **Roadways:** All speed limits and other traffic rules must be obeyed and access to the roadways should not be impeded. Parking and secure storage of materials and equipment by the Contractor and subcontractors shall only be in designated areas only.
- 3.4 **Cleanliness:** The work site must be maintained for an orderly appearance on a daily basis. Trash and construction debris shall be contained at all times and removed from the work site weekly.
- 3.5 **Toilets:** All temporary toilets shall have their doors faced away from streets. In no cases shall a worker utilize any staff washroom or other staff facilities at the work site, except as otherwise agreed in writing by the District. Under no circumstances will workers be permitted to use student washrooms.
- 3.6 **Identification Badges:** All workers shall have a District-assigned identification badge that clearly indicates the company's name and the worker's name. It is to be worn whenever at the work site.

- 3.7 **Smoking:** Smoking is not permitted on District property.
- 3.8 **Alcohol/Drugs:** No alcoholic beverages or non-prescription drugs shall be brought or consumed at the work site.
- 3.9 **Animals:** No dogs or other animals, are permitted at the work site without the written consent of the District.
- 3.10 **Fitness for Work:** All workers must be fit for work at all times. The District retains the right to request individuals leave the work site if unfit for any reason including, without limitation, inebriation, taking drugs, injury, fatigue, rudeness or any other reason that may affect the quality of the work or represents a breach of these rules.
- 3.11 **Theft:** Workers who steal from occupants or the District shall be immediately ejected from the work site. The Contractor is responsible for all such thefts irrespective of whether the worker is an employee of the Contractor or a subcontractor.
- 3.12 **Discrimination and Harassment:** The District actively promotes a safe and secure school environment and as such does not tolerate violations of human rights legislation, including:
- (a) discriminatory acts against any person with respect to the work or school environment or any educational program or service provided to or by that person because of race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age of that person, or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person;
  - (b) all forms of actual, attempted or threatened physical harm directed at any person; or
  - (c) any form of sexual harassment such as unwelcome sexual advances with actual or implied work related consequences; unwelcome remarks, questions, jokes or innuendo of a sexual nature including sexist comments or sexual invitations; verbal abuse, intimidation or threats of a sexual nature; unwelcome leering, staring or making sexual gestures; whistling or catcalls; display of pornographic or other sexual materials; offensive pictures, graffiti, cartoons or sayings; unwanted physical contact such as touching, patting, pinching or hugging; and physical assault of a sexual nature

## **SCHEDULE “C”**

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### **List of Environmental Reports**



**ASBESTOS MATERIALS SURVEY  
AND RISK ASSESSMENT**

**OF**

**CLIFF DRIVE ELEMENTARY  
5025 – 12<sup>th</sup> Avenue  
Delta, BC**

**PREPARED FOR:**

**DELTA SCHOOL DISTRICT  
Maintenance Facility  
7186 Brown Street  
Delta, BC  
V4G 1G8**

**PREPARED BY:**

**ACM ENVIRONMENTAL CORPORATION  
#217 - 2323 Quebec Street  
Vancouver, BC  
V5T 4S7  
604-873-8599**

**December 2005**

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## **EXECUTIVE SUMMARY**

A.C.M. Environmental Corporation (ACM) was retained by the Delta School District to perform an Asbestos Materials Survey and Risk Assessment for Cliff Drive Elementary located at 5025 – 12<sup>th</sup> Avenue, Delta, BC

The assessment involved an inspection of all areas of the building. The objective of the assessment was to identify the types and extent of asbestos containing materials within the building and any risks associated with the materials and the regular usage of the building.

The assessment was conducted using both visual and physical assessment techniques. Samples of materials suspected of containing asbestos were collected and forwarded, using proper chain of custody protocols, to Prezant Associates, Inc. for asbestos analysis. Asbestos sample results are located in Appendix A of this report.

Previous asbestos sampling information for the building was reviewed prior to conducting the survey assessment. ACM previously collected 2 bulk samples from the school on June 20<sup>th</sup>, 1990. The sampling identified 2 pipe elbows to be asbestos containing and was not re-sampled during the latest survey but would have been verified.

In summary, the findings from the assessment conclude that asbestos was found within the construction materials of the building, however, no PCB or Mercury containing materials were found within the equipment of the building.

Two types of asbestos containing materials were observed; vinyl floor tile materials and drywall taping compound materials. Within the context of the report, areas have been detailed as to the locations of the asbestos containing materials, the content of asbestos where applicable, and the required procedures to be followed for removal of these materials, as required.

The hazardous materials survey was conducted using non-destructive and some limited destructive testing methods. Areas within walls were not inspected as access was not possible without causing extensive damage to the walls. It should be noted that there is a possibility of asbestos containing materials existing within inaccessible wall and ceiling cavities, and under sub-floors. Possible asbestos-containing materials which may exist in these areas may include but are not limited to: insulation materials (mechanical or construction), secondary layers of drywall or flooring, etc.

Roofing materials were not sampled at this time as the integrity of the waterproof membrane would be compromised, possibly voiding insurance coverage in the

event of a water leak. If the roofing materials are to be disturbed during a renovation project, they must be sampled prior to the work taking place.

A random number of fluorescent lighting fixtures were opened up and inspected for possible PCB containing ballasts. No PCB containing ballasts were observed within the fluorescent lighting fixtures inspected, although some may exist, as not all fixtures were opened. No Mercury containing thermostat switches were observed within the building.

## **INTRODUCTION**

A.C.M. Environmental Corporation (ACM) was retained by the Delta School District to perform an Asbestos Materials Survey and Risk Assessment for Cliff Drive Elementary located at 5025 – 12<sup>th</sup> Avenue, Delta, BC. The building may undergo renovations in the near future and all areas of the building were inspected and/or sampled during this survey.

The objective of the assessment was to identify the types and extent of asbestos containing construction materials within the accessible areas of the building. The assessment at this time involved an inspection of all areas of the building not including the roofing materials.

The survey and assessment was conducted on September 7<sup>th</sup>, 2005 by Mr. Barry O'Regan, BST, ISO14001, EMS, IA, Project Manager, for ACM. Twenty one (21) representative bulk samples of materials suspected of containing asbestos were collected for analysis and are included as Appendix A of this report.

Previous asbestos sampling information for the building was reviewed prior to conducting the survey assessment. ACM previously collected bulk samples from the school on June 22<sup>nd</sup>, 1990. The sampling identified the boiler tank insulation, pipe elbows and fittings to be asbestos containing and was not re-sampled during the September 6<sup>th</sup>, 2005 survey.

## **METHODOLOGY**

The hazardous materials survey was conducted using non-destructive and some limited destructive testing methods. Areas within walls were not inspected as access was not possible without causing extensive damage to the walls. It should be noted that there is a possibility of asbestos containing materials existing within inaccessible wall and ceiling cavities, and under sub-floors. Possible asbestos-containing materials which may exist in these areas may include but are not limited to: insulation materials (mechanical or construction), secondary layers of drywall or flooring, etc.

The U.S. Environmental Protection Agency (USEPA) Guidance Document was selected for use in this study (1). The document identifies factors associated with the "condition" and the "potential for disturbance or erosion" of asbestos containing materials. These factors help to define the fibre release potential of the suspect asbestos containing materials and were used in a qualitative evaluation of materials found in the surveyed areas. Recommendations have been substantiated by additional information utilized from other documentation cited in the Reference Section of this report.

The bulk samples of suspect asbestos containing materials were forwarded, using proper chain of custody protocols, to Prezant Associates, Inc. for asbestos analysis. The samples were analyzed using polarized light microscopy (PLM) with dispersion staining in accordance with U.S. EPA method 600/R-93/116, "Method for Determination of Asbestos in Bulk Building Materials".

Other hazardous materials were visually inspected and are noted in this report.

The survey relied on the abilities and experience of the surveyor to gain access and identify possible asbestos containing materials. All areas of the building were accessed during the assessment excluding the roof.

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## **RESULTS & ASSOCIATED RISK LEVELS**

### **ASBESTOS**

Two types of asbestos containing materials were identified during this survey which will or could be affected by any potential renovation or demolition activities: vinyl floor tile and drywall taping compound materials. A breakdown for each type of material is as follows:

#### **Vinyl Floor Tile:**

Asbestos containing vinyl floor tile materials were observed within Rooms 120A-Storage room, Gym storage room, Room 128 – HUB, Library, Kitchen, and Copy room. The asbestos containing vinyl floor tile materials observed in the Gym storage room and kitchen were found to contain <1% Chrysotile asbestos were a pale grey in color and found to contain 4% Chrysotile asbestos. The vinyl floor tile materials observed in Room 123 were olive green in color and found to contain <1% Chrysotile asbestos. The materials are presently in fair to good condition.

Prior to any activities taking place which could disturb the asbestos containing vinyl floor tile materials, they must first be removed and disposed of in accordance with applicable regulations. The removal of the vinyl floor tile materials will pose a moderate risk of asbestos exposure to the workers involved, therefore as a minimum, MODERATE RISK asbestos work procedures will be required for the removal of the asbestos containing vinyl floor tile materials. The vinyl floor tile materials which are less than 1% Chrysotile asbestos do not have to be disposed of as asbestos waste.

#### **Drywall Taping Compound:**

Asbestos containing drywall taping compound materials were observed within the boiler room ceiling of the main building and was found to contain <1% Chrysotile asbestos. The asbestos containing drywall taping compound materials are presently in fair condition. Samples of drywall taping compound materials collected from the storage room 129, Room 226, staff room, and Room 132 – copy room were found to be non-asbestos containing. All original drywall materials encountered within the building are to be treated as asbestos containing until further sampling determines otherwise.

WCB Regulations do not treat any materials with less than 1% asbestos as asbestos containing. Prior to any activities taking place which could disturb the asbestos containing drywall materials, workers should still use moderate risk

procedures when exposed to the asbestos containing drywall materials, even in materials with less than 1% asbestos concentrations. The WCB states that workers must be properly protected from any potential exposure to airborne asbestos fibres. It is recommended that any work affecting the asbestos containing drywall materials be done using a minimum of moderate risk asbestos work procedures. Therefore as a minimum, MODERATE RISK asbestos work procedures will be required for the removal of the asbestos containing materials. The drywall materials which are less than 1% do not have to be disposed of in accordance with applicable regulations as asbestos waste.

### **POLYCHLORINATED BIPHENYLS (PCBs)**

A random number of fluorescent light ballasts were visually inspected for possible PCB containing ballasts. No PCB containing ballasts were observed within the fluorescent lighting fixtures inspected in both buildings, although some may exist, as not all fixtures were opened up.

PCB containing fluorescent light ballasts do not pose a risk to occupants of the building. If any PCB containing ballasts are encountered during any renovations of the building, they must be separated from the fixtures and disposed of properly in accordance with applicable regulations.

### **MERCURY THERMOSTATS**

No thermostats observed within the building were found to have Mercury containing switches within them. If any Mercury containing thermostat switches are encountered within the building during renovation or repair activities, they must be removed intact from the thermostats and disposed of properly in accordance with applicable regulations.

### **RECOMMENDATIONS**

Prior to beginning any work that may impinge upon the hazardous materials within the building, the following must be performed:

- 1.) Any affected asbestos containing vinyl floor tile or drywall materials in the building must be removed in accordance with applicable regulations. Only the vinyl floor tiles which are more than 1% will have to be disposed of in accordance with the applicable regulations. The removal of the asbestos containing vinyl floor tile materials will require MODERATE RISK asbestos work procedures to be followed.
- 2.) If any Mercury containing thermostat switches are encountered during any renovation or repair activities within the building, they must be removed and disposed of in accordance with applicable regulations.
- 3.) If any PCB containing ballasts are encountered during any renovation or repair activities within the building, they must be removed and disposed of in accordance with applicable regulations.
- 4.) If any suspect asbestos containing materials are encountered within inaccessible wall or ceiling cavities, or under floors, during renovation or demolition activities, the work in the immediate area must stop and the supervisor contacted for further direction.

**STATEMENT OF LIMITATIONS**

The ACM report is intended to direct the Client's attention to recognised environmental conditions and to potential sources of environmental contamination. The findings and conclusion regarding contamination of the property are based solely on the extent of observations and information gathered during the assessment. Nothing in the report is intended to express any legal opinion upon environmental liabilities relating to the site or whether operations legally conformed with relevant legislative requirements.

Furthermore, it must be understood that changing circumstances in the physical environment, the use of the property, as well in changes in any substances stored, used, handled at the property could alter radically the conclusions and information contained in this report. Therefore, it is important that the property is periodically re-evaluated and the client kept informed as to developments, which may impact the property. This report is not intended to be used as contract specifications.

**A.C.M. ENVIRONMENTAL CORPORATION**

---

James McArthur, ASCT  
Environmental Technician

**REFERENCES**

- 1) USEPA. 1985. U.S. Environmental Protection Agency. "Guidance for Controlling Asbestos-Containing Materials in Buildings". Washington, DC: Office of Toxic Substances, USEPA.
- 2) Lory EE, Coin DC. 1981. "Management Procedure for Assessment of Friable Asbestos Insulating Material". Port Hueneme, CA: Civil Engineering Laboratory, Naval Construction Battalion Center.
- 3) Workers' Compensation Board of British Columbia, effective 15 April 1998, and all current amendments. Occupational Health and Safety Regulations.
- 4) 2002 Edition - Workers' Compensation Board of British Columbia. Safe Work Practices for Handling Asbestos.

## **APPENDIX A**

### **Bulk Sample Results**



330 6th Ave. North, Suite 200 Seattle, WA 98109  
 OFFICE: (206) 281-8858 FAX: (206) 281-8922

## Bulk Asbestos Fiber Analysis

**ACM Environmental**  
 2323 Quebec Street, Suite 211  
 Vancouver, BC

Project Location: Cliff Drive Elementary School

PAI Batch Number: **05-2396**  
 Client Job Number:  
 Number of Samples: **21**  
 Turn Around Time: **10 day**

Batch Number:	05-2396	<b>ACM Environmental</b>
Lab Sample Number:	05013200	<i>Cliff Drive Elementary School</i>
Client Sample Number:	<b>3048-316</b>	

**L-1 Dull gray opaque pliable rubbery material**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		92% Rubber Particles
		5% Calcite Filler and Binder
		3% Mineral Fragments

Comments:

**L-2 Lime green paint**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		100% Paint

Comments:

Batch Number:	05-2396	<b>ACM Environmental</b>
Lab Sample Number:	05013201	<i>Cliff Drive Elementary School</i>
Client Sample Number:	<b>3048-317</b>	

**L-1 White paint**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		100% Paint

Comments:

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/29/2005  
 10/12/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson

10/12/2005



NVLAP LAB CODE 200613-0



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### Bulk Asbestos Fiber Analysis

#### L-2 Pale gray crystalline powdery fibrous material

<b>Asbestos Fibrous Components:</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
<1% <b>Chrysotile</b>		92% Calcite Filler and Binder
		5% Vermiculite
		>2% Mineral Fragments

**Comments:**

This layer contains <1% chrysotile asbestos.

Batch Number:	05-2396	<b>ACM Environmental</b>
Lab Sample Number:	05013202	
Client Sample Number:	<b>3048-318</b>	<i>Cliff Drive Elementary School</i>

#### L-1 Pale grayish white hard thin tile material with pink streaks

<b>Asbestos Fibrous Components:</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
2% <b>Chrysotile</b>		60% Calcite Filler and Binder
		35% Mineral Filler and Binder
		3% Vinyl Filler and Binder

**Comments:**

Tuffs of white chrysotile asbestos were seen sticking out of the side of this tile material.

#### L-2 Black opaque mastic

<b>Asbestos Fibrous Components:</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
<b>No Asbestos Detected</b>		90% Asphalt Filler and Binder
		5% Mineral Fragments
		5% Filler and Binder

**Comments:**

Batch Number:	05-2396	<b>ACM Environmental</b>
Lab Sample Number:	05013203	
Client Sample Number:	<b>3048-319</b>	<i>Cliff Drive Elementary School</i>

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/29/2005  
 10/12/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson

10/12/2005



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### Bulk Asbestos Fiber Analysis

**L-1 Pale violet-white paint**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 100% Paint

**Comments:**

**L-2 White crystalline powdery material**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 96% Calcite Filler and Binder  
2% Perlite  
2% Mineral Fragments

**Comments:**

Batch Number:	05-2396	<b>ACM Environmental</b>
Lab Sample Number:	05013204	<i>Cliff Drive Elementary School</i>
Client Sample Number:	3048-320	

**L-1 Pale gray fine powdery material**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 60% Sand  
35% Talc Filler and Binder  
5% Mineral Fragments

**Comments:**

**L-2 Black asphaltic fibrous thick material**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 65% Cellulose  
30% Asphalt Filler and Binder  
5% Mineral Fragments

**Comments:**

Sampled By: James McArthur  
Received By: John McCaslin 9/29/2005  
Reviewed By: George McCaslin 10/12/2005

Analyzed By: Deitrie Hanson 10/12/2005



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## Bulk Asbestos Fiber Analysis

Batch Number:	05-2396	<b>ACM Environmental</b>
Lab Sample Number:	05013205	
Client Sample Number:	<b>3048-321</b>	<i>Cliff Drive Elementary School</i>

### L-1 Black thick pliable asphaltic material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		60% Asphalt Filler and Binder
		35% Sand
		5% Mineral Fragments

**Comments:**

### L-2 Black thick pliable asphaltic material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		65% Asphalt Filler and Binder
		30% Mineral Filler and Binder
		5% Filler and Binder

**Comments:**

Batch Number:	05-2396	<b>ACM Environmental</b>
Lab Sample Number:	05013206	
Client Sample Number:	<b>3048-322</b>	<i>Cliff Drive Elementary School</i>

### L-1 Pale beige hard tile material with brown streaks

<b>Asbestos Fibrous Components:</b> <b>&lt;1% Chrysotile</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		55% Calcite Filler and Binder
		40% Mineral Fragments
		>4% Vinyl Filler and Binder

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/29/2005  
 10/12/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson

10/12/2005



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**Bulk Asbestos Fiber Analysis**

**L-2 Black mastic**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
 96% Asphalt Filler and Binder  
 2% Mineral Fragments  
 2% Filler and Binder

**Comments:**

Batch Number: 05-2396  
 Lab Sample Number: 05013207  
 Client Sample Number: 3048-323

**ACM Environmental**  
*Cliff Drive Elementary School*

**L-1 Pale pinkish beige pliable sheet vinyl tile material**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:  
 35% Cellulose

Non-Fibrous Components:  
 60% Rubber Particles  
 5% Vinyl Filler and Binder

**Comments:**

**L-2 Black asphaltic fibrous papery backing**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:  
 60% Cellulose

Non-Fibrous Components:  
 35% Asphalt Filler and Binder  
 5% Filler and Binder

**Comments:**

**L-3 Red opaque mastic**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
 90% Resin and Binder  
 8% Mineral Fragments  
 2% Filler and Binder

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin 9/29/2005  
 Reviewed By: George McCaslin 10/12/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 10/12/2005



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### Bulk Asbestos Fiber Analysis

Batch Number:	05-2396	<b>ACM Environmental</b>
Lab Sample Number:	05013208	
Client Sample Number:	<b>3048-324</b>	<i>Cliff Drive Elementary School</i>

#### Pale gray hard crystalline powdery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		95% Calcite Filler and Binder
		3% Mineral Fragments
		2% Filler and Binder

**Comments:**

Batch Number:	05-2396	<b>ACM Environmental</b>
Lab Sample Number:	05013209	
Client Sample Number:	<b>3048-325</b>	<i>Cliff Drive Elementary School</i>

#### L-1 Pale grayish white hard tile material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		60% Calcite Filler and Binder
		35% Mineral Filler and Binder
		5% Vinyl Filler and Binder

**Comments:**

#### L-2 Black mastic

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		92% Asphalt Filler and Binder
		5% Mineral Fragments
		3% Filler and Binder

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/29/2005  
 10/12/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson

10/12/2005



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### Bulk Asbestos Fiber Analysis

Batch Number:	05-2396	<b>ACM Environmental</b>
Lab Sample Number:	05013210	
Client Sample Number:	<b>3048-326</b>	<i>Cliff Drive Elementary School</i>

#### L-1 Dull gray hard tile material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
2% <b>Chrysotile</b>		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		3% Miscellaneous Particles

Comments:

#### L-2 Golden tan mastic on black mastic

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		82% Asphalt Filler and Binder
		15% Resin and Binder
		3% Mineral Fragments

Comments:

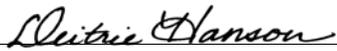
Batch Number:	05-2396	<b>ACM Environmental</b>
Lab Sample Number:	05013211	
Client Sample Number:	<b>3048-327</b>	<i>Cliff Drive Elementary School</i>

#### Dull white hard chalky powdery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		70% Calcite Filler and Binder
		25% Perlite
		5% Mineral Fragments

Comments:

Sampled By: James McArthur  
 Received By: John McCaslin 9/29/2005  
 Reviewed By: George McCaslin 10/12/2005

  
 Analyzed By: Deitrie Hanson 10/12/2005



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**Bulk Asbestos Fiber Analysis**

Batch Number: 05-2396	<b>ACM Environmental</b>
Lab Sample Number: 05013212	
Client Sample Number: 3048-328	<i>Cliff Drive Elementary School</i>

**L-1 Yellow opaque mastic**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 90% Resin and Binder 10% Mineral Fragments
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Comments:

**L-2 White paint**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 100% Paint
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Comments:

**L-3 Dull gray hard tile material**

<b>Asbestos Fibrous Components:</b> 2% Chrysotile	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 50% Calcite Filler and Binder 45% Mineral Filler and Binder 3% Vinyl Filler and Binder
--	----------------------------------	---

Comments:

**L-4 Black mastic**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 92% Asphalt Filler and Binder 5% Mineral Fragments 3% Filler and Binder
---	----------------------------------	--

Comments:

Sampled By: James McArthur  
 Received By: John McCaslin 9/29/2005  
 Reviewed By: George McCaslin 10/12/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 10/12/2005



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## Bulk Asbestos Fiber Analysis

Batch Number:	05-2396	<b>ACM Environmental</b>
Lab Sample Number:	05013213	
Client Sample Number:	<b>3048-329</b>	<i>Cliff Drive Elementary School</i>

**L-1 Black asphaltic granular material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 65% Sand 30% Asphalt Filler and Binder 5% Mineral Fragments
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**Comments:**

**L-2 Pale gray hard granular material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 90% Sand 8% Mineral Fragments 2% Miscellaneous Particles
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**Comments:**

Batch Number:	05-2396	<b>ACM Environmental</b>
Lab Sample Number:	05013214	
Client Sample Number:	<b>3048-330</b>	<i>Cliff Drive Elementary School</i>

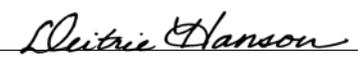
**L-1 Pale pink hard tile material**

<b>Asbestos Fibrous Components:</b> <b>&lt;1% Chrysotile</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 45% Calcite Filler and Binder 40% Mineral Filler and Binder 10% Vinyl Filler and Binder >4% Miscellaneous Particles
---	----------------------------------	---

**Comments:**

This tile contains <1% chrysotile asbestos.

Sampled By: James McArthur  
 Received By: John McCaslin 9/29/2005  
 Reviewed By: George McCaslin 10/12/2005

  
 Analyzed By: Deitrie Hanson 10/12/2005



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OFFICE: (206) 281-8858 FAX: (206) 281-8922

### Bulk Asbestos Fiber Analysis

**L-2 Black resinous mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		90% Asphalt Filler and Binder
		8% Mineral Filler and Binder
		2% Filler and Binder

**Comments:**

Batch Number: 05-2396	<b>ACM Environmental</b>
Lab Sample Number: 05013215	<i>Cliff Drive Elementary School</i>
Client Sample Number: <b>3048-331</b>	

**L-1 Golden yellow flaky paint**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		100% Paint

**Comments:**

**L-2 Dull pale gray pliable rubbery material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		80% Rubber Particles
		15% Calcite Filler and Binder
		5% Resin and Binder

**Comments:**

Batch Number: 05-2396	<b>ACM Environmental</b>
Lab Sample Number: 05013216	<i>Cliff Drive Elementary School</i>
Client Sample Number: <b>3048-332</b>	

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/29/2005  
 10/12/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson

10/12/2005



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### Bulk Asbestos Fiber Analysis

**L-1 Pale gray-white paint**

**Asbestos Fibrous Components:** No Asbestos Detected  
**Non-Asbestos Fibrous Components:**  
**Non-Fibrous Components:** 100% Paint

**Comments:**

**L-2 White crystalline powdery material**

**Asbestos Fibrous Components:** No Asbestos Detected  
**Non-Asbestos Fibrous Components:**  
**Non-Fibrous Components:** 92% Calcite Filler and Binder  
5% Perlite  
3% Mineral Fragments

**Comments:**

Batch Number:	05-2396	<b>ACM Environmental</b>
Lab Sample Number:	05013217	
Client Sample Number:	<b>3048-333</b>	<i>Cliff Drive Elementary School</i>

**L-1 White paint**

**Asbestos Fibrous Components:** No Asbestos Detected  
**Non-Asbestos Fibrous Components:**  
**Non-Fibrous Components:** 100% Paint

**Comments:**

**L-2 Pale gray fibrous opaque material**

**Asbestos Fibrous Components:** No Asbestos Detected  
**Non-Asbestos Fibrous Components:** 55% Cellulose  
30% Mineral Wool  
**Non-Fibrous Components:** 10% Perlite  
5% Filler and Binder

**Comments:**

Sampled By: James McArthur  
Received By: John McCaslin 9/29/2005  
Reviewed By: George McCaslin 10/12/2005

Analyzed By: Deitrie Hanson 10/12/2005



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OFFICE: (206) 281-8858 FAX: (206) 281-8922

### Bulk Asbestos Fiber Analysis

Batch Number:	05-2396	<b>ACM Environmental</b>
Lab Sample Number:	05013218	
Client Sample Number:	<b>3048-334</b>	<i>Cliff Drive Elementary School</i>

#### L-1 Pale grayish white paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 100% Paint
--	----------------------------------	---------------------------------------

Comments:

#### L-2 White crystalline powdery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 90% Calcite Filler and Binder 5% Perlite 5% Mineral Fragments
--	----------------------------------	--

Comments:

Batch Number:	05-2396	<b>ACM Environmental</b>
Lab Sample Number:	05013219	
Client Sample Number:	<b>3048-335</b>	<i>Cliff Drive Elementary School</i>

#### L-1 Yellow-beige hard tile material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 45% Calcite Filler and Binder 40% Mineral Filler and Binder 10% Vinyl Filler and Binder 5% Miscellaneous Particles
--	----------------------------------	--

Comments:

Sampled By: James McArthur  
 Received By: John McCaslin 9/29/2005  
 Reviewed By: George McCaslin 10/12/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 10/12/2005



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330 6th Ave. North, Suite 200 Seattle, WA 98109  
OFFICE: (206) 281-8858 FAX: (206) 281-8922

### Bulk Asbestos Fiber Analysis

#### L-2 Golden tan mastic on black mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		92% Resin and Binder
		5% Asphalt Filler and Binder
		3% Mineral Fragments

**Comments:**

Batch Number: 05-2396	<b>ACM Environmental</b>
Lab Sample Number: 05013220	
Client Sample Number: 3048-336	<i>Cliff Drive Elementary School</i>

#### L-1 Pale pinkish beige hard tile material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
<1% <b>Chrysotile</b>		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		>4% Miscellaneous Particles

**Comments:**

This layer contains <1% chrysotile asbestos.

#### L-2 Black and golden tan resinous mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		55% Resin and Binder
		40% Asphalt Filler and Binder
		5% Mineral Filler and Binder

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin 9/29/2005  
 Reviewed By: George McCaslin 10/12/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 10/12/2005



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**Bulk Asbestos Fiber Analysis**

**L-3 Pale beige hard tile material**

<p><b>Asbestos Fibrous Components:</b>                  &lt;1% <b>Chrysotile</b></p>	<p><b>Non-Asbestos Fibrous Components:</b></p>	<p><b>Non-Fibrous Components:</b>                  45% Calcite Filler and Binder                  40% Mineral Filler and Binder                  10% Vinyl Filler and Binder                  &gt;4% Miscellaneous Particles</p>
--	--	--

**Comments:**  
 This layer contains <1% chrysotile asbestos.

**L-4 Black mastic**

<p><b>Asbestos Fibrous Components:</b>  <b>No Asbestos Detected</b></p>	<p><b>Non-Asbestos Fibrous Components:</b></p>	<p><b>Non-Fibrous Components:</b>                  90% Asphalt Filler and Binder                  5% Mineral Fragments                  5% Filler and Binder</p>
---	--	--

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin 9/29/2005  
 Reviewed By: George McCaslin 10/12/2005

*Deitrie Hanson*

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Analyzed By: Deitrie Hanson 10/12/2005

## **APPENDIX B**

### **Photographs**



Typical asbestos containing 12" Pale grey vinyl floor tiles

**ENERGY SYSTEM SERVICE AGREEMENT**

**DELTA MANOR EDUCATION CENTRE**

**THIS AGREEMENT** dated for reference the 26<sup>th</sup> day of September, 2011.

**BETWEEN:**

**THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 37 (DELTA)**  
a corporation established under the School Act R.S.B.C. 1996, c. 412 having an  
office at 4585 Harvest Drive, Delta, British Columbia, V4K 5B4

(the "District")

OF THE FIRST PART

**AND:**

**FORTISBC ENERGY INC.,** a company duly incorporated under the laws of the  
Province of British Columbia, having its registered office at 10th Floor, 1111  
West Georgia Street, Vancouver, B.C. V6E 4M3

("FEI")

OF THE SECOND PART

**WHEREAS:**

- A. The District is the owner of the Delta Manor Education Centre (the "Building") and lands located at 4750 57<sup>th</sup> Street, Delta, British Columbia, which lands are legally described as:

PID: 008-467-510 Property No: 118635

LOT 4 SECTION 35 TOWNSHIP 5 NEW WESTMINSTER DISTRICT PLAN 37629

(the "Lands")

- B. FEI wishes to supply to the Building, and the District wishes to purchase, Thermal Energy generated by an Energy System that FEI will construct on the Lands, and which FEI will own and operate, all pursuant to the terms of this Agreement.
- C. The Thermal Energy supplied by FEI to the Building pursuant to this Agreement will be priced at the rate set forth in the Energy System Rate Development Agreement between the Parties dated September 26<sup>th</sup>, 2011.

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT** in consideration of the premises and the covenants, agreements, representations, warranties and payments set out herein,

the receipt and sufficiency of which is hereby acknowledged by each Party, the Parties covenant and agree as follows:

## ARTICLE 1 - INTERPRETATION

### 1.1 DEFINITIONS

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

- (a) “Adjusted Energy System Purchase Price” means, as of the date on which a purchase of the Energy System pursuant to Article 15 is effective, either:
  - (i) the Rate Base Value; or
  - (ii) such other purchase price for the Energy System as is determined by the BCUC; plus all applicable taxes;
- (b) “Affiliate” has the meaning set out in the *Business Corporation Act*, S.B.C. 2002, c.57 and includes FortisBC Inc.;
- (c) “Agreement” means this agreement, including the preamble hereto and any schedules attached hereto and the terms “this Agreement”, “hereof”, “herein”, “hereunder” and “hereinafter” and similar expressions refer to the Agreement and not to any particular Section or other portion thereof and includes any agreement supplementary or ancillary thereto;
- (d) “Acceptance Date” means the date of BCUC Acceptance;
- (e) “BCUC” means the British Columbia Utilities Commission, or any successor thereto;
- (f) “BCUC Acceptance” has the meaning assigned to that term in Section 11.1;
- (g) “Building” has the meaning assigned to that term on page one of this Agreement;
- (h) “Building System” means the space heating, cooling and ventilation, and domestic hot water distribution and control systems existing in the Building, to which the Energy System will be connected;
- (i) “Business Day” means any day except Saturday and Sunday or any day on which banks are generally not open for business in Vancouver, British Columbia;
- (j) “Capital Contribution” means \$ 14,000;
- (k) “Commissioned” means once the Energy System is certified complete and operating in accordance with the Specifications by a professional engineer under seal;
- (l) “Commission Date” means the day on which the Energy System is Commissioned;

- (m) “Contaminants” means, collectively, any contaminant, toxic substance, dangerous good, or pollutant or any other substance which when released to the natural environment is likely to cause, at some immediate or future time, material harm or degradation to the natural environment or material risk to human health, and includes any radioactive materials, asbestos materials, urea formaldehyde, underground or aboveground tanks, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive or toxic substances, hazardous waste or waste of any kind, pesticides, defoliants, or any other solid, liquid, gas, vapour, odour or any other substance .the storage, manufacture, disposal, handling, treatment, generation, use, transport, remediation or Release into the Environment of which is now or hereafter prohibited, controlled or regulated under Environmental Laws;
- (n) “Continuing Service Interruption Notice” has the meaning assigned to that term in Section 14.3(b);
- (o) “Contractor” means a prime contractor hired by FEI to oversee and complete the construction and installation of the Energy System;
- (p) “Design and Construction” means the total construction and related services required to design, construct and commission the Energy System and connected components of the Building System;
- (q) “Design Thermal Energy” means the maximum amount of Thermal Energy that the Energy System is capable of delivering through the Thermal Energy Meter and is included in the Specifications;
- (r) “Disclosed Contaminants” means Contaminants:
  - (i) the existence of which are specifically identified in the reports provided by the District to FEI and listed in Schedule C;
  - (ii) that were or ought to have been discovered, foreseen or anticipated upon reasonable inspection by FEI prior to the Effective Date; and
  - (iii) that were caused by FEI or any person for whom FEI is responsible at law;
- (s) “District” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (t) “District Losses” has the meaning assigned to that term in Section 12.6;
- (u) “District Site Rules for Contractors” means the rules set forth in Schedule “B”;
- (v) “Effective Date” means the date set out on page one of this Agreement;
- (w) “Energy System” means the equipment that FEI constructs and owns which will provide the Building with its energy needs for space heating, cooling and ventilation, and domestic hot water use, all as set forth in this Agreement;

- (x) “Energy System Service Agreement” has the meaning assigned to that term in the Energy System Rate Development Agreement;
- (y) “Energy System Rate Development Agreement” means that energy system rate development agreement between the District and FEI dated as of September 26<sup>th</sup>, 2011;
- (z) “Environment” includes the air (including all layers of the atmosphere), land (including soil, sediment deposited on land, fill, lands submerged under water, buildings, and improvements), water (including oceans, lakes, rivers, streams, groundwater, and surface water), and all other external conditions and influences under which humans, animals, and plants live or are developed and “Environmental” will have a corresponding meaning;
- (aa) “Environmental Attributes” means:
  - (i) all attributes associated with, or that may be derived from the Energy System installed having decreased environmental impacts relative to the use of conventional heating and cooling and hot water heating systems including any existing or future credit, allowance, certificate, right, benefit or advantage or proprietary or contractual right whether or not tradable;
  - (ii) any existing or future instrument, including without limitation any environmental emission allowances and environmental emission reduction credits, reduction right, allowance, certificate or other unit of any kind whatsoever, whether or not tradable and any other proprietary or contractual right, whether or not tradable, and any resulting from, or otherwise related to the actual assumed reduction, displacement or offset of emissions associated with, or that may be derived from the Energy System installed; and
  - (iii) all revenues, entitlement, benefits and other proceeds arising from or related to the foregoing;
- (bb) “Environmental Laws” means any and all statutes, laws, regulations, orders, bylaws, standards, guidelines, protocols, permits, and other lawful requirements of any Governmental Authority having jurisdiction over the Lands or the Energy System now or hereafter in force with respect in any way to the Environment, environmental assessment, health, occupational health and safety, protection of any form of plant or animal life, or transportation of dangerous goods, including the principles of common law and equity;
- (cc) “Expiry Date” means the earlier of:
  - (i) June 30, 2031, or the expiry of any renewal term thereof; and
  - (ii) the closure of the Building, or the Building otherwise ceasing to operate as a school (as defined under the *School Act* (British Columbia));
- (dd) “FEI” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (ee) “FEI Losses” has the meaning assigned to that term in Section 12.5;

- (ff) “Force Majeure” has the meaning assigned to that term in Section 17.2;
- (gg) “Governmental Authority” means any federal, provincial, regional, municipal, local or other government, governmental or public department, court, tribunal, arbitral body, commission, board, bureau or agency and any subdivision, agent, commission, board or authority thereof;
- (hh) “Lands” has the meaning assigned to that term in Recital A and includes the Building located on the Lands;
- (ii) “Laws” means laws, statutes, regulations, bylaws, Permits and orders of any Governmental Authority having jurisdiction, including without limitation, Environmental Laws;
- (jj) “Maintain” means to operate, service and maintain in a safe and reliable condition and “maintaining” and “maintenance” have corresponding meanings;
- (kk) “Monthly Charges” means that amount to be paid by the District to FEI with respect to the delivery of Thermal Energy to the Building pursuant to the Energy System Rate Development Agreement and any other payments due and owing by the District under this Agreement;
- (ll) “Notifying Party” has the meaning assigned to that term in Section 16.1;
- (mm) “Party” means a signatory to this Agreement, and the “Parties” means all of such signatories;
- (nn) “Permits” means all permits, licences, certificates, approvals, authorizations, consents and the like issued by any Governmental Authority;
- (oo) “Rate Base Value” means the value of the Energy System that the BCUC accepts from time to time in accordance with the Energy System Rate Development Agreement;
- (pp) “Release” includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, migration, disposal, or dumping;
- (qq) “Right of Access and Licence” means the right and licence granted herein by the District to FEI pursuant to Section 4.1 of this Agreement;
- (rr) “Service Failure Notice” has the meaning assigned to that term in Section 14.3(c);
- (ss) “Service Interruption” means, in any hour:
  - (i) a failure of the Energy System in that hour to deliver Thermal Energy at the Thermal Energy Meter sufficient to meet the Thermal Energy demand of the Building during that hour in accordance with the Specifications up to the Design Thermal Energy, and except where such failure is directly caused by:
    - a. the careless or wilful damage to the Energy System by the District or its agents or other persons for whom the District is responsible;

- b. damage caused to the Energy System as a result of the negligent acts or omissions of the District, its agents or those for whom in law the District is responsible;
  - c. an event of Force Majeure that triggers the suspension of FEI's obligations under the Agreement pursuant to Article 17; or
  - d. maintenance activities that FEI is performing on the Energy System that have been scheduled with the consent of the District (such consent not to be unreasonably withheld); and
- (ii) if the failure described in Section 1.1(rr)(i), FEI's failure in that hour to deliver to the Building through alternative means thermal energy sufficient to maintain an average temperature of 16 degrees Celsius in each room of the Building intended to be served by the Energy System (all as determined by the District, acting reasonably);
- (tt) "Service Interruption Notice" has the meaning assigned to that term in Section 14.3(a);
- (uu) "Services" means those services to be provided by FEI to supply Thermal Energy to a Building from an Energy System, and for greater certainty includes the services described in Articles 5 and 6, and excludes the Design and Construction;
- (vv) "Specifications" means the specifications for the Energy System prepared by FEI in consultation with the District in accordance with Section 2.3 and includes the Design Thermal Energy;
- (ww) "Term" has the meaning assigned to that term in Section 3.1;
- (xx) "Thermal Energy" means the amount of energy that FEI provides to the Building measured through a Thermal Energy Meter;
- (yy) "Thermal Energy Meter" means a device that complies with the International Organization of Legal Metrology recommendations for measuring thermal energy; and
- (zz) "UCA" means the *Utilities Commission Act*, R.S.B.C. 1996, c. 473 as may be amended from time to time.

## 1.2 SCHEDULES

The following Schedules, as may be amended from time to time, are incorporated by reference into this Agreement:

Schedule "A"	Energy System Description
Schedule "B"	Delta School District Site Rules for Contractors
Schedule "C"	List of Environmental Reports

### 1.3 AMENDMENTS TO SCHEDULES

The District and FEI acknowledge that during the construction phase of the Energy System there may be additions and alterations to the Specifications for the Energy System which would result in more efficient use and operation of the Energy System. If these additions or alterations result in changes to any of the above Schedules, the Parties mutually agree to amend the Schedules by way of a written amendment prior to the Commission Date.

### 1.4 INTERPRETATION

Except where the context requires otherwise or except as otherwise expressly provided, in this Agreement:

- (a) all references to a designated Article or Section are to the designated Article or Section of this Agreement unless otherwise specifically stated;
- (b) the singular of any term includes the plural, and vice versa, and the use of any term is equally applicable to any gender and, where applicable, body corporate;
- (c) any reference to a corporate entity includes and is also a reference to any corporate entity that is a successor by merger, amalgamation, consolidation or otherwise to such entity;
- (d) the preamble and all schedules referred to and attached to this Agreement are incorporated by reference and will form a part of this Agreement;
- (e) all sums of money which are referred to in this Agreement are in lawful money of Canada;
- (f) the headings of the Articles and Sections set out in this Agreement are for convenience only and will not be considered in any interpretation of this Agreement;

## **ARTICLE 2 - DESIGN AND CONSTRUCTION OF THE ENERGY SYSTEM**

### 2.1 CONSTRUCTION

FEI will perform the Design and Construction:

- (a) in accordance and in compliance with the Specifications;
- (b) in a good and workmanlike manner using qualified workers, and in accordance with sound and currently accepted industry standards and codes of practice normally employed, at the time and place of performance, in projects of a similar type and nature;
- (c) to ensure operational compatibility with the Building System;
- (d) in a safe and environmentally sound manner, and in accordance with all applicable Laws; and
- (e) in accordance with the terms of this Agreement.

## 2.2 CAPITAL CONTRIBUTION

The District will pay to FEI within 30 days of the Commission Date the Capital Contribution for the purpose of reducing the capital investment and the associated carrying cost of capital by FEI for provision of Service to the Building.

## 2.3 SPECIFICATIONS

Subject to and in accordance with this Section 2.3, FEI shall prepare and complete the Specifications promptly following the Acceptance Date.

FEI confirms the Energy System, as described in the Specifications and as contemplated by the Energy System description set out in Schedule A, will be designed to meet the thermal energy requirements of the Building and operational compatibility of the Building System based in part on information supplied by the District as to historical usage, which information has not been independently verified by FEI. FEI shall have no liability to the District for the failure of the Energy System to satisfy the requirements of the Building where such failure is attributable to the information supplied by the District being incorrect, inaccurate or incomplete.

FEI will prepare the Specifications in consultation with the District in order to ensure the Energy System can be appropriately accommodated within the Building and interface with the Building Systems. FEI will submit material changes to the Specifications, both before and during construction, to the District for review and comment prior to such changes taking place. If the District does not comment on the Specifications or material changes to the Specifications or advise that it has no comment within five (5) Business Days of receipt, FEI will be entitled to proceed on the basis of the information provided to the District. FEI will revise the Specifications based on the comments from the District provided that doing so will not impact FEI's costs or adversely affect system performance.

Review of and comment on the Specifications by the District does not impose any obligation on the District to verify the suitability of the Energy System or be construed as confirmation by the District that the Energy System satisfactorily meets the Building's energy requirements.

## 2.4 WORK SCHEDULE

Within ten (10) Business Days following the Acceptance Date, FEI will submit to the District for review and comment a Gantt chart schedule for the Design and Construction listing activities to be undertaken during the Design and Construction stages, key milestones and approval dates and other pertinent dates. Any revisions to the schedule must be reviewed and commented by the District, which review and comment will not be unreasonably withheld, conditioned or delayed.

In order to ensure that the Building System remains operational during normal school hours (as defined in Schedule B), the cut-over from the existing heating/cooling plant to the Energy System shall be performed outside normal school hours.

## 2.5 REPORTING

FEI shall produce and submit a monthly progress report for the Design and Construction to the District until the Energy System is Commissioned.

## 2.6 TESTING AND COMMISSIONING

FEI shall coordinate and supervise the start-up and testing of the Energy System to ensure the Energy System and other components of the Building System affected by the Design and Construction are operating in accordance with the Specifications, upon which the Energy System will be Commissioned. The District shall be invited to participate in the start-up and testing exercise.

# ARTICLE 3 - TERM AND RENEWAL

## 3.1 TERM

The term of this Agreement commences on the Effective Date and continues until the Expiry Date unless it is terminated earlier as authorized under this Agreement ("Term").

## 3.2 RENEWAL

This Agreement will automatically renew for periods of ten (10) years unless either Party provides written notice to the other Party no less than six (6) months prior to the Expiry Date, provided that there shall be no automatic renewal in the event that the Expiry Date arises as a result of the closure of the Building, or the Building otherwise ceases to operate as a school (as defined under the *School Act* (British Columbia)).

# ARTICLE 4 - ACCESS AND PERMITS

## 4.1 ACCESS RIGHTS

The District hereby grants to FEI, during the Term from and following the Acceptance Date, for so long as FEI shall require it, but subject to Section 4.4, a full, free and uninterrupted licence and right of way on, over and under the Lands and Building, for FEI, its assigns, employees, contractors, agents, invitees and licensees at all times hereafter for the purposes set out in this Agreement, provided FEI will avoid to the extent reasonably possible, and otherwise minimize interference with and inconvenience to, the occupants of the Building and the access rights of FEI will be limited to the extent reasonably necessary to fulfil FEI's obligations hereunder.

Without limiting the generality of the foregoing, but subject to Section 4.4, such right of way and licence shall include the full power, right and liberty to excavate for, install, place, construct, renew, alter, repair, maintain, operate, use, abandon, remove or replace its infrastructure, in whole or in part, and to enter upon, along, across, over or under the Lands or Building and have continual access to the Energy System, with or without vehicles, supplies, machinery or equipment, for any of the purposes set out in this Agreement, and to clear such portion of the Lands and keep it cleared of obstructions which, in the opinion of FEI, acting reasonably, may

interfere with any of the rights granted to FEI herein. The District may direct, in its discretion, FEI to use alternate routing for any Environmental or other reasonable purpose.

FEI covenants and agrees with the District not to do or knowingly permit to be done anything which may, in the opinion of the District acting reasonably, damage or interfere with the Building or impair the operating efficiency thereof or create any hazard.

#### 4.2 CONDITION OF LAND

The District represents and warrants to FEI that as of the Effective Date:

- (a) to the best of the District's knowledge, the Lands are free of Contaminants other than those specifically identified in the reports provided by the District to FEI and listed in Schedule C; and
- (b) there are no actions, proceedings, investigations, claims (including remediation cost recovery claims) pending, or to the knowledge of the District, threatened, that would interfere with FEI's access rights pursuant to Section 4.1.

#### 4.3 PERMITS

FEI will obtain and maintain at its own expense all Permits necessary for the Design and Construction and the Services.

#### 4.4 SAFETY, SECURITY AND BUILDING ACCESS

Notwithstanding anything to the contrary in this Agreement, FEI will adhere, and will cause all persons for whom it is responsible under this Agreement (including, without limitation, the Contractor) to adhere to the District Site Rules for Contractors.

#### 4.5 REMEDIATION

FEI shall promptly remediate any Disclosed Contaminants on the Lands as required by applicable Law that result from, or are Released as a result of the Design and Construction or the Services, except to the extent caused or contributed to by the District's negligence. In the event that Contaminants on the Lands, other than Disclosed Contaminants, are discovered by FEI, FEI will promptly notify the District of such discovery and the Parties will review the impact of such discovery, if any, on the Design and Construction or the Services.

### **ARTICLE 5 - SERVICE PROVISION**

#### 5.1 PROVISION OF SERVICE

Subject to the terms and conditions of the Agreement, FEI will provide the Services to the District throughout the Term.

## 5.2 SERVICE MONITORING AND REVIEW

The Parties acknowledge that FEI may be required from time to time to prepare and submit reports to the BCUC concerning the operation and performance of the Energy System, and the District shall provide FEI with reasonable cooperation in relation to the preparation of such reports.

## 5.3 STANDARD OF PERFORMANCE

In performing the Services, FEI will:

- (a) use only qualified personnel and exercise the same degree of care, skill and supervision as would be exercised by a reasonable and prudent owner experienced in performing like services;
- (b) perform the Services in accordance with all applicable Laws;
- (c) perform the Services in accordance with ongoing industry standards and codes of practice; and
- (d) without limiting the effect of the foregoing, abide by any standards of performance in relation to the Services that the BCUC may set from time to time according to the provisions of the UCA.

## 5.4 INTERRUPTION

No interruption of any of the on-site and off-site services, utilities and amenities provided by FEI to the Building will, except to the extent, if any, caused by any wrongful or negligent act of FEI or any person for whom FEI is responsible at law, render FEI liable to the District or any person claiming through or under the District, or relieve the District from any of its obligations under this Agreement. Notwithstanding the foregoing, FEI will use all reasonable diligence to remedy any such interruption if it is within its power and obligation to do so.

# **ARTICLE 6 - ENERGY SYSTEM MAINTENANCE AND OPERATION**

## 6.1 MAINTENANCE AND REPAIR OF ENERGY SYSTEM

Subject to Section 6.2, FEI will perform the Services and otherwise maintain or cause to be maintained and repaired the Energy System throughout the Term:

- (a) in accordance with the Energy System design and operating specifications and requirements as established by the qualified engineers engaged by FEI in the design and construction of the Energy System, and the equipment manufacturers;
- (b) in a good and workman-like manner using qualified workers, and in accordance with sound and currently accepted industry standards and codes of practice normally employed, at the time and place of performance, in projects of a similar type and nature;
- (c) to ensure operational compatibility with the Building System;

- (d) in a safe and environmentally sound manner, and in accordance with all applicable Laws; and
- (e) in accordance with the terms of this Agreement.

FEI will not delay repair of the Energy System for any reason, including as a result of a dispute with the District in relation to the costs and expenses of repair pursuant to Section 6.2.

## 6.2 REPAIR DAMAGE

The District will be responsible for all costs and expenses incurred by FEI in respect of any damage to the Energy System caused by or resulting from:

- (a) the careless or wilful damage to the Energy System by the District or its agents or other persons for whom at law the District is responsible; or
- (b) damage caused to the Energy System as a result of the negligent acts or omissions of the District, its agents or those for whom in law the District is responsible.

## **ARTICLE 7 - CHARGES**

### 7.1 MONTHLY CHARGES

The District throughout the Term commencing on the Commission Date in accordance with this Article 7 will pay to FEI when due for the Thermal Energy that FEI delivers and meters to the Building according to the rates set out in the Energy System Rate Development Agreement plus all applicable taxes (including harmonized sales tax applicable thereon) and any imposed taxes levied after the Commission Date by a government or regulatory agency that are related to the Energy System (including, but not limited to capital taxes or royalties) and any other payments due and owing by the District under this Agreement.

### 7.2 MONTHLY STATEMENT

FEI will, within 15 days following the end of each month, deliver to the District a statement setting out the Monthly Charges including all applicable taxes payable for that month.

### 7.3 PAYMENT

The District will pay the full amount specified in each statement provided to it in accordance with Section 7.2 within 30 days of receipt of such statement. All amounts payable to FEI will be made by cheque mailed to FEI at its address for service specified in Section 20.5.

### 7.4 PAYMENT DUE

Subject to Section 14.1, the obligation of the District to pay the Monthly Charges continues whether or not the Energy System is being used to provide the Building with its energy needs for space and ventilation heating, cooling and domestic hot water use.

#### 7.5 ARREARS TO BEAR INTEREST

If any amount owing to FEI or the District is not paid on or before the date on which it is due, a late payment charge of 1.5% per month will be assessed each month on all outstanding balances not paid by the due date.

### **ARTICLE 8 - OWNERSHIP OF THE ENERGY SYSTEM**

Notwithstanding the payments made by the District to FEI under this Article 8, any provision of this Agreement, any degree of annexation or affixation, or rule of law or equity to the contrary the District will have no proprietary interest in the Energy System which is, and shall remain, the property of FEI and may be used by FEI in its business or removed in whole or in part as it may see fit, and for any of such purposes, and FEI may enter in, upon and under all the Lands for the purposes of the maintenance, renewals, repair, removal or operation of the Energy System or any part thereof; provided that FEI shall not leave any part of the Energy System in such a state as to constitute a nuisance or a danger to the public through neglect, non-use and want of repair, and provided further that nothing in this clause shall nullify or otherwise impact or invalidate in any way the District's rights under Article 15 to purchase the Energy System.

### **ARTICLE 9 - ENVIRONMENTAL ATTRIBUTES**

#### 9.1 ENVIRONMENTAL ATTRIBUTES

All right, title and interest now existing or which may exist at any time in the future in the potential or actual commercial value of any Environmental Attributes that arise or accrue by virtue of the construction and operation of the Energy System will belong to the District. At the request of the District, FEI will reasonably cooperate with the District in applying for and assigning any Environmental Attributes to the District.

#### 9.2 GRANTS

Any grants from any Governmental Authority, a Crown Corporation or non-governmental authority that may be derived from a reduction in energy consumption by the Building will belong to the District.

### **ARTICLE 10 - REPRESENTATIONS AND WARRANTIES**

#### 10.1 DISTRICT'S REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties contained in this Agreement, the District hereby represents and warrants to FEI as follows and acknowledges that FEI is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) the District has the full right, power and authority to enter into this Agreement;

- (b) all necessary action on the part of the District has been taken to authorize and approve the execution and delivery of this Agreement and the performance by the District of its obligations hereunder;
- (c) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to the District as of the date of this Agreement;
- (d) the District is not party to any action, suit or legal proceeding, actual or, to the knowledge of the District, threatened, and there are no circumstances, matters or things known to the District which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or, to the knowledge of the District, threatened against the District before or by any Governmental Authority, which could affect the District's ability to perform its obligations under this Agreement; and
- (e) no person, firm or corporation has or will have as of the Commission Date, any agreement, right, or option or right capable of becoming an agreement, right, or option for the purchase or acquisition of the Energy System.

## 10.2 FEI'S REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties contained in this Agreement, FEI hereby represents and warrants to the District as follows and acknowledges that the District is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) FEI has the full right, power and authority to enter into this Agreement;
- (b) all necessary corporate action on the part of FEI has been taken to authorize and approve the execution and delivery of this Agreement and the performance by FEI of its obligations hereunder;
- (c) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to FEI as of the date of this Agreement;
- (d) FEI is not party to any action, suit or legal proceeding, actual or threatened, and there are no circumstances, matters or things known to FEI which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or threatened against FEI before or by any Governmental Authority, which could affect FEI's ability to perform its obligations under this Agreement; and
- (e) FEI has or will have all permits, licenses, authorizations and other documentation required for the operation of the Energy System after the Commission Date; and
- (f) FEI has all the required expertise to fulfill its obligations under this Agreement.

### 10.3 DELEGATION AND SUBCONTRACTING

FEI may delegate and subcontract its obligations under this Agreement with respect to Design and Construction and Services to any contractor, consultant, agent or representative provided that FEI shall be fully responsible for the acts and omissions of such persons and those either directly or indirectly employed by them to the same extent as FEI for its own acts or omissions.

## **ARTICLE 11 - BCUC ACCEPTANCE**

### 11.1 REGULATORY REVIEW TERMINATION

Subject to Section 11.3, either Party may terminate this Agreement if within 90 days following the Effective Date, this Agreement and the Energy System Rate Development Agreement, including the Market Rate and the SD37 Rate Rider as defined in that Agreement have not been accepted for filing by the BCUC (such acceptance being herein called "BCUC Acceptance").

### 11.2 REGULATORY FILING

FEI, on behalf of itself and the District, and at its own cost, shall file the Agreement with the BCUC within a reasonable time after the Effective Date. FEI shall take all steps reasonably required to secure BCUC Acceptance, which shall consist of those procedural steps related to filing the Agreement and providing argument and witnesses in support of filing.

### 11.3 TERMINATION

A Party entitled to terminate under Section 11.1 must do so by giving notice to terminate to the other Party at any time after the right to terminate arises pursuant to Section 11.1, and prior to:

- (a) the date of issuance of the BCUC Acceptance; and
- (b) the date that is 90 days after the Effective Date.

### 11.4 EFFECT OF BCUC ACCEPTANCE

The Parties acknowledge that upon BCUC Acceptance, the Services will be subject to regulation by the BCUC under the UCA, and will form another class of service that FEI provides as a public utility. The Parties acknowledge that the terms of the UCA may supersede the terms and conditions of this Agreement.

## **ARTICLE 12 - INDEMNITY**

### 12.1 FEI'S INDEMNITY

Without limiting any other obligations of FEI provided herein, FEI will indemnify, defend, and save harmless the District and its trustees, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including the full amount of all legal fees and expenses on a

solicitor-client basis) which may be paid by, incurred by, or asserted against the District or its directors, officers, employees, agents, successors, or assigns, arising from or in connection with:

- (a) the breach or non-performance by FEI of any of its obligations or warranties hereunder; or
- (b) the negligence or wilful misconduct of FEI, its employees, contractors or agents in respect of the Energy System, and in the performance of the obligations of FEI pursuant to this Agreement,

excluding only such of the foregoing as arise from the fraud, negligence or wilful misconduct of the District or its trustees, officers, directors, members, employees, contractors or agents, or the breach or non-performance by the District of any of its obligations or warranties hereunder.

## 12.2 DISTRICT'S INDEMNITY

Without limiting any other obligations of the District provided herein, the District will indemnify, defend, and save harmless FEI, its Affiliates and their respective shareholders, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including the full amount of all legal fees and expenses on a solicitor-client basis) which may be paid by, incurred by, or asserted against FEI, its Affiliates or their respective shareholders, directors, officers, employees, agents, successors, or assigns, arising from or in connection with:

- (a) the breach or non-performance by the District of any of its obligations or warranties hereunder; or
- (b) the negligence or wilful misconduct of the District, its employees, contractors or agents in respect of the Energy System, and in the performance of the obligations of the District pursuant to this Agreement,

excluding only such of the foregoing as arise from the fraud, negligence or wilful misconduct of FEI or its Affiliates or any of their respective officers, directors, members, employees, contractors or agents, or the breach or non-performance by FEI of any of its obligations or warranties hereunder.

## 12.3 CONSEQUENTIAL LOSS

In no event will the District or FEI or any of their respective officers, directors, employees, contractors or agents be liable to the other Party for any indirect or consequential loss, cost or expense whatsoever, including any loss of profits, revenues or other economic loss, suffered by the other Party or its officers, directors, employees, contractors or agents.

## 12.4 SURVIVAL OF INDEMNITY

The indemnity of each of the District and FEI provided under this Article 12 will survive the Term of this Agreement.

## 12.5 ENVIRONMENTAL INDEMNITY BY THE DISTRICT

The District will indemnify and save harmless FEI, its Affiliates, directors, officers, shareholders, employees, agents, successors and permitted assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants (but not including Disclosed Contaminants) and remediation of the Lands and any affected adjacent property) (collectively, "FEI Losses") which may be paid by, incurred by or asserted against FEI, its Affiliates and their respective directors, officers, shareholders, employees, agents, successors or permitted assigns, arising from or in connection with any Contaminants (but not including Disclosed Contaminants) existing on the Lands prior to the Commission Date or brought onto the Lands or Released onto the Lands by the District or any person for whom it is in law responsible, except to the extent the FEI Losses suffered were caused or contributed to by any act or omission of FEI or any person for whom FEI is in law responsible after FEI had knowledge of the Contaminants.

## 12.6 ENVIRONMENTAL INDEMNITY BY FEI

FEI will indemnify and save harmless the District, its Affiliates and their respective trustees, directors, officers, employees, agents, successors and permitted assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the Lands and any affected adjacent property) (collectively, "District Losses") which may be paid by, incurred by or asserted against the District, its Affiliates, and their respective trustees, directors, officers, employees, agents, successors or permitted assigns, arising from or in connection with any Contaminants brought onto the Lands or any Disclosed Contaminants Released onto the Lands by FEI or any person for whom it is in law responsible, except to the extent the District Losses suffered were caused or contributed to by any act or omission of the District or any person for whom the District is in law responsible after the District had knowledge of the Contaminants.

## **ARTICLE 13 - INSURANCE**

### 13.1 FEI INSURANCE COVERAGE.

- (a) FEI will obtain and maintain at its own expense throughout the Term, Commercial General Liability Insurance for bodily injury, death and property damage in the minimum amount of five million (\$5,000,000) dollars per occurrence. The policy will contain a cross liability provision and will be maintained for a period ending no sooner than 12 months after the expiry or termination of this Agreement.
- (b) FEI will be responsible for the full amount of all premiums and deductibles required under this Section 13.1. All policies required herein must be effective at the Commission Date. Insurance will be purchased from insurers registered and licensed to underwrite

insurance in British Columbia. Policies will contain waivers of subrogation against the District and all its officers, directors, members, employees, contractors and agents.

### 13.2 DISTRICT INSURANCE COVERAGE

- (a) The District will obtain and maintain at its own expense throughout the Term Commercial General Liability Insurance for bodily injury, death and property damage in the minimum amount of five million (\$5,000,000) dollars per occurrence. The policy will contain a cross liability provision and will be maintained for a period ending no sooner than 12 months after the expiry or termination of this Agreement.
- (b) The District will be responsible for the full amount of all premiums and deductibles required under this Section 13.2. All policies required herein must be effective at the date of this Agreement. Insurance will be provided by the Provincial self-insured program. Policies will contain waivers of subrogation against FEI and all its officers, directors, employees, contractors and agents.

### 13.3 PRIORITY

FEI will ensure that the District is an additional insured under the insurance to be obtained and maintained pursuant to Section 13.1. The District will ensure that FEI is an additional insured under the insurance to be obtained and maintained pursuant to Section 13.2. In the event of a claim, the insurance carried by the Party responsible for actions which give rise to such claim will be the primary insurance with respect to such claim.

## **ARTICLE 14 - DEFAULT**

### 14.1 DEFAULT BY FEI

- (a) FEI will be in default under this Agreement if FEI is in breach of a material term, covenant, agreement, condition or obligation imposed on it under this Agreement and fails to cure such default within ten (10) days after receipt of written notice thereof from the District, or, if such default is not capable of being cured within such ten (10) day notice period, fails to commence in good faith the curing of such default upon receipt of such written notice of default from the District and to continue to diligently pursue the curing of such default thereafter until cured. For the purposes of this Section 14.1, Section 4.4 is hereby deemed to be a material term of this Agreement.
- (b) If FEI is in default of this Agreement, the District may at its option and without liability therefore or prejudice to any other right or remedy it, including under the UCA, may have suspend or refuse to make any payments due hereunder until the default has been fully remedied, and no such suspension or refusal will relieve FEI from any of its obligations under this Agreement.
- (c) In the event the default is not fully remedied within thirty (30) days of receipt by FEI of written notice thereof from the District, the District may, at its option, undertake the necessary steps to remedy FEI's default at FEI's sole expense, which reasonable costs

shall be deducted from the Monthly Charges, and such actions will not relieve FEI from any of its obligations under this Agreement or, at its option, and without any liability, terminate this Agreement without prejudice to any other right the District may have hereunder or at law or otherwise.

#### 14.2 DEFAULT BY THE DISTRICT

- (a) The District will be in default under this Agreement if the District fails or refuses to make any payment due to FEI by the District under this Agreement within thirty (30) days of receiving written notice from FEI after the date that payment is due or if the District is in breach of a material term, covenant, agreement, condition or obligation imposed on it under this Agreement and fails to cure such default within ten (10) days after receipt by the District of written notice thereof from FEI or, if such default is not capable of being cured within such ten (10) day notice period, fails to commence in good faith the curing of such default forthwith upon receipt of such written notice thereof from FEI and to continue to diligently pursue the curing of such default thereafter until cured.
- (b) If the District is in default of this Agreement, FEI may at its option and without liability therefore or prejudice to any other right or remedy it may have, including under the UCA, cease performing the Services and no such actions will relieve the District from any of its obligations under this Agreement.
- (c) In the event the default by the District is not fully remedied within thirty (30) days of receipt by the District of written notice from FEI, FEI may undertake the necessary steps to remedy the District's default at the District's sole expense and such action will not relieve the District from any of its obligations under this Agreement or, at its option, and without any liability, take whatever steps necessary to shut down the Energy System and terminate this Agreement without prejudice to any other right FEI may have hereunder or at law or otherwise.

#### 14.3 CROSS DEFAULT

- (a) If any Building experiences a Service Interruption at any time, the District may deliver a notice of such Service Interruption to FEI (a "Service Interruption Notice" to FEI);
- (b) If a Service Interruption continues for a period of 48 consecutive hours after the delivery of a Service Interruption Notice pursuant to Section 14.3(a), the District may deliver a notice of such continuing Service Interruption to FEI (a "Continuing Service Interruption Notice");
- (c) If a Service Interruption continues for a period of 120 consecutive hours after the delivery of a Continuing Service Interruption Notice, the District may at its option deliver a notice of such continuing Service Interruption to FEI (a "Service Failure Notice"); Within 60 days of either:
  - (i) the District's delivery of a Service Failure Notice pursuant to Section 14.3(c); or

- (ii) the District's delivery of a Continuing Service Interruption Notice pursuant to Section 14.3(b) that constitutes the fifth or greater Continuing Service Interruption Notice delivered in that calendar year;

the District may, at its option and without liability:

- (iii) terminate this Agreement without prejudice to any other right the District may have hereunder at law or otherwise; or
  - (iv) terminate the Energy System Rate Development Agreement and all Energy System Service Agreements (inclusive of this Agreement), without prejudice to any other right the District may have hereunder at law or otherwise.
- (d) For greater certainty, this Agreement shall be deemed to be terminated in the event that the District exercises its right to terminate all Energy System Service Agreement under another Energy System Service Agreement.

#### 14.4 SURVIVAL

Upon expiry or earlier termination of this Agreement for any reason, all claims, causes of action or other outstanding obligations remaining or being unfulfilled as of the expiry or termination of this Agreement and all of the provisions of this Agreement relating to the obligation or either the Parties to account to or indemnify the other and to pay to the other any amounts owing as at the date of expiry or termination in connection with this Agreement will survive such expiry or termination.

### **ARTICLE 15 – EXPIRY AND TERMINATION**

#### 15.1 EXPIRY

Upon expiry of the Term, unless otherwise agreed between the Parties and subject to agreement by the BCUC (if required pursuant to applicable Laws), the District may, at its option and by written notice to FEI within 30 days following the termination:

- (a) require FEI to remove the Energy System at FEI's cost in accordance with Section 15.5; or
- (b) acquire the Energy System from FEI at the Adjusted Energy System Purchase Price.

#### 15.2 TERMINATION OF THE ENERGY SYSTEM RATE DEVELOPMENT AGREEMENT

- (a) If the Energy System Rate Development Agreement is terminated as a result of the adoption, approval or implementation of a thermal energy rate tariff by the BCUC, this Agreement will automatically terminate effective as of the date of termination of the Energy System Rate Development Agreement;
- (b) If the Energy System Rate Development Agreement is terminated for cause by the District, this Agreement will be deemed to have been terminated pursuant to Section

14.1(c) as of the date of termination of the Energy System Rate Development Agreement, and Section 15.3 shall apply; and

- (c) If the Energy System Rate Development Agreement is terminated for cause by FEI, this Agreement will be deemed to have been concurrently terminated pursuant to Section 14.2(c) as of the date of termination of the Energy System Rate Development Agreement, and Section 15.4 shall apply.

### 15.3 TERMINATION BY THE DISTRICT FOR CAUSE

If the District terminates this Agreement pursuant to Sections 14.1(c) or 14.3, the District may, at its option and by written notice to FEI within 30 days following the termination:

- (a) require FEI to remove the Energy System, at its own cost, in accordance with Section 15.5; or
- (b) acquire the Energy System from FEI at the Adjusted Energy System Purchase Price.

### 15.4 TERMINATION BY FEI FOR CAUSE

If FEI terminates this Agreement pursuant to Section 14.2(c), FEI may, at its option and by written notice to the District:

- (a) remove the Energy System, at its own cost, in accordance with Section 15.5; or
- (b) require the District to purchase the Energy System from FEI at the Adjusted Energy System Purchase Price.

### 15.5 REMOVAL OF THE ENERGY SYSTEM

If FEI is required to remove the Energy System pursuant to Sections 15.1(a), 15.3(a) or 15.4(a) or otherwise upon expiry of this Agreement, FEI shall promptly remove those portions of the Energy System located within the Building and at surface level at FEI's cost, and FEI shall perform such removal activities using standards of performance that are equivalent to those that apply to the performance of the Services under this Agreement. Any portion of the Energy System not removed by FEI prior to the 30<sup>th</sup> day following the termination or expiry of the Agreement will, as of such day, be deemed to be automatically transferred to the District, and become the property of the District, all at no cost to the District.

### 15.6 ACQUISITION OF THE ENERGY SYSTEM

If the District elects to acquire the Energy System pursuant to Sections 15.1(b), 15.3(b) or 15.4(b):

- (a) the District shall pay the Adjusted Energy System Purchase Price to FEI within the later of 30 days of (i) the effective date of expiration or termination, and (ii) confirmation of the Adjusted Energy System Purchase Price; and

- (b) FEI will promptly execute and deliver any documents and records reasonably required by the District to effect and facilitate the transfer of the Energy System to the District, including bills of sale, operation and maintenance manuals and warranties, and will use reasonable commercial efforts to obtain any consents and approvals that may be required in relation to the transfer (including, without limitation, BCUC approval), provided that (i) FEI's obligations under this Section 15.6(b) shall arise only upon FEI's receipt of all amounts due and owing to FEI from the District under this Agreement, and (ii) during the period between the expiration or termination of the Agreement and FEI's receipt of amounts due and owing to FEI from the District under this Agreement, FEI shall continue to maintain, or shall permit the District to maintain, the Energy System in good working order.

Notwithstanding the foregoing, the Parties acknowledge and agree that FEI's ability to sell or otherwise transfer its interest in and to the Energy System to the District may be subject to BCUC approval under applicable Laws.

## **ARTICLE 16 - NON-COMPLIANCE AND ENVIRONMENTAL**

### 16.1 NOTIFICATION OF NON-COMPLIANCE

FEI or the District (as applicable, the "Notifying Party") will promptly, upon becoming aware thereof, notify the other Party in writing of:

- (a) a Release of a Contaminant or any other occurrence or condition in the Energy System, the Lands or any adjacent property which could subject the other Party to any fines, penalties, orders or proceedings under applicable Laws;
- (b) any charge, order, investigation or notice of violation or non-compliance issued against the Notifying Party relating to the Energy System, or the operation of the Energy System, under any applicable Laws; and
- (c) any notice, claim, action or other proceeding by any third party against the Notifying Party in respect of the Design and Construction or the Services or concerning the Release or alleged Release of any Contaminants at or from the Energy System or the Lands.

### 16.2 NOTIFICATION BY FEI

FEI will notify the appropriate Governmental Authorities of any Release of any Contaminants at or from the Energy System in accordance with applicable Laws. The District may, but is not obligated to, notify the appropriate Governmental Authorities of any Release of any Contaminants at or from the Energy System in accordance with applicable Laws.

### 16.3 OWNERSHIP OF CONTAMINANTS

Notwithstanding any rule of law to the contrary, any Disclosed Contaminant Released from the Energy System, or any top soil, earth or other material containing a Contaminant for which FEI is responsible pursuant to Section 4.5 that is removed from the Lands by FEI or any person for

whom it is in law responsible, will be and remain the sole and exclusive property and responsibility of FEI and will not become the property of the District, notwithstanding the degree of its affixation to the Lands and notwithstanding the expiry or earlier termination of this Agreement.

#### 16.4 SURVIVAL OF OBLIGATIONS

The obligations of the Parties under this Article 16 will survive the expiry or termination of this Agreement.

### **ARTICLE 17 - FORCE MAJEURE**

#### 17.1 SUSPENSION

Subject to the other provisions of this Article 17, if either Party is unable or fails by reason of Force Majeure to perform in whole or in part any obligation or covenant set forth in this Agreement, with the exception of unpaid financial obligations, such inability or failure will be deemed not to be a breach of such obligation or covenant and the obligations of both Parties under this Agreement will be suspended to the extent necessary during the continuation of any inability or failure so caused by such Force Majeure.

#### 17.2 DEFINITION OF FORCE MAJEURE

For purposes of this Agreement, the term "Force Majeure" means any event or occurrence not within the control of the Party claiming Force Majeure and which by the exercise of reasonable diligence such Party is unable to prevent or overcome, including any acts of God, including lightning, earthquakes, storms, washouts, landslides, avalanches, fires, epidemics and floods; strikes, lockouts or other industrial disturbances; acts of the Queen's or public enemies, sabotage, wars, blockades, insurrections, riots or civil disturbances, fires, explosions, breakages of or accidents to machinery or lines of pipe; the laws, orders, rules, regulations, acts or restraints of any court or governmental or regulatory authority. For the purposes of this Article 17, a Party is deemed to have control over the actions or omissions of those persons to which it, its agents, contractors or employees, have delegated, assigned or subcontracted its obligations and responsibilities. For greater certainty, a Force Majeure shall not include any weather related events that do not exceed 25 year events as recorded by Environment Canada or as otherwise may be determined by the BCUC from time to time.

#### 17.3 EXCEPTIONS

Neither Party will be entitled to the benefit of Section 17.1 under any of the following circumstances:

- (a) the Energy System not being Commissioned;
- (b) to the extent that the inability or failure was caused by the negligence or contributory negligence of the Party claiming Force Majeure;

- (c) to the extent that the inability or failure was caused by the Party claiming Force Majeure having failed to diligently attempt to remedy the condition by taking all reasonable acts and to resume the performance of such covenants and obligations with reasonable dispatch;
- (d) if the inability or failure was caused by lack of funds or is in respect of any amount due hereunder; or
- (e) unless, as soon as possible after the happening of the occurrence relied upon or as soon as possible after determining that the occurrence was in the nature of Force Majeure and would affect the claiming Party's ability to observe or perform any of its covenants or obligations under this Agreement, the claiming Party will have given to the other Party notice to the effect that the claiming Party is unable by reason of Force Majeure (the nature whereof will be therein specified) to perform the particular covenants or obligations.

#### 17.4 RESUMPTION OF OBLIGATIONS

The Party claiming Force Majeure will give notice to the other Party, as soon as possible after the Force Majeure condition is remedied, to the effect that the same had been remedied and that such Party has resumed, or is then in a position to resume, the performance of its suspended covenants and obligations hereunder either in whole or in part.

#### 17.5 SETTLEMENT OF LABOUR DISPUTES

Notwithstanding any of the provisions of this Article 17, and subject to Section 17.3, the settlement of labour disputes or industrial disturbances is entirely within the discretion of the particular Party involved and the Party may make settlement of it at the time and on terms and conditions as it may deem to be advisable and no delay in making settlement will deprive the Party of the benefit of Section 17.1.

### **ARTICLE 18 - CONDITIONS PRECEDENT**

#### 18.1 CONDITIONS PRECEDENT OF FEI

The obligation of FEI to carry out the transactions contemplated by this Agreement is subject to fulfillment of the following conditions on or before such date as may be specified, which is for the sole benefit of FEI, and which may be waived by FEI in accordance with Section 18.2:

- (a) FEI obtaining the approval by its board of directors of the terms and conditions of this Agreement on or before the 30th day following the Effective Date, provided that if such approval cannot be obtained by this date due to the fact that the board of directors has not yet considered the transaction FEI reserves the right to extend the period of time to that date when the board next convenes.

## 18.2 FEI NOTICE OF WAIVER

If a condition set out in Section 18.1 has not been satisfied on or before the date as may be specified for its fulfillment, FEI may waive compliance with the condition in whole or in part, in its sole discretion, by written notice to the District, failing which delivery of written notice of satisfaction or waiver of such condition, this Agreement will, to the extent any further obligations of the Parties which remain unfulfilled, be null and void, without liability between the Parties hereto, and, neither Party will be under any further obligation to the other to complete the transactions or future transactions, as the case may be, contemplated by this Agreement.

## **ARTICLE 19 - DISPUTE RESOLUTION**

### 19.1 REFERENCE TO ARBITRATION

The Parties will attempt to resolve all disputes which may arise under, out of, in connection with or in relation to this Agreement by negotiation. They will provide full and timely disclosure to one another of all facts relevant to the disputes to facilitate those negotiations. If any such dispute remains unresolved, for any reason, fifteen (15) days after either Party requested the other Party to enter into negotiations to resolve it, or if the Parties agree to waive negotiations in respect of it, then either Party may submit that dispute for final resolution by arbitration administered by the British Columbia International Commercial Arbitration Centre (“BCICAC”) under its “Shorter Rules for Domestic Commercial Arbitration”. The seat of that arbitration will be Vancouver, British Columbia, Canada. The language of that arbitration will be English. Alternatively, the Parties may agree, within the 15 days referred to above, to submit that dispute for final resolution by arbitration in another manner.

### 19.2 BINDING DECISION

The decision of the arbitrator, regardless of what arbitration procedure is used, will, for all purposes of this Agreement, be final and binding on the Parties.

### 19.3 CONTINUATION OF SERVICES

Each of the Parties will perform all of its respective obligations under this Agreement notwithstanding the existence of any dispute that arises from time to time between the Parties in respect of any matter related to this Agreement or during the resolution of any dispute in accordance with this Article 19.

### 19.4 COSTS

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 case, the non-prevailing Party shall pay all costs and expenses of the arbitration, but not those of the prevailing Party.

## ARTICLE 20 - GENERAL

### 20.1 RESPONSIBILITY FOR COSTS

FEI's performance of any of its obligations under this Agreement, including without limitation the obligation to design, construct and install the Energy System as provided in Section 2.1, shall be at FEI's sole cost and expense, unless expressly provided otherwise in this Agreement;

### 20.2 EXERCISE OF DISCRETION

Where anything in this Agreement is identified as being in either Party's discretion, such Party will have the right to exercise such discretion in its own best interest without regard for the interest of the other Party.

### 20.3 COOPERATION

FEI and the District will at all times extend co-operation to each other to ensure the orderly management and operation of the Energy System.

### 20.4 SOLICITATION

Nothing in this Agreement precludes either Party from soliciting or entering into, other contracts with the other Party.

### 20.5 NOTICES

Any notice or other communication required or permitted to be given under this Agreement will be effective only if in writing and when it is actually delivered (which delivery may be by telecopy or other telecommunications device) to the Party for whom it is intended at the following address or such other address in British Columbia as such Party may designate to the other Party by notice in writing delivered in accordance with this Section 20.5:

(a) if to FEI:

FortisBC Energy Inc.  
10th Floor, 1111 West Georgia Street  
Vancouver, B.C.  
V6E 4M3

Attention: Gareth Jones  
Telephone: 250-380-5972  
Telecopy: 250-388-6876

(b) if to the District:

Board of Education of School District No. 37 (Delta)  
4585 Harvest Drive  
Delta, B.C.  
V4K 5B4

Attention: Frank Geyer  
Telephone: 604-952-5336  
Telecopy: 604-952-5375

Notwithstanding the foregoing, notices with respect to Force Majeure will be given in writing by telecopy, or orally in person or by telephone (to be confirmed by telecopy), to the person or persons designated from time to time by the Parties as the person or persons authorized to receive such notices.

## 20.6 CONFIDENTIALITY

The District and FEI will treat as confidential the terms of this Agreement and all Confidential Information (as defined below) and will at all times during the term of this Agreement and for a reasonable time thereafter hold the terms of this Agreement and all Confidential Information in confidence and neither Party will, without the prior written consent of the other Party, disclose or divulge the terms of this Agreement or any Confidential Information to any person, provided that nothing in this Section 20.6 will restrict or prevent either Party from making any disclosure of such terms or any Confidential Information:

- (a) which is reasonably necessary or desirable for such Party to carry out and give full effect to the terms, conditions and intent of this Agreement and the matters contemplated hereby;
- (b) which is required by any Law, including the Freedom of Information and Protection of Privacy Act (British Columbia);
- (c) to any Governmental Authority;
- (d) to the British Columbia Utilities Commission or other regulatory agency as part or in support of any regulatory application or submission;
- (e) to the directors, officers or employees of such Party or to an Affiliate of such Party or to the directors, officers or employees of an Affiliate of such Party;
- (f) to the professional advisors of such Party on the same terms of confidentiality;
- (g) which is already in the public domain; or
- (h) in connection with legal proceedings or steps being taken to remedy a breach or default under this Agreement by the other Party.

For the purposes of this Section 20.6, “Confidential Information” means proprietary information of either Party such as data, plans, drawings, manuals, or specifications which have been provided by such Party, its employees, contractors, agents, subcontractors, Affiliates to the other Party pursuant to this Agreement or proprietary information either Party conceived or developed by or for such Party concerning construction practices, operation and maintenance practices, agreements, marketing plans and strategies, profits, costs, pricing and systems of procedure (provided that “Confidential Information” does not include information which was disclosed to the receiving Party by a third Party (unless, to the knowledge of the receiving Party, the third Party is under an obligation of confidentiality to the other Party) or any information developed or conceived by the receiving Party without using the “Confidential Information” of the other Party).

#### 20.7 SEVERABILITY

If any provision of this Agreement is found or determined to be invalid, illegal or unenforceable it will be construed to be separate and severable from this Agreement and will not impair the validity, legality or enforceability of any other provisions of this Agreement, and the remainder of this Agreement will continue to be binding on the Parties as if such provision had been deleted.

#### 20.8 NO WAIVER

No waiver by either Party of any default by the other in the performance of any of the provisions of this Agreement will operate or be construed as a waiver of any other or future default or defaults hereunder, whether of a like or a different character. To be binding, any waiver of any provision of this Agreement must be clearly expressed in writing to be signed by the waiving Party.

#### 20.9 BURDEN AND BENEFIT

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

#### 20.10 GOVERNING LAW

This Agreement and all matters arising hereunder will be governed by the laws of British Columbia and the federal laws of Canada applicable in British Columbia.

#### 20.11 ENTIRE AGREEMENT

This Agreement contains the whole agreement between the Parties in respect of the subject matter hereof and there are no terms, conditions or collateral agreements express, implied or statutory other than as expressly set forth in this Agreement and this Agreement supersedes all of the terms of any written or oral agreement or understanding between the Parties.

#### 20.12 TIME OF ESSENCE

Time is of the essence of this Agreement.

#### 20.13 FURTHER ASSURANCES

Each Party will, at all times hereafter on demand by the other, execute and deliver or cause to be executed and delivered all such further documents and do all such further acts and things as may be reasonably requested by the other Party to evidence, carry out and give full effect to the intent and meaning of this Agreement and to assure the completion of the transactions contemplated hereby.

#### 20.14 AMENDMENTS TO BE IN WRITING

Except as set out in this Agreement, no amendment or variation of this Agreement will be effective or binding upon the Parties unless such amendment or variation is set out in writing and duly executed by the Parties.

#### 20.15 FACSIMILE

This Agreement may be executed by the Parties and transmitted by facsimile transmission and, if so executed, transmitted and received, this Agreement will for all purposes be effective as if the Parties had delivered and executed the original Agreement and each Party undertakes to provide the other Party with a copy of this Agreement bearing original signatures forthwith upon demand.

#### 20.16 SUBJECT TO LEGISLATION

Notwithstanding any other provision hereof, this Agreement and the rights and obligations of FEI and the District under this Agreement are subject to all present and future laws, rules, regulations and orders of any legislative body, governmental agency or duly constituted authority now or hereafter having jurisdiction over FEI or the District.

#### 20.17 EXPENSES

Each Party to this Agreement shall be responsible for the payment of all costs, expenses, legal fees and disbursements incurred or to be incurred by it in negotiating and preparing this Agreement and all documents required to be delivered under this Agreement and otherwise relating to the transactions contemplated by this Agreement.

#### 20.18 NO CONTRARY AGREEMENT

No Party shall enter into an agreement or other commitment with any person if such agreement or commitment has terms or provisions in conflict with or inconsistent with the terms of this Agreement or which could reasonably be expected to lead to actions or consequences that would result in the Party being in breach of the commitments and obligations of the Party pursuant to this Agreement unless such other agreement or commitment is expressly approved by the other Parties.

#### 20.19 NO PARTNERSHIP

Nothing herein shall be deemed or construed to create a joint venture, partnership, employment or agency relationship between the Parties for any purpose.

20.20 ASSIGNMENT

Neither Party may assign this Agreement or any of its rights or obligations under this Agreement, and FEI may not assign, transfer or sell all or any part of the Energy System, except:

- (a) with the consent of the other Party, such consent not to be unreasonably withheld, delayed or conditioned; or
- (b) in the case of FEI, to an Affiliate of FEI which is a "public utility" as defined in the *UCA* on notice to, but without the consent of, the District.

20.21 COUNTERPARTS

This Agreement may be executed in counterparts with the same effect as if the Parties had signed the same document. All counterparts will be construed together and will constitute one agreement.

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

**FORTISBC ENERGY INC.**

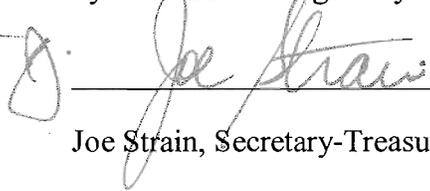
by its authorized signatory:

  
\_\_\_\_\_

Doug Stout,  
VP Energy Solutions & External Relations

**THE BOARD OF EDUCATION OF  
SCHOOL DISTRICT NO. 37 (DELTA)**

by its authorized signatory:

  
\_\_\_\_\_

Joe Strain, Secretary-Treasurer

# SAMPLE SCHEDULE “A”

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## Energy System Description

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### Mechanical Equipment Plans and Specifications

Equipment schedule:

- 1 ground source heat pumps water furnace 540NXW or equivalent. and associated pumps. The heat pump and related equipment will be installed in the boiler room at the old boilers location on the concrete pad.
- Each heat pump will have 1 pump on condenser side (5 Hp, 90gpm, 100 ft).
- Piping, control valves and other equipment and accessories connected to the above equipment.
- Connection of the heat pumps on the return of the boiler and installation of the 3 way valves.
- 500 ft of piping 4 inches isolated between the field and the heat pump The pipes will be installed on the roof.
- Installation of geo-exchange field loop to match the designed performance of the system.
- Supply and do the injection of 800 usgals of propylene/glycol with a concentration of 25%.
- Control systems for the above mentioned equipment.
- BTU meters

Prior to commencement of the Mechanical Equipment construction, FEI shall provide detailed drawings to the District for review and acceptance.

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## **SCHEDULE “B”**

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# **Delta School District Site Rules for Contractors**

## **Delta School District Site Rules for Contractors**

### **1.0 Safety**

- 1.1 For the purposes of this section, “Safety Regulations” means the rules, regulations, and practices required by WorkSafeBC.
- 1.2 The Contractor shall be solely responsible for site safety during the execution of all assigned construction and maintenance activities, including work performed by subcontractors and suppliers, and for compliance with the Safety Regulations, and shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the work.
- 1.3 If the District is of the reasonable opinion that the Contractor has not taken such precautions as are necessary to ensure compliance with the requirements of Clause 1.2, the District may take or order any remedial measures which it deems necessary, including stopping the performance of all or any portion of the work, and the District may use the employees of itself, the Contractor, any subcontractor or any other contractors to perform such remedial measures. The Contractor acknowledges and agrees that any failure by the Contractor to comply with the Safety Regulations shall constitute a default of the Contractor's contractual obligations and the District may issue a written notice instructing the Contractor to correct the default in the two (2) working days immediately following receipt of such notice.
- 1.4 The Contractor shall file any notices or any similar document (including, without limitation, a Notice of Project where applicable) required pursuant to the Safety Regulations. This duty of the Contractor will be considered to be included in the work and no separate payment therefore will be made to the Contractor.
- 1.5 The Contractor shall develop, maintain and supervise for the duration of the work a comprehensive safety program that will effectively incorporate and implement all required safety precautions. The program shall, as a minimum, respond fully to the Safety Regulations and general construction practices for the safety of persons or property, including without limitation the WorkSafeBC regulations that may be applicable (e.g. WHMIS, dust control, etc.).
- 1.6 The Contractor shall provide a copy of the safety program described in Clause 1.5 to the District prior to the commencement of the work and shall, at all times require, as far as it is reasonably practical to do so, that every employer and worker performing work in respect of the project complies with such program.
- 1.7 The Contractor shall arrange regular safety meetings at its expense, record the minutes of such meetings and maintain a complete file for review by the appropriate authorities.
- 1.8 The Contractor shall supply and maintain, at its own expense, at its office or other well-known place at the work site, safety equipment necessary to protect the workers and general public against accident or injury as prescribed by the governing authorities.
- 1.9 The Contractor shall supply and maintain all articles necessary for giving first-aid to any person who may be injured on the work site and shall establish an emergency procedure for the immediate removal of any injured person to a hospital or a doctor's care in accordance with the Safety Regulations.
- 1.10 The Contractor shall, as required under the Safety Regulations, promptly report all accidents of any sort arising out of or in connection with the performance of the work whether on or adjacent to the work site, giving full details and statements of witnesses. The District shall be copied on all accident reports and investigation reports.

## **2.0 Security and Access**

- 2.1 **Site and Building Access:** The District's Maintenance Services Department will issue gate and building keys, electronic access cards (complete with instructions as to how to arm/disarm the building intrusion alarm system and how to contact the alarm monitoring station) and identification badges for the Contractor to enter the site and building, disarm/arm the building intrusion alarm system, and access the portions of the site where the Contractor's work is taking place. The Contractor and all subcontractors must check in at the school office (if occupied by District staff) prior to entering other parts of the building. The access cards, keys and identification badges shall be promptly returned to the District at the end of the contract.
- 2.2 **Security:** The Contractor shall assume all responsibility for the security of the work site. The Contractor must ensure that all windows, doors and gates are secure and the building intrusion alarm system is armed (unless District staff are still in the building) at the end of the workday. The Contractor must also safeguard the rest of the building and/or site from access through possible open construction areas. Security doors shall at all times remain closed and shall not be propped open, even for a short time. The Contractor is responsible for any costs arising when the District's security runner services is called to attend a work site for security matters resulting from the Contractor's negligence.
- 2.3 **Normal School Hours:** Normal hours of operation for the District are 0730h-1600h Monday to Friday, excluding statutory holidays. For after-hours and weekend work, the Contractor must notify the District's Maintenance Services Department at least one business day in advance of the work.

## **3.0 Conduct**

- 3.1 **Noise Due to Construction or Maintenance Activities:** In accordance with the Delta Noise Bylaw 1906, "no person shall carry on or cause to be carried any construction work, reconstruction, alteration, repair or demolition of a building or structure, the operation of machinery, or works in connection with any excavation or highway before 07:00h or after 1900h and day of the week from Monday to Friday, inclusive, before 0900h or after 1700h on Saturdays, or at any time Sundays. The Contractor shall respect the classroom operations in the vicinity of the work site and as such will make every attempt to limit noisy work to times outside of classroom operation or to adequately dampen, silence and/or soundproof equipment that generates noise to mitigate disruption to the classrooms.
- 3.2 **Communication devices:** Radio and cell phone volume shall be at the minimum volume which is consistent with the ability to operate the device.
- 3.3 **Roadways:** All speed limits and other traffic rules must be obeyed and access to the roadways should not be impeded. Parking and secure storage of materials and equipment by the Contractor and subcontractors shall only be in designated areas only.
- 3.4 **Cleanliness:** The work site must be maintained for an orderly appearance on a daily basis. Trash and construction debris shall be contained at all times and removed from the work site weekly.
- 3.5 **Toilets:** All temporary toilets shall have their doors faced away from streets. In no cases shall a worker utilize any staff washroom or other staff facilities at the work site, except as otherwise agreed in writing by the District. Under no circumstances will workers be permitted to use student washrooms.
- 3.6 **Identification Badges:** All workers shall have a District-assigned identification badge that clearly indicates the company's name and the worker's name. It is to be worn whenever at the work site.

- 3.7 **Smoking:** Smoking is not permitted on District property.
- 3.8 **Alcohol/Drugs:** No alcoholic beverages or non-prescription drugs shall be brought or consumed at the work site.
- 3.9 **Animals:** No dogs or other animals, are permitted at the work site without the written consent of the District.
- 3.10 **Fitness for Work:** All workers must be fit for work at all times. The District retains the right to request individuals leave the work site if unfit for any reason including, without limitation, inebriation, taking drugs, injury, fatigue, rudeness or any other reason that may affect the quality of the work or represents a breach of these rules.
- 3.11 **Theft:** Workers who steal from occupants or the District shall be immediately ejected from the work site. The Contractor is responsible for all such thefts irrespective of whether the worker is an employee of the Contractor or a subcontractor.
- 3.12 **Discrimination and Harassment:** The District actively promotes a safe and secure school environment and as such does not tolerate violations of human rights legislation, including:
- (a) discriminatory acts against any person with respect to the work or school environment or any educational program or service provided to or by that person because of race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age of that person, or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person;
  - (b) all forms of actual, attempted or threatened physical harm directed at any person; or
  - (c) any form of sexual harassment such as unwelcome sexual advances with actual or implied work related consequences; unwelcome remarks, questions, jokes or innuendo of a sexual nature including sexist comments or sexual invitations; verbal abuse, intimidation or threats of a sexual nature; unwelcome leering, staring or making sexual gestures; whistling or catcalls; display of pornographic or other sexual materials; offensive pictures, graffiti, cartoons or sayings; unwanted physical contact such as touching, patting, pinching or hugging; and physical assault of a sexual nature

## **SCHEDULE “C”**

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### **List of Environmental Reports**



**ASBESTOS MATERIALS SURVEY  
AND RISK ASSESSMENT**

**OF**

**DELTA MANOR ELEMENTARY SCHOOL  
4750 – 57<sup>th</sup> Street  
Delta, BC**

**PREPARED FOR:**

**DELTA SCHOOL DISTRICT  
Maintenance Facility  
7186 Brown Street  
Delta, BC  
V4G 1G8**

**PREPARED BY:**

**ACM ENVIRONMENTAL CORPORATION  
#217 -2323 Quebec Street  
Vancouver, BC  
V5T 4S7  
604-873-8599**

**September 2005**

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## **EXECUTIVE SUMMARY**

A.C.M. Environmental Corporation (ACM) was retained by the Delta School District to perform an Asbestos Materials Survey and Risk Assessment for Delta Manor Elementary located at 4750 – 57<sup>th</sup> Street, Delta, BC.

The assessment involved an inspection of all areas of the building. The objective of the assessment was to identify the types and extent of asbestos containing materials within the building and any risks associated with the materials and the regular usage of the building.

The assessment was conducted using both visual and physical assessment techniques. Samples of materials suspected of containing asbestos were collected and forwarded, using proper chain of custody protocols, to Prezant Associates, Inc. for asbestos analysis. Asbestos sample results are located in Appendix A of this report.

Previous asbestos sampling information for the building was reviewed prior to conducting the survey assessment. ACM previously collected 5 bulk samples from the school on June 18<sup>th</sup>, 1990. The sampling identified the Boiler Room wall stucco filler and several pipe elbow locations to be asbestos containing and was not re-sampled during the November 2004 survey. After this survey was completed it appears that all asbestos pipe insulation has been abated and the pipe insulation was replaced with fibreglass.

In summary, the findings from the assessment conclude that asbestos was found within the construction materials of the building, however, no PCB or Mercury containing materials were found within the equipment of the building.

Two types of asbestos containing materials were observed during this survey and one from the previous survey. These include vinyl floor tile materials and plaster materials from the recent survey and the wall stucco filler found from the previous survey. Within the context of the report, areas have been detailed as to the locations of the asbestos containing materials, the content of asbestos where applicable, and the required procedures to be followed for removal of these materials, as required.

The hazardous materials survey was conducted using non-destructive and some limited destructive testing methods. Areas within walls were not inspected as access was not possible without causing extensive damage to the walls. It should be noted that there is a possibility of asbestos containing materials existing within inaccessible wall and ceiling cavities, and under sub-floors. Possible asbestos-containing materials which may exist in these areas may

include but are not limited to: insulation materials (mechanical or construction), secondary layers of drywall or flooring, etc.

Roofing materials were not sampled at this time as the integrity of the waterproof membrane would be compromised, possibly voiding insurance coverage in the event of a water leak. If the roofing materials are to be disturbed during a renovation project, they must be sampled prior to the work taking place.

A random number of fluorescent lighting fixtures were opened up and inspected for possible PCB containing ballasts. No PCB containing ballasts were observed within the fluorescent lighting fixtures inspected, although some may exist, as not all fixtures were opened. No Mercury containing thermostat switches were observed within the building.

## **INTRODUCTION**

A.C.M. Environmental Corporation (ACM) was retained by the Delta School District to perform an Asbestos Materials Survey and Risk Assessment for the Delta Manor Elementary located at 4750 – 57th Street, Delta, BC. All areas of the building were inspected and/or sampled during this survey and photographs of the site are included as Appendix B.

The objective of the assessment was to identify the types and extent of asbestos containing construction materials within the accessible areas of the building. The assessment at this time involved an inspection of all areas of the building not including the roofing materials.

The survey and assessment was conducted on September 12<sup>th</sup>, 2005 by Mr. Barry O'Regan, BST, ISO14001, EMS, IA, Project Manager, for ACM. Thirty three (33) representative bulk samples of materials suspected of containing asbestos were collected for analysis and are included as Appendix A of this report.

Previous asbestos sampling information for the building was reviewed prior to conducting the survey assessment. ACM previously collected bulk samples from the school on June 18<sup>th</sup>, 1990. The sampling identified the pipe elbow insulation and stucco wall filler to be asbestos containing and was not re-sampled during the September 12<sup>h</sup>, 2005 survey.

## **METHODOLOGY**

The hazardous materials survey was conducted using non-destructive and some limited destructive testing methods. Areas within walls were not inspected as access was not possible without causing extensive damage to the walls. It should be noted that there is a possibility of asbestos containing materials existing within inaccessible wall and ceiling cavities, and under sub-floors. Possible asbestos-containing materials which may exist in these areas may include but are not limited to: insulation materials (mechanical or construction), secondary layers of drywall or flooring, etc.

The U.S. Environmental Protection Agency (USEPA) Guidance Document was selected for use in this study (1). The document identifies factors associated with the "condition" and the "potential for disturbance or erosion" of asbestos containing materials. These factors help to define the fibre release potential of the suspect asbestos containing materials and were used in a qualitative evaluation of materials found in the surveyed areas. Recommendations have been substantiated by additional information utilized from other documentation cited in the Reference Section of this report.

The bulk samples of suspect asbestos containing materials were forwarded, using proper chain of custody protocols, to Prezant Associates, Inc. for asbestos analysis. The samples were analyzed using polarized light microscopy (PLM) with dispersion staining in accordance with U.S. EPA method 600/R-93/116, "Method for Determination of Asbestos in Bulk Building Materials".

Other hazardous materials were visually inspected and are noted in this report.

The survey relied on the abilities and experience of the surveyor to gain access and identify possible asbestos containing materials. All areas of the building were accessed during the assessment excluding the roof.

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## **RESULTS & ASSOCIATED RISK LEVELS**

### **ASBESTOS**

Three types of asbestos containing materials were identified during the two surveys which could be affected by any potential renovation or demolition activities. These materials are vinyl floor tiles, plaster and stucco filler. A breakdown for each type of material is as follows:

#### **Vinyl Floor Tile Materials:**

Asbestos containing vinyl floor tile materials were observed within rooms 103, 115, 128 and 130. The asbestos containing vinyl floor tile materials were either pale orange-pink in color (Room 115), beige with thin brown streaks (Room 103), or beige with brown and grey streaks. All four bulk samples of vinyl floor tile materials were found to contain <1% Chrysotile asbestos in the tiles. The materials are presently in fair to good condition.

WCB Regulations do not treat any materials with less than 1% asbestos as asbestos containing. Workers should still use moderate risk procedures when exposed to the vinyl floor tile materials, even in materials with less than 1% asbestos concentrations. The WCB states that workers must be properly protected from any potential exposure to airborne asbestos fibres. It is recommended that any work affecting the materials be done using a minimum of moderate risk asbestos work procedures. The vinyl floor tile materials do not have to be disposed in accordance with applicable regulations as asbestos waste.

#### **Plaster Materials:**

Many of the walls within the building are constructed of cast in place concrete, cinder block, or wood/drywall and plaster materials. Two samples of plaster materials were collected; one from the Gym kitchen which was found to be non-asbestos containing, and one sample was collected from a storage room within the building which was found to contain 5% Chrysotile asbestos.

Prior to the any activities taking place that may affect the asbestos containing plaster materials, the materials must be removed and disposed of in accordance with applicable regulations. The removal of the plaster materials will pose a moderate to high risk of asbestos exposure to the workers involved, therefore as a minimum, MODIFIED MODERATE RISK asbestos work procedures will be required for the removal of the asbestos containing plaster materials. Modified moderate risk asbestos work procedures incorporate the use of better dust

control measures and increased personal protection in addition to regular moderate risk asbestos requirements. If the materials are to remain in place, any work procedures that may disturb the asbestos containing plaster materials must be done using, as a minimum, moderate risk asbestos work procedures.

Stucco Filler Materials:

Asbestos containing stucco filler materials were observed and sampled from Boiler Room in the previous survey. The asbestos containing stucco filler materials were only observed in this area, however, could exist within other areas of the building. The stucco filler sample collected was found to contain <1% Chrysotile asbestos. The materials are presently in fair to good condition.

WCB Regulations do not treat any materials with less than 1% asbestos as asbestos containing. Workers are still encouraged to use moderate risk procedures when exposed to the stucco filler materials, even in materials with less than 1% asbestos concentrations. The WCB states that workers must be properly protected from any potential exposure to airborne asbestos fibres. It is recommended that any work affecting the materials be done using a minimum of moderate risk asbestos work procedures. The stucco filler materials do not have to be disposed in accordance with applicable regulations as asbestos waste.

Other Materials:

It should be noted that asbestos containing door gasket materials were observed on a flammable storage cabinet. Although these gasket materials are not a part of the building structure, they should not be disturbed or removed without following proper modified moderate risk asbestos work procedures

**POLYCHLORINATED BIPHENYLS (PCBs)**

A random number of fluorescent light ballasts were visually inspected for possible PCB containing ballasts. No PCB containing ballasts were observed within the fluorescent lighting fixtures inspected in both buildings, although some may exist, as not all fixtures were opened up.

PCB containing fluorescent light ballasts do not pose a risk to occupants of the building. If any PCB containing ballasts are encountered during any renovations of the building, they must be separated from the fixtures and disposed of properly in accordance with applicable regulations.

**MERCURY THERMOSTATS**

No thermostats observed within the building were found to have Mercury containing switches within them. If any Mercury containing thermostat switches are encountered within the building during renovation or repair activities, they must be removed intact from the thermostats and disposed of properly in accordance with applicable regulations.

## **RECOMMENDATIONS**

Prior to beginning any work that may impinge upon the hazardous materials within the building, the following must be performed:

- 1.) Any affected asbestos containing vinyl floor tile materials in the building should be removed in accordance with applicable regulations. The removal of the asbestos containing vinyl floor tile materials will require MODERATE RISK asbestos work procedures to be followed.
- 2.) Any affected asbestos containing plaster materials in the building must be removed and disposed of in accordance with applicable regulations. The removal of the asbestos containing plaster materials will require MODIFIED MODERATE RISK asbestos work procedures to be followed.
- 3.) If any Mercury containing thermostat switches are encountered during any renovation or repair activities within the building, they must be removed and disposed of in accordance with applicable regulations.
- 4.) If any PCB containing ballasts are encountered during any renovation or repair activities within the building, they must be removed and disposed of in accordance with applicable regulations.
- 5.) If any suspect asbestos containing materials are encountered within inaccessible wall or ceiling cavities, or under floors, during renovation or demolition activities, the work in the immediate area must stop and the supervisor contacted for further direction.

**STATEMENT OF LIMITATIONS**

The ACM report is intended to direct the Client's attention to recognised environmental conditions and to potential sources of environmental contamination. The findings and conclusion regarding contamination of the property are based solely on the extent of observations and information gathered during the assessment. Nothing in the report is intended to express any legal opinion upon environmental liabilities relating to the site or whether operations legally conformed with relevant legislative requirements.

Furthermore, it must be understood that changing circumstances in the physical environment, the use of the property, as well in changes in any substances stored, used, handled at the property, could alter radically the conclusions and information contained in this report. Therefore, it is important that the property is periodically re-evaluated and the client kept informed as to developments, which may impact the property. This report is not intended to be used as contract specifications.

**A.C.M. ENVIRONMENTAL CORPORATION**

---

James McArthur, ASCT  
Environmental Technician

**REFERENCES**

- 1) USEPA. 1985. U.S. Environmental Protection Agency. "Guidance for Controlling Asbestos-Containing Materials in Buildings". Washington, DC: Office of Toxic Substances, USEPA.
- 2) Lory EE, Coin DC. 1981. "Management Procedure for Assessment of Friable Asbestos Insulating Material". Port Hueneme, CA: Civil Engineering Laboratory, Naval Construction Battalion Center.
- 3) Workers' Compensation Board of British Columbia, effective 15 April 1998, and all current amendments. Occupational Health and Safety Regulations.
- 4) 2002 Edition - Workers' Compensation Board of British Columbia. Safe Work Practices for Handling Asbestos.

**APPENDIX A**  
**Bulk Sample Results**



NVLAP LAB CODE 200613-0



330 6th Ave. North, Suite 200 Seattle, WA 98109  
OFFICE: (206) 281-8858 FAX: (206) 281-8922

### Bulk Asbestos Fiber Analysis

**ACM Environmental**  
2323 Quebec Street, Suite 211  
Vancouver, BC

Project Location: Delta Manor Elementary  
3048-27

PAI Batch Number: **05-2336**  
Client Job Number:  
Number of Samples: **33**  
Turn Around Time: **10 day**

Batch Number:	05-2336	<b>ACM Environmental</b>
Lab Sample Number:	05012768	
Client Sample Number:	<b>3048.221</b>	<i>Delta Manor Elementary</i> <b>3048-27</b>

#### L-1 Beige hard tile with brown thin streaks

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<1% <b>Chrysotile</b>		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		>4% Miscellaneous Particles

**Comments:**  
There is <1% chrysotile asbestos in this layer.

#### L-2 Black shiny mastic

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Asphalt Filler and Binder
		5% Mineral Fragments
		5% Filler and Binder

**Comments:**

#### L-3 Gray hard granular powdery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		98% Sand
		2% Mineral Fragments

**Comments:**

Sampled By: James McArthur  
Received By: John McCaslin 9/22/2005  
Reviewed By: George McCaslin 9/28/2005

Analyzed By: Deitrie Hanson 9/28/2005



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OFFICE: (206) 281-8858 FAX: (206) 281-8922

### Bulk Asbestos Fiber Analysis

Batch Number:	05-2336	<b>ACM Environmental</b>
Lab Sample Number:	05012769	
Client Sample Number:	<b>3048.222</b>	<i>Delta Manor Elementary</i> <i>3048-27</i>

#### L-1 Off-white hard tile material with pale gray streaks

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		5% Filler and Binder

Comments:

#### L-2 Golden yellow resinous mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		92% Resin and Binder
		5% Mineral Fragments
		3% Filler and Binder

Comments:

Batch Number:	05-2336	<b>ACM Environmental</b>
Lab Sample Number:	05012770	
Client Sample Number:	<b>3048.223</b>	<i>Delta Manor Elementary</i> <i>3048-27</i>

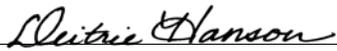
#### L-1 Black shiny topped gray and peach fibrous material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
	90% Cellulose	5% Vinyl Filler and Binder
		5% Resin and Binder

Comments:

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/22/2005  
9/28/2005

  
 Analyzed By: Deitrie Hanson

9/28/2005



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OFFICE: (206) 281-8858 FAX: (206) 281-8922

### Bulk Asbestos Fiber Analysis

#### L-2 Black pliable rubbery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		80% Rubber Particles
		15% Calcite Filler and Binder
		5% Mineral Fragments

Comments:

Batch Number: 05-2336	<b>ACM Environmental</b>
Lab Sample Number: 05012771	
Client Sample Number: 3048.224	<i>Delta Manor Elementary</i> 3048-27

#### L-1 White paint on black shiny topped gray and peach fibrous opaque material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
	80% Cellulose	15% Vinyl Filler and Binder
		3% Resin and Binder
		2% Paint

Comments:

#### L-2 Pale gray and peach fibrous material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
	98% Cellulose	2% Filler and Binder

Comments:

Batch Number: 05-2336	<b>ACM Environmental</b>
Lab Sample Number: 05012772	
Client Sample Number: 3048.225	<i>Delta Manor Elementary</i> 3048-27

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/22/2005  
 9/28/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 9/28/2005



330 6th Ave. North, Suite 200 Seattle, WA 98109  
 OFFICE: (206) 281-8858 FAX: (206) 281-8922

## Bulk Asbestos Fiber Analysis

### L-1 Pink hard tile material

<b>Asbestos Fibrous Components:</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
<1% Chrysotile		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		>4% Miscellaneous Particles

**Comments:**  
 This tile contains <1% chrysotile asbestos.

### L-2 Black mastic

<b>Asbestos Fibrous Components:</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
No Asbestos Detected		90% Asphalt Filler and Binder
		5% Mineral Fragments
		5% Filler and Binder

**Comments:**

Batch Number: 05-2336	ACM Environmental
Lab Sample Number: 05012773	
Client Sample Number: 3048.226	Delta Manor Elementary 3048-27

### L-1 White paint

<b>Asbestos Fibrous Components:</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
No Asbestos Detected		100% Paint

**Comments:**

### L-2 Pale gray fibrous opaque material

<b>Asbestos Fibrous Components:</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
No Asbestos Detected	55% Cellulose	5% Perlite
	40% Mineral Wool	

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/22/2005  
 9/28/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson

9/28/2005



NVLAP LAB CODE 200613-0



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OFFICE: (206) 281-8858 FAX: (206) 281-8922

## Bulk Asbestos Fiber Analysis

Batch Number:	05-2336	<b>ACM Environmental</b>
Lab Sample Number:	05012774	
Client Sample Number:	<b>3048.227</b>	<i>Delta Manor Elementary</i> <i>3048-27</i>

### L-1 Black pliable rubbery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 90% Rubber Particles 10% Calcite Filler and Binder
--	---	---

Comments:

### L-2 Off-white opaque pliable mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 95% Resin and Binder 5% Mineral Fragments
--	---	--

Comments:

### L-3 White paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 100% Paint
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Comments:

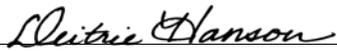
### L-4 Golden tan fibrous papery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b> 97% Cellulose	<b>Non-Fibrous Components:</b> 3% Filler and Binder
--	--	--

Comments:

Sampled By: James McArthur  
Received By: John McCaslin  
Reviewed By: George McCaslin

9/22/2005  
9/28/2005

  
Analyzed By: Deitrie Hanson

9/28/2005



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### Bulk Asbestos Fiber Analysis

Batch Number:	05-2336	<b>ACM Environmental</b>
Lab Sample Number:	05012775	
Client Sample Number:	<b>3048.228</b>	<i>Delta Manor Elementary</i> <b>3048-27</b>

**L-1 Pale pink and gray pliable thick rubbery material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Rubber Particles
		10% Calcite Filler and Binder

**Comments:**

**L-2 Tan fibrous opaque material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
	97% Cellulose	3% Filler and Binder

**Comments:**

Batch Number:	05-2336	<b>ACM Environmental</b>
Lab Sample Number:	05012776	
Client Sample Number:	<b>3048.229</b>	<i>Delta Manor Elementary</i> <b>3048-27</b>

**L-1 White paint**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		100% Paint

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/22/2005  
 9/28/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson

9/28/2005



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### Bulk Asbestos Fiber Analysis

#### L-2 Pale grayish tan fibrous opaque material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	60% Cellulose 35% Mineral Wool	5% Perlite

**Comments:**

Batch Number:	05-2336	<b>ACM Environmental</b>
Lab Sample Number:	05012777	
Client Sample Number:	<b>3048.230</b>	<i>Delta Manor Elementary</i> <b>3048-27</b>

#### L-1 Pale beige hard tile material with brown streaks

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>&lt;1% Chrysotile</b>		45% Calcite Filler and Binder 40% Mineral Filler and Binder 10% Vinyl Filler and Binder >4% Miscellaneous Particles

**Comments:**

This tile contains <1% chrysotile asbestos.

#### L-2 Black mastic

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Asphalt Filler and Binder 5% Mineral Fragments 5% Filler and Binder

**Comments:**

Batch Number:	05-2336	<b>ACM Environmental</b>
Lab Sample Number:	05012778	
Client Sample Number:	<b>3048.231</b>	<i>Delta Manor Elementary</i> <b>3048-27</b>

Sampled By: James McArthur  
Received By: John McCaslin  
Reviewed By: George McCaslin

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9/28/2005

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Analyzed By: Deitrie Hanson 9/28/2005



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### Bulk Asbestos Fiber Analysis

**L-1 White and red paper on brown fibrous papery material**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	99% Cellulose	1% Filler and Binder

Comments:

**L-2 White fine chalky powdery fibrous material with brown flakes**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	15% Glass Fiber	80% Talc Filler and Binder 5% Vermiculite

Comments:

**L-3 Brown fibrous papery material**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	99% Cellulose	1% Filler and Binder

Comments:

Batch Number:	05-2336	<b>ACM Environmental</b>
Lab Sample Number:	05012779	
Client Sample Number:	<b>3048.232</b>	<i>Delta Manor Elementary</i> <b>3048-27</b>

**L-1 Off-white paint on black pliable rubbery material**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Rubber Particles 10% Calcite Filler and Binder

Comments:

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/22/2005  
9/28/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson

9/28/2005



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### Bulk Asbestos Fiber Analysis

**L-2 Golden brown opaque mastic**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		97% Resin and Binder
		3% Mineral Fragments

**Comments:**

Batch Number:	05-2336	<b>ACM Environmental</b>
Lab Sample Number:	05012780	
Client Sample Number:	<b>3048.233</b>	<i>Delta Manor Elementary</i> <b>3048-27</b>

**L-1 Pale beige hard tile material with brown and gray streaks**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>&lt;1% Chrysotile</b>		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		>4% Miscellaneous Particles

**Comments:**

This tile contains <1% chrysotile asbestos.

**L-2 Black mastic**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Asphalt Filler and Binder
		5% Mineral Fragments
		5% Filler and Binder

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin 9/22/2005  
 Reviewed By: George McCaslin 9/28/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 9/28/2005



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### Bulk Asbestos Fiber Analysis

#### L-3 Brown fine powdery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		90% Clay Filler and Binder
		10% Mineral Fragments

**Comments:**

Batch Number: 05-2336	<b>ACM Environmental</b>
Lab Sample Number: 05012781	
Client Sample Number: 3048.234	<i>Delta Manor Elementary</i> 3048-27

#### L-1 Dull thick pliable rubbery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		90% Rubber Particles
		10% Calcite Filler and Binder

**Comments:**

#### L-2 Golden orange transparent resinous mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		92% Resin and Binder
		5% Mineral Fragments
		3% Filler and Binder

**Comments:**

Batch Number: 05-2336	<b>ACM Environmental</b>
Lab Sample Number: 05012782	
Client Sample Number: 3048.235	<i>Delta Manor Elementary</i> 3048-27

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/22/2005  
 9/28/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 9/28/2005



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### Bulk Asbestos Fiber Analysis

**L-1 Dull gray and pink thick brittle textured sheet vinyl tile material**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	5% Synthetic	45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder

**Comments:**

**L-2 Golden tan resinous mastic**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Resin and Binder
		7% Mineral Fragments
		3% Filler and Binder

**Comments:**

Batch Number: 05-2336	<b>ACM Environmental</b>
Lab Sample Number: 05012783	
Client Sample Number: 3048.236	<b>Delta Manor Elementary</b> 3048-27

**L-1 Black thick pliable rubbery material**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Rubber Particles
		10% Calcite Filler and Binder

**Comments:**

**L-2 Golden brown pliable mastic**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	3% Hair	95% Resin and Binder
	2% Cellulose	

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin 9/22/2005  
 Reviewed By: George McCaslin 9/28/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 9/28/2005



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### Bulk Asbestos Fiber Analysis

Batch Number:	05-2336	<b>ACM Environmental</b>
Lab Sample Number:	05012784	
Client Sample Number:	<b>3048.237</b>	<i>Delta Manor Elementary</i> <i>3048-27</i>

#### L-1 Brown fibrous papery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	99% Cellulose	1% Filler and Binder

Comments:

#### L-2 White fine powdery fibrous material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	12% Cellulose	85% Talc Filler and Binder 3% Mineral Fragments

Comments:

#### L-3 Brown fibrous papery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	99% Cellulose	1% Filler and Binder

Comments:

Batch Number:	05-2336	<b>ACM Environmental</b>
Lab Sample Number:	05012785	
Client Sample Number:	<b>3048.238</b>	<i>Delta Manor Elementary</i> <i>3048-27</i>

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/22/2005  
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*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson

9/28/2005



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### Bulk Asbestos Fiber Analysis

**L-1 Dull pale orange thick pliable sheet vinyl tile material**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	5% Cellulose	60% Vinyl Filler and Binder
		35% Mineral Filler and Binder

Comments:

**L-2 Pink coated tan twisted fiber bundles**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		97% Straw
		3% Paint

Comments:

**L-3 Tan opaque mastic**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Resin and Binder
		5% Mineral Fragments
		5% Filler and Binder

Comments:

Batch Number:	05-2336	<b>ACM Environmental</b>
Lab Sample Number:	05012786	
Client Sample Number:	<b>3048.239</b>	<i>Delta Manor Elementary</i> <b>3048-27</b>

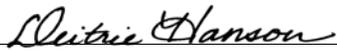
**L-1 Pale pinkish orange pliable sheet vinyl tile material**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	5% Cellulose	65% Vinyl Filler and Binder
		30% Mineral Filler and Binder

Comments:

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/22/2005  
9/28/2005

  
 Analyzed By: Deitrie Hanson

9/28/2005



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### Bulk Asbestos Fiber Analysis

**L-2 Golden orange woven twisted fiber bundles**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		98% Straw
		2% Filler and Binder

**Comments:**

**L-3 Brown fine powdery material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Clay Filler and Binder
		10% Miscellaneous Particles

**Comments:**

**L-4 Off-white flaky paint**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		100% Paint

**Comments:**

Batch Number: 05-2336	<b>ACM Environmental</b>
Lab Sample Number: 05012787	
Client Sample Number: 3048.240	<i>Delta Manor Elementary</i> 3048-27

**L-1 Pale beige paint**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		100% Paint

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/22/2005  
 9/28/2005

*Deitrie Hanson*  
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9/28/2005



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## Bulk Asbestos Fiber Analysis

**L-2 White crystalline powdery material**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		80% Calcite Filler and Binder
		15% Perlite
		5% Mineral Fragments

**Comments:**

**L-3 Pale beige fibrous tape-like papery material**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
	97% Cellulose	3% Filler and Binder

**Comments:**

**L-4 White crystalline powdery material**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Calcite Filler and Binder
		8% Perlite
		2% Mineral Fragments

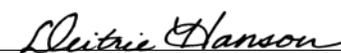
**Comments:**

**L-5 Brown fibrous papery material**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
	99% Cellulose	1% Filler and Binder

**Comments:**

Batch Number:	05-2336	<b>ACM Environmental</b>
Lab Sample Number:	05012788	
Client Sample Number:	<b>3048.241</b>	<i>Delta Manor Elementary</i> 3048-27

Sampled By: James McArthur		
Received By: John McCaslin	9/22/2005	Analyzed By: Deitrie Hanson
Reviewed By: George McCaslin	9/28/2005	9/28/2005



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### Bulk Asbestos Fiber Analysis

**L-1 White crystalline powdery material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		92% Calcite Filler and Binder
		5% Mineral Fragments
		3% Filler and Binder

**Comments:**

**L-2 Dull brown fibrous papery material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
	97% Cellulose	3% Filler and Binder

**Comments:**

**L-3 White powdery fibrous material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
	15% Cellulose	80% Talc Filler and Binder
		5% Mineral Fragments

**Comments:**

**L-4 Dull brown fibrous papery material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
	99% Cellulose	1% Filler and Binder

**Comments:**

Batch Number: 05-2336	<b>ACM Environmental</b>
Lab Sample Number: 05012789	
Client Sample Number: 3048.242	<b>Delta Manor Elementary</b> <b>3048-27</b>

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/22/2005  
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 Analyzed By: Deitrie Hanson

9/28/2005



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## Bulk Asbestos Fiber Analysis

**L-1 White powdery chalky granular material with white fibers**

<b>Asbestos Fibrous Components:</b> 5% <b>Chrysotile</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 65% Calcite Filler and Binder 30% Talc Filler and Binder
---	---	---

**Comments:**  
 The white chrysotile asbestos is sticking out of this granular material.

**L-2 Pale gray hard granular hard mortar-like material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 88% Sand 10% Mineral Filler and Binder 2% Filler and Binder
--	---	---

**Comments:**

Batch Number: 05-2336	<b>ACM Environmental</b>
Lab Sample Number: 05012790	
Client Sample Number: 3048.243	<i>Delta Manor Elementary</i> 3048-27

**L-1 White crystalline powdery material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 92% Calcite Filler and Binder 5% Mineral Fragments 3% Filler and Binder
--	---	---

**Comments:**

**L-2 Pale tan fibrous tape-like papery material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b> 97% Cellulose	<b>Non-Fibrous Components:</b> 3% Filler and Binder
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**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/22/2005  
 9/28/2005

*Deitrie Hanson*

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Analyzed By: Deitrie Hanson 9/28/2005



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## Bulk Asbestos Fiber Analysis

**L-3      Brown fibrous papery material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components: 99% Cellulose	Non-Fibrous Components: 1% Filler and Binder
--	---	---

**Comments:**

**L-4      White powdery fibrous material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components: 15% Cellulose	Non-Fibrous Components: 80% Talc Filler and Binder 5% Filler and Binder
--	---	---

**Comments:**

Batch Number: 05-2336	<b>ACM Environmental</b>
Lab Sample Number: 05012791	
Client Sample Number: 3048.244	<i>Delta Manor Elementary</i> 3048-27

**L-1      Pale grayish white hard tile material with pale gray streaks**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 55% Calcite Filler and Binder 40% Mineral Filler and Binder 5% Vinyl Filler and Binder
--	----------------------------------	---

**Comments:**

**L-2      Black resinous mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 92% Asphalt Filler and Binder 5% Mineral Fragments 3% Filler and Binder
--	----------------------------------	--

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin      9/22/2005  
 Reviewed By: George McCaslin      9/28/2005

*Deitrie Hanson*  
 \_\_\_\_\_  
 Analyzed By: Deitrie Hanson      9/28/2005



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## Bulk Asbestos Fiber Analysis

Batch Number:	05-2336	<b>ACM Environmental</b>
Lab Sample Number:	05012792	
Client Sample Number:	<b>3048.245</b>	<i>Delta Manor Elementary</i> <i>3048-27</i>

### L-1 White paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		100% Paint

Comments:

### L-2 Pale grayish tan fibrous opaque material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
	40% Cellulose	15% Perlite
	35% Mineral Wool	5% Filler and Binder
		5% Mineral Fragments

Comments:

Batch Number:	05-2336	<b>ACM Environmental</b>
Lab Sample Number:	05012793	
Client Sample Number:	<b>3048.246</b>	<i>Delta Manor Elementary</i> <i>3048-27</i>

### L-1 Dull gray pliable rubbery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		90% Rubber Particles
		10% Calcite Filler and Binder

Comments:

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/22/2005  
 9/28/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 9/28/2005



NVLAP LAB CODE 200613-0



330 6th Ave. North, Suite 200 Seattle, WA 98109  
OFFICE: (206) 281-8858 FAX: (206) 281-8922

### Bulk Asbestos Fiber Analysis

**L-2 Off-white opaque pliable mastic**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		80% Resin and Binder
		20% Calcite Filler and Binder

Comments:

**L-3 White paint**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		100% Paint

Comments:

**L-4 White crystalline powdery material**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		80% Calcite Filler and Binder
		15% Perlite
		5% Mineral Fragments

Comments:

Batch Number: 05-2336	<b>ACM Environmental</b>
Lab Sample Number: 05012794	
Client Sample Number: 3048.247	<i>Delta Manor Elementary</i> 3048-27

**Dull gray pliable rubbery material**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Rubber Particles
		10% Calcite Filler and Binder

Comments:

Sampled By: James McArthur  
 Received By: John McCaslin 9/22/2005  
 Reviewed By: George McCaslin 9/28/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 9/28/2005



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OFFICE: (206) 281-8858 FAX: (206) 281-8922

### Bulk Asbestos Fiber Analysis

Batch Number:	05-2336	<b>ACM Environmental</b>
Lab Sample Number:	05012795	
Client Sample Number:	<b>3048.248</b>	<i>Delta Manor Elementary</i> <i>3048-27</i>

#### L-1 White chalky powdery hard material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		90% Calcite Filler and Binder
		8% Perlite
		2% Mineral Fragments

Comments:

#### L-2 Brown fibrous papery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
	99% Cellulose	1% Filler and Binder

Comments:

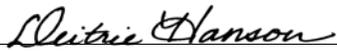
#### L-3 White powdery fibrous material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
	15% Cellulose	80% Talc Filler and Binder
		5% Filler and Binder

Comments:

Batch Number:	05-2336	<b>ACM Environmental</b>
Lab Sample Number:	05012796	
Client Sample Number:	<b>3048.249</b>	<i>Delta Manor Elementary</i> <i>3048-27</i>

Sampled By: James McArthur  
 Received By: John McCaslin 9/22/2005  
 Reviewed By: George McCaslin 9/28/2005

  
 Analyzed By: Deitrie Hanson 9/28/2005



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### Bulk Asbestos Fiber Analysis

**L-1 Dull gray hard tile material**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
40% Calcite Filler and Binder  
40% Mineral Filler and Binder  
10% Vinyl Filler and Binder  
10% Miscellaneous Particles

**Comments:**

**L-2 Black shiny mastic**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
95% Asphalt Filler and Binder  
5% Mineral Fragments

**Comments:**

Batch Number: 05-2336  
Lab Sample Number: 05012797  
Client Sample Number: 3048.250

**ACM Environmental**

*Delta Manor Elementary  
3048-27*

**L-1 Pale beige paint**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
100% Paint

**Comments:**

**L-2 White crystalline powdery material**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
85% Calcite Filler and Binder  
12% Perlite  
3% Mineral Fragments

**Comments:**

Sampled By: James McArthur  
Received By: John McCaslin 9/22/2005  
Reviewed By: George McCaslin 9/28/2005

Analyzed By: Deitrie Hanson 9/28/2005



NVLAP LAB CODE 200613-0



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### Bulk Asbestos Fiber Analysis

Batch Number:	05-2336	<b>ACM Environmental</b>
Lab Sample Number:	05012798	
Client Sample Number:	<b>3048.251</b>	<i>Delta Manor Elementary</i> <i>3048-27</i>

#### L-1 White crystalline powdery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		80% Calcite Filler and Binder
		15% Perlite
		5% Mineral Fragments

Comments:

#### L-2 Pale beige fibrous tape-like papery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
	97% Cellulose	3% Filler and Binder

Comments:

#### L-3 White crystalline powdery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		85% Calcite Filler and Binder
		12% Perlite
		3% Mineral Fragments

Comments:

#### L-4 Brown fibrous papery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
	99% Cellulose	1% Filler and Binder

Comments:

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/22/2005  
 9/28/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson

9/28/2005



330 6th Ave. North, Suite 200 Seattle, WA 98109  
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## Bulk Asbestos Fiber Analysis

### L-5 White powdery fibrous material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	15% Cellulose	80% Talc Filler and Binder
		5% Mineral Fragments

**Comments:**

Batch Number: 05-2336	<b>ACM Environmental</b>
Lab Sample Number: 05012799	
Client Sample Number: 3048.252	<i>Delta Manor Elementary</i> 3048-27

### L-1 White paint

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		100% Paint

**Comments:**

### L-2 Dull pale gray fibrous opaque material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	70% Cellulose	5% Perlite
	25% Mineral Wool	

**Comments:**

Batch Number: 05-2336	<b>ACM Environmental</b>
Lab Sample Number: 05012800	
Client Sample Number: 3048.253	<i>Delta Manor Elementary</i> 3048-27

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/22/2005  
 9/28/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson

9/28/2005



NVLAP LAB CODE 200613-0



330 6th Ave. North, Suite 200 Seattle, WA 98109  
OFFICE: (206) 281-8858 FAX: (206) 281-8922

### Bulk Asbestos Fiber Analysis

**L-1 Beige thick paint**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
100% Paint

**Comments:**

**L-2 Dull gray hard granular material**

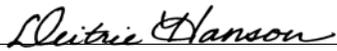
**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
85% Sand  
12% Mineral Filler and Binder  
3% Filler and Binder

**Comments:**

Sampled By: James McArthur  
Received By: John McCaslin 9/22/2005  
Reviewed By: George McCaslin 9/28/2005

  
Analyzed By: Deitrie Hanson 9/28/2005

**APPENDIX B**  
**Photographs**



Asbestos containing 9" vinyl floor tiles in lower hallway



Asbestos containing plaster in Room 135 (Storage)



Asbestos containing door gasket on flammable storage cabinet

**ENERGY SYSTEM SERVICE AGREEMENT**

**DELTA SECONDARY SCHOOL**

**THIS AGREEMENT** dated for reference the 26<sup>th</sup> day of September, 2011.

**BETWEEN:**

**THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 37 (DELTA)**  
a corporation established under the School Act R.S.B.C. 1996, c. 412 having an  
office at 4585 Harvest Drive, Delta, British Columbia, V4K 5B4

(the "District")

OF THE FIRST PART

**AND:**

**FORTISBC ENERGY INC.**, a company duly incorporated under the laws of the  
Province of British Columbia, having its registered office at 10th Floor, 1111  
West Georgia Street, Vancouver, B.C. V6E 4M3

("FEI")

OF THE SECOND PART

**WHEREAS:**

- A. The District is the owner of Delta Secondary School (the "Building") and lands located at 4629 51<sup>st</sup> Street, Delta, Delta, British Columbia, which lands are legally described as:

PID: 019-037-384 Property No: 122287

PARCEL 1 EXCEPT PART IN PLAN LMP51813 DISTRICT LOTS 106 AND 115  
GROUP 2 NEW WESTMINSTER DISTRICT REFERENCE PLAN LMP19697

(the "Lands")

- B. FEI wishes to supply to the Building, and the District wishes to purchase, Thermal Energy generated by an Energy System that FEI will construct on the Lands, and which FEI will own and operate, all pursuant to the terms of this Agreement.
- C. The Thermal Energy supplied by FEI to the Building pursuant to this Agreement will be priced at the rate set forth in the Energy System Rate Development Agreement between the Parties dated September 26<sup>th</sup>, 2011.

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT** in consideration of the premises and the covenants, agreements, representations, warranties and payments set out herein,

the receipt and sufficiency of which is hereby acknowledged by each Party, the Parties covenant and agree as follows:

## ARTICLE 1 - INTERPRETATION

### 1.1 DEFINITIONS

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

- (a) “Adjusted Energy System Purchase Price” means, as of the date on which a purchase of the Energy System pursuant to Article 15 is effective, either:
  - (i) the Rate Base Value; or
  - (ii) such other purchase price for the Energy System as is determined by the BCUC; plus all applicable taxes;
- (b) “Affiliate” has the meaning set out in the *Business Corporation Act*, S.B.C. 2002, c.57 and includes FortisBC Inc.;
- (c) “Agreement” means this agreement, including the preamble hereto and any schedules attached hereto and the terms “this Agreement”, “hereof”, “herein”, “hereunder” and “hereinafter” and similar expressions refer to the Agreement and not to any particular Section or other portion thereof and includes any agreement supplementary or ancillary thereto;
- (d) “Acceptance Date” means the date of BCUC Acceptance;
- (e) “BCUC” means the British Columbia Utilities Commission, or any successor thereto;
- (f) “BCUC Acceptance” has the meaning assigned to that term in Section 11.1;
- (g) “Building” has the meaning assigned to that term on page one of this Agreement;
- (h) “Building System” means the space heating, cooling and ventilation, and domestic hot water distribution and control systems existing in the Building, to which the Energy System will be connected;
- (i) “Business Day” means any day except Saturday and Sunday or any day on which banks are generally not open for business in Vancouver, British Columbia;
- (j) “Capital Contribution” means \$0;
- (k) “Commissioned” means once the Energy System is certified complete and operating in accordance with the Specifications by a professional engineer under seal;
- (l) “Commission Date” means the day on which the Energy System is Commissioned;

- (m) “Contaminants” means, collectively, any contaminant, toxic substance, dangerous good, or pollutant or any other substance which when released to the natural environment is likely to cause, at some immediate or future time, material harm or degradation to the natural environment or material risk to human health, and includes any radioactive materials, asbestos materials, urea formaldehyde, underground or aboveground tanks, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive or toxic substances, hazardous waste or waste of any kind, pesticides, defoliant, or any other solid, liquid, gas, vapour, odour or any other substance .the storage, manufacture, disposal, handling, treatment, generation, use, transport, remediation or Release into the Environment of which is now or hereafter prohibited, controlled or regulated under Environmental Laws;
- (n) “Continuing Service Interruption Notice” has the meaning assigned to that term in Section 14.3(b);
- (o) “Contractor” means a prime contractor hired by FEI to oversee and complete the construction and installation of the Energy System;
- (p) “Design and Construction” means the total construction and related services required to design, construct and commission the Energy System and connected components of the Building System;
- (q) “Design Thermal Energy” means the maximum amount of Thermal Energy that the Energy System is capable of delivering through the Thermal Energy Meter and is included in the Specifications;
- (r) “Disclosed Contaminants” means Contaminants:
  - (i) the existence of which are specifically identified in the reports provided by the District to FEI and listed in Schedule C;
  - (ii) that were or ought to have been discovered, foreseen or anticipated upon reasonable inspection by FEI prior to the Effective Date; and
  - (iii) that were caused by FEI or any person for whom FEI is responsible at law;
- (s) “District” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (t) “District Losses” has the meaning assigned to that term in Section 12.6;
- (u) “District Site Rules for Contractors” means the rules set forth in Schedule “B”;
- (v) “Effective Date” means the date set out on page one of this Agreement;
- (w) “Energy System” means the equipment that FEI constructs and owns which will provide the Building with its energy needs for space heating, cooling and ventilation, and domestic hot water use, all as set forth in this Agreement;

- (x) “Energy System Service Agreement” has the meaning assigned to that term in the Energy System Rate Development Agreement;
- (y) “Energy System Rate Development Agreement” means that energy system rate development agreement between the District and FEI dated as of September 26<sup>th</sup>, 2011;
- (z) “Environment” includes the air (including all layers of the atmosphere), land (including soil, sediment deposited on land, fill, lands submerged under water, buildings, and improvements), water (including oceans, lakes, rivers, streams, groundwater, and surface water), and all other external conditions and influences under which humans, animals, and plants live or are developed and “Environmental” will have a corresponding meaning;
- (aa) “Environmental Attributes” means:
  - (i) all attributes associated with, or that may be derived from the Energy System installed having decreased environmental impacts relative to the use of conventional heating and cooling and hot water heating systems including any existing or future credit, allowance, certificate, right, benefit or advantage or proprietary or contractual right whether or not tradable;
  - (ii) any existing or future instrument, including without limitation any environmental emission allowances and environmental emission reduction credits, reduction right, allowance, certificate or other unit of any kind whatsoever, whether or not tradable and any other proprietary or contractual right, whether or not tradable, and any resulting from, or otherwise related to the actual assumed reduction, displacement or offset of emissions associated with, or that may be derived from the Energy System installed; and
  - (iii) all revenues, entitlement, benefits and other proceeds arising from or related to the foregoing;
- (bb) “Environmental Laws” means any and all statutes, laws, regulations, orders, bylaws, standards, guidelines, protocols, permits, and other lawful requirements of any Governmental Authority having jurisdiction over the Lands or the Energy System now or hereafter in force with respect in any way to the Environment, environmental assessment, health, occupational health and safety, protection of any form of plant or animal life, or transportation of dangerous goods, including the principles of common law and equity;
- (cc) “Expiry Date” means the earlier of:
  - (i) June 30, 2031, or the expiry of any renewal term thereof; and
  - (ii) the closure of the Building, or the Building otherwise ceasing to operate as a school (as defined under the *School Act* (British Columbia));
- (dd) “FEI” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (ee) “FEI Losses” has the meaning assigned to that term in Section 12.5;

- (ff) “Force Majeure” has the meaning assigned to that term in Section 17.2;
- (gg) “Governmental Authority” means any federal, provincial, regional, municipal, local or other government, governmental or public department, court, tribunal, arbitral body, commission, board, bureau or agency and any subdivision, agent, commission, board or authority thereof;
- (hh) “Lands” has the meaning assigned to that term in Recital A and includes the Building located on the Lands;
- (ii) “Laws” means laws, statutes, regulations, bylaws, Permits and orders of any Governmental Authority having jurisdiction, including without limitation, Environmental Laws;
- (jj) “Maintain” means to operate, service and maintain in a safe and reliable condition and “maintaining” and “maintenance” have corresponding meanings;
- (kk) “Monthly Charges” means that amount to be paid by the District to FEI with respect to the delivery of Thermal Energy to the Building pursuant to the Energy System Rate Development Agreement and any other payments due and owing by the District under this Agreement;
- (ll) “Notifying Party” has the meaning assigned to that term in Section 16.1;
- (mm) “Party” means a signatory to this Agreement, and the “Parties” means all of such signatories;
- (nn) “Permits” means all permits, licences, certificates, approvals, authorizations, consents and the like issued by any Governmental Authority;
- (oo) “Rate Base Value” means the value of the Energy System that the BCUC accepts from time to time in accordance with the Energy System Rate Development Agreement;
- (pp) “Release” includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, migration, disposal, or dumping;
- (qq) “Right of Access and Licence” means the right and licence granted herein by the District to FEI pursuant to Section 4.1 of this Agreement;
- (rr) “Service Failure Notice” has the meaning assigned to that term in Section 14.3(c);
- (ss) “Service Interruption” means, in any hour:
  - (i) a failure of the Energy System in that hour to deliver Thermal Energy at the Thermal Energy Meter sufficient to meet the Thermal Energy demand of the Building during that hour in accordance with the Specifications up to the Design Thermal Energy, and except where such failure is directly caused by:
    - a. the careless or wilful damage to the Energy System by the District or its agents or other persons for whom the District is responsible;

- b. damage caused to the Energy System as a result of the negligent acts or omissions of the District, its agents or those for whom in law the District is responsible;
  - c. an event of Force Majeure that triggers the suspension of FEI's obligations under the Agreement pursuant to Article 17; or
  - d. maintenance activities that FEI is performing on the Energy System that have been scheduled with the consent of the District (such consent not to be unreasonably withheld); and
- (ii) if the failure described in Section 1.1(rr)(i), FEI's failure in that hour to deliver to the Building through alternative means thermal energy sufficient to maintain an average temperature of 16 degrees Celsius in each room of the Building intended to be served by the Energy System (all as determined by the District, acting reasonably);
- (tt) "Service Interruption Notice" has the meaning assigned to that term in Section 14.3(a);
- (uu) "Services" means those services to be provided by FEI to supply Thermal Energy to a Building from an Energy System, and for greater certainty includes the services described in Articles 5 and 6, and excludes the Design and Construction;
- (vv) "Specifications" means the specifications for the Energy System prepared by FEI in consultation with the District in accordance with Section 2.3 and includes the Design Thermal Energy;
- (ww) "Term" has the meaning assigned to that term in Section 3.1;
- (xx) "Thermal Energy" means the amount of energy that FEI provides to the Building measured through a Thermal Energy Meter;
- (yy) "Thermal Energy Meter" means a device that complies with the International Organization of Legal Metrology recommendations for measuring thermal energy; and
- (zz) "UCA" means the *Utilities Commission Act*, R.S.B.C. 1996, c. 473 as may be amended from time to time.

## 1.2 SCHEDULES

The following Schedules, as may be amended from time to time, are incorporated by reference into this Agreement:

Schedule "A"	Energy System Description
Schedule "B"	Delta School District Site Rules for Contractors
Schedule "C"	List of Environmental Reports

### 1.3 AMENDMENTS TO SCHEDULES

The District and FEI acknowledge that during the construction phase of the Energy System there may be additions and alterations to the Specifications for the Energy System which would result in more efficient use and operation of the Energy System. If these additions or alterations result in changes to any of the above Schedules, the Parties mutually agree to amend the Schedules by way of a written amendment prior to the Commission Date.

### 1.4 INTERPRETATION

Except where the context requires otherwise or except as otherwise expressly provided, in this Agreement:

- (a) all references to a designated Article or Section are to the designated Article or Section of this Agreement unless otherwise specifically stated;
- (b) the singular of any term includes the plural, and vice versa, and the use of any term is equally applicable to any gender and, where applicable, body corporate;
- (c) any reference to a corporate entity includes and is also a reference to any corporate entity that is a successor by merger, amalgamation, consolidation or otherwise to such entity;
- (d) the preamble and all schedules referred to and attached to this Agreement are incorporated by reference and will form a part of this Agreement;
- (e) all sums of money which are referred to in this Agreement are in lawful money of Canada;
- (f) the headings of the Articles and Sections set out in this Agreement are for convenience only and will not be considered in any interpretation of this Agreement;

## **ARTICLE 2 - DESIGN AND CONSTRUCTION OF THE ENERGY SYSTEM**

### 2.1 CONSTRUCTION

FEI will perform the Design and Construction:

- (a) in accordance and in compliance with the Specifications;
- (b) in a good and workmanlike manner using qualified workers, and in accordance with sound and currently accepted industry standards and codes of practice normally employed, at the time and place of performance, in projects of a similar type and nature;
- (c) to ensure operational compatibility with the Building System;
- (d) in a safe and environmentally sound manner, and in accordance with all applicable Laws; and
- (e) in accordance with the terms of this Agreement.

## 2.2 CAPITAL CONTRIBUTION

The District will pay to FEI within 30 days of the Commission Date the Capital Contribution for the purpose of reducing the capital investment and the associated carrying cost of capital by FEI for provision of Service to the Building.

## 2.3 SPECIFICATIONS

Subject to and in accordance with this Section 2.3, FEI shall prepare and complete the Specifications promptly following the Acceptance Date.

FEI confirms the Energy System, as described in the Specifications and as contemplated by the Energy System description set out in Schedule A, will be designed to meet the thermal energy requirements of the Building and operational compatibility of the Building System based in part on information supplied by the District as to historical usage, which information has not been independently verified by FEI. FEI shall have no liability to the District for the failure of the Energy System to satisfy the requirements of the Building where such failure is attributable to the information supplied by the District being incorrect, inaccurate or incomplete.

FEI will prepare the Specifications in consultation with the District in order to ensure the Energy System can be appropriately accommodated within the Building and interface with the Building Systems. FEI will submit material changes to the Specifications, both before and during construction, to the District for review and comment prior to such changes taking place. If the District does not comment on the Specifications or material changes to the Specifications or advise that it has no comment within five (5) Business Days of receipt, FEI will be entitled to proceed on the basis of the information provided to the District. FEI will revise the Specifications based on the comments from the District provided that doing so will not impact FEI's costs or adversely affect system performance.

Review of and comment on the Specifications by the District does not impose any obligation on the District to verify the suitability of the Energy System or be construed as confirmation by the District that the Energy System satisfactorily meets the Building's energy requirements.

## 2.4 WORK SCHEDULE

Within ten (10) Business Days following the Acceptance Date, FEI will submit to the District for review and comment a Gantt chart schedule for the Design and Construction listing activities to be undertaken during the Design and Construction stages, key milestones and approval dates and other pertinent dates. Any revisions to the schedule must be reviewed and commented by the District, which review and comment will not be unreasonably withheld, conditioned or delayed.

In order to ensure that the Building System remains operational during normal school hours (as defined in Schedule B), the cut-over from the existing heating/cooling plant to the Energy System shall be performed outside normal school hours.

## 2.5 REPORTING

FEI shall produce and submit a monthly progress report for the Design and Construction to the District until the Energy System is Commissioned.

## 2.6 TESTING AND COMMISSIONING

FEI shall coordinate and supervise the start-up and testing of the Energy System to ensure the Energy System and other components of the Building System affected by the Design and Construction are operating in accordance with the Specifications, upon which the Energy System will be Commissioned. The District shall be invited to participate in the start-up and testing exercise.

# ARTICLE 3 - TERM AND RENEWAL

## 3.1 TERM

The term of this Agreement commences on the Effective Date and continues until the Expiry Date unless it is terminated earlier as authorized under this Agreement ("Term").

## 3.2 RENEWAL

This Agreement will automatically renew for periods of ten (10) years unless either Party provides written notice to the other Party no less than six (6) months prior to the Expiry Date, provided that there shall be no automatic renewal in the event that the Expiry Date arises as a result of the closure of the Building, or the Building otherwise ceases to operate as a school (as defined under the *School Act* (British Columbia)).

# ARTICLE 4 - ACCESS AND PERMITS

## 4.1 ACCESS RIGHTS

The District hereby grants to FEI, during the Term from and following the Acceptance Date, for so long as FEI shall require it, but subject to Section 4.4, a full, free and uninterrupted licence and right of way on, over and under the Lands and Building, for FEI, its assigns, employees, contractors, agents, invitees and licensees at all times hereafter for the purposes set out in this Agreement, provided FEI will avoid to the extent reasonably possible, and otherwise minimize interference with and inconvenience to, the occupants of the Building and the access rights of FEI will be limited to the extent reasonably necessary to fulfil FEI's obligations hereunder.

Without limiting the generality of the foregoing, but subject to Section 4.4, such right of way and licence shall include the full power, right and liberty to excavate for, install, place, construct, renew, alter, repair, maintain, operate, use, abandon, remove or replace its infrastructure, in whole or in part, and to enter upon, along, across, over or under the Lands or Building and have continual access to the Energy System, with or without vehicles, supplies, machinery or equipment, for any of the purposes set out in this Agreement, and to clear such portion of the Lands and keep it cleared of obstructions which, in the opinion of FEI, acting reasonably, may

interfere with any of the rights granted to FEI herein. The District may direct, in its discretion, FEI to use alternate routing for any Environmental or other reasonable purpose.

FEI covenants and agrees with the District not to do or knowingly permit to be done anything which may, in the opinion of the District acting reasonably, damage or interfere with the Building or impair the operating efficiency thereof or create any hazard.

#### 4.2 CONDITION OF LAND

The District represents and warrants to FEI that as of the Effective Date:

- (a) to the best of the District's knowledge, the Lands are free of Contaminants other than those specifically identified in the reports provided by the District to FEI and listed in Schedule C; and
- (b) there are no actions, proceedings, investigations, claims (including remediation cost recovery claims) pending, or to the knowledge of the District, threatened, that would interfere with FEI's access rights pursuant to Section 4.1.

#### 4.3 PERMITS

FEI will obtain and maintain at its own expense all Permits necessary for the Design and Construction and the Services.

#### 4.4 SAFETY, SECURITY AND BUILDING ACCESS

Notwithstanding anything to the contrary in this Agreement, FEI will adhere, and will cause all persons for whom it is responsible under this Agreement (including, without limitation, the Contractor) to adhere to the District Site Rules for Contractors.

#### 4.5 REMEDIATION

FEI shall promptly remediate any Disclosed Contaminants on the Lands as required by applicable Law that result from, or are Released as a result of the Design and Construction or the Services, except to the extent caused or contributed to by the District's negligence. In the event that Contaminants on the Lands, other than Disclosed Contaminants, are discovered by FEI, FEI will promptly notify the District of such discovery and the Parties will review the impact of such discovery, if any, on the Design and Construction or the Services.

### **ARTICLE 5 - SERVICE PROVISION**

#### 5.1 PROVISION OF SERVICE

Subject to the terms and conditions of the Agreement, FEI will provide the Services to the District throughout the Term.

## 5.2 SERVICE MONITORING AND REVIEW

The Parties acknowledge that FEI may be required from time to time to prepare and submit reports to the BCUC concerning the operation and performance of the Energy System, and the District shall provide FEI with reasonable cooperation in relation to the preparation of such reports.

## 5.3 STANDARD OF PERFORMANCE

In performing the Services, FEI will:

- (a) use only qualified personnel and exercise the same degree of care, skill and supervision as would be exercised by a reasonable and prudent owner experienced in performing like services;
- (b) perform the Services in accordance with all applicable Laws;
- (c) perform the Services in accordance with ongoing industry standards and codes of practice; and
- (d) without limiting the effect of the foregoing, abide by any standards of performance in relation to the Services that the BCUC may set from time to time according to the provisions of the UCA.

## 5.4 INTERRUPTION

No interruption of any of the on-site and off-site services, utilities and amenities provided by FEI to the Building will, except to the extent, if any, caused by any wrongful or negligent act of FEI or any person for whom FEI is responsible at law, render FEI liable to the District or any person claiming through or under the District, or relieve the District from any of its obligations under this Agreement. Notwithstanding the foregoing, FEI will use all reasonable diligence to remedy any such interruption if it is within its power and obligation to do so.

# **ARTICLE 6 - ENERGY SYSTEM MAINTENANCE AND OPERATION**

## 6.1 MAINTENANCE AND REPAIR OF ENERGY SYSTEM

Subject to Section 6.2, FEI will perform the Services and otherwise maintain or cause to be maintained and repaired the Energy System throughout the Term:

- (a) in accordance with the Energy System design and operating specifications and requirements as established by the qualified engineers engaged by FEI in the design and construction of the Energy System, and the equipment manufacturers;
- (b) in a good and workman-like manner using qualified workers, and in accordance with sound and currently accepted industry standards and codes of practice normally employed, at the time and place of performance, in projects of a similar type and nature;
- (c) to ensure operational compatibility with the Building System;

- (d) in a safe and environmentally sound manner, and in accordance with all applicable Laws; and
- (e) in accordance with the terms of this Agreement.

FEI will not delay repair of the Energy System for any reason, including as a result of a dispute with the District in relation to the costs and expenses of repair pursuant to Section 6.2.

## 6.2 REPAIR DAMAGE

The District will be responsible for all costs and expenses incurred by FEI in respect of any damage to the Energy System caused by or resulting from:

- (a) the careless or wilful damage to the Energy System by the District or its agents or other persons for whom at law the District is responsible; or
- (b) damage caused to the Energy System as a result of the negligent acts or omissions of the District, its agents or those for whom in law the District is responsible.

## **ARTICLE 7 - CHARGES**

### 7.1 MONTHLY CHARGES

The District throughout the Term commencing on the Commission Date in accordance with this Article 7 will pay to FEI when due for the Thermal Energy that FEI delivers and meters to the Building according to the rates set out in the Energy System Rate Development Agreement plus all applicable taxes (including harmonized sales tax applicable thereon) and any imposed taxes levied after the Commission Date by a government or regulatory agency that are related to the Energy System (including, but not limited to capital taxes or royalties) and any other payments due and owing by the District under this Agreement.

### 7.2 MONTHLY STATEMENT

FEI will, within 15 days following the end of each month, deliver to the District a statement setting out the Monthly Charges including all applicable taxes payable for that month.

### 7.3 PAYMENT

The District will pay the full amount specified in each statement provided to it in accordance with Section 7.2 within 30 days of receipt of such statement. All amounts payable to FEI will be made by cheque mailed to FEI at its address for service specified in Section 20.5.

### 7.4 PAYMENT DUE

Subject to Section 14.1, the obligation of the District to pay the Monthly Charges continues whether or not the Energy System is being used to provide the Building with its energy needs for space and ventilation heating, cooling and domestic hot water use.

#### 7.5 ARREARS TO BEAR INTEREST

If any amount owing to FEI or the District is not paid on or before the date on which it is due, a late payment charge of 1.5% per month will be assessed each month on all outstanding balances not paid by the due date.

### **ARTICLE 8 - OWNERSHIP OF THE ENERGY SYSTEM**

Notwithstanding the payments made by the District to FEI under this Article 8, any provision of this Agreement, any degree of annexation or affixation, or rule of law or equity to the contrary the District will have no proprietary interest in the Energy System which is, and shall remain, the property of FEI and may be used by FEI in its business or removed in whole or in part as it may see fit, and for any of such purposes, and FEI may enter in, upon and under all the Lands for the purposes of the maintenance, renewals, repair, removal or operation of the Energy System or any part thereof; provided that FEI shall not leave any part of the Energy System in such a state as to constitute a nuisance or a danger to the public through neglect, non-use and want of repair, and provided further that nothing in this clause shall nullify or otherwise impact or invalidate in any way the District's rights under Article 15 to purchase the Energy System.

### **ARTICLE 9 - ENVIRONMENTAL ATTRIBUTES**

#### 9.1 ENVIRONMENTAL ATTRIBUTES

All right, title and interest now existing or which may exist at any time in the future in the potential or actual commercial value of any Environmental Attributes that arise or accrue by virtue of the construction and operation of the Energy System will belong to the District. At the request of the District, FEI will reasonably cooperate with the District in applying for and assigning any Environmental Attributes to the District.

#### 9.2 GRANTS

Any grants from any Governmental Authority, a Crown Corporation or non-governmental authority that may be derived from a reduction in energy consumption by the Building will belong to the District.

### **ARTICLE 10 - REPRESENTATIONS AND WARRANTIES**

#### 10.1 DISTRICT'S REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties contained in this Agreement, the District hereby represents and warrants to FEI as follows and acknowledges that FEI is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) the District has the full right, power and authority to enter into this Agreement;

- (b) all necessary action on the part of the District has been taken to authorize and approve the execution and delivery of this Agreement and the performance by the District of its obligations hereunder;
- (c) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to the District as of the date of this Agreement;
- (d) the District is not party to any action, suit or legal proceeding, actual or, to the knowledge of the District, threatened, and there are no circumstances, matters or things known to the District which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or, to the knowledge of the District, threatened against the District before or by any Governmental Authority, which could affect the District's ability to perform its obligations under this Agreement; and
- (e) no person, firm or corporation has or will have as of the Commission Date, any agreement, right, or option or right capable of becoming an agreement, right, or option for the purchase or acquisition of the Energy System.

## 10.2 FEI'S REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties contained in this Agreement, FEI hereby represents and warrants to the District as follows and acknowledges that the District is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) FEI has the full right, power and authority to enter into this Agreement;
- (b) all necessary corporate action on the part of FEI has been taken to authorize and approve the execution and delivery of this Agreement and the performance by FEI of its obligations hereunder;
- (c) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to FEI as of the date of this Agreement;
- (d) FEI is not party to any action, suit or legal proceeding, actual or threatened, and there are no circumstances, matters or things known to FEI which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or threatened against FEI before or by any Governmental Authority, which could affect FEI's ability to perform its obligations under this Agreement; and
- (e) FEI has or will have all permits, licenses, authorizations and other documentation required for the operation of the Energy System after the Commission Date; and
- (f) FEI has all the required expertise to fulfill its obligations under this Agreement.

### 10.3 DELEGATION AND SUBCONTRACTING

FEI may delegate and subcontract its obligations under this Agreement with respect to Design and Construction and Services to any contractor, consultant, agent or representative provided that FEI shall be fully responsible for the acts and omissions of such persons and those either directly or indirectly employed by them to the same extent as FEI for its own acts or omissions.

## **ARTICLE 11 - BCUC ACCEPTANCE**

### 11.1 REGULATORY REVIEW TERMINATION

Subject to Section 11.3, either Party may terminate this Agreement if within 90 days following the Effective Date, this Agreement and the Energy System Rate Development Agreement, including the Market Rate and the SD37 Rate Rider as defined in that Agreement have not been accepted for filing by the BCUC (such acceptance being herein called "BCUC Acceptance").

### 11.2 REGULATORY FILING

FEI, on behalf of itself and the District, and at its own cost, shall file the Agreement with the BCUC within a reasonable time after the Effective Date. FEI shall take all steps reasonably required to secure BCUC Acceptance, which shall consist of those procedural steps related to filing the Agreement and providing argument and witnesses in support of filing.

### 11.3 TERMINATION

A Party entitled to terminate under Section 11.1 must do so by giving notice to terminate to the other Party at any time after the right to terminate arises pursuant to Section 11.1, and prior to:

- (a) the date of issuance of the BCUC Acceptance; and
- (b) the date that is 90 days after the Effective Date.

### 11.4 EFFECT OF BCUC ACCEPTANCE

The Parties acknowledge that upon BCUC Acceptance, the Services will be subject to regulation by the BCUC under the UCA, and will form another class of service that FEI provides as a public utility. The Parties acknowledge that the terms of the UCA may supersede the terms and conditions of this Agreement.

## **ARTICLE 12 - INDEMNITY**

### 12.1 FEI'S INDEMNITY

Without limiting any other obligations of FEI provided herein, FEI will indemnify, defend, and save harmless the District and its trustees, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including the full amount of all legal fees and expenses on a

solicitor-client basis) which may be paid by, incurred by, or asserted against the District or its directors, officers, employees, agents, successors, or assigns, arising from or in connection with:

- (a) the breach or non-performance by FEI of any of its obligations or warranties hereunder; or
- (b) the negligence or wilful misconduct of FEI, its employees, contractors or agents in respect of the Energy System, and in the performance of the obligations of FEI pursuant to this Agreement,

excluding only such of the foregoing as arise from the fraud, negligence or wilful misconduct of the District or its trustees, officers, directors, members, employees, contractors or agents, or the breach or non-performance by the District of any of its obligations or warranties hereunder.

## 12.2 DISTRICT'S INDEMNITY

Without limiting any other obligations of the District provided herein, the District will indemnify, defend, and save harmless FEI, its Affiliates and their respective shareholders, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including the full amount of all legal fees and expenses on a solicitor-client basis) which may be paid by, incurred by, or asserted against FEI, its Affiliates or their respective shareholders, directors, officers, employees, agents, successors, or assigns, arising from or in connection with:

- (a) the breach or non-performance by the District of any of its obligations or warranties hereunder; or
- (b) the negligence or wilful misconduct of the District, its employees, contractors or agents in respect of the Energy System, and in the performance of the obligations of the District pursuant to this Agreement,

excluding only such of the foregoing as arise from the fraud, negligence or wilful misconduct of FEI or its Affiliates or any of their respective officers, directors, members, employees, contractors or agents, or the breach or non-performance by FEI of any of its obligations or warranties hereunder.

## 12.3 CONSEQUENTIAL LOSS

In no event will the District or FEI or any of their respective officers, directors, employees, contractors or agents be liable to the other Party for any indirect or consequential loss, cost or expense whatsoever, including any loss of profits, revenues or other economic loss, suffered by the other Party or its officers, directors, employees, contractors or agents.

## 12.4 SURVIVAL OF INDEMNITY

The indemnity of each of the District and FEI provided under this Article 12 will survive the Term of this Agreement.

## 12.5 ENVIRONMENTAL INDEMNITY BY THE DISTRICT

The District will indemnify and save harmless FEI, its Affiliates, directors, officers, shareholders, employees, agents, successors and permitted assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants (but not including Disclosed Contaminants) and remediation of the Lands and any affected adjacent property) (collectively, "FEI Losses") which may be paid by, incurred by or asserted against FEI, its Affiliates and their respective directors, officers, shareholders, employees, agents, successors or permitted assigns, arising from or in connection with any Contaminants (but not including Disclosed Contaminants) existing on the Lands prior to the Commission Date or brought onto the Lands or Released onto the Lands by the District or any person for whom it is in law responsible, except to the extent the FEI Losses suffered were caused or contributed to by any act or omission of FEI or any person for whom FEI is in law responsible after FEI had knowledge of the Contaminants.

## 12.6 ENVIRONMENTAL INDEMNITY BY FEI

FEI will indemnify and save harmless the District, its Affiliates and their respective trustees, directors, officers, employees, agents, successors and permitted assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the Lands and any affected adjacent property) (collectively, "District Losses") which may be paid by, incurred by or asserted against the District, its Affiliates, and their respective trustees, directors, officers, employees, agents, successors or permitted assigns, arising from or in connection with any Contaminants brought onto the Lands or any Disclosed Contaminants Released onto the Lands by FEI or any person for whom it is in law responsible, except to the extent the District Losses suffered were caused or contributed to by any act or omission of the District or any person for whom the District is in law responsible after the District had knowledge of the Contaminants.

# ARTICLE 13 - INSURANCE

## 13.1 FEI INSURANCE COVERAGE.

- (a) FEI will obtain and maintain at its own expense throughout the Term, Commercial General Liability Insurance for bodily injury, death and property damage in the minimum amount of five million (\$5,000,000) dollars per occurrence. The policy will contain a cross liability provision and will be maintained for a period ending no sooner than 12 months after the expiry or termination of this Agreement.
- (b) FEI will be responsible for the full amount of all premiums and deductibles required under this Section 13.1. All policies required herein must be effective at the Commission Date. Insurance will be purchased from insurers registered and licensed to underwrite

insurance in British Columbia. Policies will contain waivers of subrogation against the District and all its officers, directors, members, employees, contractors and agents.

### 13.2 DISTRICT INSURANCE COVERAGE

- (a) The District will obtain and maintain at its own expense throughout the Term Commercial General Liability Insurance for bodily injury, death and property damage in the minimum amount of five million (\$5,000,000) dollars per occurrence. The policy will contain a cross liability provision and will be maintained for a period ending no sooner than 12 months after the expiry or termination of this Agreement.
- (b) The District will be responsible for the full amount of all premiums and deductibles required under this Section 13.2. All policies required herein must be effective at the date of this Agreement. Insurance will be provided by the Provincial self-insured program. Policies will contain waivers of subrogation against FEI and all its officers, directors, employees, contractors and agents.

### 13.3 PRIORITY

FEI will ensure that the District is an additional insured under the insurance to be obtained and maintained pursuant to Section 13.1. The District will ensure that FEI is an additional insured under the insurance to be obtained and maintained pursuant to Section 13.2. In the event of a claim, the insurance carried by the Party responsible for actions which give rise to such claim will be the primary insurance with respect to such claim.

## **ARTICLE 14 - DEFAULT**

### 14.1 DEFAULT BY FEI

- (a) FEI will be in default under this Agreement if FEI is in breach of a material term, covenant, agreement, condition or obligation imposed on it under this Agreement and fails to cure such default within ten (10) days after receipt of written notice thereof from the District, or, if such default is not capable of being cured within such ten (10) day notice period, fails to commence in good faith the curing of such default upon receipt of such written notice of default from the District and to continue to diligently pursue the curing of such default thereafter until cured. For the purposes of this Section 14.1, Section 4.4 is hereby deemed to be a material term of this Agreement.
- (b) If FEI is in default of this Agreement, the District may at its option and without liability therefore or prejudice to any other right or remedy it, including under the UCA, may have suspend or refuse to make any payments due hereunder until the default has been fully remedied, and no such suspension or refusal will relieve FEI from any of its obligations under this Agreement.
- (c) In the event the default is not fully remedied within thirty (30) days of receipt by FEI of written notice thereof from the District, the District may, at its option, undertake the necessary steps to remedy FEI's default at FEI's sole expense, which reasonable costs

shall be deducted from the Monthly Charges, and such actions will not relieve FEI from any of its obligations under this Agreement or, at its option, and without any liability, terminate this Agreement without prejudice to any other right the District may have hereunder or at law or otherwise.

#### 14.2 DEFAULT BY THE DISTRICT

- (a) The District will be in default under this Agreement if the District fails or refuses to make any payment due to FEI by the District under this Agreement within thirty (30) days of receiving written notice from FEI after the date that payment is due or if the District is in breach of a material term, covenant, agreement, condition or obligation imposed on it under this Agreement and fails to cure such default within ten (10) days after receipt by the District of written notice thereof from FEI or, if such default is not capable of being cured within such ten (10) day notice period, fails to commence in good faith the curing of such default forthwith upon receipt of such written notice thereof from FEI and to continue to diligently pursue the curing of such default thereafter until cured.
- (b) If the District is in default of this Agreement, FEI may at its option and without liability therefore or prejudice to any other right or remedy it may have, including under the UCA, cease performing the Services and no such actions will relieve the District from any of its obligations under this Agreement.
- (c) In the event the default by the District is not fully remedied within thirty (30) days of receipt by the District of written notice from FEI, FEI may undertake the necessary steps to remedy the District's default at the District's sole expense and such action will not relieve the District from any of its obligations under this Agreement or, at its option, and without any liability, take whatever steps necessary to shut down the Energy System and terminate this Agreement without prejudice to any other right FEI may have hereunder or at law or otherwise.

#### 14.3 CROSS DEFAULT

- (a) If any Building experiences a Service Interruption at any time, the District may deliver a notice of such Service Interruption to FEI (a "Service Interruption Notice" to FEI);
- (b) If a Service Interruption continues for a period of 48 consecutive hours after the delivery of a Service Interruption Notice pursuant to Section 14.3(a), the District may deliver a notice of such continuing Service Interruption to FEI (a "Continuing Service Interruption Notice");
- (c) If a Service Interruption continues for a period of 120 consecutive hours after the delivery of a Continuing Service Interruption Notice, the District may at its option deliver a notice of such continuing Service Interruption to FEI (a "Service Failure Notice"); Within 60 days of either:
  - (i) the District's delivery of a Service Failure Notice pursuant to Section 14.3(c); or

- (ii) the District's delivery of a Continuing Service Interruption Notice pursuant to Section 14.3(b) that constitutes the fifth or greater Continuing Service Interruption Notice delivered in that calendar year;

the District may, at its option and without liability:

- (iii) terminate this Agreement without prejudice to any other right the District may have hereunder at law or otherwise; or
  - (iv) terminate the Energy System Rate Development Agreement and all Energy System Service Agreements (inclusive of this Agreement), without prejudice to any other right the District may have hereunder at law or otherwise.
- (d) For greater certainty, this Agreement shall be deemed to be terminated in the event that the District exercises its right to terminate all Energy System Service Agreement under another Energy System Service Agreement.

#### 14.4 SURVIVAL

Upon expiry or earlier termination of this Agreement for any reason, all claims, causes of action or other outstanding obligations remaining or being unfulfilled as of the expiry or termination of this Agreement and all of the provisions of this Agreement relating to the obligation or either the Parties to account to or indemnify the other and to pay to the other any amounts owing as at the date of expiry or termination in connection with this Agreement will survive such expiry or termination.

### **ARTICLE 15 – EXPIRY AND TERMINATION**

#### 15.1 EXPIRY

Upon expiry of the Term, unless otherwise agreed between the Parties and subject to agreement by the BCUC (if required pursuant to applicable Laws), the District may, at its option and by written notice to FEI within 30 days following the termination:

- (a) require FEI to remove the Energy System at FEI's cost in accordance with Section 15.5; or
- (b) acquire the Energy System from FEI at the Adjusted Energy System Purchase Price.

#### 15.2 TERMINATION OF THE ENERGY SYSTEM RATE DEVELOPMENT AGREEMENT

- (a) If the Energy System Rate Development Agreement is terminated as a result of the adoption, approval or implementation of a thermal energy rate tariff by the BCUC, this Agreement will automatically terminate effective as of the date of termination of the Energy System Rate Development Agreement;
- (b) If the Energy System Rate Development Agreement is terminated for cause by the District, this Agreement will be deemed to have been terminated pursuant to Section

14.1(c) as of the date of termination of the Energy System Rate Development Agreement, and Section 15.3 shall apply; and

- (c) If the Energy System Rate Development Agreement is terminated for cause by FEI, this Agreement will be deemed to have been concurrently terminated pursuant to Section 14.2(c) as of the date of termination of the Energy System Rate Development Agreement, and Section 15.4 shall apply.

### 15.3 TERMINATION BY THE DISTRICT FOR CAUSE

If the District terminates this Agreement pursuant to Sections 14.1(c) or 14.3, the District may, at its option and by written notice to FEI within 30 days following the termination:

- (a) require FEI to remove the Energy System, at its own cost, in accordance with Section 15.5; or
- (b) acquire the Energy System from FEI at the Adjusted Energy System Purchase Price.

### 15.4 TERMINATION BY FEI FOR CAUSE

If FEI terminates this Agreement pursuant to Section 14.2(c), FEI may, at its option and by written notice to the District:

- (a) remove the Energy System, at its own cost, in accordance with Section 15.5; or
- (b) require the District to purchase the Energy System from FEI at the Adjusted Energy System Purchase Price.

### 15.5 REMOVAL OF THE ENERGY SYSTEM

If FEI is required to remove the Energy System pursuant to Sections 15.1(a), 15.3(a) or 15.4(a) or otherwise upon expiry of this Agreement, FEI shall promptly remove those portions of the Energy System located within the Building and at surface level at FEI's cost, and FEI shall perform such removal activities using standards of performance that are equivalent to those that apply to the performance of the Services under this Agreement. Any portion of the Energy System not removed by FEI prior to the 30<sup>th</sup> day following the termination or expiry of the Agreement will, as of such day, be deemed to be automatically transferred to the District, and become the property of the District, all at no cost to the District.

### 15.6 ACQUISITION OF THE ENERGY SYSTEM

If the District elects to acquire the Energy System pursuant to Sections 15.1(b), 15.3(b) or 15.4(b):

- (a) the District shall pay the Adjusted Energy System Purchase Price to FEI within the later of 30 days of (i) the effective date of expiration or termination, and (ii) confirmation of the Adjusted Energy System Purchase Price; and

- (b) FEI will promptly execute and deliver any documents and records reasonably required by the District to effect and facilitate the transfer of the Energy System to the District, including bills of sale, operation and maintenance manuals and warranties, and will use reasonable commercial efforts to obtain any consents and approvals that may be required in relation to the transfer (including, without limitation, BCUC approval), provided that (i) FEI's obligations under this Section 15.6(b) shall arise only upon FEI's receipt of all amounts due and owing to FEI from the District under this Agreement, and (ii) during the period between the expiration or termination of the Agreement and FEI's receipt of amounts due and owing to FEI from the District under this Agreement, FEI shall continue to maintain, or shall permit the District to maintain, the Energy System in good working order.

Notwithstanding the foregoing, the Parties acknowledge and agree that FEI's ability to sell or otherwise transfer its interest in and to the Energy System to the District may be subject to BCUC approval under applicable Laws.

## **ARTICLE 16 - NON-COMPLIANCE AND ENVIRONMENTAL**

### 16.1 NOTIFICATION OF NON-COMPLIANCE

FEI or the District (as applicable, the "Notifying Party") will promptly, upon becoming aware thereof, notify the other Party in writing of:

- (a) a Release of a Contaminant or any other occurrence or condition in the Energy System, the Lands or any adjacent property which could subject the other Party to any fines, penalties, orders or proceedings under applicable Laws;
- (b) any charge, order, investigation or notice of violation or non-compliance issued against the Notifying Party relating to the Energy System, or the operation of the Energy System, under any applicable Laws; and
- (c) any notice, claim, action or other proceeding by any third party against the Notifying Party in respect of the Design and Construction or the Services or concerning the Release or alleged Release of any Contaminants at or from the Energy System or the Lands.

### 16.2 NOTIFICATION BY FEI

FEI will notify the appropriate Governmental Authorities of any Release of any Contaminants at or from the Energy System in accordance with applicable Laws. The District may, but is not obligated to, notify the appropriate Governmental Authorities of any Release of any Contaminants at or from the Energy System in accordance with applicable Laws.

### 16.3 OWNERSHIP OF CONTAMINANTS

Notwithstanding any rule of law to the contrary, any Disclosed Contaminant Released from the Energy System, or any top soil, earth or other material containing a Contaminant for which FEI is responsible pursuant to Section 4.5 that is removed from the Lands by FEI or any person for

whom it is in law responsible, will be and remain the sole and exclusive property and responsibility of FEI and will not become the property of the District, notwithstanding the degree of its affixation to the Lands and notwithstanding the expiry or earlier termination of this Agreement.

#### 16.4 SURVIVAL OF OBLIGATIONS

The obligations of the Parties under this Article 16 will survive the expiry or termination of this Agreement.

### **ARTICLE 17 - FORCE MAJEURE**

#### 17.1 SUSPENSION

Subject to the other provisions of this Article 17, if either Party is unable or fails by reason of Force Majeure to perform in whole or in part any obligation or covenant set forth in this Agreement, with the exception of unpaid financial obligations, such inability or failure will be deemed not to be a breach of such obligation or covenant and the obligations of both Parties under this Agreement will be suspended to the extent necessary during the continuation of any inability or failure so caused by such Force Majeure.

#### 17.2 DEFINITION OF FORCE MAJEURE

For purposes of this Agreement, the term "Force Majeure" means any event or occurrence not within the control of the Party claiming Force Majeure and which by the exercise of reasonable diligence such Party is unable to prevent or overcome, including any acts of God, including lightning, earthquakes, storms, washouts, landslides, avalanches, fires, epidemics and floods; strikes, lockouts or other industrial disturbances; acts of the Queen's or public enemies, sabotage, wars, blockades, insurrections, riots or civil disturbances, fires, explosions, breakages of or accidents to machinery or lines of pipe; the laws, orders, rules, regulations, acts or restraints of any court or governmental or regulatory authority. For the purposes of this Article 17, a Party is deemed to have control over the actions or omissions of those persons to which it, its agents, contractors or employees, have delegated, assigned or subcontracted its obligations and responsibilities. For greater certainty, a Force Majeure shall not include any weather related events that do not exceed 25 year events as recorded by Environment Canada or as otherwise may be determined by the BCUC from time to time.

#### 17.3 EXCEPTIONS

Neither Party will be entitled to the benefit of Section 17.1 under any of the following circumstances:

- (a) the Energy System not being Commissioned;
- (b) to the extent that the inability or failure was caused by the negligence or contributory negligence of the Party claiming Force Majeure;

- (c) to the extent that the inability or failure was caused by the Party claiming Force Majeure having failed to diligently attempt to remedy the condition by taking all reasonable acts and to resume the performance of such covenants and obligations with reasonable dispatch;
- (d) if the inability or failure was caused by lack of funds or is in respect of any amount due hereunder; or
- (e) unless, as soon as possible after the happening of the occurrence relied upon or as soon as possible after determining that the occurrence was in the nature of Force Majeure and would affect the claiming Party's ability to observe or perform any of its covenants or obligations under this Agreement, the claiming Party will have given to the other Party notice to the effect that the claiming Party is unable by reason of Force Majeure (the nature whereof will be therein specified) to perform the particular covenants or obligations.

#### 17.4 RESUMPTION OF OBLIGATIONS

The Party claiming Force Majeure will give notice to the other Party, as soon as possible after the Force Majeure condition is remedied, to the effect that the same had been remedied and that such Party has resumed, or is then in a position to resume, the performance of its suspended covenants and obligations hereunder either in whole or in part.

#### 17.5 SETTLEMENT OF LABOUR DISPUTES

Notwithstanding any of the provisions of this Article 17, and subject to Section 17.3, the settlement of labour disputes or industrial disturbances is entirely within the discretion of the particular Party involved and the Party may make settlement of it at the time and on terms and conditions as it may deem to be advisable and no delay in making settlement will deprive the Party of the benefit of Section 17.1.

### **ARTICLE 18 - CONDITIONS PRECEDENT**

#### 18.1 CONDITIONS PRECEDENT OF FEI

The obligation of FEI to carry out the transactions contemplated by this Agreement is subject to fulfillment of the following conditions on or before such date as may be specified, which is for the sole benefit of FEI, and which may be waived by FEI in accordance with Section 18.2:

- (a) FEI obtaining the approval by its board of directors of the terms and conditions of this Agreement on or before the 30th day following the Effective Date, provided that if such approval cannot be obtained by this date due to the fact that the board of directors has not yet considered the transaction FEI reserves the right to extend the period of time to that date when the board next convenes.

## 18.2 FEI NOTICE OF WAIVER

If a condition set out in Section 18.1 has not been satisfied on or before the date as may be specified for its fulfillment, FEI may waive compliance with the condition in whole or in part, in its sole discretion, by written notice to the District, failing which delivery of written notice of satisfaction or waiver of such condition, this Agreement will, to the extent any further obligations of the Parties which remain unfulfilled, be null and void, without liability between the Parties hereto, and, neither Party will be under any further obligation to the other to complete the transactions or future transactions, as the case may be, contemplated by this Agreement.

## **ARTICLE 19 - DISPUTE RESOLUTION**

### 19.1 REFERENCE TO ARBITRATION

The Parties will attempt to resolve all disputes which may arise under, out of, in connection with or in relation to this Agreement by negotiation. They will provide full and timely disclosure to one another of all facts relevant to the disputes to facilitate those negotiations. If any such dispute remains unresolved, for any reason, fifteen (15) days after either Party requested the other Party to enter into negotiations to resolve it, or if the Parties agree to waive negotiations in respect of it, then either Party may submit that dispute for final resolution by arbitration administered by the British Columbia International Commercial Arbitration Centre (“BCICAC”) under its “Shorter Rules for Domestic Commercial Arbitration”. The seat of that arbitration will be Vancouver, British Columbia, Canada. The language of that arbitration will be English. Alternatively, the Parties may agree, within the 15 days referred to above, to submit that dispute for final resolution by arbitration in another manner.

### 19.2 BINDING DECISION

The decision of the arbitrator, regardless of what arbitration procedure is used, will, for all purposes of this Agreement, be final and binding on the Parties.

### 19.3 CONTINUATION OF SERVICES

Each of the Parties will perform all of its respective obligations under this Agreement notwithstanding the existence of any dispute that arises from time to time between the Parties in respect of any matter related to this Agreement or during the resolution of any dispute in accordance with this Article 19.

### 19.4 COSTS

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 case, the non-prevailing Party shall pay all costs and expenses of the arbitration, but not those of the prevailing Party.

## ARTICLE 20 - GENERAL

### 20.1 RESPONSIBILITY FOR COSTS

FEI's performance of any of its obligations under this Agreement, including without limitation the obligation to design, construct and install the Energy System as provided in Section 2.1, shall be at FEI's sole cost and expense, unless expressly provided otherwise in this Agreement;

### 20.2 EXERCISE OF DISCRETION

Where anything in this Agreement is identified as being in either Party's discretion, such Party will have the right to exercise such discretion in its own best interest without regard for the interest of the other Party.

### 20.3 COOPERATION

FEI and the District will at all times extend co-operation to each other to ensure the orderly management and operation of the Energy System.

### 20.4 SOLICITATION

Nothing in this Agreement precludes either Party from soliciting or entering into, other contracts with the other Party.

### 20.5 NOTICES

Any notice or other communication required or permitted to be given under this Agreement will be effective only if in writing and when it is actually delivered (which delivery may be by telecopy or other telecommunications device) to the Party for whom it is intended at the following address or such other address in British Columbia as such Party may designate to the other Party by notice in writing delivered in accordance with this Section 20.5:

(a) if to FEI:

FortisBC Energy Inc.  
10th Floor, 1111 West Georgia Street  
Vancouver, B.C.  
V6E 4M3

Attention: Gareth Jones  
Telephone: 250-380-5972  
Telecopy: 250-388-6876

(b) if to the District:

Board of Education of School District No. 37 (Delta)  
4585 Harvest Drive  
Delta, B.C.  
V4K 5B4

Attention: Frank Geyer  
Telephone: 604-952-5336  
Telecopy: 604-952-5375

Notwithstanding the foregoing, notices with respect to Force Majeure will be given in writing by telecopy, or orally in person or by telephone (to be confirmed by telecopy), to the person or persons designated from time to time by the Parties as the person or persons authorized to receive such notices.

## 20.6 CONFIDENTIALITY

The District and FEI will treat as confidential the terms of this Agreement and all Confidential Information (as defined below) and will at all times during the term of this Agreement and for a reasonable time thereafter hold the terms of this Agreement and all Confidential Information in confidence and neither Party will, without the prior written consent of the other Party, disclose or divulge the terms of this Agreement or any Confidential Information to any person, provided that nothing in this Section 20.6 will restrict or prevent either Party from making any disclosure of such terms or any Confidential Information:

- (a) which is reasonably necessary or desirable for such Party to carry out and give full effect to the terms, conditions and intent of this Agreement and the matters contemplated hereby;
- (b) which is required by any Law, including the Freedom of Information and Protection of Privacy Act (British Columbia);
- (c) to any Governmental Authority;
- (d) to the British Columbia Utilities Commission or other regulatory agency as part or in support of any regulatory application or submission;
- (e) to the directors, officers or employees of such Party or to an Affiliate of such Party or to the directors, officers or employees of an Affiliate of such Party;
- (f) to the professional advisors of such Party on the same terms of confidentiality;
- (g) which is already in the public domain; or
- (h) in connection with legal proceedings or steps being taken to remedy a breach or default under this Agreement by the other Party.

For the purposes of this Section 20.6, “Confidential Information” means proprietary information of either Party such as data, plans, drawings, manuals, or specifications which have been provided by such Party, its employees, contractors, agents, subcontractors, Affiliates to the other Party pursuant to this Agreement or proprietary information either Party conceived or developed by or for such Party concerning construction practices, operation and maintenance practices, agreements, marketing plans and strategies, profits, costs, pricing and systems of procedure (provided that “Confidential Information” does not include information which was disclosed to the receiving Party by a third Party (unless, to the knowledge of the receiving Party, the third Party is under an obligation of confidentiality to the other Party) or any information developed or conceived by the receiving Party without using the “Confidential Information” of the other Party).

#### 20.7 SEVERABILITY

If any provision of this Agreement is found or determined to be invalid, illegal or unenforceable it will be construed to be separate and severable from this Agreement and will not impair the validity, legality or enforceability of any other provisions of this Agreement, and the remainder of this Agreement will continue to be binding on the Parties as if such provision had been deleted.

#### 20.8 NO WAIVER

No waiver by either Party of any default by the other in the performance of any of the provisions of this Agreement will operate or be construed as a waiver of any other or future default or defaults hereunder, whether of a like or a different character. To be binding, any waiver of any provision of this Agreement must be clearly expressed in writing to be signed by the waiving Party.

#### 20.9 BURDEN AND BENEFIT

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

#### 20.10 GOVERNING LAW

This Agreement and all matters arising hereunder will be governed by the laws of British Columbia and the federal laws of Canada applicable in British Columbia.

#### 20.11 ENTIRE AGREEMENT

This Agreement contains the whole agreement between the Parties in respect of the subject matter hereof and there are no terms, conditions or collateral agreements express, implied or statutory other than as expressly set forth in this Agreement and this Agreement supersedes all of the terms of any written or oral agreement or understanding between the Parties.

#### 20.12 TIME OF ESSENCE

Time is of the essence of this Agreement.

#### 20.13 FURTHER ASSURANCES

Each Party will, at all times hereafter on demand by the other, execute and deliver or cause to be executed and delivered all such further documents and do all such further acts and things as may be reasonably requested by the other Party to evidence, carry out and give full effect to the intent and meaning of this Agreement and to assure the completion of the transactions contemplated hereby.

#### 20.14 AMENDMENTS TO BE IN WRITING

Except as set out in this Agreement, no amendment or variation of this Agreement will be effective or binding upon the Parties unless such amendment or variation is set out in writing and duly executed by the Parties.

#### 20.15 FACSIMILE

This Agreement may be executed by the Parties and transmitted by facsimile transmission and, if so executed, transmitted and received, this Agreement will for all purposes be effective as if the Parties had delivered and executed the original Agreement and each Party undertakes to provide the other Party with a copy of this Agreement bearing original signatures forthwith upon demand.

#### 20.16 SUBJECT TO LEGISLATION

Notwithstanding any other provision hereof, this Agreement and the rights and obligations of FEI and the District under this Agreement are subject to all present and future laws, rules, regulations and orders of any legislative body, governmental agency or duly constituted authority now or hereafter having jurisdiction over FEI or the District.

#### 20.17 EXPENSES

Each Party to this Agreement shall be responsible for the payment of all costs, expenses, legal fees and disbursements incurred or to be incurred by it in negotiating and preparing this Agreement and all documents required to be delivered under this Agreement and otherwise relating to the transactions contemplated by this Agreement.

#### 20.18 NO CONTRARY AGREEMENT

No Party shall enter into an agreement or other commitment with any person if such agreement or commitment has terms or provisions in conflict with or inconsistent with the terms of this Agreement or which could reasonably be expected to lead to actions or consequences that would result in the Party being in breach of the commitments and obligations of the Party pursuant to this Agreement unless such other agreement or commitment is expressly approved by the other Parties.

#### 20.19 NO PARTNERSHIP

Nothing herein shall be deemed or construed to create a joint venture, partnership, employment or agency relationship between the Parties for any purpose.

20.20 ASSIGNMENT

Neither Party may assign this Agreement or any of its rights or obligations under this Agreement, and FEI may not assign, transfer or sell all or any part of the Energy System, except:

- (a) with the consent of the other Party, such consent not to be unreasonably withheld, delayed or conditioned; or
- (b) in the case of FEI, to an Affiliate of FEI which is a "public utility" as defined in the *UCA* on notice to, but without the consent of, the District.

20.21 COUNTERPARTS

This Agreement may be executed in counterparts with the same effect as if the Parties had signed the same document. All counterparts will be construed together and will constitute one agreement.

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

**FORTISBC ENERGY INC.**

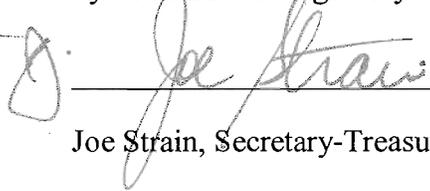
by its authorized signatory:

  
\_\_\_\_\_

Doug Stout,  
VP Energy Solutions & External Relations

**THE BOARD OF EDUCATION OF  
SCHOOL DISTRICT NO. 37 (DELTA)**

by its authorized signatory:

  
\_\_\_\_\_

Joe Strain, Secretary-Treasurer

# SAMPLE SCHEDULE “A”

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## Energy System Description

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### Mechanical Equipment Plans and Specifications

Equipment schedule:

- 3 ground source heat pumps water furnace 540NXW or equivalent. and associated pumps. The heat pump and related equipment will be installed in the boiler room at the old boilers location on the concrete pad.
- Each heat pump will have 1 pump on condenser side (5 Hp, 90gpm, 100 ft).
- Piping, control valves and other equipment and accessories connected to the above equipment.
- Connection of the heat pumps on the return of the boiler and installation of the 3 ways valves.
- 700 ft of piping 6 inches isolated between the field and the heat pump The pipes will be installed on the roof.
- Installation of geo-exchange field loop to match the designed performance of the system.
- Supply and do the injection of 2400 usgals of propylene/glycol with a concentration of 25%.
- Control systems for the above mentioned equipment.
- BTU meters

Prior to commencement of the Mechanical Equipment construction, FEI shall provide detailed drawings to the District for review and acceptance.

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## **SCHEDULE “B”**

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# **Delta School District Site Rules for Contractors**

## **Delta School District Site Rules for Contractors**

### **1.0 Safety**

- 1.1 For the purposes of this section, “Safety Regulations” means the rules, regulations, and practices required by WorkSafeBC.
- 1.2 The Contractor shall be solely responsible for site safety during the execution of all assigned construction and maintenance activities, including work performed by subcontractors and suppliers, and for compliance with the Safety Regulations, and shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the work.
- 1.3 If the District is of the reasonable opinion that the Contractor has not taken such precautions as are necessary to ensure compliance with the requirements of Clause 1.2, the District may take or order any remedial measures which it deems necessary, including stopping the performance of all or any portion of the work, and the District may use the employees of itself, the Contractor, any subcontractor or any other contractors to perform such remedial measures. The Contractor acknowledges and agrees that any failure by the Contractor to comply with the Safety Regulations shall constitute a default of the Contractor's contractual obligations and the District may issue a written notice instructing the Contractor to correct the default in the two (2) working days immediately following receipt of such notice.
- 1.4 The Contractor shall file any notices or any similar document (including, without limitation, a Notice of Project where applicable) required pursuant to the Safety Regulations. This duty of the Contractor will be considered to be included in the work and no separate payment therefore will be made to the Contractor.
- 1.5 The Contractor shall develop, maintain and supervise for the duration of the work a comprehensive safety program that will effectively incorporate and implement all required safety precautions. The program shall, as a minimum, respond fully to the Safety Regulations and general construction practices for the safety of persons or property, including without limitation the WorkSafeBC regulations that may be applicable (e.g. WHMIS, dust control, etc.).
- 1.6 The Contractor shall provide a copy of the safety program described in Clause 1.5 to the District prior to the commencement of the work and shall, at all times require, as far as it is reasonably practical to do so, that every employer and worker performing work in respect of the project complies with such program.
- 1.7 The Contractor shall arrange regular safety meetings at its expense, record the minutes of such meetings and maintain a complete file for review by the appropriate authorities.
- 1.8 The Contractor shall supply and maintain, at its own expense, at its office or other well-known place at the work site, safety equipment necessary to protect the workers and general public against accident or injury as prescribed by the governing authorities.
- 1.9 The Contractor shall supply and maintain all articles necessary for giving first-aid to any person who may be injured on the work site and shall establish an emergency procedure for the immediate removal of any injured person to a hospital or a doctor's care in accordance with the Safety Regulations.
- 1.10 The Contractor shall, as required under the Safety Regulations, promptly report all accidents of any sort arising out of or in connection with the performance of the work whether on or adjacent to the work site, giving full details and statements of witnesses. The District shall be copied on all accident reports and investigation reports.

## **2.0 Security and Access**

- 2.1 **Site and Building Access:** The District's Maintenance Services Department will issue gate and building keys, electronic access cards (complete with instructions as to how to arm/disarm the building intrusion alarm system and how to contact the alarm monitoring station) and identification badges for the Contractor to enter the site and building, disarm/arm the building intrusion alarm system, and access the portions of the site where the Contractor's work is taking place. The Contractor and all subcontractors must check in at the school office (if occupied by District staff) prior to entering other parts of the building. The access cards, keys and identification badges shall be promptly returned to the District at the end of the contract.
- 2.2 **Security:** The Contractor shall assume all responsibility for the security of the work site. The Contractor must ensure that all windows, doors and gates are secure and the building intrusion alarm system is armed (unless District staff are still in the building) at the end of the workday. The Contractor must also safeguard the rest of the building and/or site from access through possible open construction areas. Security doors shall at all times remain closed and shall not be propped open, even for a short time. The Contractor is responsible for any costs arising when the District's security runner services is called to attend a work site for security matters resulting from the Contractor's negligence.
- 2.3 **Normal School Hours:** Normal hours of operation for the District are 0730h-1600h Monday to Friday, excluding statutory holidays. For after-hours and weekend work, the Contractor must notify the District's Maintenance Services Department at least one business day in advance of the work.

## **3.0 Conduct**

- 3.1 **Noise Due to Construction or Maintenance Activities:** In accordance with the Delta Noise Bylaw 1906, "no person shall carry on or cause to be carried any construction work, reconstruction, alteration, repair or demolition of a building or structure, the operation of machinery, or works in connection with any excavation or highway before 07:00h or after 1900h and day of the week from Monday to Friday, inclusive, before 0900h or after 1700h on Saturdays, or at any time Sundays. The Contractor shall respect the classroom operations in the vicinity of the work site and as such will make every attempt to limit noisy work to times outside of classroom operation or to adequately dampen, silence and/or soundproof equipment that generates noise to mitigate disruption to the classrooms.
- 3.2 **Communication devices:** Radio and cell phone volume shall be at the minimum volume which is consistent with the ability to operate the device.
- 3.3 **Roadways:** All speed limits and other traffic rules must be obeyed and access to the roadways should not be impeded. Parking and secure storage of materials and equipment by the Contractor and subcontractors shall only be in designated areas only.
- 3.4 **Cleanliness:** The work site must be maintained for an orderly appearance on a daily basis. Trash and construction debris shall be contained at all times and removed from the work site weekly.
- 3.5 **Toilets:** All temporary toilets shall have their doors faced away from streets. In no cases shall a worker utilize any staff washroom or other staff facilities at the work site, except as otherwise agreed in writing by the District. Under no circumstances will workers be permitted to use student washrooms.
- 3.6 **Identification Badges:** All workers shall have a District-assigned identification badge that clearly indicates the company's name and the worker's name. It is to be worn whenever at the work site.

- 3.7 **Smoking:** Smoking is not permitted on District property.
- 3.8 **Alcohol/Drugs:** No alcoholic beverages or non-prescription drugs shall be brought or consumed at the work site.
- 3.9 **Animals:** No dogs or other animals, are permitted at the work site without the written consent of the District.
- 3.10 **Fitness for Work:** All workers must be fit for work at all times. The District retains the right to request individuals leave the work site if unfit for any reason including, without limitation, inebriation, taking drugs, injury, fatigue, rudeness or any other reason that may affect the quality of the work or represents a breach of these rules.
- 3.11 **Theft:** Workers who steal from occupants or the District shall be immediately ejected from the work site. The Contractor is responsible for all such thefts irrespective of whether the worker is an employee of the Contractor or a subcontractor.
- 3.12 **Discrimination and Harassment:** The District actively promotes a safe and secure school environment and as such does not tolerate violations of human rights legislation, including:
  - (a) discriminatory acts against any person with respect to the work or school environment or any educational program or service provided to or by that person because of race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age of that person, or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person;
  - (b) all forms of actual, attempted or threatened physical harm directed at any person; or
  - (c) any form of sexual harassment such as unwelcome sexual advances with actual or implied work related consequences; unwelcome remarks, questions, jokes or innuendo of a sexual nature including sexist comments or sexual invitations; verbal abuse, intimidation or threats of a sexual nature; unwelcome leering, staring or making sexual gestures; whistling or catcalls; display of pornographic or other sexual materials; offensive pictures, graffiti, cartoons or sayings; unwanted physical contact such as touching, patting, pinching or hugging; and physical assault of a sexual nature

## **SCHEDULE “C”**

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### **List of Environmental Reports**



**ASBESTOS MATERIALS SURVEY  
AND RISK ASSESSMENT**

**OF**

**DELTA SECONDARY SCHOOL  
4615 – 51<sup>st</sup> Street  
Delta, BC**

**PREPARED FOR:**

**DELTA SCHOOL DISTRICT  
Maintenance Facility  
7186 Brown Street  
Delta, BC  
V4G 1G8**

**PREPARED BY:**

**ACM ENVIRONMENTAL CORPORATION  
#217 -2323 Quebec Street  
Vancouver, BC  
V5T 4S7  
604-873-8599**

**September 2005**

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## **EXECUTIVE SUMMARY**

A.C.M. Environmental Corporation (ACM) was retained by the Delta School District to perform an Asbestos Materials Survey and Risk Assessment for Delta Secondary School located at 4615 – 51<sup>st</sup> Street, Delta, BC

The assessment involved an inspection of all areas of the building. The objective of the assessment was to identify the types and extent of asbestos containing materials within the building and any risks associated with the materials and the regular usage of the building.

The assessment was conducted using both visual and physical assessment techniques. Samples of materials suspected of containing asbestos were collected and forwarded, using proper chain of custody protocols, to Prezant Associates, Inc. for asbestos analysis. Asbestos sample results are located in Appendix A of this report.

Previous asbestos sampling information for the building was reviewed prior to conducting the survey assessment. ACM previously collected 15 bulk samples from the school on June 12<sup>th</sup> and 13<sup>th</sup>, 1990. The sampling mainly identified the mechanical pipe insulation to be asbestos containing but has since been replaced with fibreglass insulation.

In summary, the findings from the assessment conclude that asbestos was found within the construction materials of the building, however, no PCB or Mercury containing materials were found within the equipment of the building.

Three types of asbestos containing building materials were observed during this survey. Also, the insulation within the incubators in Room 1719 was observed to be asbestos containing. These asbestos containing building materials include vinyl floor tile materials, ducting mastic materials and cement board materials. Within the context of the report, areas have been detailed as to the locations of the asbestos containing materials, the content of asbestos where applicable, and the essential procedures to be followed for removal of these materials, as required.

The hazardous materials survey was conducted using non-destructive and some limited destructive testing methods. Areas within walls were not inspected as access was not possible without causing extensive damage to the walls. It should be noted that there is a possibility of asbestos containing materials existing within inaccessible wall and ceiling cavities, and under sub-floors. Possible asbestos-containing materials which may exist in these areas may include but are not limited to: insulation materials (mechanical or construction), secondary layers of drywall or flooring, etc.

Roofing materials were not sampled at this time as the integrity of the waterproof membrane would be compromised, possibly voiding insurance coverage in the event of a water leak. If the roofing materials are to be disturbed during a renovation project, they must be sampled prior to the work taking place.

A random number of fluorescent lighting fixtures were opened up and inspected for possible PCB containing ballasts. No PCB containing ballasts were observed within the fluorescent lighting fixtures inspected, although some may exist, as not all fixtures were opened. No Mercury containing thermostat switches were observed within the building.

## **INTRODUCTION**

A.C.M. Environmental Corporation (ACM) was retained by the Delta School District to perform an Asbestos Materials Survey and Risk Assessment for the Delta Secondary School located at 4615 – 51st Street, Delta, BC. All areas of the building were inspected and/or sampled during this survey and photographs of the site are included as Appendix B.

The objective of the assessment was to identify the types and extent of asbestos containing construction materials within the accessible areas of the building. The assessment at this time involved an inspection of all areas of the building not including the roofing materials.

The survey and assessment was conducted on September 7<sup>th</sup>, 8<sup>th</sup> and 13<sup>th</sup>, 2005 by Mr. James McArthur, AScT, Environmental Technician, for ACM and Mr. Jim Williams, Dipl. Tech., Environmental Technician, for ACM. Thirty-nine (39) representative bulk samples of materials suspected of containing asbestos were collected from the latest survey and are included as Appendix A of this report.

Previous asbestos sampling information for the building was reviewed prior to conducting the survey assessment. ACM previously collected 15 bulk samples from the school on June 12<sup>th</sup> and 13<sup>th</sup>, 1990. The sampling identified mainly mechanical insulation materials as asbestos containing, however, these materials have been recently abated and replaced with non-asbestos containing materials.

## **METHODOLOGY**

The hazardous materials survey was conducted using non-destructive and some limited destructive testing methods. Areas within walls were not inspected as access was not possible without causing extensive damage to the walls. It should be noted that there is a possibility of asbestos containing materials existing within inaccessible wall and ceiling cavities, and under sub-floors. Possible asbestos-containing materials which may exist in these areas may include but are not limited to: insulation materials (mechanical or construction), secondary layers of drywall or flooring, etc.

The U.S. Environmental Protection Agency (USEPA) Guidance Document was selected for use in this study (1). The document identifies factors associated with the "condition" and the "potential for disturbance or erosion" of asbestos containing materials. These factors help to define the fibre release potential of the suspect asbestos containing materials and were used in a qualitative evaluation of materials found in the surveyed areas. Recommendations have been substantiated by additional information utilized from other documentation cited in the Reference Section of this report.

The bulk samples of suspect asbestos containing materials were forwarded, using proper chain of custody protocols, to Prezant Associates, Inc. for asbestos analysis. The samples were analyzed using polarized light microscopy (PLM) with dispersion staining in accordance with U.S. EPA method 600/R-93/116, "Method for Determination of Asbestos in Bulk Building Materials".

Other hazardous materials were visually inspected and are noted in this report.

The survey relied on the abilities and experience of the surveyor to gain access and identify possible asbestos containing materials. All areas of the building were accessed during the assessment excluding the roof.

## **RESULTS & ASSOCIATED RISK LEVELS**

### **ASBESTOS**

Three types of asbestos containing materials were identified during the survey which could be affected by any potential renovation or demolition activities. These are vinyl floor tile materials, ducting mastic materials and cement board materials. A breakdown for each type of material is as follows:

#### **Vinyl Floor Tile Materials:**

Asbestos containing vinyl floor tile materials were found exposed and underneath newer flooring materials. The exposed 12" Beige floor tiles with orange and white streaks were observed within Room 1506 - Equipment room and 1520 – stairwell to weight room was asbestos containing. Also, asbestos containing floor tiles were found under new vinyl sheet flooring in the 1600 – hallway area. A sample of the vinyl floor tile materials was found to contain <1% Chrysotile asbestos in these tiles. Other floor tiles were found underneath the 12" beige floor tiles in 1611 - Laundry Room adjacent to the cafeteria kitchen area. The second layer of flooring appeared to be green in color. A sample of the vinyl floor tile materials was found to contain 2% Chrysotile asbestos in the tiles. The materials are all presently in fair to good condition.

WCB Regulations do not treat any materials with less than 1% asbestos as asbestos containing. Workers should still use moderate risk procedures when exposed to the vinyl floor tile materials, even in materials with less than 1% asbestos concentrations. The WCB states that workers must be properly protected from any potential exposure to airborne asbestos fibres. It is recommended that any work affecting all the vinyl floor tile materials be done using a minimum of moderate risk asbestos work procedures. Therefore as a minimum, MODERATE RISK asbestos work procedures will be required for the removal of the asbestos containing vinyl floor tile materials. The vinyl floor tile materials which are less than 1% do not have to be disposed of in accordance with applicable regulations as asbestos waste.

#### **Duct Mastics:**

Three asbestos containing duct mastic materials were observed within the older sections of the school. The original square HVAC ducting which was exposed on the mezzanine level of the woodshop was found to have asbestos containing silver/grey duct mastic. A sample of the asbestos containing HVAC duct mastic was collected from the woodshop and the roof and found to contain 3% and 7% Chrysotile asbestos respectively. The materials are presently in good condition.

All original HVAC duct mastic observed within the building is to be treated as asbestos containing. Asbestos containing red duct mastic was observed within the Auto Shop of the building. A sample of the asbestos containing red duct mastic was collected and found to contain 2% Chrysotile asbestos. The materials are presently in good condition. All red duct mastic observed within the building is to be treated as asbestos containing.

Prior to any demolition activities taking place which could disturb the asbestos containing duct mastic materials, it must first be removed and disposed of in accordance with applicable regulations. The removal of the asbestos containing duct mastic will pose a moderate risk of asbestos exposure to the workers involved, therefore as a minimum, MODERATE RISK asbestos work procedures will be required for the removal of the asbestos containing duct mastic.

#### Cement Board Materials:

Asbestos containing cement board materials were observed within Room 1503 along the West wall adjacent to a large kiln observed in the corner of the room. The cement board materials were not sampled, however, are known to contain 20-60% Chrysotile asbestos. The materials were observed to be in good condition.

Prior to any demolition activities taking place which could disturb the asbestos containing cement board materials, the affected materials must first be removed in accordance with applicable regulations. The removal of the asbestos containing cement board (20-60% Chrysotile asbestos) will pose a moderate risk of asbestos exposure to the workers involved, therefore as a minimum, MODERATE RISK asbestos work procedures would be required for the removal of the asbestos containing cement pipe materials.

#### **POLYCHLORINATED BIPHENYLS (PCBs)**

A random number of fluorescent light ballasts were visually inspected for possible PCB containing ballasts. No PCB containing ballasts were observed within the fluorescent lighting fixtures inspected in both buildings, although some may exist, as not all fixtures were opened up.

PCB containing fluorescent light ballasts do not pose a risk to occupants of the building. If any PCB containing ballasts are encountered during any renovations of the building, they must be separated from the fixtures and disposed of properly in accordance with applicable regulations.

**MERCURY THERMOSTATS**

No thermostats observed within the building were found to have Mercury containing switches within them. If any Mercury containing thermostat switches are encountered within the building during renovation or repair activities, they must be removed intact from the thermostats and disposed of properly in accordance with applicable regulations.

### **RECOMMENDATIONS**

Prior to beginning any work that may impinge upon the hazardous materials within the building, the following must be performed:

- 1.) Any affected asbestos containing vinyl floor tiles, ducting mastics and cement board materials should be removed in accordance with applicable regulations. The removal of the asbestos containing vinyl floor tile, duct mastic and cement board materials will require MODERATE RISK asbestos work procedures to be followed. Any vinyl floor tile materials with less than 1% Chrysotile asbestos do not have to be disposed of as asbestos waste.
- 2.) If any Mercury containing thermostat switches are encountered during any renovation or repair activities within the building, they must be removed and disposed of in accordance with applicable regulations.
- 3.) If any PCB containing ballasts are encountered during any renovation or repair activities within the building, they must be removed and disposed of in accordance with applicable regulations.
- 4.) If any suspect asbestos containing materials are encountered within inaccessible wall or ceiling cavities, or under floors, during renovation or demolition activities, the work in the immediate area must stop and the supervisor contacted for further direction.

### **STATEMENT OF LIMITATIONS**

The ACM report is intended to direct the Client's attention to recognised environmental conditions and to potential sources of environmental contamination. The findings and conclusion regarding contamination of the property are based solely on the extent of observations and information gathered during the assessment. Nothing in the report is intended to express any legal opinion upon environmental liabilities relating to the site or whether operations legally conformed with relevant legislative requirements.

Furthermore, it must be understood that changing circumstances in the physical environment, the use of the property, as well in changes in any substances stored, used, handled at the property, could alter radically the conclusions and information contained in this report. Therefore, it is important that the property is periodically re-evaluated and the client kept informed as to developments, which may impact the property. This report is not intended to be used as contract specifications.

### **A.C.M. ENVIRONMENTAL CORPORATION**

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James McArthur, ASCT  
Environmental Technician

**REFERENCES**

- 1) USEPA. 1985. U.S. Environmental Protection Agency. "Guidance for Controlling Asbestos-Containing Materials in Buildings". Washington, DC: Office of Toxic Substances, USEPA.
- 2) Lory EE, Coin DC. 1981. "Management Procedure for Assessment of Friable Asbestos Insulating Material". Port Hueneme, CA: Civil Engineering Laboratory, Naval Construction Battalion Center.
- 3) Workers' Compensation Board of British Columbia, effective 15 April 1998, and all current amendments. Occupational Health and Safety Regulations.
- 4) 2002 Edition - Workers' Compensation Board of British Columbia. Safe Work Practices for Handling Asbestos.

## **APPENDIX A**

### **Bulk Sample Results**



NVLAP LAB CODE 200613-0



330 6th Ave. North, Suite 200 Seattle, WA 98109  
OFFICE: (206) 281-8858 FAX: (206) 281-8922

### Bulk Asbestos Fiber Analysis

**ACM Environmental**  
2323 Quebec Street, Suite 211  
Vancouver, BC

Project Location: Delta Secondary School  
3048-14

PAI Batch Number: **05-2339**  
Client Job Number:  
Number of Samples: **39**  
Turn Around Time: **10 day**

Batch Number:	05-2339	<b>ACM Environmental</b>
Lab Sample Number:	05012850	
Client Sample Number:	<b>3048.116</b>	<i>Delta Secondary School 3048-14</i>

**L-1 Pale gray paint**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
100% Paint

**Comments:**

**L-2 White crystalline powdery material**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
85% Calcite Filler and Binder  
12% Perlite  
3% Mineral Fragments

**Comments:**

Batch Number:	05-2339	<b>ACM Environmental</b>
Lab Sample Number:	05012851	
Client Sample Number:	<b>3048.117</b>	<i>Delta Secondary School 3048-14</i>

**L-1 White paint**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
100% Paint

**Comments:**

Sampled By: James McArthur  
Received By: John McCaslin 9/22/2005  
Reviewed By: George McCaslin 10/3/2005

Analyzed By: Deitrie Hanson 10/3/2005



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## Bulk Asbestos Fiber Analysis

### L-2 Pale gray fibrous opaque material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	65% Mineral Wool	5% Filler and Binder
	30% Cellulose	

**Comments:**

Batch Number:	05-2339	<b>ACM Environmental</b>
Lab Sample Number:	05012852	
Client Sample Number:	<b>3048.118</b>	<i>Delta Secondary School</i> <b>3048-14</b>

### L-1 Dull gray pliable rubbery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Rubber Particles
		10% Calcite Filler and Binder

**Comments:**

This sample was ashed by lighter flame and no asbestos fibers were detected.

### L-2 White paint

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		100% Paint

**Comments:**

### L-3 White crystalline powdery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		92% Calcite Filler and Binder
		5% Mineral Fragments
		3% Filler and Binder

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/22/2005  
 10/3/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson

10/3/2005



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**Bulk Asbestos Fiber Analysis**

Batch Number:	05-2339	<b>ACM Environmental</b>
Lab Sample Number:	05012853	
Client Sample Number:	<b>3048.119</b>	<i>Delta Secondary School 3048-14</i>

**L-1 White paint**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		100% Paint

**Comments:**

**L-2 Pale gray fibrous opaque material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
	55% Cellulose 40% Mineral Wool 5% Glass Fiber	

**Comments:**

Batch Number:	05-2339	<b>ACM Environmental</b>
Lab Sample Number:	05012854	
Client Sample Number:	<b>3048.120</b>	<i>Delta Secondary School 3048-14</i>

**L-1 Dull gray thick pliable paint**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		100% Paint

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/22/2005  
 10/3/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson

10/3/2005



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## Bulk Asbestos Fiber Analysis

**L-2 Gray thick pliable rubbery material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 80% Rubber Particles 15% Calcite Filler and Binder 5% Mineral Fragments
--	----------------------------------	--

**Comments:**

**L-3 Golden yellow resinous mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 95% Resin and Binder 5% Mineral Fragments
--	----------------------------------	---

**Comments:**

**L-4 Orange wooden splinter material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components: 97% Cellulose	Non-Fibrous Components: 3% Filler and Binder
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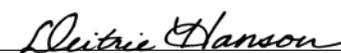
**Comments:**

Batch Number:	05-2339	<b>ACM Environmental</b>
Lab Sample Number:	05012855	
Client Sample Number:	<b>3048.121</b>	<i>Delta Secondary School 3048-14</i>

**L-1 Orange crystalline powdery material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 90% Resin and Binder 10% Mineral Fragments
--	----------------------------------	--

**Comments:**

Sampled By: James McArthur		
Received By: John McCaslin	9/22/2005	
Reviewed By: George McCaslin	10/3/2005	Analyzed By: Deitrie Hanson



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## Bulk Asbestos Fiber Analysis

### L-2 Gray pliable putty-like crystalline powdery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	6% Wollastonite	90% Calcite Filler and Binder
		4% Mineral Fragments

**Comments:**

Batch Number:	05-2339	<b>ACM Environmental</b>
Lab Sample Number:	05012856	
Client Sample Number:	<b>3048.122</b>	<i>Delta Secondary School</i> <b>3048-14</b>

### L-1 Dull pink paint

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		100% Paint

**Comments:**

### L-2 Silver thick shiny pliable paint

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>3% Chrysotile</b>		97% Paint

**Comments:**

### L-3 Golden yellow resinous mastic

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		98% Resin and Binder
		2% Mineral Fragments

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/22/2005  
 10/3/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson

10/3/2005



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### Bulk Asbestos Fiber Analysis

Batch Number:	05-2339	<b>ACM Environmental</b>
Lab Sample Number:	05012857	
Client Sample Number:	<b>3048.123</b>	<i>Delta Secondary School 3048-14</i>

#### L-1 Dull gray pliable sheet vinyl rubbery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		80% Rubber Particles
		15% Calcite Filler and Binder
		5% Vinyl Filler and Binder

**Comments:**

#### L-2 Gray debris on pale tan hard tile material

<b>Asbestos Fibrous Components:</b> <b>&lt;1% Chrysotile</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		40% Calcite Filler and Binder
		35% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		10% Miscellaneous Particles
		>4% Filler and Binder

**Comments:**

The pale tan hard tile contains <1% chrysotile asbestos.

#### L-3 Golden tan resinous mastic

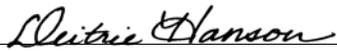
<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		98% Resin and Binder
		2% Mineral Fragments

**Comments:**

Batch Number:	05-2339	<b>ACM Environmental</b>
Lab Sample Number:	05012858	
Client Sample Number:	<b>3048.124</b>	<i>Delta Secondary School 3048-14</i>

Sampled By: James McArthur  
Received By: John McCaslin  
Reviewed By: George McCaslin

9/22/2005  
10/3/2005

  
Analyzed By: Deitrie Hanson

10/3/2005



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### Bulk Asbestos Fiber Analysis

**L-1 Pale beige hard tile material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		55% Calcite Filler and Binder
		40% Mineral Filler and Binder
		5% Vinyl Filler and Binder

**Comments:**

**L-2 Black mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		92% Asphalt Filler and Binder
		5% Sand
		3% Mineral Fragments

**Comments:**

Batch Number: 05-2339	<b>ACM Environmental</b>
Lab Sample Number: 05012859	
Client Sample Number: 3048.125	<i>Delta Secondary School 3048-14</i>

**L-1 White thick paint**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		100% Paint

**Comments:**

**L-2 Dark red pliable thick putty-like material**

<b>Asbestos Fibrous Components:</b> <b>2% Chrysotile</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		80% Rubber Particles
		15% Mineral Particles
		3% Resin and Binder

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin 9/22/2005  
 Reviewed By: George McCaslin 10/3/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 10/3/2005



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### Bulk Asbestos Fiber Analysis

Batch Number:	05-2339	<b>ACM Environmental</b>
Lab Sample Number:	05012860	
Client Sample Number:	<b>3048.126</b>	<i>Delta Secondary School 3048-14</i>

#### Tan fibers on dull white hard chalky powdery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		85% Calcite Filler and Binder
		12% Perlite
		3% Mineral Fragments

**Comments:**

Batch Number:	05-2339	<b>ACM Environmental</b>
Lab Sample Number:	05012861	
Client Sample Number:	<b>3048.127</b>	<i>Delta Secondary School 3048-14</i>

#### L-1 White paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		100% Paint

**Comments:**

#### L-2 White crystalline powdery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Calcite Filler and Binder
		5% Perlite
		5% Filler and Binder

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/22/2005  
 10/3/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson

10/3/2005



330 6th Ave. North, Suite 200 Seattle, WA 98109  
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**Bulk Asbestos Fiber Analysis**

Batch Number:	05-2339	<b>ACM Environmental</b>
Lab Sample Number:	05012862	
Client Sample Number:	<b>3048.128</b>	<i>Delta Secondary School 3048-14</i>

**Pale gray fine powdery fibrous material with golden brown flakes**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	45% Cellulose	40% Talc Filler and Binder
		10% Perlite
		5% Vermiculite

**Comments:**

Batch Number:	05-2339	<b>ACM Environmental</b>
Lab Sample Number:	05012863	
Client Sample Number:	<b>3048.129</b>	<i>Delta Secondary School 3048-14</i>

**L-1 White paint**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		100% Paint

**Comments:**

**L-2 Gray hard granular material with transparent straight fibers**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	15% Glass Fiber	80% Sand
		5% Mineral Fragments

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/22/2005  
 10/3/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson

10/3/2005



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**Bulk Asbestos Fiber Analysis**

Batch Number: 05-2339 **ACM Environmental**  
 Lab Sample Number: 05012864  
 Client Sample Number: **3048.130** *Delta Secondary School 3048-14*

**Pale gray pliable rubbery material with long fibers**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
10% <b>Amosite</b>		80% Mineral Filler and Binder
		6% Resin and Binder
		4% Mineral Fragments

**Comments:**

Batch Number: 05-2339 **ACM Environmental**  
 Lab Sample Number: 05012865  
 Client Sample Number: **3048.131** *Delta Secondary School 3048-14*

**L-1 Dark gray and silvery gray hard granular material**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		80% Mineral Filler and Binder
		12% Clay Filler and Binder
		8% Metal

**Comments:**

**L-2 Silver shiny pellets**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		97% Metal
		3% Mineral Fragments

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin 9/22/2005  
 Reviewed By: George McCaslin 10/3/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 10/3/2005



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### Bulk Asbestos Fiber Analysis

#### L-3 Dull dark orange fine powdery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		60% Clay Filler and Binder
		25% Sand
		15% Mineral Particles

**Comments:**

Batch Number: 05-2339	<b>ACM Environmental</b>
Lab Sample Number: 05012866	
Client Sample Number: 3048.132	<i>Delta Secondary School 3048-14</i>

#### L-1 Light brown hard tile material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		55% Calcite Filler and Binder
		40% Mineral Filler and Binder
		5% Vinyl Filler and Binder

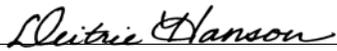
**Comments:**

#### L-2 Black mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		97% Asphalt Filler and Binder
		3% Mineral Fragments

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin 9/22/2005  
 Reviewed By: George McCaslin 10/3/2005

  
 Analyzed By: Deitrie Hanson 10/3/2005



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## Bulk Asbestos Fiber Analysis

### L-3 Dull gray hard tile material

<b>Asbestos Fibrous Components:</b> 2% <b>Chrysotile</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 45% Calcite Filler and Binder 40% Mineral Filler and Binder 10% Vinyl Filler and Binder 3% Filler and Binder
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**Comments:**

### L-4 Black mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 90% Asphalt Filler and Binder 10% Sand
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**Comments:**

Batch Number: 05-2339	<b>ACM Environmental</b>
Lab Sample Number: 05012867	
Client Sample Number: <b>3048.133</b>	<i>Delta Secondary School 3048-14</i>

### L-1 Beige hard tile material with brown thin streaks

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 55% Calcite Filler and Binder 40% Mineral Filler and Binder 5% Vinyl Filler and Binder
--	---	--

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/22/2005  
 10/3/2005

*Deitrie Hanson*

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Analyzed By: Deitrie Hanson 10/3/2005



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### Bulk Asbestos Fiber Analysis

**L-2 Black shiny resinous mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Asphalt Filler and Binder
		5% Mineral Fragments
		5% Filler and Binder

**Comments:**

Batch Number: 05-2339	<b>ACM Environmental</b>
Lab Sample Number: 05012868	
Client Sample Number: <b>3048.134</b>	<i>Delta Secondary School 3048-14</i>

**L-1 White paint**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		100% Paint

**Comments:**

**L-2 White crystalline powdery material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		80% Calcite Filler and Binder
		15% Mineral Fragments
		5% Filler and Binder

**Comments:**

Batch Number: 05-2339	<b>ACM Environmental</b>
Lab Sample Number: 05012869	
Client Sample Number: <b>3048.135</b>	<i>Delta Secondary School 3048-14</i>

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/22/2005  
 10/3/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson

10/3/2005



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### Bulk Asbestos Fiber Analysis

#### White chalky brittle powdery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		90% Calcite Filler and Binder
		5% Perlite
		5% Mineral Fragments

**Comments:**

Batch Number:	05-2339	<b>ACM Environmental</b>
Lab Sample Number:	05012870	
Client Sample Number:	<b>3048.136</b>	<i>Delta Secondary School 3048-14</i>

#### White crystalline powdery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		80% Calcite Filler and Binder
		15% Perlite
		5% Mineral Fragments

**Comments:**

Batch Number:	05-2339	<b>ACM Environmental</b>
Lab Sample Number:	05012871	
Client Sample Number:	<b>3048.137</b>	<i>Delta Secondary School 3048-14</i>

#### L-1 White paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		100% Paint

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/22/2005  
 10/3/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 10/3/2005



NVLAP LAB CODE 200613-0



330 6th Ave. North, Suite 200 Seattle, WA 98109  
OFFICE: (206) 281-8858 FAX: (206) 281-8922

### Bulk Asbestos Fiber Analysis

#### L-2 Pale tan opaque fibrous material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	50% Cellulose	12% Perlite
	35% Mineral Wool	3% Filler and Binder

**Comments:**

Batch Number:	05-2339	<b>ACM Environmental</b>
Lab Sample Number:	05012872	
Client Sample Number:	<b>3048.138</b>	<i>Delta Secondary School 3048-14</i>

#### White hard chalky powdery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		80% Calcite Filler and Binder
		15% Perlite
		5% Mineral Fragments

**Comments:**

Batch Number:	05-2339	<b>ACM Environmental</b>
Lab Sample Number:	05012873	
Client Sample Number:	<b>3048.139</b>	<i>Delta Secondary School 3048-14</i>

#### L-1 Dull gray pliable resinous rubbery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		80% Rubber Particles
		15% Calcite Filler and Binder
		5% Resin and Binder

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/22/2005  
 10/3/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson

10/3/2005



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OFFICE: (206) 281-8858 FAX: (206) 281-8922

### Bulk Asbestos Fiber Analysis

#### L-2 White paint

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:

95% Paint  
3% Mineral Fragments  
2% Filler and Binder

**Comments:**

Batch Number:	05-2339	<b>ACM Environmental</b>
Lab Sample Number:	05012874	
Client Sample Number:	<b>3048.140</b>	<i>Delta Secondary School 3048-14</i>

#### L-1 Dull black thick asphaltic pliable papery material

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:  
65% Cellulose

Non-Fibrous Components:  
30% Asphalt Filler and Binder  
5% Sand

**Comments:**

#### L-2 Black and gray hard rocky asphaltic material

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
55% Rocks  
40% Asphalt Filler and Binder  
5% Mineral Fragments

**Comments:**

Batch Number:	05-2339	<b>ACM Environmental</b>
Lab Sample Number:	05012875	
Client Sample Number:	<b>3048.141</b>	<i>Delta Secondary School 3048-14</i>

Sampled By: James McArthur  
Received By: John McCaslin  
Reviewed By: George McCaslin

9/22/2005  
10/3/2005

*Deitrie Hanson*  
Analyzed By: Deitrie Hanson

10/3/2005



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OFFICE: (206) 281-8858 FAX: (206) 281-8922

### Bulk Asbestos Fiber Analysis

#### Dull black thick pliable asphaltic material with white fibers

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
7% Chrysotile		90% Asphalt Filler and Binder
		3% Mineral Fragments

**Comments:**

Batch Number:	05-2339	ACM Environmental
Lab Sample Number:	05012876	
Client Sample Number:	3048.142	Delta Secondary School 3048-14

#### White chalky powdery fibrous material with golden brown fibers

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
No Asbestos Detected	40% Cellulose	30% Talc Filler and Binder
	20% Mineral Wool	5% Perlite
		5% Mineral Particles

**Comments:**

Batch Number:	05-2339	ACM Environmental
Lab Sample Number:	05012877	
Client Sample Number:	3048.143	Delta Secondary School 3048-14

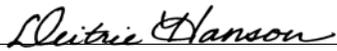
#### L-1 White hard tile material with dark gray streaks

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
No Asbestos Detected		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		5% Miscellaneous Particles

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/22/2005  
 10/3/2005

  
 Analyzed By: Deitrie Hanson

10/3/2005



NVLAP LAB CODE 200613-0



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### Bulk Asbestos Fiber Analysis

**L-2 Black mastic**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
90% Asphalt Filler and Binder  
7% Resin and Binder  
3% Mineral Fragments

**Comments:**

Batch Number:	05-2339	<b>ACM Environmental</b>
Lab Sample Number:	05012878	
Client Sample Number:	<b>3048.144</b>	<i>Delta Secondary School</i> <b>3048-14</b>

**L-1 Pale gray hard tile material with gray streaks**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
45% Calcite Filler and Binder  
40% Mineral Filler and Binder  
10% Vinyl Filler and Binder  
5% Filler and Binder

**Comments:**

**L-2 Black mastic**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
90% Asphalt Filler and Binder  
5% Mineral Fragments  
5% Resin and Binder

**Comments:**

Batch Number:	05-2339	<b>ACM Environmental</b>
Lab Sample Number:	05012879	
Client Sample Number:	<b>3048.145</b>	<i>Delta Secondary School</i> <b>3048-14</b>

Sampled By: James McArthur  
Received By: John McCaslin  
Reviewed By: George McCaslin

9/22/2005  
10/3/2005

*Deitrie Hanson*  
Analyzed By: Deitrie Hanson

10/3/2005



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## Bulk Asbestos Fiber Analysis

**L-1 Off-white paint**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 100% Paint
---	----------------------------------	---------------------------------------

Comments:

**L-2 White crystalline powdery material**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 80% Calcite Filler and Binder 15% Perlite 5% Mineral Fragments
---	----------------------------------	---

Comments:

**L-3 Brown fibrous papery material**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	Non-Asbestos Fibrous Components: 99% Cellulose	Non-Fibrous Components: 1% Filler and Binder
---	---	---

Comments:

**L-4 White powdery fibrous material**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	Non-Asbestos Fibrous Components: 15% Cellulose	Non-Fibrous Components: 80% Talc Filler and Binder 5% Mineral Fragments
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Comments:

Batch Number:	05-2339	<b>ACM Environmental</b>
Lab Sample Number:	05012880	
Client Sample Number:	<b>3048.146</b>	<i>Delta Secondary School 3048-14</i>

Sampled By: James McArthur  
 Received By: John McCaslin  
 Reviewed By: George McCaslin

9/22/2005  
 10/3/2005

*Deitrie Hanson*

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Analyzed By: Deitrie Hanson 10/3/2005



NVLAP LAB CODE 200613-0



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OFFICE: (206) 281-8858 FAX: (206) 281-8922

### Bulk Asbestos Fiber Analysis

#### Pale gray fine powdery fibrous material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	55% Cellulose	30% Talc Filler and Binder
	10% Glass Fiber	5% Perlite

**Comments:**

Batch Number:	05-2339	<b>ACM Environmental</b>
Lab Sample Number:	05012881	
Client Sample Number:	<b>3048.147</b>	<i>Delta Secondary School</i> <b>3048-14</b>

#### L-1 Dull dark gray hard tile material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		60% Calcite Filler and Binder
		35% Mineral Filler and Binder
		5% Vinyl Filler and Binder

**Comments:**

#### L-2 Black mastic

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		92% Asphalt Filler and Binder
		5% Mineral Fragments
		3% Filler and Binder

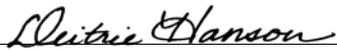
**Comments:**

#### L-3 White paint

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		98% Paint
		2% Mineral Fragments

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin 9/22/2005  
 Reviewed By: George McCaslin 10/3/2005

  
 Analyzed By: Deitrie Hanson 10/3/2005



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### Bulk Asbestos Fiber Analysis

Batch Number:	05-2339	<b>ACM Environmental</b>
Lab Sample Number:	05012882	
Client Sample Number:	<b>3048.148</b>	<i>Delta Secondary School 3048-14</i>

#### L-1 Dull pale violet paint

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 100% Paint
---	----------------------------------	---------------------------------------

Comments:

#### L-2 White crystalline powdery material

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 85% Calcite Filler and Binder 12% Perlite 3% Mineral Fragments
---	----------------------------------	---

Comments:

#### L-3 Silver flaky paint

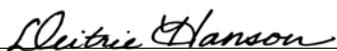
<b>Asbestos Fibrous Components:</b> No Asbestos Detected	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 100% Paint
---	----------------------------------	---------------------------------------

Comments:

Batch Number:	05-2339	<b>ACM Environmental</b>
Lab Sample Number:	05012883	
Client Sample Number:	<b>3048.149</b>	<i>Delta Secondary School 3048-14</i>

Sampled By: James McArthur  
Received By: John McCaslin  
Reviewed By: George McCaslin

9/22/2005  
10/3/2005

  
Analyzed By: Deitrie Hanson

10/3/2005





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OFFICE: (206) 281-8858 FAX: (206) 281-8922

### Bulk Asbestos Fiber Analysis

**L-2 Black mastic**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
97% Asphalt Filler and Binder  
2% Mineral Fragments  
1% Filler and Binder

**Comments:**

Batch Number:	05-2339	<b>ACM Environmental</b>
Lab Sample Number:	05012885	
Client Sample Number:	<b>3048.151</b>	<i>Delta Secondary School 3048-14</i>

**L-1 Gray paint**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
100% Paint

**Comments:**

**L-2 White chalky powdery material**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
92% Calcite Filler and Binder  
4% Clay Filler and Binder  
4% Mineral Fragments

**Comments:**

**L-3 Dull pale brown fibrous opaque material**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:  
70% Cellulose  
25% Mineral Wool

Non-Fibrous Components:  
5% Perlite

**Comments:**

Sampled By: James McArthur  
Received By: John McCaslin  
Reviewed By: George McCaslin

9/22/2005  
10/3/2005

Analyzed By: Deitrie Hanson

10/3/2005



NVLAP LAB CODE 200613-0



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OFFICE: (206) 281-8858 FAX: (206) 281-8922

### Bulk Asbestos Fiber Analysis

Batch Number:	05-2339	<b>ACM Environmental</b>
Lab Sample Number:	05012886	
Client Sample Number:	<b>3048.152</b>	<i>Delta Secondary School 3048-14</i>

#### L-1 Dull gray hard tile material with dark gray and white streaks

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		5% Miscellaneous Particles

**Comments:**

#### L-2 Golden yellow resinous mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		96% Resin and Binder
		4% Mineral Fragments

**Comments:**

#### L-3 Black mastic

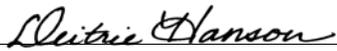
<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Asphalt Filler and Binder
		5% Mineral Fragments
		5% Miscellaneous Particles

**Comments:**

Batch Number:	05-2339	<b>ACM Environmental</b>
Lab Sample Number:	05012887	
Client Sample Number:	<b>3048.153</b>	<i>Delta Secondary School 3048-14</i>

Sampled By: James McArthur  
Received By: John McCaslin  
Reviewed By: George McCaslin

9/22/2005  
10/3/2005

  
Analyzed By: Deitrie Hanson

10/3/2005



NVLAP LAB CODE 200613-0



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OFFICE: (206) 281-8858 FAX: (206) 281-8922

### Bulk Asbestos Fiber Analysis

**L-1 Dull blue-gray hard curved tile material**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		65% Calcite Filler and Binder
		30% Mineral Filler and Binder
		5% Vinyl Filler and Binder

**Comments:**

**L-2 Yellow resinous mastic**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		97% Resin and Binder
		3% Mineral Fragments

**Comments:**

Batch Number: 05-2339	<b>ACM Environmental</b>
Lab Sample Number: 05012888	
Client Sample Number: 3048.154	<i>Delta Secondary School 3048-14</i>

**L-1 Pale gray hard tile material with dark gray and white thick streaks**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		5% Miscellaneous Particles

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin 9/22/2005  
 Reviewed By: George McCaslin 10/3/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 10/3/2005



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330 6th Ave. North, Suite 200 Seattle, WA 98109  
OFFICE: (206) 281-8858 FAX: (206) 281-8922

## Bulk Asbestos Fiber Analysis

**L-2 Black shiny resinous mastic**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

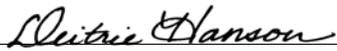
**Non-Asbestos Fibrous Components:**

**Non-Fibrous Components:**  
90% Asphalt Filler and Binder  
5% Mineral Fragments  
5% Filler and Binder

**Comments:**

Sampled By: James McArthur  
Received By: John McCaslin  
Reviewed By: George McCaslin

9/22/2005  
10/3/2005

  
Analyzed By: Deitrie Hanson

10/3/2005

## **APPENDIX B**

### **Photographs**



Asbestos containing incubator insulation observed in Science Room



Asbestos containing duct mastic on original HVAC ducting



New non-asbestos mechanical insulation observed in Boiler Room



Asbestos containing 2<sup>nd</sup> layer floor tile underneath 12" brown floor tiles (Room 1611)



Asbestos containing red mastic observed on small round ducting

**ENERGY SYSTEM SERVICE AGREEMENT**

**DELVIEW SECONDARY SCHOOL**

**THIS AGREEMENT** dated for reference the 26<sup>th</sup> day of September, 2011.

**BETWEEN:**

**THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 37 (DELTA)**  
a corporation established under the School Act R.S.B.C. 1996, c. 412 having an  
office at 4585 Harvest Drive, Delta, British Columbia, V4K 5B4

(the "District")

OF THE FIRST PART

**AND:**

**FORTISBC ENERGY INC.,** a company duly incorporated under the laws of the  
Province of British Columbia, having its registered office at 10th Floor, 1111  
West Georgia Street, Vancouver, B.C. V6E 4M3

("FEI")

OF THE SECOND PART

**WHEREAS:**

- A. The District is the owner of Delview Secondary School (the "Building") and lands located at 9111 116<sup>th</sup> Street, Delta, British Columbia, which lands are legally described as:

PID: 007-349-157 Property No: 129724

LOT 962 DISTRICT LOT 440 GROUP 2 NEW WESTMINSTER DISTRICT PLAN  
36619

(the "Lands")

- B. FEI wishes to supply to the Building, and the District wishes to purchase, Thermal Energy generated by an Energy System that FEI will construct on the Lands, and which FEI will own and operate, all pursuant to the terms of this Agreement.
- C. The Thermal Energy supplied by FEI to the Building pursuant to this Agreement will be priced at the rate set forth in the Energy System Rate Development Agreement between the Parties dated September 26<sup>th</sup>, 2011.

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT** in consideration of the premises and the covenants, agreements, representations, warranties and payments set out herein, the receipt and sufficiency of which is hereby acknowledged by each Party, the Parties covenant and agree as follows:

## **ARTICLE 1 - INTERPRETATION**

### 1.1 DEFINITIONS

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

- (a) “Adjusted Energy System Purchase Price” means, as of the date on which a purchase of the Energy System pursuant to Article 15 is effective, either:
  - (i) the Rate Base Value; or
  - (ii) such other purchase price for the Energy System as is determined by the BCUC; plus all applicable taxes;
- (b) “Affiliate” has the meaning set out in the *Business Corporation Act*, S.B.C. 2002, c.57 and includes FortisBC Inc.;
- (c) “Agreement” means this agreement, including the preamble hereto and any schedules attached hereto and the terms “this Agreement”, “hereof”, “herein”, “hereunder” and “hereinafter” and similar expressions refer to the Agreement and not to any particular Section or other portion thereof and includes any agreement supplementary or ancillary thereto;
- (d) “Acceptance Date” means the date of BCUC Acceptance;
- (e) “BCUC” means the British Columbia Utilities Commission, or any successor thereto;
- (f) “BCUC Acceptance” has the meaning assigned to that term in Section 11.1;
- (g) “Building” has the meaning assigned to that term on page one of this Agreement;
- (h) “Building System” means the space heating, cooling and ventilation, and domestic hot water distribution and control systems existing in the Building, to which the Energy System will be connected;
- (i) “Business Day” means any day except Saturday and Sunday or any day on which banks are generally not open for business in Vancouver, British Columbia;
- (j) “Capital Contribution” means \$ 0;
- (k) “Commissioned” means once the Energy System is certified complete and operating in accordance with the Specifications by a professional engineer under seal;

- (l) “Commission Date” means the day on which the Energy System is Commissioned;
- (m) “Contaminants” means, collectively, any contaminant, toxic substance, dangerous good, or pollutant or any other substance which when released to the natural environment is likely to cause, at some immediate or future time, material harm or degradation to the natural environment or material risk to human health, and includes any radioactive materials, asbestos materials, urea formaldehyde, underground or aboveground tanks, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive or toxic substances, hazardous waste or waste of any kind, pesticides, defoliants, or any other solid, liquid, gas, vapour, odour or any other substance .the storage, manufacture, disposal, handling, treatment, generation, use, transport, remediation or Release into the Environment of which is now or hereafter prohibited, controlled or regulated under Environmental Laws;
- (n) “Continuing Service Interruption Notice” has the meaning assigned to that term in Section 14.3(b);
- (o) “Contractor” means a prime contractor hired by FEI to oversee and complete the construction and installation of the Energy System;
- (p) “Design and Construction” means the total construction and related services required to design, construct and commission the Energy System and connected components of the Building System;
- (q) “Design Thermal Energy” means the maximum amount of Thermal Energy that the Energy System is capable of delivering through the Thermal Energy Meter and is included in the Specifications;
- (r) “Disclosed Contaminants” means Contaminants:
  - (i) the existence of which are specifically identified in the reports provided by the District to FEI and listed in Schedule C;
  - (ii) that were or ought to have been discovered, foreseen or anticipated upon reasonable inspection by FEI prior to the Effective Date; and
  - (iii) that were caused by FEI or any person for whom FEI is responsible at law;
- (s) “District” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (t) “District Losses” has the meaning assigned to that term in Section 12.6;
- (u) “District Site Rules for Contractors” means the rules set forth in Schedule “B”;
- (v) “Effective Date” means the date set out on page one of this Agreement;
- (w) “Energy System” means the equipment that FEI constructs and owns which will provide the Building with its energy needs for space heating, cooling and ventilation, and domestic hot water use, all as set forth in this Agreement;

- (x) “Energy System Service Agreement” has the meaning assigned to that term in the Energy System Rate Development Agreement;
- (y) “Energy System Rate Development Agreement” means that energy system rate development agreement between the District and FEI dated as of September 26<sup>th</sup>, 2011;
- (z) “Environment” includes the air (including all layers of the atmosphere), land (including soil, sediment deposited on land, fill, lands submerged under water, buildings, and improvements), water (including oceans, lakes, rivers, streams, groundwater, and surface water), and all other external conditions and influences under which humans, animals, and plants live or are developed and “Environmental” will have a corresponding meaning;
- (aa) “Environmental Attributes” means:
  - (i) all attributes associated with, or that may be derived from the Energy System installed having decreased environmental impacts relative to the use of conventional heating and cooling and hot water heating systems including any existing or future credit, allowance, certificate, right, benefit or advantage or proprietary or contractual right whether or not tradable;
  - (ii) any existing or future instrument, including without limitation any environmental emission allowances and environmental emission reduction credits, reduction right, allowance, certificate or other unit of any kind whatsoever, whether or not tradable and any other proprietary or contractual right, whether or not tradable, and any resulting from, or otherwise related to the actual assumed reduction, displacement or offset of emissions associated with, or that may be derived from the Energy System installed; and
  - (iii) all revenues, entitlement, benefits and other proceeds arising from or related to the foregoing;
- (bb) “Environmental Laws” means any and all statutes, laws, regulations, orders, bylaws, standards, guidelines, protocols, permits, and other lawful requirements of any Governmental Authority having jurisdiction over the Lands or the Energy System now or hereafter in force with respect in any way to the Environment, environmental assessment, health, occupational health and safety, protection of any form of plant or animal life, or transportation of dangerous goods, including the principles of common law and equity;
- (cc) “Expiry Date” means the earlier of:
  - (i) June 30, 2031, or the expiry of any renewal term thereof; and
  - (ii) the closure of the Building, or the Building otherwise ceasing to operate as a school (as defined under the *School Act* (British Columbia));
- (dd) “FEI” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (ee) “FEI Losses” has the meaning assigned to that term in Section 12.5;

- (ff) “Force Majeure” has the meaning assigned to that term in Section 17.2;
- (gg) “Governmental Authority” means any federal, provincial, regional, municipal, local or other government, governmental or public department, court, tribunal, arbitral body, commission, board, bureau or agency and any subdivision, agent, commission, board or authority thereof;
- (hh) “Lands” has the meaning assigned to that term in Recital A and includes the Building located on the Lands;
- (ii) “Laws” means laws, statutes, regulations, bylaws, Permits and orders of any Governmental Authority having jurisdiction, including without limitation, Environmental Laws;
- (jj) “Maintain” means to operate, service and maintain in a safe and reliable condition and “maintaining” and “maintenance” have corresponding meanings;
- (kk) “Monthly Charges” means that amount to be paid by the District to FEI with respect to the delivery of Thermal Energy to the Building pursuant to the Energy System Rate Development Agreement and any other payments due and owing by the District under this Agreement;
- (ll) “Notifying Party” has the meaning assigned to that term in Section 16.1;
- (mm) “Party” means a signatory to this Agreement, and the “Parties” means all of such signatories;
- (nn) “Permits” means all permits, licences, certificates, approvals, authorizations, consents and the like issued by any Governmental Authority;
- (oo) “Rate Base Value” means the value of the Energy System that the BCUC accepts from time to time in accordance with the Energy System Rate Development Agreement;
- (pp) “Release” includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, migration, disposal, or dumping;
- (qq) “Right of Access and Licence” means the right and licence granted herein by the District to FEI pursuant to Section 4.1 of this Agreement;
- (rr) “Service Failure Notice” has the meaning assigned to that term in Section 14.3(c);
- (ss) “Service Interruption” means, in any hour:
  - (i) a failure of the Energy System in that hour to deliver Thermal Energy at the Thermal Energy Meter sufficient to meet the Thermal Energy demand of the Building during that hour in accordance with the Specifications up to the Design Thermal Energy, and except where such failure is directly caused by:
    - a. the careless or wilful damage to the Energy System by the District or its agents or other persons for whom the District is responsible;

- b. damage caused to the Energy System as a result of the negligent acts or omissions of the District, its agents or those for whom in law the District is responsible;
  - c. an event of Force Majeure that triggers the suspension of FEI's obligations under the Agreement pursuant to Article 17; or
  - d. maintenance activities that FEI is performing on the Energy System that have been scheduled with the consent of the District (such consent not to be unreasonably withheld); and
- (ii) if the failure described in Section 1.1(rr)(i), FEI's failure in that hour to deliver to the Building through alternative means thermal energy sufficient to maintain an average temperature of 16 degrees Celsius in each room of the Building intended to be served by the Energy System (all as determined by the District, acting reasonably);
- (tt) "Service Interruption Notice" has the meaning assigned to that term in Section 14.3(a);
- (uu) "Services" means those services to be provided by FEI to supply Thermal Energy to a Building from an Energy System, and for greater certainty includes the services described in Articles 5 and 6, and excludes the Design and Construction;
- (vv) "Specifications" means the specifications for the Energy System prepared by FEI in consultation with the District in accordance with Section 2.3 and includes the Design Thermal Energy;
- (ww) "Term" has the meaning assigned to that term in Section 3.1;
- (xx) "Thermal Energy" means the amount of energy that FEI provides to the Building measured through a Thermal Energy Meter;
- (yy) "Thermal Energy Meter" means a device that complies with the International Organization of Legal Metrology recommendations for measuring thermal energy; and
- (zz) "UCA" means the *Utilities Commission Act*, R.S.B.C. 1996, c. 473 as may be amended from time to time.

## 1.2 SCHEDULES

The following Schedules, as may be amended from time to time, are incorporated by reference into this Agreement:

Schedule "A"	Energy System Description
Schedule "B"	Delta School District Site Rules for Contractors
Schedule "C"	List of Environmental Reports

### 1.3 AMENDMENTS TO SCHEDULES

The District and FEI acknowledge that during the construction phase of the Energy System there may be additions and alterations to the Specifications for the Energy System which would result in more efficient use and operation of the Energy System. If these additions or alterations result in changes to any of the above Schedules, the Parties mutually agree to amend the Schedules by way of a written amendment prior to the Commission Date.

### 1.4 INTERPRETATION

Except where the context requires otherwise or except as otherwise expressly provided, in this Agreement:

- (a) all references to a designated Article or Section are to the designated Article or Section of this Agreement unless otherwise specifically stated;
- (b) the singular of any term includes the plural, and vice versa, and the use of any term is equally applicable to any gender and, where applicable, body corporate;
- (c) any reference to a corporate entity includes and is also a reference to any corporate entity that is a successor by merger, amalgamation, consolidation or otherwise to such entity;
- (d) the preamble and all schedules referred to and attached to this Agreement are incorporated by reference and will form a part of this Agreement;
- (e) all sums of money which are referred to in this Agreement are in lawful money of Canada;
- (f) the headings of the Articles and Sections set out in this Agreement are for convenience only and will not be considered in any interpretation of this Agreement;

## **ARTICLE 2 - DESIGN AND CONSTRUCTION OF THE ENERGY SYSTEM**

### 2.1 CONSTRUCTION

FEI will perform the Design and Construction:

- (a) in accordance and in compliance with the Specifications;
- (b) in a good and workmanlike manner using qualified workers, and in accordance with sound and currently accepted industry standards and codes of practice normally employed, at the time and place of performance, in projects of a similar type and nature;
- (c) to ensure operational compatibility with the Building System;
- (d) in a safe and environmentally sound manner, and in accordance with all applicable Laws; and
- (e) in accordance with the terms of this Agreement.

## 2.2 CAPITAL CONTRIBUTION

The District will pay to FEI within 30 days of the Commission Date the Capital Contribution for the purpose of reducing the capital investment and the associated carrying cost of capital by FEI for provision of Service to the Building.

## 2.3 SPECIFICATIONS

Subject to and in accordance with this Section 2.3, FEI shall prepare and complete the Specifications promptly following the Acceptance Date.

FEI confirms the Energy System, as described in the Specifications and as contemplated by the Energy System description set out in Schedule A, will be designed to meet the thermal energy requirements of the Building and operational compatibility of the Building System based in part on information supplied by the District as to historical usage, which information has not been independently verified by FEI. FEI shall have no liability to the District for the failure of the Energy System to satisfy the requirements of the Building where such failure is attributable to the information supplied by the District being incorrect, inaccurate or incomplete.

FEI will prepare the Specifications in consultation with the District in order to ensure the Energy System can be appropriately accommodated within the Building and interface with the Building Systems. FEI will submit material changes to the Specifications, both before and during construction, to the District for review and comment prior to such changes taking place. If the District does not comment on the Specifications or material changes to the Specifications or advise that it has no comment within five (5) Business Days of receipt, FEI will be entitled to proceed on the basis of the information provided to the District. FEI will revise the Specifications based on the comments from the District provided that doing so will not impact FEI's costs or adversely affect system performance.

Review of and comment on the Specifications by the District does not impose any obligation on the District to verify the suitability of the Energy System or be construed as confirmation by the District that the Energy System satisfactorily meets the Building's energy requirements.

## 2.4 WORK SCHEDULE

Within ten (10) Business Days following the Acceptance Date, FEI will submit to the District for review and comment a Gantt chart schedule for the Design and Construction listing activities to be undertaken during the Design and Construction stages, key milestones and approval dates and other pertinent dates. Any revisions to the schedule must be reviewed and commented by the District, which review and comment will not be unreasonably withheld, conditioned or delayed.

In order to ensure that the Building System remains operational during normal school hours (as defined in Schedule B), the cut-over from the existing heating/cooling plant to the Energy System shall be performed outside normal school hours.

## 2.5 REPORTING

FEI shall produce and submit a monthly progress report for the Design and Construction to the District until the Energy System is Commissioned.

## 2.6 TESTING AND COMMISSIONING

FEI shall coordinate and supervise the start-up and testing of the Energy System to ensure the Energy System and other components of the Building System affected by the Design and Construction are operating in accordance with the Specifications, upon which the Energy System will be Commissioned. The District shall be invited to participate in the start-up and testing exercise.

# ARTICLE 3 - TERM AND RENEWAL

## 3.1 TERM

The term of this Agreement commences on the Effective Date and continues until the Expiry Date unless it is terminated earlier as authorized under this Agreement ("Term").

## 3.2 RENEWAL

This Agreement will automatically renew for periods of ten (10) years unless either Party provides written notice to the other Party no less than six (6) months prior to the Expiry Date, provided that there shall be no automatic renewal in the event that the Expiry Date arises as a result of the closure of the Building, or the Building otherwise ceases to operate as a school (as defined under the *School Act* (British Columbia)).

# ARTICLE 4 - ACCESS AND PERMITS

## 4.1 ACCESS RIGHTS

The District hereby grants to FEI, during the Term from and following the Acceptance Date, for so long as FEI shall require it, but subject to Section 4.4, a full, free and uninterrupted licence and right of way on, over and under the Lands and Building, for FEI, its assigns, employees, contractors, agents, invitees and licensees at all times hereafter for the purposes set out in this Agreement, provided FEI will avoid to the extent reasonably possible, and otherwise minimize interference with and inconvenience to, the occupants of the Building and the access rights of FEI will be limited to the extent reasonably necessary to fulfil FEI's obligations hereunder.

Without limiting the generality of the foregoing, but subject to Section 4.4, such right of way and licence shall include the full power, right and liberty to excavate for, install, place, construct, renew, alter, repair, maintain, operate, use, abandon, remove or replace its infrastructure, in whole or in part, and to enter upon, along, across, over or under the Lands or Building and have continual access to the Energy System, with or without vehicles, supplies, machinery or equipment, for any of the purposes set out in this Agreement, and to clear such portion of the Lands and keep it cleared of obstructions which, in the opinion of FEI, acting reasonably, may

interfere with any of the rights granted to FEI herein. The District may direct, in its discretion, FEI to use alternate routing for any Environmental or other reasonable purpose.

FEI covenants and agrees with the District not to do or knowingly permit to be done anything which may, in the opinion of the District acting reasonably, damage or interfere with the Building or impair the operating efficiency thereof or create any hazard.

#### 4.2 CONDITION OF LAND

The District represents and warrants to FEI that as of the Effective Date:

- (a) to the best of the District's knowledge, the Lands are free of Contaminants other than those specifically identified in the reports provided by the District to FEI and listed in Schedule C; and
- (b) there are no actions, proceedings, investigations, claims (including remediation cost recovery claims) pending, or to the knowledge of the District, threatened, that would interfere with FEI's access rights pursuant to Section 4.1.

#### 4.3 PERMITS

FEI will obtain and maintain at its own expense all Permits necessary for the Design and Construction and the Services.

#### 4.4 SAFETY, SECURITY AND BUILDING ACCESS

Notwithstanding anything to the contrary in this Agreement, FEI will adhere, and will cause all persons for whom it is responsible under this Agreement (including, without limitation, the Contractor) to adhere to the District Site Rules for Contractors.

#### 4.5 REMEDIATION

FEI shall promptly remediate any Disclosed Contaminants on the Lands as required by applicable Law that result from, or are Released as a result of the Design and Construction or the Services, except to the extent caused or contributed to by the District's negligence. In the event that Contaminants on the Lands, other than Disclosed Contaminants, are discovered by FEI, FEI will promptly notify the District of such discovery and the Parties will review the impact of such discovery, if any, on the Design and Construction or the Services.

### **ARTICLE 5 - SERVICE PROVISION**

#### 5.1 PROVISION OF SERVICE

Subject to the terms and conditions of the Agreement, FEI will provide the Services to the District throughout the Term.

## 5.2 SERVICE MONITORING AND REVIEW

The Parties acknowledge that FEI may be required from time to time to prepare and submit reports to the BCUC concerning the operation and performance of the Energy System, and the District shall provide FEI with reasonable cooperation in relation to the preparation of such reports.

## 5.3 STANDARD OF PERFORMANCE

In performing the Services, FEI will:

- (a) use only qualified personnel and exercise the same degree of care, skill and supervision as would be exercised by a reasonable and prudent owner experienced in performing like services;
- (b) perform the Services in accordance with all applicable Laws;
- (c) perform the Services in accordance with ongoing industry standards and codes of practice; and
- (d) without limiting the effect of the foregoing, abide by any standards of performance in relation to the Services that the BCUC may set from time to time according to the provisions of the UCA.

## 5.4 INTERRUPTION

No interruption of any of the on-site and off-site services, utilities and amenities provided by FEI to the Building will, except to the extent, if any, caused by any wrongful or negligent act of FEI or any person for whom FEI is responsible at law, render FEI liable to the District or any person claiming through or under the District, or relieve the District from any of its obligations under this Agreement. Notwithstanding the foregoing, FEI will use all reasonable diligence to remedy any such interruption if it is within its power and obligation to do so.

# **ARTICLE 6 - ENERGY SYSTEM MAINTENANCE AND OPERATION**

## 6.1 MAINTENANCE AND REPAIR OF ENERGY SYSTEM

Subject to Section 6.2, FEI will perform the Services and otherwise maintain or cause to be maintained and repaired the Energy System throughout the Term:

- (a) in accordance with the Energy System design and operating specifications and requirements as established by the qualified engineers engaged by FEI in the design and construction of the Energy System, and the equipment manufacturers;
- (b) in a good and workman-like manner using qualified workers, and in accordance with sound and currently accepted industry standards and codes of practice normally employed, at the time and place of performance, in projects of a similar type and nature;
- (c) to ensure operational compatibility with the Building System;

- (d) in a safe and environmentally sound manner, and in accordance with all applicable Laws; and
- (e) in accordance with the terms of this Agreement.

FEI will not delay repair of the Energy System for any reason, including as a result of a dispute with the District in relation to the costs and expenses of repair pursuant to Section 6.2.

## 6.2 REPAIR DAMAGE

The District will be responsible for all costs and expenses incurred by FEI in respect of any damage to the Energy System caused by or resulting from:

- (a) the careless or wilful damage to the Energy System by the District or its agents or other persons for whom at law the District is responsible; or
- (b) damage caused to the Energy System as a result of the negligent acts or omissions of the District, its agents or those for whom in law the District is responsible.

## ARTICLE 7 - CHARGES

### 7.1 MONTHLY CHARGES

The District throughout the Term commencing on the Commission Date in accordance with this Article 7 will pay to FEI when due for the Thermal Energy that FEI delivers and meters to the Building according to the rates set out in the Energy System Rate Development Agreement plus all applicable taxes (including harmonized sales tax applicable thereon) and any imposed taxes levied after the Commission Date by a government or regulatory agency that are related to the Energy System (including, but not limited to capital taxes or royalties) and any other payments due and owing by the District under this Agreement.

### 7.2 MONTHLY STATEMENT

FEI will, within 15 days following the end of each month, deliver to the District a statement setting out the Monthly Charges including all applicable taxes payable for that month.

### 7.3 PAYMENT

The District will pay the full amount specified in each statement provided to it in accordance with Section 7.2 within 30 days of receipt of such statement. All amounts payable to FEI will be made by cheque mailed to FEI at its address for service specified in Section 20.5.

### 7.4 PAYMENT DUE

Subject to Section 14.1, the obligation of the District to pay the Monthly Charges continues whether or not the Energy System is being used to provide the Building with its energy needs for space and ventilation heating, cooling and domestic hot water use.

#### 7.5 ARREARS TO BEAR INTEREST

If any amount owing to FEI or the District is not paid on or before the date on which it is due, a late payment charge of 1.5% per month will be assessed each month on all outstanding balances not paid by the due date.

### **ARTICLE 8 - OWNERSHIP OF THE ENERGY SYSTEM**

Notwithstanding the payments made by the District to FEI under this Article 8, any provision of this Agreement, any degree of annexation or affixation, or rule of law or equity to the contrary the District will have no proprietary interest in the Energy System which is, and shall remain, the property of FEI and may be used by FEI in its business or removed in whole or in part as it may see fit, and for any of such purposes, and FEI may enter in, upon and under all the Lands for the purposes of the maintenance, renewals, repair, removal or operation of the Energy System or any part thereof; provided that FEI shall not leave any part of the Energy System in such a state as to constitute a nuisance or a danger to the public through neglect, non-use and want of repair, and provided further that nothing in this clause shall nullify or otherwise impact or invalidate in any way the District's rights under Article 15 to purchase the Energy System.

### **ARTICLE 9 - ENVIRONMENTAL ATTRIBUTES**

#### 9.1 ENVIRONMENTAL ATTRIBUTES

All right, title and interest now existing or which may exist at any time in the future in the potential or actual commercial value of any Environmental Attributes that arise or accrue by virtue of the construction and operation of the Energy System will belong to the District. At the request of the District, FEI will reasonably cooperate with the District in applying for and assigning any Environmental Attributes to the District.

#### 9.2 GRANTS

Any grants from any Governmental Authority, a Crown Corporation or non-governmental authority that may be derived from a reduction in energy consumption by the Building will belong to the District.

### **ARTICLE 10 - REPRESENTATIONS AND WARRANTIES**

#### 10.1 DISTRICT'S REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties contained in this Agreement, the District hereby represents and warrants to FEI as follows and acknowledges that FEI is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) the District has the full right, power and authority to enter into this Agreement;

- (b) all necessary action on the part of the District has been taken to authorize and approve the execution and delivery of this Agreement and the performance by the District of its obligations hereunder;
- (c) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to the District as of the date of this Agreement;
- (d) the District is not party to any action, suit or legal proceeding, actual or, to the knowledge of the District, threatened, and there are no circumstances, matters or things known to the District which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or, to the knowledge of the District, threatened against the District before or by any Governmental Authority, which could affect the District's ability to perform its obligations under this Agreement; and
- (e) no person, firm or corporation has or will have as of the Commission Date, any agreement, right, or option or right capable of becoming an agreement, right, or option for the purchase or acquisition of the Energy System.

## 10.2 FEI'S REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties contained in this Agreement, FEI hereby represents and warrants to the District as follows and acknowledges that the District is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) FEI has the full right, power and authority to enter into this Agreement;
- (b) all necessary corporate action on the part of FEI has been taken to authorize and approve the execution and delivery of this Agreement and the performance by FEI of its obligations hereunder;
- (c) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to FEI as of the date of this Agreement;
- (d) FEI is not party to any action, suit or legal proceeding, actual or threatened, and there are no circumstances, matters or things known to FEI which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or threatened against FEI before or by any Governmental Authority, which could affect FEI's ability to perform its obligations under this Agreement; and
- (e) FEI has or will have all permits, licenses, authorizations and other documentation required for the operation of the Energy System after the Commission Date; and
- (f) FEI has all the required expertise to fulfill its obligations under this Agreement.

### 10.3 DELEGATION AND SUBCONTRACTING

FEI may delegate and subcontract its obligations under this Agreement with respect to Design and Construction and Services to any contractor, consultant, agent or representative provided that FEI shall be fully responsible for the acts and omissions of such persons and those either directly or indirectly employed by them to the same extent as FEI for its own acts or omissions.

## **ARTICLE 11 - BCUC ACCEPTANCE**

### 11.1 REGULATORY REVIEW TERMINATION

Subject to Section 11.3, either Party may terminate this Agreement if within 90 days following the Effective Date, this Agreement and the Energy System Rate Development Agreement, including the Market Rate and the SD37 Rate Rider as defined in that Agreement have not been accepted for filing by the BCUC (such acceptance being herein called "BCUC Acceptance").

### 11.2 REGULATORY FILING

FEI, on behalf of itself and the District, and at its own cost, shall file the Agreement with the BCUC within a reasonable time after the Effective Date. FEI shall take all steps reasonably required to secure BCUC Acceptance, which shall consist of those procedural steps related to filing the Agreement and providing argument and witnesses in support of filing.

### 11.3 TERMINATION

A Party entitled to terminate under Section 11.1 must do so by giving notice to terminate to the other Party at any time after the right to terminate arises pursuant to Section 11.1, and prior to:

- (a) the date of issuance of the BCUC Acceptance; and
- (b) the date that is 90 days after the Effective Date.

### 11.4 EFFECT OF BCUC ACCEPTANCE

The Parties acknowledge that upon BCUC Acceptance, the Services will be subject to regulation by the BCUC under the UCA, and will form another class of service that FEI provides as a public utility. The Parties acknowledge that the terms of the UCA may supersede the terms and conditions of this Agreement.

## **ARTICLE 12 - INDEMNITY**

### 12.1 FEI'S INDEMNITY

Without limiting any other obligations of FEI provided herein, FEI will indemnify, defend, and save harmless the District and its trustees, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including the full amount of all legal fees and expenses on a

solicitor-client basis) which may be paid by, incurred by, or asserted against the District or its directors, officers, employees, agents, successors, or assigns, arising from or in connection with:

- (a) the breach or non-performance by FEI of any of its obligations or warranties hereunder; or
- (b) the negligence or wilful misconduct of FEI, its employees, contractors or agents in respect of the Energy System, and in the performance of the obligations of FEI pursuant to this Agreement,

excluding only such of the foregoing as arise from the fraud, negligence or wilful misconduct of the District or its trustees, officers, directors, members, employees, contractors or agents, or the breach or non-performance by the District of any of its obligations or warranties hereunder.

## 12.2 DISTRICT'S INDEMNITY

Without limiting any other obligations of the District provided herein, the District will indemnify, defend, and save harmless FEI, its Affiliates and their respective shareholders, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including the full amount of all legal fees and expenses on a solicitor-client basis) which may be paid by, incurred by, or asserted against FEI, its Affiliates or their respective shareholders, directors, officers, employees, agents, successors, or assigns, arising from or in connection with:

- (a) the breach or non-performance by the District of any of its obligations or warranties hereunder; or
- (b) the negligence or wilful misconduct of the District, its employees, contractors or agents in respect of the Energy System, and in the performance of the obligations of the District pursuant to this Agreement,

excluding only such of the foregoing as arise from the fraud, negligence or wilful misconduct of FEI or its Affiliates or any of their respective officers, directors, members, employees, contractors or agents, or the breach or non-performance by FEI of any of its obligations or warranties hereunder.

## 12.3 CONSEQUENTIAL LOSS

In no event will the District or FEI or any of their respective officers, directors, employees, contractors or agents be liable to the other Party for any indirect or consequential loss, cost or expense whatsoever, including any loss of profits, revenues or other economic loss, suffered by the other Party or its officers, directors, employees, contractors or agents.

## 12.4 SURVIVAL OF INDEMNITY

The indemnity of each of the District and FEI provided under this Article 12 will survive the Term of this Agreement.

## 12.5 ENVIRONMENTAL INDEMNITY BY THE DISTRICT

The District will indemnify and save harmless FEI, its Affiliates, directors, officers, shareholders, employees, agents, successors and permitted assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants (but not including Disclosed Contaminants) and remediation of the Lands and any affected adjacent property) (collectively, "FEI Losses") which may be paid by, incurred by or asserted against FEI, its Affiliates and their respective directors, officers, shareholders, employees, agents, successors or permitted assigns, arising from or in connection with any Contaminants (but not including Disclosed Contaminants) existing on the Lands prior to the Commission Date or brought onto the Lands or Released onto the Lands by the District or any person for whom it is in law responsible, except to the extent the FEI Losses suffered were caused or contributed to by any act or omission of FEI or any person for whom FEI is in law responsible after FEI had knowledge of the Contaminants.

## 12.6 ENVIRONMENTAL INDEMNITY BY FEI

FEI will indemnify and save harmless the District, its Affiliates and their respective trustees, directors, officers, employees, agents, successors and permitted assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the Lands and any affected adjacent property) (collectively, "District Losses") which may be paid by, incurred by or asserted against the District, its Affiliates, and their respective trustees, directors, officers, employees, agents, successors or permitted assigns, arising from or in connection with any Contaminants brought onto the Lands or any Disclosed Contaminants Released onto the Lands by FEI or any person for whom it is in law responsible, except to the extent the District Losses suffered were caused or contributed to by any act or omission of the District or any person for whom the District is in law responsible after the District had knowledge of the Contaminants.

# ARTICLE 13 - INSURANCE

## 13.1 FEI INSURANCE COVERAGE.

- (a) FEI will obtain and maintain at its own expense throughout the Term, Commercial General Liability Insurance for bodily injury, death and property damage in the minimum amount of five million (\$5,000,000) dollars per occurrence. The policy will contain a cross liability provision and will be maintained for a period ending no sooner than 12 months after the expiry or termination of this Agreement.
- (b) FEI will be responsible for the full amount of all premiums and deductibles required under this Section 13.1. All policies required herein must be effective at the Commission Date. Insurance will be purchased from insurers registered and licensed to underwrite

insurance in British Columbia. Policies will contain waivers of subrogation against the District and all its officers, directors, members, employees, contractors and agents.

### 13.2 DISTRICT INSURANCE COVERAGE

- (a) The District will obtain and maintain at its own expense throughout the Term Commercial General Liability Insurance for bodily injury, death and property damage in the minimum amount of five million (\$5,000,000) dollars per occurrence. The policy will contain a cross liability provision and will be maintained for a period ending no sooner than 12 months after the expiry or termination of this Agreement.
- (b) The District will be responsible for the full amount of all premiums and deductibles required under this Section 13.2. All policies required herein must be effective at the date of this Agreement. Insurance will be provided by the Provincial self-insured program. Policies will contain waivers of subrogation against FEI and all its officers, directors, employees, contractors and agents.

### 13.3 PRIORITY

FEI will ensure that the District is an additional insured under the insurance to be obtained and maintained pursuant to Section 13.1. The District will ensure that FEI is an additional insured under the insurance to be obtained and maintained pursuant to Section 13.2. In the event of a claim, the insurance carried by the Party responsible for actions which give rise to such claim will be the primary insurance with respect to such claim.

## **ARTICLE 14 - DEFAULT**

### 14.1 DEFAULT BY FEI

- (a) FEI will be in default under this Agreement if FEI is in breach of a material term, covenant, agreement, condition or obligation imposed on it under this Agreement and fails to cure such default within ten (10) days after receipt of written notice thereof from the District, or, if such default is not capable of being cured within such ten (10) day notice period, fails to commence in good faith the curing of such default upon receipt of such written notice of default from the District and to continue to diligently pursue the curing of such default thereafter until cured. For the purposes of this Section 14.1, Section 4.4 is hereby deemed to be a material term of this Agreement.
- (b) If FEI is in default of this Agreement, the District may at its option and without liability therefore or prejudice to any other right or remedy it, including under the UCA, may have suspend or refuse to make any payments due hereunder until the default has been fully remedied, and no such suspension or refusal will relieve FEI from any of its obligations under this Agreement.
- (c) In the event the default is not fully remedied within thirty (30) days of receipt by FEI of written notice thereof from the District, the District may, at its option, undertake the necessary steps to remedy FEI's default at FEI's sole expense, which reasonable costs

shall be deducted from the Monthly Charges, and such actions will not relieve FEI from any of its obligations under this Agreement or, at its option, and without any liability, terminate this Agreement without prejudice to any other right the District may have hereunder or at law or otherwise.

#### 14.2 DEFAULT BY THE DISTRICT

- (a) The District will be in default under this Agreement if the District fails or refuses to make any payment due to FEI by the District under this Agreement within thirty (30) days of receiving written notice from FEI after the date that payment is due or if the District is in breach of a material term, covenant, agreement, condition or obligation imposed on it under this Agreement and fails to cure such default within ten (10) days after receipt by the District of written notice thereof from FEI or, if such default is not capable of being cured within such ten (10) day notice period, fails to commence in good faith the curing of such default forthwith upon receipt of such written notice thereof from FEI and to continue to diligently pursue the curing of such default thereafter until cured.
- (b) If the District is in default of this Agreement, FEI may at its option and without liability therefore or prejudice to any other right or remedy it may have, including under the UCA, cease performing the Services and no such actions will relieve the District from any of its obligations under this Agreement.
- (c) In the event the default by the District is not fully remedied within thirty (30) days of receipt by the District of written notice from FEI, FEI may undertake the necessary steps to remedy the District's default at the District's sole expense and such action will not relieve the District from any of its obligations under this Agreement or, at its option, and without any liability, take whatever steps necessary to shut down the Energy System and terminate this Agreement without prejudice to any other right FEI may have hereunder or at law or otherwise.

#### 14.3 CROSS DEFAULT

- (a) If any Building experiences a Service Interruption at any time, the District may deliver a notice of such Service Interruption to FEI (a "Service Interruption Notice" to FEI);
- (b) If a Service Interruption continues for a period of 48 consecutive hours after the delivery of a Service Interruption Notice pursuant to Section 14.3(a), the District may deliver a notice of such continuing Service Interruption to FEI (a "Continuing Service Interruption Notice");
- (c) If a Service Interruption continues for a period of 120 consecutive hours after the delivery of a Continuing Service Interruption Notice, the District may at its option deliver a notice of such continuing Service Interruption to FEI (a "Service Failure Notice"); Within 60 days of either:
  - (i) the District's delivery of a Service Failure Notice pursuant to Section 14.3(c); or

- (ii) the District's delivery of a Continuing Service Interruption Notice pursuant to Section 14.3(b) that constitutes the fifth or greater Continuing Service Interruption Notice delivered in that calendar year;

the District may, at its option and without liability:

- (iii) terminate this Agreement without prejudice to any other right the District may have hereunder at law or otherwise; or
  - (iv) terminate the Energy System Rate Development Agreement and all Energy System Service Agreements (inclusive of this Agreement), without prejudice to any other right the District may have hereunder at law or otherwise.
- (d) For greater certainty, this Agreement shall be deemed to be terminated in the event that the District exercises its right to terminate all Energy System Service Agreement under another Energy System Service Agreement.

#### 14.4 SURVIVAL

Upon expiry or earlier termination of this Agreement for any reason, all claims, causes of action or other outstanding obligations remaining or being unfulfilled as of the expiry or termination of this Agreement and all of the provisions of this Agreement relating to the obligation or either the Parties to account to or indemnify the other and to pay to the other any amounts owing as at the date of expiry or termination in connection with this Agreement will survive such expiry or termination.

### **ARTICLE 15 – EXPIRY AND TERMINATION**

#### 15.1 EXPIRY

Upon expiry of the Term, unless otherwise agreed between the Parties and subject to agreement by the BCUC (if required pursuant to applicable Laws), the District may, at its option and by written notice to FEI within 30 days following the termination:

- (a) require FEI to remove the Energy System at FEI's cost in accordance with Section 15.5; or
- (b) acquire the Energy System from FEI at the Adjusted Energy System Purchase Price.

#### 15.2 TERMINATION OF THE ENERGY SYSTEM RATE DEVELOPMENT AGREEMENT

- (a) If the Energy System Rate Development Agreement is terminated as a result of the adoption, approval or implementation of a thermal energy rate tariff by the BCUC, this Agreement will automatically terminate effective as of the date of termination of the Energy System Rate Development Agreement;
- (b) If the Energy System Rate Development Agreement is terminated for cause by the District, this Agreement will be deemed to have been terminated pursuant to Section

14.1(c) as of the date of termination of the Energy System Rate Development Agreement, and Section 15.3 shall apply; and

- (c) If the Energy System Rate Development Agreement is terminated for cause by FEI, this Agreement will be deemed to have been concurrently terminated pursuant to Section 14.2(c) as of the date of termination of the Energy System Rate Development Agreement, and Section 15.4 shall apply.

### 15.3 TERMINATION BY THE DISTRICT FOR CAUSE

If the District terminates this Agreement pursuant to Sections 14.1(c) or 14.3, the District may, at its option and by written notice to FEI within 30 days following the termination:

- (a) require FEI to remove the Energy System, at its own cost, in accordance with Section 15.5; or
- (b) acquire the Energy System from FEI at the Adjusted Energy System Purchase Price.

### 15.4 TERMINATION BY FEI FOR CAUSE

If FEI terminates this Agreement pursuant to Section 14.2(c), FEI may, at its option and by written notice to the District:

- (a) remove the Energy System, at its own cost, in accordance with Section 15.5; or
- (b) require the District to purchase the Energy System from FEI at the Adjusted Energy System Purchase Price.

### 15.5 REMOVAL OF THE ENERGY SYSTEM

If FEI is required to remove the Energy System pursuant to Sections 15.1(a), 15.3(a) or 15.4(a) or otherwise upon expiry of this Agreement, FEI shall promptly remove those portions of the Energy System located within the Building and at surface level at FEI's cost, and FEI shall perform such removal activities using standards of performance that are equivalent to those that apply to the performance of the Services under this Agreement. Any portion of the Energy System not removed by FEI prior to the 30<sup>th</sup> day following the termination or expiry of the Agreement will, as of such day, be deemed to be automatically transferred to the District, and become the property of the District, all at no cost to the District.

### 15.6 ACQUISITION OF THE ENERGY SYSTEM

If the District elects to acquire the Energy System pursuant to Sections 15.1(b), 15.3(b) or 15.4(b):

- (a) the District shall pay the Adjusted Energy System Purchase Price to FEI within the later of 30 days of (i) the effective date of expiration or termination, and (ii) confirmation of the Adjusted Energy System Purchase Price; and

- (b) FEI will promptly execute and deliver any documents and records reasonably required by the District to effect and facilitate the transfer of the Energy System to the District, including bills of sale, operation and maintenance manuals and warranties, and will use reasonable commercial efforts to obtain any consents and approvals that may be required in relation to the transfer (including, without limitation, BCUC approval), provided that (i) FEI's obligations under this Section 15.6(b) shall arise only upon FEI's receipt of all amounts due and owing to FEI from the District under this Agreement, and (ii) during the period between the expiration or termination of the Agreement and FEI's receipt of amounts due and owing to FEI from the District under this Agreement, FEI shall continue to maintain, or shall permit the District to maintain, the Energy System in good working order.

Notwithstanding the foregoing, the Parties acknowledge and agree that FEI's ability to sell or otherwise transfer its interest in and to the Energy System to the District may be subject to BCUC approval under applicable Laws.

## **ARTICLE 16 - NON-COMPLIANCE AND ENVIRONMENTAL**

### **16.1 NOTIFICATION OF NON-COMPLIANCE**

FEI or the District (as applicable, the "Notifying Party") will promptly, upon becoming aware thereof, notify the other Party in writing of:

- (a) a Release of a Contaminant or any other occurrence or condition in the Energy System, the Lands or any adjacent property which could subject the other Party to any fines, penalties, orders or proceedings under applicable Laws;
- (b) any charge, order, investigation or notice of violation or non-compliance issued against the Notifying Party relating to the Energy System, or the operation of the Energy System, under any applicable Laws; and
- (c) any notice, claim, action or other proceeding by any third party against the Notifying Party in respect of the Design and Construction or the Services or concerning the Release or alleged Release of any Contaminants at or from the Energy System or the Lands.

### **16.2 NOTIFICATION BY FEI**

FEI will notify the appropriate Governmental Authorities of any Release of any Contaminants at or from the Energy System in accordance with applicable Laws. The District may, but is not obligated to, notify the appropriate Governmental Authorities of any Release of any Contaminants at or from the Energy System in accordance with applicable Laws.

### **16.3 OWNERSHIP OF CONTAMINANTS**

Notwithstanding any rule of law to the contrary, any Disclosed Contaminant Released from the Energy System, or any top soil, earth or other material containing a Contaminant for which FEI is responsible pursuant to Section 4.5 that is removed from the Lands by FEI or any person for

whom it is in law responsible, will be and remain the sole and exclusive property and responsibility of FEI and will not become the property of the District, notwithstanding the degree of its affixation to the Lands and notwithstanding the expiry or earlier termination of this Agreement.

#### 16.4 SURVIVAL OF OBLIGATIONS

The obligations of the Parties under this Article 16 will survive the expiry or termination of this Agreement.

### **ARTICLE 17 - FORCE MAJEURE**

#### 17.1 SUSPENSION

Subject to the other provisions of this Article 17, if either Party is unable or fails by reason of Force Majeure to perform in whole or in part any obligation or covenant set forth in this Agreement, with the exception of unpaid financial obligations, such inability or failure will be deemed not to be a breach of such obligation or covenant and the obligations of both Parties under this Agreement will be suspended to the extent necessary during the continuation of any inability or failure so caused by such Force Majeure.

#### 17.2 DEFINITION OF FORCE MAJEURE

For purposes of this Agreement, the term "Force Majeure" means any event or occurrence not within the control of the Party claiming Force Majeure and which by the exercise of reasonable diligence such Party is unable to prevent or overcome, including any acts of God, including lightning, earthquakes, storms, washouts, landslides, avalanches, fires, epidemics and floods; strikes, lockouts or other industrial disturbances; acts of the Queen's or public enemies, sabotage, wars, blockades, insurrections, riots or civil disturbances, fires, explosions, breakages of or accidents to machinery or lines of pipe; the laws, orders, rules, regulations, acts or restraints of any court or governmental or regulatory authority. For the purposes of this Article 17, a Party is deemed to have control over the actions or omissions of those persons to which it, its agents, contractors or employees, have delegated, assigned or subcontracted its obligations and responsibilities. For greater certainty, a Force Majeure shall not include any weather related events that do not exceed 25 year events as recorded by Environment Canada or as otherwise may be determined by the BCUC from time to time.

#### 17.3 EXCEPTIONS

Neither Party will be entitled to the benefit of Section 17.1 under any of the following circumstances:

- (a) the Energy System not being Commissioned;
- (b) to the extent that the inability or failure was caused by the negligence or contributory negligence of the Party claiming Force Majeure;

- (c) to the extent that the inability or failure was caused by the Party claiming Force Majeure having failed to diligently attempt to remedy the condition by taking all reasonable acts and to resume the performance of such covenants and obligations with reasonable dispatch;
- (d) if the inability or failure was caused by lack of funds or is in respect of any amount due hereunder; or
- (e) unless, as soon as possible after the happening of the occurrence relied upon or as soon as possible after determining that the occurrence was in the nature of Force Majeure and would affect the claiming Party's ability to observe or perform any of its covenants or obligations under this Agreement, the claiming Party will have given to the other Party notice to the effect that the claiming Party is unable by reason of Force Majeure (the nature whereof will be therein specified) to perform the particular covenants or obligations.

#### 17.4 RESUMPTION OF OBLIGATIONS

The Party claiming Force Majeure will give notice to the other Party, as soon as possible after the Force Majeure condition is remedied, to the effect that the same had been remedied and that such Party has resumed, or is then in a position to resume, the performance of its suspended covenants and obligations hereunder either in whole or in part.

#### 17.5 SETTLEMENT OF LABOUR DISPUTES

Notwithstanding any of the provisions of this Article 17, and subject to Section 17.3, the settlement of labour disputes or industrial disturbances is entirely within the discretion of the particular Party involved and the Party may make settlement of it at the time and on terms and conditions as it may deem to be advisable and no delay in making settlement will deprive the Party of the benefit of Section 17.1.

### **ARTICLE 18 - CONDITIONS PRECEDENT**

#### 18.1 CONDITIONS PRECEDENT OF FEI

The obligation of FEI to carry out the transactions contemplated by this Agreement is subject to fulfillment of the following conditions on or before such date as may be specified, which is for the sole benefit of FEI, and which may be waived by FEI in accordance with Section 18.2:

- (a) FEI obtaining the approval by its board of directors of the terms and conditions of this Agreement on or before the 30th day following the Effective Date, provided that if such approval cannot be obtained by this date due to the fact that the board of directors has not yet considered the transaction FEI reserves the right to extend the period of time to that date when the board next convenes.

## 18.2 FEI NOTICE OF WAIVER

If a condition set out in Section 18.1 has not been satisfied on or before the date as may be specified for its fulfillment, FEI may waive compliance with the condition in whole or in part, in its sole discretion, by written notice to the District, failing which delivery of written notice of satisfaction or waiver of such condition, this Agreement will, to the extent any further obligations of the Parties which remain unfulfilled, be null and void, without liability between the Parties hereto, and, neither Party will be under any further obligation to the other to complete the transactions or future transactions, as the case may be, contemplated by this Agreement.

## **ARTICLE 19 - DISPUTE RESOLUTION**

### 19.1 REFERENCE TO ARBITRATION

The Parties will attempt to resolve all disputes which may arise under, out of, in connection with or in relation to this Agreement by negotiation. They will provide full and timely disclosure to one another of all facts relevant to the disputes to facilitate those negotiations. If any such dispute remains unresolved, for any reason, fifteen (15) days after either Party requested the other Party to enter into negotiations to resolve it, or if the Parties agree to waive negotiations in respect of it, then either Party may submit that dispute for final resolution by arbitration administered by the British Columbia International Commercial Arbitration Centre (“BCICAC”) under its “Shorter Rules for Domestic Commercial Arbitration”. The seat of that arbitration will be Vancouver, British Columbia, Canada. The language of that arbitration will be English. Alternatively, the Parties may agree, within the 15 days referred to above, to submit that dispute for final resolution by arbitration in another manner.

### 19.2 BINDING DECISION

The decision of the arbitrator, regardless of what arbitration procedure is used, will, for all purposes of this Agreement, be final and binding on the Parties.

### 19.3 CONTINUATION OF SERVICES

Each of the Parties will perform all of its respective obligations under this Agreement notwithstanding the existence of any dispute that arises from time to time between the Parties in respect of any matter related to this Agreement or during the resolution of any dispute in accordance with this Article 19.

### 19.4 COSTS

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 case, the non-prevailing Party shall pay all costs and expenses of the arbitration, but not those of the prevailing Party.

## ARTICLE 20 - GENERAL

### 20.1 RESPONSIBILITY FOR COSTS

FEI's performance of any of its obligations under this Agreement, including without limitation the obligation to design, construct and install the Energy System as provided in Section 2.1, shall be at FEI's sole cost and expense, unless expressly provided otherwise in this Agreement;

### 20.2 EXERCISE OF DISCRETION

Where anything in this Agreement is identified as being in either Party's discretion, such Party will have the right to exercise such discretion in its own best interest without regard for the interest of the other Party.

### 20.3 COOPERATION

FEI and the District will at all times extend co-operation to each other to ensure the orderly management and operation of the Energy System.

### 20.4 SOLICITATION

Nothing in this Agreement precludes either Party from soliciting or entering into, other contracts with the other Party.

### 20.5 NOTICES

Any notice or other communication required or permitted to be given under this Agreement will be effective only if in writing and when it is actually delivered (which delivery may be by telecopy or other telecommunications device) to the Party for whom it is intended at the following address or such other address in British Columbia as such Party may designate to the other Party by notice in writing delivered in accordance with this Section 20.5:

(a) if to FEI:

FortisBC Energy Inc.  
10th Floor, 1111 West Georgia Street  
Vancouver, B.C.  
V6E 4M3

Attention: Gareth Jones  
Telephone: 250-380-5972  
Telecopy: 250-388-6876

(b) if to the District:

Board of Education of School District No. 37 (Delta)  
4585 Harvest Drive  
Delta, B.C.  
V4K 5B4

Attention: Frank Geyer  
Telephone: 604-952-5336  
Telecopy: 604-952-5375

Notwithstanding the foregoing, notices with respect to Force Majeure will be given in writing by telecopy, or orally in person or by telephone (to be confirmed by telecopy), to the person or persons designated from time to time by the Parties as the person or persons authorized to receive such notices.

## 20.6 CONFIDENTIALITY

The District and FEI will treat as confidential the terms of this Agreement and all Confidential Information (as defined below) and will at all times during the term of this Agreement and for a reasonable time thereafter hold the terms of this Agreement and all Confidential Information in confidence and neither Party will, without the prior written consent of the other Party, disclose or divulge the terms of this Agreement or any Confidential Information to any person, provided that nothing in this Section 20.6 will restrict or prevent either Party from making any disclosure of such terms or any Confidential Information:

- (a) which is reasonably necessary or desirable for such Party to carry out and give full effect to the terms, conditions and intent of this Agreement and the matters contemplated hereby;
- (b) which is required by any Law, including the Freedom of Information and Protection of Privacy Act (British Columbia);
- (c) to any Governmental Authority;
- (d) to the British Columbia Utilities Commission or other regulatory agency as part or in support of any regulatory application or submission;
- (e) to the directors, officers or employees of such Party or to an Affiliate of such Party or to the directors, officers or employees of an Affiliate of such Party;
- (f) to the professional advisors of such Party on the same terms of confidentiality;
- (g) which is already in the public domain; or
- (h) in connection with legal proceedings or steps being taken to remedy a breach or default under this Agreement by the other Party.

For the purposes of this Section 20.6, “Confidential Information” means proprietary information of either Party such as data, plans, drawings, manuals, or specifications which have been provided by such Party, its employees, contractors, agents, subcontractors, Affiliates to the other Party pursuant to this Agreement or proprietary information either Party conceived or developed by or for such Party concerning construction practices, operation and maintenance practices, agreements, marketing plans and strategies, profits, costs, pricing and systems of procedure (provided that “Confidential Information” does not include information which was disclosed to the receiving Party by a third Party (unless, to the knowledge of the receiving Party, the third Party is under an obligation of confidentiality to the other Party) or any information developed or conceived by the receiving Party without using the “Confidential Information” of the other Party).

#### 20.7 SEVERABILITY

If any provision of this Agreement is found or determined to be invalid, illegal or unenforceable it will be construed to be separate and severable from this Agreement and will not impair the validity, legality or enforceability of any other provisions of this Agreement, and the remainder of this Agreement will continue to be binding on the Parties as if such provision had been deleted.

#### 20.8 NO WAIVER

No waiver by either Party of any default by the other in the performance of any of the provisions of this Agreement will operate or be construed as a waiver of any other or future default or defaults hereunder, whether of a like or a different character. To be binding, any waiver of any provision of this Agreement must be clearly expressed in writing to be signed by the waiving Party.

#### 20.9 BURDEN AND BENEFIT

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

#### 20.10 GOVERNING LAW

This Agreement and all matters arising hereunder will be governed by the laws of British Columbia and the federal laws of Canada applicable in British Columbia.

#### 20.11 ENTIRE AGREEMENT

This Agreement contains the whole agreement between the Parties in respect of the subject matter hereof and there are no terms, conditions or collateral agreements express, implied or statutory other than as expressly set forth in this Agreement and this Agreement supersedes all of the terms of any written or oral agreement or understanding between the Parties.

#### 20.12 TIME OF ESSENCE

Time is of the essence of this Agreement.

#### 20.13 FURTHER ASSURANCES

Each Party will, at all times hereafter on demand by the other, execute and deliver or cause to be executed and delivered all such further documents and do all such further acts and things as may be reasonably requested by the other Party to evidence, carry out and give full effect to the intent and meaning of this Agreement and to assure the completion of the transactions contemplated hereby.

#### 20.14 AMENDMENTS TO BE IN WRITING

Except as set out in this Agreement, no amendment or variation of this Agreement will be effective or binding upon the Parties unless such amendment or variation is set out in writing and duly executed by the Parties.

#### 20.15 FACSIMILE

This Agreement may be executed by the Parties and transmitted by facsimile transmission and, if so executed, transmitted and received, this Agreement will for all purposes be effective as if the Parties had delivered and executed the original Agreement and each Party undertakes to provide the other Party with a copy of this Agreement bearing original signatures forthwith upon demand.

#### 20.16 SUBJECT TO LEGISLATION

Notwithstanding any other provision hereof, this Agreement and the rights and obligations of FEI and the District under this Agreement are subject to all present and future laws, rules, regulations and orders of any legislative body, governmental agency or duly constituted authority now or hereafter having jurisdiction over FEI or the District.

#### 20.17 EXPENSES

Each Party to this Agreement shall be responsible for the payment of all costs, expenses, legal fees and disbursements incurred or to be incurred by it in negotiating and preparing this Agreement and all documents required to be delivered under this Agreement and otherwise relating to the transactions contemplated by this Agreement.

#### 20.18 NO CONTRARY AGREEMENT

No Party shall enter into an agreement or other commitment with any person if such agreement or commitment has terms or provisions in conflict with or inconsistent with the terms of this Agreement or which could reasonably be expected to lead to actions or consequences that would result in the Party being in breach of the commitments and obligations of the Party pursuant to this Agreement unless such other agreement or commitment is expressly approved by the other Parties.

#### 20.19 NO PARTNERSHIP

Nothing herein shall be deemed or construed to create a joint venture, partnership, employment or agency relationship between the Parties for any purpose.

20.20 ASSIGNMENT

Neither Party may assign this Agreement or any of its rights or obligations under this Agreement, and FEI may not assign, transfer or sell all or any part of the Energy System, except:

- (a) with the consent of the other Party, such consent not to be unreasonably withheld, delayed or conditioned; or
- (b) in the case of FEI, to an Affiliate of FEI which is a "public utility" as defined in the *UCA* on notice to, but without the consent of, the District.

20.21 COUNTERPARTS

This Agreement may be executed in counterparts with the same effect as if the Parties had signed the same document. All counterparts will be construed together and will constitute one agreement.

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

**FORTISBC ENERGY INC.**

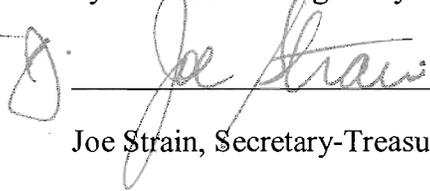
by its authorized signatory:

  
\_\_\_\_\_

Doug Stout,  
VP Energy Solutions & External Relations

**THE BOARD OF EDUCATION OF  
SCHOOL DISTRICT NO. 37 (DELTA)**

by its authorized signatory:

  
\_\_\_\_\_

Joe Strain, Secretary-Treasurer

# SAMPLE SCHEDULE “A”

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## Energy System Description

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### Mechanical Equipment Plans and Specifications

Equipment schedule:

- 2 ground source heat pumps water furnace 540NXW or equivalent and associated pumps. The heat pump and related equipment will be installed in the boiler room at the old boilers location on the concrete pad.
- Each heat pump will have 1 pump on condenser side (5 Hp, 90gpm, 100 ft).
- Piping, control valves and other equipment and accessories connected to the above equipment.
- Connection of the heat pumps on the return of the boiler and installation of the 3 ways valves.
- 1000 ft of piping 4 inches isolated between the field and the heat pump. The pipes will be installed on the roof.
- Installation of geo-exchange field loop to match the designed performance of the system.
- Control systems for the above mentioned equipment.
- BTU meters

Prior to commencement of the Mechanical Equipment construction, FEI shall provide detailed drawings to the District for review and acceptance.

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## **SCHEDULE “B”**

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# **Delta School District Site Rules for Contractors**

## **Delta School District Site Rules for Contractors**

### **1.0 Safety**

- 1.1 For the purposes of this section, “Safety Regulations” means the rules, regulations, and practices required by WorkSafeBC.
- 1.2 The Contractor shall be solely responsible for site safety during the execution of all assigned construction and maintenance activities, including work performed by subcontractors and suppliers, and for compliance with the Safety Regulations, and shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the work.
- 1.3 If the District is of the reasonable opinion that the Contractor has not taken such precautions as are necessary to ensure compliance with the requirements of Clause 1.2, the District may take or order any remedial measures which it deems necessary, including stopping the performance of all or any portion of the work, and the District may use the employees of itself, the Contractor, any subcontractor or any other contractors to perform such remedial measures. The Contractor acknowledges and agrees that any failure by the Contractor to comply with the Safety Regulations shall constitute a default of the Contractor's contractual obligations and the District may issue a written notice instructing the Contractor to correct the default in the two (2) working days immediately following receipt of such notice.
- 1.4 The Contractor shall file any notices or any similar document (including, without limitation, a Notice of Project where applicable) required pursuant to the Safety Regulations. This duty of the Contractor will be considered to be included in the work and no separate payment therefore will be made to the Contractor.
- 1.5 The Contractor shall develop, maintain and supervise for the duration of the work a comprehensive safety program that will effectively incorporate and implement all required safety precautions. The program shall, as a minimum, respond fully to the Safety Regulations and general construction practices for the safety of persons or property, including without limitation the WorkSafeBC regulations that may be applicable (e.g. WHMIS, dust control, etc.).
- 1.6 The Contractor shall provide a copy of the safety program described in Clause 1.5 to the District prior to the commencement of the work and shall, at all times require, as far as it is reasonably practical to do so, that every employer and worker performing work in respect of the project complies with such program.
- 1.7 The Contractor shall arrange regular safety meetings at its expense, record the minutes of such meetings and maintain a complete file for review by the appropriate authorities.
- 1.8 The Contractor shall supply and maintain, at its own expense, at its office or other well-known place at the work site, safety equipment necessary to protect the workers and general public against accident or injury as prescribed by the governing authorities.
- 1.9 The Contractor shall supply and maintain all articles necessary for giving first-aid to any person who may be injured on the work site and shall establish an emergency procedure for the immediate removal of any injured person to a hospital or a doctor's care in accordance with the Safety Regulations.
- 1.10 The Contractor shall, as required under the Safety Regulations, promptly report all accidents of any sort arising out of or in connection with the performance of the work whether on or adjacent to the work site, giving full details and statements of witnesses. The District shall be copied on all accident reports and investigation reports.

## **2.0 Security and Access**

- 2.1 **Site and Building Access:** The District's Maintenance Services Department will issue gate and building keys, electronic access cards (complete with instructions as to how to arm/disarm the building intrusion alarm system and how to contact the alarm monitoring station) and identification badges for the Contractor to enter the site and building, disarm/arm the building intrusion alarm system, and access the portions of the site where the Contractor's work is taking place. The Contractor and all subcontractors must check in at the school office (if occupied by District staff) prior to entering other parts of the building. The access cards, keys and identification badges shall be promptly returned to the District at the end of the contract.
- 2.2 **Security:** The Contractor shall assume all responsibility for the security of the work site. The Contractor must ensure that all windows, doors and gates are secure and the building intrusion alarm system is armed (unless District staff are still in the building) at the end of the workday. The Contractor must also safeguard the rest of the building and/or site from access through possible open construction areas. Security doors shall at all times remain closed and shall not be propped open, even for a short time. The Contractor is responsible for any costs arising when the District's security runner services is called to attend a work site for security matters resulting from the Contractor's negligence.
- 2.3 **Normal School Hours:** Normal hours of operation for the District are 0730h-1600h Monday to Friday, excluding statutory holidays. For after-hours and weekend work, the Contractor must notify the District's Maintenance Services Department at least one business day in advance of the work.

## **3.0 Conduct**

- 3.1 **Noise Due to Construction or Maintenance Activities:** In accordance with the Delta Noise Bylaw 1906, "no person shall carry on or cause to be carried any construction work, reconstruction, alteration, repair or demolition of a building or structure, the operation of machinery, or works in connection with any excavation or highway before 07:00h or after 1900h and day of the week from Monday to Friday, inclusive, before 0900h or after 1700h on Saturdays, or at any time Sundays. The Contractor shall respect the classroom operations in the vicinity of the work site and as such will make every attempt to limit noisy work to times outside of classroom operation or to adequately dampen, silence and/or soundproof equipment that generates noise to mitigate disruption to the classrooms.
- 3.2 **Communication devices:** Radio and cell phone volume shall be at the minimum volume which is consistent with the ability to operate the device.
- 3.3 **Roadways:** All speed limits and other traffic rules must be obeyed and access to the roadways should not be impeded. Parking and secure storage of materials and equipment by the Contractor and subcontractors shall only be in designated areas only.
- 3.4 **Cleanliness:** The work site must be maintained for an orderly appearance on a daily basis. Trash and construction debris shall be contained at all times and removed from the work site weekly.
- 3.5 **Toilets:** All temporary toilets shall have their doors faced away from streets. In no cases shall a worker utilize any staff washroom or other staff facilities at the work site, except as otherwise agreed in writing by the District. Under no circumstances will workers be permitted to use student washrooms.
- 3.6 **Identification Badges:** All workers shall have a District-assigned identification badge that clearly indicates the company's name and the worker's name. It is to be worn whenever at the work site.

- 3.7 **Smoking:** Smoking is not permitted on District property.
- 3.8 **Alcohol/Drugs:** No alcoholic beverages or non-prescription drugs shall be brought or consumed at the work site.
- 3.9 **Animals:** No dogs or other animals, are permitted at the work site without the written consent of the District.
- 3.10 **Fitness for Work:** All workers must be fit for work at all times. The District retains the right to request individuals leave the work site if unfit for any reason including, without limitation, inebriation, taking drugs, injury, fatigue, rudeness or any other reason that may affect the quality of the work or represents a breach of these rules.
- 3.11 **Theft:** Workers who steal from occupants or the District shall be immediately ejected from the work site. The Contractor is responsible for all such thefts irrespective of whether the worker is an employee of the Contractor or a subcontractor.
- 3.12 **Discrimination and Harassment:** The District actively promotes a safe and secure school environment and as such does not tolerate violations of human rights legislation, including:
- (a) discriminatory acts against any person with respect to the work or school environment or any educational program or service provided to or by that person because of race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age of that person, or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person;
  - (b) all forms of actual, attempted or threatened physical harm directed at any person; or
  - (c) any form of sexual harassment such as unwelcome sexual advances with actual or implied work related consequences; unwelcome remarks, questions, jokes or innuendo of a sexual nature including sexist comments or sexual invitations; verbal abuse, intimidation or threats of a sexual nature; unwelcome leering, staring or making sexual gestures; whistling or catcalls; display of pornographic or other sexual materials; offensive pictures, graffiti, cartoons or sayings; unwanted physical contact such as touching, patting, pinching or hugging; and physical assault of a sexual nature

## **SCHEDULE “C”**

---

### **List of Environmental Reports**



**ASBESTOS MATERIALS SURVEY  
AND RISK ASSESSMENT**

**OF**

**DELVIEW SECONDARY  
SCHOOL  
9111 - 116<sup>th</sup> Street  
Delta, BC**

**PREPARED FOR:**

**DELTA SCHOOL DISTRICT  
Maintenance Facility  
7186 Brown Street  
Delta, BC  
V4G 1G8**

**PREPARED BY:**

**ACM ENVIRONMENTAL CORPORATION  
#217 -2323 Quebec Street  
Vancouver, BC  
V5T 4S7  
604-873-8599**

**December 2005**

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## **EXECUTIVE SUMMARY**

A.C.M. Environmental Corporation (ACM) was retained by the Delta School District to perform an Asbestos Materials Survey and Risk Assessment for Delview Secondary School located at 9111 - 116<sup>th</sup> Street, Delta, BC. All areas of the building were inspected and/or sampled during this survey.

The objective of the assessment was to identify the types and extent of asbestos containing construction materials within the accessible areas of the building. The assessment at this time involved an inspection of all areas of the building.

Previous asbestos sampling information for the building was reviewed prior to conducting the survey assessment. ACM previously conducted 2 surveys of the building in December 1990 and in November 2004 where a total of twenty-eight bulk samples were collected. The sampling identified mechanical insulation materials, cement board fume hoods, ceiling texture, ceiling tiles, drywall taping compounds and duct mastic materials. The building has undergone extensive renovations since the November 2004 survey. Flooring was not addressed during the first two surveys; however, it was the main focus of this survey.

The assessment was conducted using both visual and physical assessment techniques. Samples of materials suspected of containing asbestos were collected and forwarded, using proper chain of custody protocols, to Prezant Associates, Inc. for asbestos analysis. Asbestos sample results are located in Appendix A of this report.

Six types of asbestos containing materials were observed which may be affected by any upcoming renovation project: mechanical insulation materials, ceiling tiles, drywall taping compounds, duct mastics, cement board materials and flooring materials. Within the context of the report, areas have been detailed as to the locations of the asbestos containing materials, the content of asbestos where applicable, and the required procedures to be followed for removal of these materials, as required.

The hazardous materials survey was conducted using non-destructive and some limited destructive testing methods. Areas within walls were not inspected as access was not possible without causing extensive damage to the walls. It should be noted that there is a possibility of asbestos containing materials existing within inaccessible wall and ceiling cavities, and under sub-floors. Possible asbestos-containing materials which may exist in these areas may include but are not limited to: insulation materials (mechanical or construction), secondary layers of drywall or flooring, etc.

In summary, the findings from the assessment conclude that asbestos containing materials do exist in some of the construction materials within the building. The hazardous materials are present in quantities of significance and are of concern to any contractor involved in any demolition or renovation activities within the building.

## **INTRODUCTION**

A.C.M. Environmental Corporation (ACM) was retained by the Delta School District to perform an Asbestos Materials Survey and Risk Assessment for Delview Secondary School located at 9111 - 116<sup>th</sup> Street in Delta, BC. All areas of the building were inspected and/or sampled during this survey.

The objective of the assessment was to identify the types and extent of asbestos containing construction materials within the accessible areas of the building. The assessment at this time involved an inspection of all areas of the building excluding the roofs as they were surveyed during the previous November 2004 survey.

The survey and assessment was conducted on December 1<sup>st</sup>, 2005 by Mr. James McArthur, AScT, Environmental Technician, for ACM. Seven (7) representative bulk samples of materials suspected of containing asbestos were collected for analysis and are included as Appendix A of this report.

Previous asbestos sampling information for the building was reviewed prior to conducting the survey assessment. ACM collected 28 bulk samples from the school from the two previous surveys. The sampling identified several types of asbestos containing materials which were re-inspected and/or confirmed during the December 2005 survey.

## **METHODOLOGY**

The hazardous materials survey was conducted using non-destructive and some limited destructive testing methods. Areas within walls were not inspected as access was not possible without causing extensive damage to the walls. It should be noted that there is a possibility of asbestos containing materials existing within inaccessible wall and ceiling cavities, and under sub-floors. Possible asbestos-containing materials which may exist in these areas may include but are not limited to: insulation materials (mechanical or construction), secondary layers of drywall or flooring, etc.

The U.S. Environmental Protection Agency (USEPA) Guidance Document was selected for use in this study (1). The document identifies factors associated with the "condition" and the "potential for disturbance or erosion" of asbestos containing materials. These factors help to define the fibre release potential of the suspect asbestos containing materials and were used in a qualitative evaluation of materials found in the surveyed areas. Recommendations have been substantiated by additional information utilized from other documentation cited in the Reference Section of this report.

The bulk samples of suspect asbestos containing materials were analyzed at the A.C.M. Environmental Corporation laboratory using the Workers' Compensation Board of British Columbia (WCB) Analytical Method 0205. The method determines the content of asbestos containing materials (ACM) by type and percent volume using a combination of polarized light microscopy, morphology, refractive index, extinction, sign of elongation, birefringence and dispersion staining colours.

The survey relied on the abilities and experience of the surveyor to gain access and identify possible asbestos containing materials. All areas of the building were accessed during the assessment including the roof.

## **RESULTS & ASSOCIATED RISK LEVELS**

### **ASBESTOS**

Six types of asbestos containing materials were identified during this survey which will or could be affected by any potential renovation or demolition activities: mechanical insulation materials, ceiling tiles, drywall taping compounds, duct mastics, cement board materials and flooring materials. A breakdown for each type of material is as follows:

#### **Mechanical Insulation Materials:**

Mechanical Insulation materials were observed and sampled during the original and latest survey conducted. Previously, the hot water tank insulation and pipe elbows and fittings were identified by ACM in December 1990 as asbestos containing. These materials were observed to still remain within the school in several areas and were observed to be exposed within classrooms 104, 106, 108 110 and 112. Three mechanical insulation bulk samples were collected from the boiler room. The tank insulation and larger pipe flange insulation materials were found to contain 20 and 35% Chrysotile asbestos respectively. The smaller pipe elbow insulation material was found to contain 55% Chrysotile asbestos. All asbestos containing mechanical pipe insulation material within the school was observed to be labelled with asbestos signage.

Prior to any activities taking place which could disturb the asbestos containing mechanical insulating materials, they must first be removed and disposed of in accordance with applicable regulations. The removal of the asbestos containing mechanical insulating materials will pose a moderate risk of asbestos exposure to the workers involved, provided that the glove bag or wrap and cut methods of removal are used. Therefore as a minimum, MODERATE RISK glove bag or wrap and cut asbestos removal work procedures will be required for the removal of the asbestos containing mechanical insulating materials.

#### **Ceiling Tiles:**

Asbestos containing ceiling tiles were observed sporadically throughout the building where the older non-containing tiles exist and within the lunchroom kitchen area. These 2x4 ceiling tiles with large thin "fissures" and small pinholes were previously located within the Book Room as mentioned in the last report before being abated. The asbestos containing ceiling tiles were previously sampled and were found to contain 1-10% Amosite asbestos. All ceiling tiles with large thin "fissures" and small pinholes with a pink backing are to be considered asbestos containing. Four additional types of ceiling tiles were

sampled within the school and were found to be non-asbestos containing. The asbestos containing ceiling tiles are currently in fair to good condition.

Prior to any activities taking place that may affect the asbestos containing ceiling tiles, they should be removed and disposed of in accordance with applicable regulations. The removal of the asbestos containing ceiling tiles would pose a moderate to high risk of asbestos exposure to the workers involved, therefore as a minimum, MODIFIED MODERATE RISK asbestos work procedures would be required for the removal of the asbestos containing ceiling tiles. If the asbestos containing ceiling tiles are found to be sporadically distributed throughout the school, moderate risk asbestos work procedures may be used. If the materials are to remain in place, any work procedures that may disturb the asbestos containing ceiling tiles must be done using, as a minimum, moderate risk asbestos work procedures.

#### Drywall Taping Compounds:

Many of the walls within the building are constructed of cast in place concrete, cinder block, or wood/drywall panelling (drywall panelling does not have any taping compounds applied the seams, etc.). However some drywall materials exist throughout the building on walls and ceilings. Several samples of drywall taping compounds were collected during the previous survey from various areas within the building. Three of the bulk samples were found to contain 1-10% Chrysotile asbestos. The asbestos containing drywall materials were observed within the hallway outside the activity room, in the gym under the bleachers and within the boiler room within the school. The remaining three drywall taping compound samples were collected within the school including: room 182, room 153, and the electrical room and were all found to be non-asbestos containing.

Covered drywall walls were observed in some rooms and were not inspected at this time to determine if drywall taping compounds exist on these walls due to the non-destructive nature of this survey. The covering should be removed from the walls before any demolition of the walls takes place to determine if taping compounds are present and sampled if they are. All original painted drywall walls and ceilings throughout the building, with exception of areas found to be non-asbestos containing during this survey, should be treated as asbestos containing unless further sampling determines otherwise.

Prior to the any activities taking place that may affect the asbestos containing drywall materials, the asbestos containing drywall materials must be removed and disposed of in accordance with applicable regulations. The removal of the drywall materials will pose a moderate to high risk of asbestos exposure to the workers involved, therefore as a minimum, MODIFIED MODERATE RISK

asbestos work procedures will be required for the removal of the asbestos containing drywall materials. Modified moderate risk asbestos work procedures incorporate the use of better dust control measures and increased personal protection in addition to regular moderate risk asbestos requirements. If the materials are to remain in place, any work procedures that may disturb the asbestos containing drywall materials must be done using, as a minimum, moderate risk asbestos work procedures.

Duct mastic:

Asbestos containing gold/grey duct mastic materials were observed within the fan rooms next to the stage in the gymnasium. Asbestos containing silver duct mastic was observed on the exhaust duct within the metal work shop (room 110) of the school. Much of the ducting is also insulated with foil-face fibreglass insulation. Most of the exposed un-insulated ducting observed throughout the building was observed to have no mastics. Samples of duct mastic materials were collected and were both found to contain 1-10% Chrysotile asbestos. The asbestos containing duct mastic materials are currently in good condition. All gold-grey and silver duct mastics within the school are to be treated as asbestos containing.

Prior to any activities taking place that may affect the asbestos containing duct mastic materials, they must be removed and disposed of in accordance with applicable regulations. The removal of the asbestos containing duct mastic materials will pose a moderate risk of asbestos exposure to the workers involved, therefore as a minimum, MODERATE RISK asbestos work procedures will be required for the removal of the asbestos containing duct mastic materials.

Cement Board Materials:

Asbestos containing cement board materials were observed within the fume hoods found in science rooms 131, 134 and the science storage room. These were also identified by ACM in the December 1990 survey. The asbestos containing cement board materials were not sampled however are typically found to contain 20-40% Chrysotile asbestos. The materials are presently in fair to good condition. All asbestos containing cement board materials were observed to be labelled with asbestos signage.

Prior to any activities taking place that may affect the asbestos containing cement board materials, they must be removed and disposed of in accordance with applicable regulations. The removal of the asbestos containing cement board materials will pose a moderate risk of asbestos exposure to the workers involved, therefore as a minimum, MODERATE RISK asbestos work procedures

will be required for the removal of the asbestos containing cement board materials.

Vinyl Floor Tile Materials:

Asbestos containing vinyl floor tiles were observed within various areas of the building. The asbestos containing floor tiles were observed in the 12" square size. These include vinyl floor tiles which were beige/olive in color with dark & white streaks observed in room 101 & adjacent hallway; vinyl floor tiles which were beige in color with brownish/orange streaks found in the hallway adjacent the staff room, rooms 100, 102, 122, 124, science rooms 131 through 134, custodian storage room, auxiliary gym & adjacent hallway, lunchroom & adjoining kitchen area; vinyl floor tiles which were dark brown in color with white streaks found in the majority of the corridors except the northeast section of the school; vinyl floor tiles which were brown in color with dark and white streaks found in the northeast corridors. The bulk samples of these vinyl floor tile materials were found to contain <1% Chrysotile asbestos in the tiles. The materials are presently in good condition. The 12" Beige vinyl floor tiles with small brown streaks observed are non-asbestos containing.

WCB Regulations do not treat any materials with less than 1% asbestos as asbestos containing. Workers should still use moderate risk procedures when exposed to the vinyl floor tile materials, even in materials with less than 1% asbestos concentrations. The WCB states that workers must be properly protected from any potential exposure to airborne asbestos fibres. It is recommended that any work affecting the materials be done using a minimum of moderate risk asbestos work procedures. The vinyl floor tile materials do not have to be disposed in accordance with applicable regulations as asbestos waste.

### **RECOMMENDATIONS**

Prior to beginning any work that may impinge upon the hazardous materials within the building, the following must be performed:

- 1.) All asbestos containing materials must be removed from the building, utilizing as a minimum, the risk levels and/or procedures discussed in the results section of this report.
- 2.) If any Mercury containing thermostat switches are encountered during any renovation or repair activities within the building, they must be removed and disposed of in accordance with applicable regulations.
- 3.) If any PCB containing ballasts are encountered during any renovation or repair activities within the building, they must be removed and disposed of in accordance with applicable regulations.
- 4.) If any suspect asbestos containing materials are encountered within inaccessible wall or ceiling cavities, or under floors, during renovation or demolition activities, the work in the immediate area must stop and the supervisor contacted for further direction.

### **STATEMENT OF LIMITATIONS**

The ACM report is intended to direct the Client's attention to recognised environmental conditions and to potential sources of environmental contamination. The findings and conclusion regarding contamination of the property are based solely on the extent of observations and information gathered during the assessment. Nothing in the report is intended to express any legal opinion upon environmental liabilities relating to the site or whether operations legally conformed with relevant legislative requirements.

Furthermore, it must be understood that changing circumstances in the physical environment, the use of the property, as well in changes in any substances stored, used, handled at the property, could alter radically the conclusions and information contained in this report. Therefore, it is important that the property is periodically re-evaluated and the client kept informed as to developments, which may impact the property. This report is not intended to be used as contract specifications.

### **A.C.M. ENVIRONMENTAL CORPORATION**

---

James McArthur, ASCT  
Environmental Technician

**REFERENCES**

- 1) USEPA. 1985. U.S. Environmental Protection Agency. "Guidance for Controlling Asbestos-Containing Materials in Buildings". Washington, DC: Office of Toxic Substances, USEPA.
- 2) Lory EE, Coin DC. 1981. "Management Procedure for Assessment of Friable Asbestos Insulating Material". Port Hueneme, CA: Civil Engineering Laboratory, Naval Construction Battalion Center.
- 3) Workers' Compensation Board of British Columbia, effective 15 April 1998, and all current amendments. Occupational Health and Safety Regulations.
- 4) 2002 Edition - Workers' Compensation Board of British Columbia. Safe Work Practices for Handling Asbestos.

## **APPENDIX A**

### **Bulk Sample Results**



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

ACM Environmental  
2323 Quebec Street, Suite 211  
Vancouver, BC

PAI Batch Number: 05-3017  
Client Job Number: 3048-15  
Number of Samples: 7  
Turn Around Time: 5 day

Project Location: Delview Jr. Secondary School

Batch Number: 05-3017  
Lab Sample Number: 05016602  
Client Sample Number: 3048-538

ACM Environmental  
3048-15  
Delview Jr. Secondary School

#### L-1 Pale gray paint

Asbestos Fibrous Components:  
No Asbestos Detected

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
100% Paint

Comments:

#### L-2 Beige woven fibrous material

Asbestos Fibrous Components:  
No Asbestos Detected

Non-Asbestos Fibrous Components:  
99% Cotton

Non-Fibrous Components:  
1% Filler and Binder

Comments:

#### L-3 Pale gray and dark red powdery fibrous material

Asbestos Fibrous Components:  
20% Chrysotile

Non-Asbestos Fibrous Components:  
10% Cellulose

Non-Fibrous Components:  
65% Talc Filler and Binder  
5% Mineral Particles

Comments:

Batch Number: 05-3017  
Lab Sample Number: 05016603  
Client Sample Number: 3048-539

ACM Environmental  
3048-15  
Delview Jr. Secondary School

Sampled By: Client  
Received By: John McCaslin 12/12/2005  
Reviewed By: George McCaslin 12/13/2005

Analyzed By: Deitrie Hanson 12/13/2005



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

**Grayish white and pale brown fibrous opaque material**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
35% <b>Chrysotile</b>	45% Mineral Wool	5% Mineral Particles
	15% Cellulose	

Comments:

Batch Number:	05-3017	<b>ACM Environmental</b>
Lab Sample Number:	05016604	<b>3048-15</b>
Client Sample Number:	<b>3048-540</b>	<i>Delview Jr. Secondary School</i>

**L-1 Dull beige hard tile material with small dark brown streaks**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		5% Filler and Binder

Comments:

**L-2 Black mastic**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Asphalt Filler and Binder
		5% Mineral Particles
		5% Filler and Binder

Comments:

Batch Number:	05-3017	<b>ACM Environmental</b>
Lab Sample Number:	05016605	<b>3048-15</b>
Client Sample Number:	<b>3048-541</b>	<i>Delview Jr. Secondary School</i>

Sampled By: Client				
Received By: John McCaslin	12/12/2005		Analyzed By: Deitrie Hanson	12/13/2005
Reviewed By: George McCaslin	12/13/2005			



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
 OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

## Bulk Asbestos Fiber Analysis

**L-1 Dull beige hard tile material with deep red and orange streaks**

<b>Asbestos Fibrous Components:</b> <1% <b>Chrysotile</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 45% Calcite Filler and Binder 40% Mineral Filler and Binder 10% Vinyl Filler and Binder >4% Miscellaneous Particles
--	---	--

**Comments:**  
 This tile contains <1% chrysotile asbestos.

**L-2 Black mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 95% Asphalt Filler and Binder 3% Mineral Particles 2% Filler and Binder
--	---	---

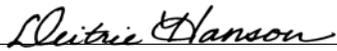
**Comments:**

Batch Number: 05-3017	ACM Environmental
Lab Sample Number: 05016606	3048-15
Client Sample Number: <b>3048-542</b>	<i>Delview Jr. Secondary School</i>

**L-1 Dark brown hard tile material with white streaks**

<b>Asbestos Fibrous Components:</b> <1% <b>Chrysotile</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 50% Calcite Filler and Binder 45% Mineral Filler and Binder >4% Vinyl Filler and Binder
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**Comments:**  
 This tile contains <1% chrysotile asbestos.

Sampled By: Client		
Received By: John McCaslin	12/12/2005	
Reviewed By: George McCaslin	12/13/2005	Analyzed By: Deitrie Hanson 12/13/2005



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
 OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

## Bulk Asbestos Fiber Analysis

### L-2 Black resinous mastic

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 90% Asphalt Filler and Binder 5% Mineral Particles 5% Mineral Fragments
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**Comments:**

Batch Number: 05-3017	ACM Environmental
Lab Sample Number: 05016607	3048-15
Client Sample Number: <b>3048-543</b>	<i>Delview Jr. Secondary School</i>

### L-1 Pale grayish white fibrous opaque material

<b>Asbestos Fibrous Components:</b> 55% Chrysotile	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 40% Talc Filler and Binder 5% Mineral Particles
---	---	--

**Comments:**

### L-2 Golden yellow fibers on white woven twisted fiber bundles

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b> 90% Cotton 5% Glass Fiber	<b>Non-Fibrous Components:</b> 5% Resin and Binder
---	---	---

**Comments:**

Batch Number: 05-3017	ACM Environmental
Lab Sample Number: 05016608	3048-15
Client Sample Number: <b>3048-544</b>	<i>Delview Jr. Secondary School</i>

Sampled By: Client  
 Received By: John McCaslin 12/12/2005  
 Reviewed By: George McCaslin 12/13/2005

*Deitrie Hanson*

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Analyzed By: Deitrie Hanson 12/13/2005



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
 OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

## Bulk Asbestos Fiber Analysis

### L-1 Pale beige and olive green hard tile material with white streaks

<b>Asbestos Fibrous Components:</b> <1% Chrysotile	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 45% Calcite Filler and Binder 40% Mineral Filler and Binder 10% Vinyl Filler and Binder >4% Miscellaneous Particles
---	---	--

**Comments:**  
 This tile contains <1% chrysotile asbestos.

### L-2 Black mastic

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 95% Asphalt Filler and Binder 3% Mineral Particles 2% Filler and Binder
---	---	---

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 12/12/2005  
 Reviewed By: George McCaslin 12/13/2005

*Deitrie Hanson*

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Analyzed By: Deitrie Hanson 12/13/2005

## **APPENDIX B**

### **Photographs**



Asbestos containing ceiling tile with large thin “fissures” and small pinholes



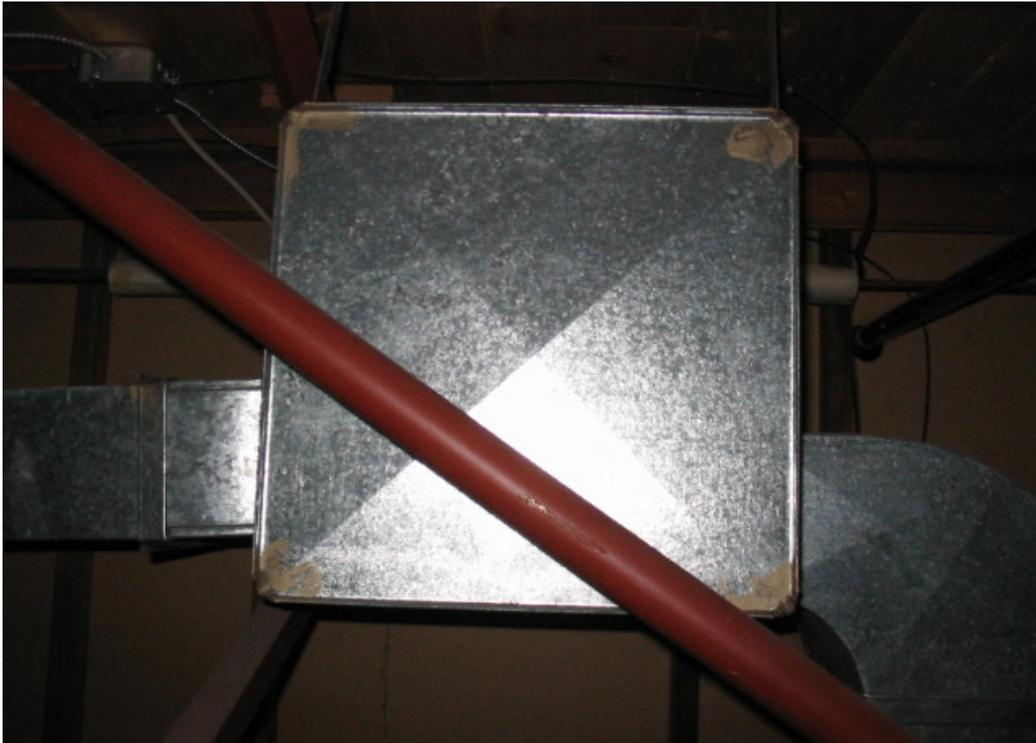
Non-asbestos containing ceiling tiles observed (larger pinholes)



Asbestos containing 12" Olive vinyl floor tiles with dark & white streaks



Asbestos containing 12" Beige vinyl floor tiles with orange & white streaks



Asbestos containing gold mastic observed on square ducting

**ENERGY SYSTEM SERVICE AGREEMENT**

**DISTRICT OPERATIONS CENTRE**

**THIS AGREEMENT** dated for reference the 26<sup>th</sup> day of September, 2011.

**BETWEEN:**

**THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 37 (DELTA)**  
a corporation established under the School Act R.S.B.C. 1996, c. 412 having an  
office at 4585 Harvest Drive, Delta, British Columbia, V4K 5B4

(the "District")

OF THE FIRST PART

**AND:**

**FORTISBC ENERGY INC.**, a company duly incorporated under the laws of the  
Province of British Columbia, having its registered office at 10th Floor, 1111  
West Georgia Street, Vancouver, B.C. V6E 4M3

("FEI")

OF THE SECOND PART

**WHEREAS:**

- A. The District is the owner of the District Operations Centre (the "Building") and lands located at 7186 Brown Street, Delta, British Columbia, which lands are legally described as:

PID: 002-812-584 Property No: 125576

Legal: LOT 135 DISTRICT LOT 129 GROUP 2 NEW WESTMINSTER DISTRICT  
PLAN 61530

(the "Lands")

- B. FEI wishes to supply to the Building, and the District wishes to purchase, Thermal Energy generated by an Energy System that FEI will construct on the Lands, and which FEI will own and operate, all pursuant to the terms of this Agreement.
- C. The Thermal Energy supplied by FEI to the Building pursuant to this Agreement will be priced at the rate set forth in the Energy System Rate Development Agreement between the Parties dated September 26<sup>th</sup>, 2011.

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT** in consideration of the premises and the covenants, agreements, representations, warranties and payments set out herein, the receipt and sufficiency of which is hereby acknowledged by each Party, the Parties covenant and agree as follows:

## **ARTICLE 1 - INTERPRETATION**

### 1.1 DEFINITIONS

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

- (a) “Adjusted Energy System Purchase Price” means, as of the date on which a purchase of the Energy System pursuant to Article 15 is effective, either:
  - (i) the Rate Base Value; or
  - (ii) such other purchase price for the Energy System as is determined by the BCUC; plus all applicable taxes;
- (b) “Affiliate” has the meaning set out in the *Business Corporation Act*, S.B.C. 2002, c.57 and includes FortisBC Inc.;
- (c) “Agreement” means this agreement, including the preamble hereto and any schedules attached hereto and the terms “this Agreement”, “hereof”, “herein”, “hereunder” and “hereinafter” and similar expressions refer to the Agreement and not to any particular Section or other portion thereof and includes any agreement supplementary or ancillary thereto;
- (d) “Acceptance Date” means the date of BCUC Acceptance;
- (e) “BCUC” means the British Columbia Utilities Commission, or any successor thereto;
- (f) “BCUC Acceptance” has the meaning assigned to that term in Section 11.1;
- (g) “Building” has the meaning assigned to that term on page one of this Agreement;
- (h) “Building System” means the space heating, cooling and ventilation, and domestic hot water distribution and control systems existing in the Building, to which the Energy System will be connected;
- (i) “Business Day” means any day except Saturday and Sunday or any day on which banks are generally not open for business in Vancouver, British Columbia;
- (j) “Capital Contribution” means \$ 67,000;
- (k) “Commissioned” means once the Energy System is certified complete and operating in accordance with the Specifications by a professional engineer under seal;

- (l) “Commission Date” means the day on which the Energy System is Commissioned;
- (m) “Contaminants” means, collectively, any contaminant, toxic substance, dangerous good, or pollutant or any other substance which when released to the natural environment is likely to cause, at some immediate or future time, material harm or degradation to the natural environment or material risk to human health, and includes any radioactive materials, asbestos materials, urea formaldehyde, underground or aboveground tanks, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive or toxic substances, hazardous waste or waste of any kind, pesticides, defoliants, or any other solid, liquid, gas, vapour, odour or any other substance .the storage, manufacture, disposal, handling, treatment, generation, use, transport, remediation or Release into the Environment of which is now or hereafter prohibited, controlled or regulated under Environmental Laws;
- (n) “Continuing Service Interruption Notice” has the meaning assigned to that term in Section 14.3(b);
- (o) “Contractor” means a prime contractor hired by FEI to oversee and complete the construction and installation of the Energy System;
- (p) “Design and Construction” means the total construction and related services required to design, construct and commission the Energy System and connected components of the Building System;
- (q) “Design Thermal Energy” means the maximum amount of Thermal Energy that the Energy System is capable of delivering through the Thermal Energy Meter and is included in the Specifications;
- (r) “Disclosed Contaminants” means Contaminants:
  - (i) the existence of which are specifically identified in the reports provided by the District to FEI and listed in Schedule C;
  - (ii) that were or ought to have been discovered, foreseen or anticipated upon reasonable inspection by FEI prior to the Effective Date; and
  - (iii) that were caused by FEI or any person for whom FEI is responsible at law;
- (s) “District” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (t) “District Losses” has the meaning assigned to that term in Section 12.6;
- (u) “District Site Rules for Contractors” means the rules set forth in Schedule “B”;
- (v) “Effective Date” means the date set out on page one of this Agreement;
- (w) “Energy System” means the equipment that FEI constructs and owns which will provide the Building with its energy needs for space heating, cooling and ventilation, and domestic hot water use, all as set forth in this Agreement;

- (x) “Energy System Service Agreement” has the meaning assigned to that term in the Energy System Rate Development Agreement;
- (y) “Energy System Rate Development Agreement” means that energy system rate development agreement between the District and FEI dated as of September 26<sup>th</sup>, 2011;
- (z) “Environment” includes the air (including all layers of the atmosphere), land (including soil, sediment deposited on land, fill, lands submerged under water, buildings, and improvements), water (including oceans, lakes, rivers, streams, groundwater, and surface water), and all other external conditions and influences under which humans, animals, and plants live or are developed and “Environmental” will have a corresponding meaning;
- (aa) “Environmental Attributes” means:
  - (i) all attributes associated with, or that may be derived from the Energy System installed having decreased environmental impacts relative to the use of conventional heating and cooling and hot water heating systems including any existing or future credit, allowance, certificate, right, benefit or advantage or proprietary or contractual right whether or not tradable;
  - (ii) any existing or future instrument, including without limitation any environmental emission allowances and environmental emission reduction credits, reduction right, allowance, certificate or other unit of any kind whatsoever, whether or not tradable and any other proprietary or contractual right, whether or not tradable, and any resulting from, or otherwise related to the actual assumed reduction, displacement or offset of emissions associated with, or that may be derived from the Energy System installed; and
  - (iii) all revenues, entitlement, benefits and other proceeds arising from or related to the foregoing;
- (bb) “Environmental Laws” means any and all statutes, laws, regulations, orders, bylaws, standards, guidelines, protocols, permits, and other lawful requirements of any Governmental Authority having jurisdiction over the Lands or the Energy System now or hereafter in force with respect in any way to the Environment, environmental assessment, health, occupational health and safety, protection of any form of plant or animal life, or transportation of dangerous goods, including the principles of common law and equity;
- (cc) “Expiry Date” means the earlier of:
  - (i) June 30, 2031, or the expiry of any renewal term thereof; and
  - (ii) the closure of the Building, or the Building otherwise ceasing to operate as a school (as defined under the *School Act* (British Columbia));
- (dd) “FEI” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (ee) “FEI Losses” has the meaning assigned to that term in Section 12.5;

- (ff) “Force Majeure” has the meaning assigned to that term in Section 17.2;
- (gg) “Governmental Authority” means any federal, provincial, regional, municipal, local or other government, governmental or public department, court, tribunal, arbitral body, commission, board, bureau or agency and any subdivision, agent, commission, board or authority thereof;
- (hh) “Lands” has the meaning assigned to that term in Recital A and includes the Building located on the Lands;
- (ii) “Laws” means laws, statutes, regulations, bylaws, Permits and orders of any Governmental Authority having jurisdiction, including without limitation, Environmental Laws;
- (jj) “Maintain” means to operate, service and maintain in a safe and reliable condition and “maintaining” and “maintenance” have corresponding meanings;
- (kk) “Monthly Charges” means that amount to be paid by the District to FEI with respect to the delivery of Thermal Energy to the Building pursuant to the Energy System Rate Development Agreement and any other payments due and owing by the District under this Agreement;
- (ll) “Notifying Party” has the meaning assigned to that term in Section 16.1;
- (mm) “Party” means a signatory to this Agreement, and the “Parties” means all of such signatories;
- (nn) “Permits” means all permits, licences, certificates, approvals, authorizations, consents and the like issued by any Governmental Authority;
- (oo) “Rate Base Value” means the value of the Energy System that the BCUC accepts from time to time in accordance with the Energy System Rate Development Agreement;
- (pp) “Release” includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, migration, disposal, or dumping;
- (qq) “Right of Access and Licence” means the right and licence granted herein by the District to FEI pursuant to Section 4.1 of this Agreement;
- (rr) “Service Failure Notice” has the meaning assigned to that term in Section 14.3(c);
- (ss) “Service Interruption” means, in any hour:
  - (i) a failure of the Energy System in that hour to deliver Thermal Energy at the Thermal Energy Meter sufficient to meet the Thermal Energy demand of the Building during that hour in accordance with the Specifications up to the Design Thermal Energy, and except where such failure is directly caused by:
    - a. the careless or wilful damage to the Energy System by the District or its agents or other persons for whom the District is responsible;

- b. damage caused to the Energy System as a result of the negligent acts or omissions of the District, its agents or those for whom in law the District is responsible;
  - c. an event of Force Majeure that triggers the suspension of FEI's obligations under the Agreement pursuant to Article 17; or
  - d. maintenance activities that FEI is performing on the Energy System that have been scheduled with the consent of the District (such consent not to be unreasonably withheld); and
- (ii) if the failure described in Section 1.1(rr)(i), FEI's failure in that hour to deliver to the Building through alternative means thermal energy sufficient to maintain an average temperature of 16 degrees Celsius in each room of the Building intended to be served by the Energy System (all as determined by the District, acting reasonably);
- (tt) "Service Interruption Notice" has the meaning assigned to that term in Section 14.3(a);
- (uu) "Services" means those services to be provided by FEI to supply Thermal Energy to a Building from an Energy System, and for greater certainty includes the services described in Articles 5 and 6, and excludes the Design and Construction;
- (vv) "Specifications" means the specifications for the Energy System prepared by FEI in consultation with the District in accordance with Section 2.3 and includes the Design Thermal Energy;
- (ww) "Term" has the meaning assigned to that term in Section 3.1;
- (xx) "Thermal Energy" means the amount of energy that FEI provides to the Building measured through a Thermal Energy Meter;
- (yy) "Thermal Energy Meter" means a device that complies with the International Organization of Legal Metrology recommendations for measuring thermal energy; and
- (zz) "UCA" means the *Utilities Commission Act*, R.S.B.C. 1996, c. 473 as may be amended from time to time.

## 1.2 SCHEDULES

The following Schedules, as may be amended from time to time, are incorporated by reference into this Agreement:

Schedule "A"	Energy System Description
Schedule "B"	Delta School District Site Rules for Contractors
Schedule "C"	List of Environmental Reports

### 1.3 AMENDMENTS TO SCHEDULES

The District and FEI acknowledge that during the construction phase of the Energy System there may be additions and alterations to the Specifications for the Energy System which would result in more efficient use and operation of the Energy System. If these additions or alterations result in changes to any of the above Schedules, the Parties mutually agree to amend the Schedules by way of a written amendment prior to the Commission Date.

### 1.4 INTERPRETATION

Except where the context requires otherwise or except as otherwise expressly provided, in this Agreement:

- (a) all references to a designated Article or Section are to the designated Article or Section of this Agreement unless otherwise specifically stated;
- (b) the singular of any term includes the plural, and vice versa, and the use of any term is equally applicable to any gender and, where applicable, body corporate;
- (c) any reference to a corporate entity includes and is also a reference to any corporate entity that is a successor by merger, amalgamation, consolidation or otherwise to such entity;
- (d) the preamble and all schedules referred to and attached to this Agreement are incorporated by reference and will form a part of this Agreement;
- (e) all sums of money which are referred to in this Agreement are in lawful money of Canada;
- (f) the headings of the Articles and Sections set out in this Agreement are for convenience only and will not be considered in any interpretation of this Agreement;

## **ARTICLE 2 - DESIGN AND CONSTRUCTION OF THE ENERGY SYSTEM**

### 2.1 CONSTRUCTION

FEI will perform the Design and Construction:

- (a) in accordance and in compliance with the Specifications;
- (b) in a good and workmanlike manner using qualified workers, and in accordance with sound and currently accepted industry standards and codes of practice normally employed, at the time and place of performance, in projects of a similar type and nature;
- (c) to ensure operational compatibility with the Building System;
- (d) in a safe and environmentally sound manner, and in accordance with all applicable Laws; and
- (e) in accordance with the terms of this Agreement.

## 2.2 CAPITAL CONTRIBUTION

The District will pay to FEI within 30 days of the Commission Date the Capital Contribution for the purpose of reducing the capital investment and the associated carrying cost of capital by FEI for provision of Service to the Building.

## 2.3 SPECIFICATIONS

Subject to and in accordance with this Section 2.3, FEI shall prepare and complete the Specifications promptly following the Acceptance Date.

FEI confirms the Energy System, as described in the Specifications and as contemplated by the Energy System description set out in Schedule A, will be designed to meet the thermal energy requirements of the Building and operational compatibility of the Building System based in part on information supplied by the District as to historical usage, which information has not been independently verified by FEI. FEI shall have no liability to the District for the failure of the Energy System to satisfy the requirements of the Building where such failure is attributable to the information supplied by the District being incorrect, inaccurate or incomplete.

FEI will prepare the Specifications in consultation with the District in order to ensure the Energy System can be appropriately accommodated within the Building and interface with the Building Systems. FEI will submit material changes to the Specifications, both before and during construction, to the District for review and comment prior to such changes taking place. If the District does not comment on the Specifications or material changes to the Specifications or advise that it has no comment within five (5) Business Days of receipt, FEI will be entitled to proceed on the basis of the information provided to the District. FEI will revise the Specifications based on the comments from the District provided that doing so will not impact FEI's costs or adversely affect system performance.

Review of and comment on the Specifications by the District does not impose any obligation on the District to verify the suitability of the Energy System or be construed as confirmation by the District that the Energy System satisfactorily meets the Building's energy requirements.

## 2.4 WORK SCHEDULE

Within ten (10) Business Days following the Acceptance Date, FEI will submit to the District for review and comment a Gantt chart schedule for the Design and Construction listing activities to be undertaken during the Design and Construction stages, key milestones and approval dates and other pertinent dates. Any revisions to the schedule must be reviewed and commented by the District, which review and comment will not be unreasonably withheld, conditioned or delayed.

In order to ensure that the Building System remains operational during normal school hours (as defined in Schedule B), the cut-over from the existing heating/cooling plant to the Energy System shall be performed outside normal school hours.

## 2.5 REPORTING

FEI shall produce and submit a monthly progress report for the Design and Construction to the District until the Energy System is Commissioned.

## 2.6 TESTING AND COMMISSIONING

FEI shall coordinate and supervise the start-up and testing of the Energy System to ensure the Energy System and other components of the Building System affected by the Design and Construction are operating in accordance with the Specifications, upon which the Energy System will be Commissioned. The District shall be invited to participate in the start-up and testing exercise.

# ARTICLE 3 - TERM AND RENEWAL

## 3.1 TERM

The term of this Agreement commences on the Effective Date and continues until the Expiry Date unless it is terminated earlier as authorized under this Agreement ("Term").

## 3.2 RENEWAL

This Agreement will automatically renew for periods of ten (10) years unless either Party provides written notice to the other Party no less than six (6) months prior to the Expiry Date, provided that there shall be no automatic renewal in the event that the Expiry Date arises as a result of the closure of the Building, or the Building otherwise ceases to operate as a school (as defined under the *School Act* (British Columbia)).

# ARTICLE 4 - ACCESS AND PERMITS

## 4.1 ACCESS RIGHTS

The District hereby grants to FEI, during the Term from and following the Acceptance Date, for so long as FEI shall require it, but subject to Section 4.4, a full, free and uninterrupted licence and right of way on, over and under the Lands and Building, for FEI, its assigns, employees, contractors, agents, invitees and licensees at all times hereafter for the purposes set out in this Agreement, provided FEI will avoid to the extent reasonably possible, and otherwise minimize interference with and inconvenience to, the occupants of the Building and the access rights of FEI will be limited to the extent reasonably necessary to fulfil FEI's obligations hereunder.

Without limiting the generality of the foregoing, but subject to Section 4.4, such right of way and licence shall include the full power, right and liberty to excavate for, install, place, construct, renew, alter, repair, maintain, operate, use, abandon, remove or replace its infrastructure, in whole or in part, and to enter upon, along, across, over or under the Lands or Building and have continual access to the Energy System, with or without vehicles, supplies, machinery or equipment, for any of the purposes set out in this Agreement, and to clear such portion of the Lands and keep it cleared of obstructions which, in the opinion of FEI, acting reasonably, may

interfere with any of the rights granted to FEI herein. The District may direct, in its discretion, FEI to use alternate routing for any Environmental or other reasonable purpose.

FEI covenants and agrees with the District not to do or knowingly permit to be done anything which may, in the opinion of the District acting reasonably, damage or interfere with the Building or impair the operating efficiency thereof or create any hazard.

#### 4.2 CONDITION OF LAND

The District represents and warrants to FEI that as of the Effective Date:

- (a) to the best of the District's knowledge, the Lands are free of Contaminants other than those specifically identified in the reports provided by the District to FEI and listed in Schedule C; and
- (b) there are no actions, proceedings, investigations, claims (including remediation cost recovery claims) pending, or to the knowledge of the District, threatened, that would interfere with FEI's access rights pursuant to Section 4.1.

#### 4.3 PERMITS

FEI will obtain and maintain at its own expense all Permits necessary for the Design and Construction and the Services.

#### 4.4 SAFETY, SECURITY AND BUILDING ACCESS

Notwithstanding anything to the contrary in this Agreement, FEI will adhere, and will cause all persons for whom it is responsible under this Agreement (including, without limitation, the Contractor) to adhere to the District Site Rules for Contractors.

#### 4.5 REMEDIATION

FEI shall promptly remediate any Disclosed Contaminants on the Lands as required by applicable Law that result from, or are Released as a result of the Design and Construction or the Services, except to the extent caused or contributed to by the District's negligence. In the event that Contaminants on the Lands, other than Disclosed Contaminants, are discovered by FEI, FEI will promptly notify the District of such discovery and the Parties will review the impact of such discovery, if any, on the Design and Construction or the Services.

### **ARTICLE 5 - SERVICE PROVISION**

#### 5.1 PROVISION OF SERVICE

Subject to the terms and conditions of the Agreement, FEI will provide the Services to the District throughout the Term.

## 5.2 SERVICE MONITORING AND REVIEW

The Parties acknowledge that FEI may be required from time to time to prepare and submit reports to the BCUC concerning the operation and performance of the Energy System, and the District shall provide FEI with reasonable cooperation in relation to the preparation of such reports.

## 5.3 STANDARD OF PERFORMANCE

In performing the Services, FEI will:

- (a) use only qualified personnel and exercise the same degree of care, skill and supervision as would be exercised by a reasonable and prudent owner experienced in performing like services;
- (b) perform the Services in accordance with all applicable Laws;
- (c) perform the Services in accordance with ongoing industry standards and codes of practice; and
- (d) without limiting the effect of the foregoing, abide by any standards of performance in relation to the Services that the BCUC may set from time to time according to the provisions of the UCA.

## 5.4 INTERRUPTION

No interruption of any of the on-site and off-site services, utilities and amenities provided by FEI to the Building will, except to the extent, if any, caused by any wrongful or negligent act of FEI or any person for whom FEI is responsible at law, render FEI liable to the District or any person claiming through or under the District, or relieve the District from any of its obligations under this Agreement. Notwithstanding the foregoing, FEI will use all reasonable diligence to remedy any such interruption if it is within its power and obligation to do so.

# **ARTICLE 6 - ENERGY SYSTEM MAINTENANCE AND OPERATION**

## 6.1 MAINTENANCE AND REPAIR OF ENERGY SYSTEM

Subject to Section 6.2, FEI will perform the Services and otherwise maintain or cause to be maintained and repaired the Energy System throughout the Term:

- (a) in accordance with the Energy System design and operating specifications and requirements as established by the qualified engineers engaged by FEI in the design and construction of the Energy System, and the equipment manufacturers;
- (b) in a good and workman-like manner using qualified workers, and in accordance with sound and currently accepted industry standards and codes of practice normally employed, at the time and place of performance, in projects of a similar type and nature;
- (c) to ensure operational compatibility with the Building System;

- (d) in a safe and environmentally sound manner, and in accordance with all applicable Laws; and
- (e) in accordance with the terms of this Agreement.

FEI will not delay repair of the Energy System for any reason, including as a result of a dispute with the District in relation to the costs and expenses of repair pursuant to Section 6.2.

## 6.2 REPAIR DAMAGE

The District will be responsible for all costs and expenses incurred by FEI in respect of any damage to the Energy System caused by or resulting from:

- (a) the careless or wilful damage to the Energy System by the District or its agents or other persons for whom at law the District is responsible; or
- (b) damage caused to the Energy System as a result of the negligent acts or omissions of the District, its agents or those for whom in law the District is responsible.

## **ARTICLE 7 - CHARGES**

### 7.1 MONTHLY CHARGES

The District throughout the Term commencing on the Commission Date in accordance with this Article 7 will pay to FEI when due for the Thermal Energy that FEI delivers and meters to the Building according to the rates set out in the Energy System Rate Development Agreement plus all applicable taxes (including harmonized sales tax applicable thereon) and any imposed taxes levied after the Commission Date by a government or regulatory agency that are related to the Energy System (including, but not limited to capital taxes or royalties) and any other payments due and owing by the District under this Agreement.

### 7.2 MONTHLY STATEMENT

FEI will, within 15 days following the end of each month, deliver to the District a statement setting out the Monthly Charges including all applicable taxes payable for that month.

### 7.3 PAYMENT

The District will pay the full amount specified in each statement provided to it in accordance with Section 7.2 within 30 days of receipt of such statement. All amounts payable to FEI will be made by cheque mailed to FEI at its address for service specified in Section 20.5.

### 7.4 PAYMENT DUE

Subject to Section 14.1, the obligation of the District to pay the Monthly Charges continues whether or not the Energy System is being used to provide the Building with its energy needs for space and ventilation heating, cooling and domestic hot water use.

#### 7.5 ARREARS TO BEAR INTEREST

If any amount owing to FEI or the District is not paid on or before the date on which it is due, a late payment charge of 1.5% per month will be assessed each month on all outstanding balances not paid by the due date.

### **ARTICLE 8 - OWNERSHIP OF THE ENERGY SYSTEM**

Notwithstanding the payments made by the District to FEI under this Article 8, any provision of this Agreement, any degree of annexation or affixation, or rule of law or equity to the contrary the District will have no proprietary interest in the Energy System which is, and shall remain, the property of FEI and may be used by FEI in its business or removed in whole or in part as it may see fit, and for any of such purposes, and FEI may enter in, upon and under all the Lands for the purposes of the maintenance, renewals, repair, removal or operation of the Energy System or any part thereof; provided that FEI shall not leave any part of the Energy System in such a state as to constitute a nuisance or a danger to the public through neglect, non-use and want of repair, and provided further that nothing in this clause shall nullify or otherwise impact or invalidate in any way the District's rights under Article 15 to purchase the Energy System.

### **ARTICLE 9 - ENVIRONMENTAL ATTRIBUTES**

#### 9.1 ENVIRONMENTAL ATTRIBUTES

All right, title and interest now existing or which may exist at any time in the future in the potential or actual commercial value of any Environmental Attributes that arise or accrue by virtue of the construction and operation of the Energy System will belong to the District. At the request of the District, FEI will reasonably cooperate with the District in applying for and assigning any Environmental Attributes to the District.

#### 9.2 GRANTS

Any grants from any Governmental Authority, a Crown Corporation or non-governmental authority that may be derived from a reduction in energy consumption by the Building will belong to the District.

### **ARTICLE 10 - REPRESENTATIONS AND WARRANTIES**

#### 10.1 DISTRICT'S REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties contained in this Agreement, the District hereby represents and warrants to FEI as follows and acknowledges that FEI is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) the District has the full right, power and authority to enter into this Agreement;

- (b) all necessary action on the part of the District has been taken to authorize and approve the execution and delivery of this Agreement and the performance by the District of its obligations hereunder;
- (c) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to the District as of the date of this Agreement;
- (d) the District is not party to any action, suit or legal proceeding, actual or, to the knowledge of the District, threatened, and there are no circumstances, matters or things known to the District which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or, to the knowledge of the District, threatened against the District before or by any Governmental Authority, which could affect the District's ability to perform its obligations under this Agreement; and
- (e) no person, firm or corporation has or will have as of the Commission Date, any agreement, right, or option or right capable of becoming an agreement, right, or option for the purchase or acquisition of the Energy System.

## 10.2 FEI'S REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties contained in this Agreement, FEI hereby represents and warrants to the District as follows and acknowledges that the District is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) FEI has the full right, power and authority to enter into this Agreement;
- (b) all necessary corporate action on the part of FEI has been taken to authorize and approve the execution and delivery of this Agreement and the performance by FEI of its obligations hereunder;
- (c) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to FEI as of the date of this Agreement;
- (d) FEI is not party to any action, suit or legal proceeding, actual or threatened, and there are no circumstances, matters or things known to FEI which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or threatened against FEI before or by any Governmental Authority, which could affect FEI's ability to perform its obligations under this Agreement; and
- (e) FEI has or will have all permits, licenses, authorizations and other documentation required for the operation of the Energy System after the Commission Date; and
- (f) FEI has all the required expertise to fulfill its obligations under this Agreement.

### 10.3 DELEGATION AND SUBCONTRACTING

FEI may delegate and subcontract its obligations under this Agreement with respect to Design and Construction and Services to any contractor, consultant, agent or representative provided that FEI shall be fully responsible for the acts and omissions of such persons and those either directly or indirectly employed by them to the same extent as FEI for its own acts or omissions.

## **ARTICLE 11 - BCUC ACCEPTANCE**

### 11.1 REGULATORY REVIEW TERMINATION

Subject to Section 11.3, either Party may terminate this Agreement if within 90 days following the Effective Date, this Agreement and the Energy System Rate Development Agreement, including the Market Rate and the SD37 Rate Rider as defined in that Agreement have not been accepted for filing by the BCUC (such acceptance being herein called "BCUC Acceptance").

### 11.2 REGULATORY FILING

FEI, on behalf of itself and the District, and at its own cost, shall file the Agreement with the BCUC within a reasonable time after the Effective Date. FEI shall take all steps reasonably required to secure BCUC Acceptance, which shall consist of those procedural steps related to filing the Agreement and providing argument and witnesses in support of filing.

### 11.3 TERMINATION

A Party entitled to terminate under Section 11.1 must do so by giving notice to terminate to the other Party at any time after the right to terminate arises pursuant to Section 11.1, and prior to:

- (a) the date of issuance of the BCUC Acceptance; and
- (b) the date that is 90 days after the Effective Date.

### 11.4 EFFECT OF BCUC ACCEPTANCE

The Parties acknowledge that upon BCUC Acceptance, the Services will be subject to regulation by the BCUC under the UCA, and will form another class of service that FEI provides as a public utility. The Parties acknowledge that the terms of the UCA may supersede the terms and conditions of this Agreement.

## **ARTICLE 12 - INDEMNITY**

### 12.1 FEI'S INDEMNITY

Without limiting any other obligations of FEI provided herein, FEI will indemnify, defend, and save harmless the District and its trustees, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including the full amount of all legal fees and expenses on a

solicitor-client basis) which may be paid by, incurred by, or asserted against the District or its directors, officers, employees, agents, successors, or assigns, arising from or in connection with:

- (a) the breach or non-performance by FEI of any of its obligations or warranties hereunder; or
- (b) the negligence or wilful misconduct of FEI, its employees, contractors or agents in respect of the Energy System, and in the performance of the obligations of FEI pursuant to this Agreement,

excluding only such of the foregoing as arise from the fraud, negligence or wilful misconduct of the District or its trustees, officers, directors, members, employees, contractors or agents, or the breach or non-performance by the District of any of its obligations or warranties hereunder.

## 12.2 DISTRICT'S INDEMNITY

Without limiting any other obligations of the District provided herein, the District will indemnify, defend, and save harmless FEI, its Affiliates and their respective shareholders, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including the full amount of all legal fees and expenses on a solicitor-client basis) which may be paid by, incurred by, or asserted against FEI, its Affiliates or their respective shareholders, directors, officers, employees, agents, successors, or assigns, arising from or in connection with:

- (a) the breach or non-performance by the District of any of its obligations or warranties hereunder; or
- (b) the negligence or wilful misconduct of the District, its employees, contractors or agents in respect of the Energy System, and in the performance of the obligations of the District pursuant to this Agreement,

excluding only such of the foregoing as arise from the fraud, negligence or wilful misconduct of FEI or its Affiliates or any of their respective officers, directors, members, employees, contractors or agents, or the breach or non-performance by FEI of any of its obligations or warranties hereunder.

## 12.3 CONSEQUENTIAL LOSS

In no event will the District or FEI or any of their respective officers, directors, employees, contractors or agents be liable to the other Party for any indirect or consequential loss, cost or expense whatsoever, including any loss of profits, revenues or other economic loss, suffered by the other Party or its officers, directors, employees, contractors or agents.

## 12.4 SURVIVAL OF INDEMNITY

The indemnity of each of the District and FEI provided under this Article 12 will survive the Term of this Agreement.

## 12.5 ENVIRONMENTAL INDEMNITY BY THE DISTRICT

The District will indemnify and save harmless FEI, its Affiliates, directors, officers, shareholders, employees, agents, successors and permitted assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants (but not including Disclosed Contaminants) and remediation of the Lands and any affected adjacent property) (collectively, "FEI Losses") which may be paid by, incurred by or asserted against FEI, its Affiliates and their respective directors, officers, shareholders, employees, agents, successors or permitted assigns, arising from or in connection with any Contaminants (but not including Disclosed Contaminants) existing on the Lands prior to the Commission Date or brought onto the Lands or Released onto the Lands by the District or any person for whom it is in law responsible, except to the extent the FEI Losses suffered were caused or contributed to by any act or omission of FEI or any person for whom FEI is in law responsible after FEI had knowledge of the Contaminants.

## 12.6 ENVIRONMENTAL INDEMNITY BY FEI

FEI will indemnify and save harmless the District, its Affiliates and their respective trustees, directors, officers, employees, agents, successors and permitted assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the Lands and any affected adjacent property) (collectively, "District Losses") which may be paid by, incurred by or asserted against the District, its Affiliates, and their respective trustees, directors, officers, employees, agents, successors or permitted assigns, arising from or in connection with any Contaminants brought onto the Lands or any Disclosed Contaminants Released onto the Lands by FEI or any person for whom it is in law responsible, except to the extent the District Losses suffered were caused or contributed to by any act or omission of the District or any person for whom the District is in law responsible after the District had knowledge of the Contaminants.

## **ARTICLE 13 - INSURANCE**

### 13.1 FEI INSURANCE COVERAGE.

- (a) FEI will obtain and maintain at its own expense throughout the Term, Commercial General Liability Insurance for bodily injury, death and property damage in the minimum amount of five million (\$5,000,000) dollars per occurrence. The policy will contain a cross liability provision and will be maintained for a period ending no sooner than 12 months after the expiry or termination of this Agreement.
- (b) FEI will be responsible for the full amount of all premiums and deductibles required under this Section 13.1. All policies required herein must be effective at the Commission Date. Insurance will be purchased from insurers registered and licensed to underwrite

insurance in British Columbia. Policies will contain waivers of subrogation against the District and all its officers, directors, members, employees, contractors and agents.

### 13.2 DISTRICT INSURANCE COVERAGE

- (a) The District will obtain and maintain at its own expense throughout the Term Commercial General Liability Insurance for bodily injury, death and property damage in the minimum amount of five million (\$5,000,000) dollars per occurrence. The policy will contain a cross liability provision and will be maintained for a period ending no sooner than 12 months after the expiry or termination of this Agreement.
- (b) The District will be responsible for the full amount of all premiums and deductibles required under this Section 13.2. All policies required herein must be effective at the date of this Agreement. Insurance will be provided by the Provincial self-insured program. Policies will contain waivers of subrogation against FEI and all its officers, directors, employees, contractors and agents.

### 13.3 PRIORITY

FEI will ensure that the District is an additional insured under the insurance to be obtained and maintained pursuant to Section 13.1. The District will ensure that FEI is an additional insured under the insurance to be obtained and maintained pursuant to Section 13.2. In the event of a claim, the insurance carried by the Party responsible for actions which give rise to such claim will be the primary insurance with respect to such claim.

## **ARTICLE 14 - DEFAULT**

### 14.1 DEFAULT BY FEI

- (a) FEI will be in default under this Agreement if FEI is in breach of a material term, covenant, agreement, condition or obligation imposed on it under this Agreement and fails to cure such default within ten (10) days after receipt of written notice thereof from the District, or, if such default is not capable of being cured within such ten (10) day notice period, fails to commence in good faith the curing of such default upon receipt of such written notice of default from the District and to continue to diligently pursue the curing of such default thereafter until cured. For the purposes of this Section 14.1, Section 4.4 is hereby deemed to be a material term of this Agreement.
- (b) If FEI is in default of this Agreement, the District may at its option and without liability therefore or prejudice to any other right or remedy it, including under the UCA, may have suspend or refuse to make any payments due hereunder until the default has been fully remedied, and no such suspension or refusal will relieve FEI from any of its obligations under this Agreement.
- (c) In the event the default is not fully remedied within thirty (30) days of receipt by FEI of written notice thereof from the District, the District may, at its option, undertake the necessary steps to remedy FEI's default at FEI's sole expense, which reasonable costs

shall be deducted from the Monthly Charges, and such actions will not relieve FEI from any of its obligations under this Agreement or, at its option, and without any liability, terminate this Agreement without prejudice to any other right the District may have hereunder or at law or otherwise.

#### 14.2 DEFAULT BY THE DISTRICT

- (a) The District will be in default under this Agreement if the District fails or refuses to make any payment due to FEI by the District under this Agreement within thirty (30) days of receiving written notice from FEI after the date that payment is due or if the District is in breach of a material term, covenant, agreement, condition or obligation imposed on it under this Agreement and fails to cure such default within ten (10) days after receipt by the District of written notice thereof from FEI or, if such default is not capable of being cured within such ten (10) day notice period, fails to commence in good faith the curing of such default forthwith upon receipt of such written notice thereof from FEI and to continue to diligently pursue the curing of such default thereafter until cured.
- (b) If the District is in default of this Agreement, FEI may at its option and without liability therefore or prejudice to any other right or remedy it may have, including under the UCA, cease performing the Services and no such actions will relieve the District from any of its obligations under this Agreement.
- (c) In the event the default by the District is not fully remedied within thirty (30) days of receipt by the District of written notice from FEI, FEI may undertake the necessary steps to remedy the District's default at the District's sole expense and such action will not relieve the District from any of its obligations under this Agreement or, at its option, and without any liability, take whatever steps necessary to shut down the Energy System and terminate this Agreement without prejudice to any other right FEI may have hereunder or at law or otherwise.

#### 14.3 CROSS DEFAULT

- (a) If any Building experiences a Service Interruption at any time, the District may deliver a notice of such Service Interruption to FEI (a "Service Interruption Notice" to FEI);
- (b) If a Service Interruption continues for a period of 48 consecutive hours after the delivery of a Service Interruption Notice pursuant to Section 14.3(a), the District may deliver a notice of such continuing Service Interruption to FEI (a "Continuing Service Interruption Notice");
- (c) If a Service Interruption continues for a period of 120 consecutive hours after the delivery of a Continuing Service Interruption Notice, the District may at its option deliver a notice of such continuing Service Interruption to FEI (a "Service Failure Notice"); Within 60 days of either:
  - (i) the District's delivery of a Service Failure Notice pursuant to Section 14.3(c); or

- (ii) the District's delivery of a Continuing Service Interruption Notice pursuant to Section 14.3(b) that constitutes the fifth or greater Continuing Service Interruption Notice delivered in that calendar year;

the District may, at its option and without liability:

- (iii) terminate this Agreement without prejudice to any other right the District may have hereunder at law or otherwise; or
  - (iv) terminate the Energy System Rate Development Agreement and all Energy System Service Agreements (inclusive of this Agreement), without prejudice to any other right the District may have hereunder at law or otherwise.
- (d) For greater certainty, this Agreement shall be deemed to be terminated in the event that the District exercises its right to terminate all Energy System Service Agreement under another Energy System Service Agreement.

#### 14.4 SURVIVAL

Upon expiry or earlier termination of this Agreement for any reason, all claims, causes of action or other outstanding obligations remaining or being unfulfilled as of the expiry or termination of this Agreement and all of the provisions of this Agreement relating to the obligation or either the Parties to account to or indemnify the other and to pay to the other any amounts owing as at the date of expiry or termination in connection with this Agreement will survive such expiry or termination.

### **ARTICLE 15 – EXPIRY AND TERMINATION**

#### 15.1 EXPIRY

Upon expiry of the Term, unless otherwise agreed between the Parties and subject to agreement by the BCUC (if required pursuant to applicable Laws), the District may, at its option and by written notice to FEI within 30 days following the termination:

- (a) require FEI to remove the Energy System at FEI's cost in accordance with Section 15.5; or
- (b) acquire the Energy System from FEI at the Adjusted Energy System Purchase Price.

#### 15.2 TERMINATION OF THE ENERGY SYSTEM RATE DEVELOPMENT AGREEMENT

- (a) If the Energy System Rate Development Agreement is terminated as a result of the adoption, approval or implementation of a thermal energy rate tariff by the BCUC, this Agreement will automatically terminate effective as of the date of termination of the Energy System Rate Development Agreement;
- (b) If the Energy System Rate Development Agreement is terminated for cause by the District, this Agreement will be deemed to have been terminated pursuant to Section

14.1(c) as of the date of termination of the Energy System Rate Development Agreement, and Section 15.3 shall apply; and

- (c) If the Energy System Rate Development Agreement is terminated for cause by FEI, this Agreement will be deemed to have been concurrently terminated pursuant to Section 14.2(c) as of the date of termination of the Energy System Rate Development Agreement, and Section 15.4 shall apply.

### 15.3 TERMINATION BY THE DISTRICT FOR CAUSE

If the District terminates this Agreement pursuant to Sections 14.1(c) or 14.3, the District may, at its option and by written notice to FEI within 30 days following the termination:

- (a) require FEI to remove the Energy System, at its own cost, in accordance with Section 15.5; or
- (b) acquire the Energy System from FEI at the Adjusted Energy System Purchase Price.

### 15.4 TERMINATION BY FEI FOR CAUSE

If FEI terminates this Agreement pursuant to Section 14.2(c), FEI may, at its option and by written notice to the District:

- (a) remove the Energy System, at its own cost, in accordance with Section 15.5; or
- (b) require the District to purchase the Energy System from FEI at the Adjusted Energy System Purchase Price.

### 15.5 REMOVAL OF THE ENERGY SYSTEM

If FEI is required to remove the Energy System pursuant to Sections 15.1(a), 15.3(a) or 15.4(a) or otherwise upon expiry of this Agreement, FEI shall promptly remove those portions of the Energy System located within the Building and at surface level at FEI's cost, and FEI shall perform such removal activities using standards of performance that are equivalent to those that apply to the performance of the Services under this Agreement. Any portion of the Energy System not removed by FEI prior to the 30<sup>th</sup> day following the termination or expiry of the Agreement will, as of such day, be deemed to be automatically transferred to the District, and become the property of the District, all at no cost to the District.

### 15.6 ACQUISITION OF THE ENERGY SYSTEM

If the District elects to acquire the Energy System pursuant to Sections 15.1(b), 15.3(b) or 15.4(b):

- (a) the District shall pay the Adjusted Energy System Purchase Price to FEI within the later of 30 days of (i) the effective date of expiration or termination, and (ii) confirmation of the Adjusted Energy System Purchase Price; and

- (b) FEI will promptly execute and deliver any documents and records reasonably required by the District to effect and facilitate the transfer of the Energy System to the District, including bills of sale, operation and maintenance manuals and warranties, and will use reasonable commercial efforts to obtain any consents and approvals that may be required in relation to the transfer (including, without limitation, BCUC approval), provided that (i) FEI's obligations under this Section 15.6(b) shall arise only upon FEI's receipt of all amounts due and owing to FEI from the District under this Agreement, and (ii) during the period between the expiration or termination of the Agreement and FEI's receipt of amounts due and owing to FEI from the District under this Agreement, FEI shall continue to maintain, or shall permit the District to maintain, the Energy System in good working order.

Notwithstanding the foregoing, the Parties acknowledge and agree that FEI's ability to sell or otherwise transfer its interest in and to the Energy System to the District may be subject to BCUC approval under applicable Laws.

## **ARTICLE 16 - NON-COMPLIANCE AND ENVIRONMENTAL**

### 16.1 NOTIFICATION OF NON-COMPLIANCE

FEI or the District (as applicable, the "Notifying Party") will promptly, upon becoming aware thereof, notify the other Party in writing of:

- (a) a Release of a Contaminant or any other occurrence or condition in the Energy System, the Lands or any adjacent property which could subject the other Party to any fines, penalties, orders or proceedings under applicable Laws;
- (b) any charge, order, investigation or notice of violation or non-compliance issued against the Notifying Party relating to the Energy System, or the operation of the Energy System, under any applicable Laws; and
- (c) any notice, claim, action or other proceeding by any third party against the Notifying Party in respect of the Design and Construction or the Services or concerning the Release or alleged Release of any Contaminants at or from the Energy System or the Lands.

### 16.2 NOTIFICATION BY FEI

FEI will notify the appropriate Governmental Authorities of any Release of any Contaminants at or from the Energy System in accordance with applicable Laws. The District may, but is not obligated to, notify the appropriate Governmental Authorities of any Release of any Contaminants at or from the Energy System in accordance with applicable Laws.

### 16.3 OWNERSHIP OF CONTAMINANTS

Notwithstanding any rule of law to the contrary, any Disclosed Contaminant Released from the Energy System, or any top soil, earth or other material containing a Contaminant for which FEI is responsible pursuant to Section 4.5 that is removed from the Lands by FEI or any person for

whom it is in law responsible, will be and remain the sole and exclusive property and responsibility of FEI and will not become the property of the District, notwithstanding the degree of its affixation to the Lands and notwithstanding the expiry or earlier termination of this Agreement.

#### 16.4 SURVIVAL OF OBLIGATIONS

The obligations of the Parties under this Article 16 will survive the expiry or termination of this Agreement.

### **ARTICLE 17 - FORCE MAJEURE**

#### 17.1 SUSPENSION

Subject to the other provisions of this Article 17, if either Party is unable or fails by reason of Force Majeure to perform in whole or in part any obligation or covenant set forth in this Agreement, with the exception of unpaid financial obligations, such inability or failure will be deemed not to be a breach of such obligation or covenant and the obligations of both Parties under this Agreement will be suspended to the extent necessary during the continuation of any inability or failure so caused by such Force Majeure.

#### 17.2 DEFINITION OF FORCE MAJEURE

For purposes of this Agreement, the term "Force Majeure" means any event or occurrence not within the control of the Party claiming Force Majeure and which by the exercise of reasonable diligence such Party is unable to prevent or overcome, including any acts of God, including lightning, earthquakes, storms, washouts, landslides, avalanches, fires, epidemics and floods; strikes, lockouts or other industrial disturbances; acts of the Queen's or public enemies, sabotage, wars, blockades, insurrections, riots or civil disturbances, fires, explosions, breakages of or accidents to machinery or lines of pipe; the laws, orders, rules, regulations, acts or restraints of any court or governmental or regulatory authority. For the purposes of this Article 17, a Party is deemed to have control over the actions or omissions of those persons to which it, its agents, contractors or employees, have delegated, assigned or subcontracted its obligations and responsibilities. For greater certainty, a Force Majeure shall not include any weather related events that do not exceed 25 year events as recorded by Environment Canada or as otherwise may be determined by the BCUC from time to time.

#### 17.3 EXCEPTIONS

Neither Party will be entitled to the benefit of Section 17.1 under any of the following circumstances:

- (a) the Energy System not being Commissioned;
- (b) to the extent that the inability or failure was caused by the negligence or contributory negligence of the Party claiming Force Majeure;

- (c) to the extent that the inability or failure was caused by the Party claiming Force Majeure having failed to diligently attempt to remedy the condition by taking all reasonable acts and to resume the performance of such covenants and obligations with reasonable dispatch;
- (d) if the inability or failure was caused by lack of funds or is in respect of any amount due hereunder; or
- (e) unless, as soon as possible after the happening of the occurrence relied upon or as soon as possible after determining that the occurrence was in the nature of Force Majeure and would affect the claiming Party's ability to observe or perform any of its covenants or obligations under this Agreement, the claiming Party will have given to the other Party notice to the effect that the claiming Party is unable by reason of Force Majeure (the nature whereof will be therein specified) to perform the particular covenants or obligations.

#### 17.4 RESUMPTION OF OBLIGATIONS

The Party claiming Force Majeure will give notice to the other Party, as soon as possible after the Force Majeure condition is remedied, to the effect that the same had been remedied and that such Party has resumed, or is then in a position to resume, the performance of its suspended covenants and obligations hereunder either in whole or in part.

#### 17.5 SETTLEMENT OF LABOUR DISPUTES

Notwithstanding any of the provisions of this Article 17, and subject to Section 17.3, the settlement of labour disputes or industrial disturbances is entirely within the discretion of the particular Party involved and the Party may make settlement of it at the time and on terms and conditions as it may deem to be advisable and no delay in making settlement will deprive the Party of the benefit of Section 17.1.

### **ARTICLE 18 - CONDITIONS PRECEDENT**

#### 18.1 CONDITIONS PRECEDENT OF FEI

The obligation of FEI to carry out the transactions contemplated by this Agreement is subject to fulfillment of the following conditions on or before such date as may be specified, which is for the sole benefit of FEI, and which may be waived by FEI in accordance with Section 18.2:

- (a) FEI obtaining the approval by its board of directors of the terms and conditions of this Agreement on or before the 30th day following the Effective Date, provided that if such approval cannot be obtained by this date due to the fact that the board of directors has not yet considered the transaction FEI reserves the right to extend the period of time to that date when the board next convenes.

## 18.2 FEI NOTICE OF WAIVER

If a condition set out in Section 18.1 has not been satisfied on or before the date as may be specified for its fulfillment, FEI may waive compliance with the condition in whole or in part, in its sole discretion, by written notice to the District, failing which delivery of written notice of satisfaction or waiver of such condition, this Agreement will, to the extent any further obligations of the Parties which remain unfulfilled, be null and void, without liability between the Parties hereto, and, neither Party will be under any further obligation to the other to complete the transactions or future transactions, as the case may be, contemplated by this Agreement.

## **ARTICLE 19 - DISPUTE RESOLUTION**

### 19.1 REFERENCE TO ARBITRATION

The Parties will attempt to resolve all disputes which may arise under, out of, in connection with or in relation to this Agreement by negotiation. They will provide full and timely disclosure to one another of all facts relevant to the disputes to facilitate those negotiations. If any such dispute remains unresolved, for any reason, fifteen (15) days after either Party requested the other Party to enter into negotiations to resolve it, or if the Parties agree to waive negotiations in respect of it, then either Party may submit that dispute for final resolution by arbitration administered by the British Columbia International Commercial Arbitration Centre (“BCICAC”) under its “Shorter Rules for Domestic Commercial Arbitration”. The seat of that arbitration will be Vancouver, British Columbia, Canada. The language of that arbitration will be English. Alternatively, the Parties may agree, within the 15 days referred to above, to submit that dispute for final resolution by arbitration in another manner.

### 19.2 BINDING DECISION

The decision of the arbitrator, regardless of what arbitration procedure is used, will, for all purposes of this Agreement, be final and binding on the Parties.

### 19.3 CONTINUATION OF SERVICES

Each of the Parties will perform all of its respective obligations under this Agreement notwithstanding the existence of any dispute that arises from time to time between the Parties in respect of any matter related to this Agreement or during the resolution of any dispute in accordance with this Article 19.

### 19.4 COSTS

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 case, the non-prevailing Party shall pay all costs and expenses of the arbitration, but not those of the prevailing Party.

## ARTICLE 20 - GENERAL

### 20.1 RESPONSIBILITY FOR COSTS

FEI's performance of any of its obligations under this Agreement, including without limitation the obligation to design, construct and install the Energy System as provided in Section 2.1, shall be at FEI's sole cost and expense, unless expressly provided otherwise in this Agreement;

### 20.2 EXERCISE OF DISCRETION

Where anything in this Agreement is identified as being in either Party's discretion, such Party will have the right to exercise such discretion in its own best interest without regard for the interest of the other Party.

### 20.3 COOPERATION

FEI and the District will at all times extend co-operation to each other to ensure the orderly management and operation of the Energy System.

### 20.4 SOLICITATION

Nothing in this Agreement precludes either Party from soliciting or entering into, other contracts with the other Party.

### 20.5 NOTICES

Any notice or other communication required or permitted to be given under this Agreement will be effective only if in writing and when it is actually delivered (which delivery may be by telecopy or other telecommunications device) to the Party for whom it is intended at the following address or such other address in British Columbia as such Party may designate to the other Party by notice in writing delivered in accordance with this Section 20.5:

(a) if to FEI:

FortisBC Energy Inc.  
10th Floor, 1111 West Georgia Street  
Vancouver, B.C.  
V6E 4M3

Attention: Gareth Jones  
Telephone: 250-380-5972  
Telecopy: 250-388-6876

(b) if to the District:

Board of Education of School District No. 37 (Delta)  
4585 Harvest Drive  
Delta, B.C.  
V4K 5B4

Attention: Frank Geyer  
Telephone: 604-952-5336  
Telecopy: 604-952-5375

Notwithstanding the foregoing, notices with respect to Force Majeure will be given in writing by telecopy, or orally in person or by telephone (to be confirmed by telecopy), to the person or persons designated from time to time by the Parties as the person or persons authorized to receive such notices.

## 20.6 CONFIDENTIALITY

The District and FEI will treat as confidential the terms of this Agreement and all Confidential Information (as defined below) and will at all times during the term of this Agreement and for a reasonable time thereafter hold the terms of this Agreement and all Confidential Information in confidence and neither Party will, without the prior written consent of the other Party, disclose or divulge the terms of this Agreement or any Confidential Information to any person, provided that nothing in this Section 20.6 will restrict or prevent either Party from making any disclosure of such terms or any Confidential Information:

- (a) which is reasonably necessary or desirable for such Party to carry out and give full effect to the terms, conditions and intent of this Agreement and the matters contemplated hereby;
- (b) which is required by any Law, including the Freedom of Information and Protection of Privacy Act (British Columbia);
- (c) to any Governmental Authority;
- (d) to the British Columbia Utilities Commission or other regulatory agency as part or in support of any regulatory application or submission;
- (e) to the directors, officers or employees of such Party or to an Affiliate of such Party or to the directors, officers or employees of an Affiliate of such Party;
- (f) to the professional advisors of such Party on the same terms of confidentiality;
- (g) which is already in the public domain; or
- (h) in connection with legal proceedings or steps being taken to remedy a breach or default under this Agreement by the other Party.

For the purposes of this Section 20.6, “Confidential Information” means proprietary information of either Party such as data, plans, drawings, manuals, or specifications which have been provided by such Party, its employees, contractors, agents, subcontractors, Affiliates to the other Party pursuant to this Agreement or proprietary information either Party conceived or developed by or for such Party concerning construction practices, operation and maintenance practices, agreements, marketing plans and strategies, profits, costs, pricing and systems of procedure (provided that “Confidential Information” does not include information which was disclosed to the receiving Party by a third Party (unless, to the knowledge of the receiving Party, the third Party is under an obligation of confidentiality to the other Party) or any information developed or conceived by the receiving Party without using the “Confidential Information” of the other Party).

#### 20.7 SEVERABILITY

If any provision of this Agreement is found or determined to be invalid, illegal or unenforceable it will be construed to be separate and severable from this Agreement and will not impair the validity, legality or enforceability of any other provisions of this Agreement, and the remainder of this Agreement will continue to be binding on the Parties as if such provision had been deleted.

#### 20.8 NO WAIVER

No waiver by either Party of any default by the other in the performance of any of the provisions of this Agreement will operate or be construed as a waiver of any other or future default or defaults hereunder, whether of a like or a different character. To be binding, any waiver of any provision of this Agreement must be clearly expressed in writing to be signed by the waiving Party.

#### 20.9 BURDEN AND BENEFIT

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

#### 20.10 GOVERNING LAW

This Agreement and all matters arising hereunder will be governed by the laws of British Columbia and the federal laws of Canada applicable in British Columbia.

#### 20.11 ENTIRE AGREEMENT

This Agreement contains the whole agreement between the Parties in respect of the subject matter hereof and there are no terms, conditions or collateral agreements express, implied or statutory other than as expressly set forth in this Agreement and this Agreement supersedes all of the terms of any written or oral agreement or understanding between the Parties.

#### 20.12 TIME OF ESSENCE

Time is of the essence of this Agreement.

#### 20.13 FURTHER ASSURANCES

Each Party will, at all times hereafter on demand by the other, execute and deliver or cause to be executed and delivered all such further documents and do all such further acts and things as may be reasonably requested by the other Party to evidence, carry out and give full effect to the intent and meaning of this Agreement and to assure the completion of the transactions contemplated hereby.

#### 20.14 AMENDMENTS TO BE IN WRITING

Except as set out in this Agreement, no amendment or variation of this Agreement will be effective or binding upon the Parties unless such amendment or variation is set out in writing and duly executed by the Parties.

#### 20.15 FACSIMILE

This Agreement may be executed by the Parties and transmitted by facsimile transmission and, if so executed, transmitted and received, this Agreement will for all purposes be effective as if the Parties had delivered and executed the original Agreement and each Party undertakes to provide the other Party with a copy of this Agreement bearing original signatures forthwith upon demand.

#### 20.16 SUBJECT TO LEGISLATION

Notwithstanding any other provision hereof, this Agreement and the rights and obligations of FEI and the District under this Agreement are subject to all present and future laws, rules, regulations and orders of any legislative body, governmental agency or duly constituted authority now or hereafter having jurisdiction over FEI or the District.

#### 20.17 EXPENSES

Each Party to this Agreement shall be responsible for the payment of all costs, expenses, legal fees and disbursements incurred or to be incurred by it in negotiating and preparing this Agreement and all documents required to be delivered under this Agreement and otherwise relating to the transactions contemplated by this Agreement.

#### 20.18 NO CONTRARY AGREEMENT

No Party shall enter into an agreement or other commitment with any person if such agreement or commitment has terms or provisions in conflict with or inconsistent with the terms of this Agreement or which could reasonably be expected to lead to actions or consequences that would result in the Party being in breach of the commitments and obligations of the Party pursuant to this Agreement unless such other agreement or commitment is expressly approved by the other Parties.

#### 20.19 NO PARTNERSHIP

Nothing herein shall be deemed or construed to create a joint venture, partnership, employment or agency relationship between the Parties for any purpose.

20.20 ASSIGNMENT

Neither Party may assign this Agreement or any of its rights or obligations under this Agreement, and FEI may not assign, transfer or sell all or any part of the Energy System, except:

- (a) with the consent of the other Party, such consent not to be unreasonably withheld, delayed or conditioned; or
- (b) in the case of FEI, to an Affiliate of FEI which is a "public utility" as defined in the *UCA* on notice to, but without the consent of, the District.

20.21 COUNTERPARTS

This Agreement may be executed in counterparts with the same effect as if the Parties had signed the same document. All counterparts will be construed together and will constitute one agreement.

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

**FORTISBC ENERGY INC.**

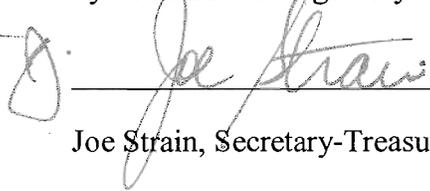
by its authorized signatory:

  
\_\_\_\_\_

Doug Stout,  
VP Energy Solutions & External Relations

**THE BOARD OF EDUCATION OF  
SCHOOL DISTRICT NO. 37 (DELTA)**

by its authorized signatory:

  
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Joe Strain, Secretary-Treasurer

# **SAMPLE SCHEDULE “A”**

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## **Energy System Description**

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### **Mechanical Equipment Plans and Specifications**

Equipment schedule:

- 1 boilers Mod Com 300 (By others)
- Pumps, piping, control valves and other equipment and accessories connected to the above equipment.
- BTU meters
- Control systems for the above mentioned equipment.

Prior to commencement of the Mechanical Equipment construction, FEI shall provide detailed drawings to the District for review and acceptance.

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## **SCHEDULE “B”**

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# **Delta School District Site Rules for Contractors**

## **Delta School District Site Rules for Contractors**

### **1.0 Safety**

- 1.1 For the purposes of this section, “Safety Regulations” means the rules, regulations, and practices required by WorkSafeBC.
- 1.2 The Contractor shall be solely responsible for site safety during the execution of all assigned construction and maintenance activities, including work performed by subcontractors and suppliers, and for compliance with the Safety Regulations, and shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the work.
- 1.3 If the District is of the reasonable opinion that the Contractor has not taken such precautions as are necessary to ensure compliance with the requirements of Clause 1.2, the District may take or order any remedial measures which it deems necessary, including stopping the performance of all or any portion of the work, and the District may use the employees of itself, the Contractor, any subcontractor or any other contractors to perform such remedial measures. The Contractor acknowledges and agrees that any failure by the Contractor to comply with the Safety Regulations shall constitute a default of the Contractor's contractual obligations and the District may issue a written notice instructing the Contractor to correct the default in the two (2) working days immediately following receipt of such notice.
- 1.4 The Contractor shall file any notices or any similar document (including, without limitation, a Notice of Project where applicable) required pursuant to the Safety Regulations. This duty of the Contractor will be considered to be included in the work and no separate payment therefore will be made to the Contractor.
- 1.5 The Contractor shall develop, maintain and supervise for the duration of the work a comprehensive safety program that will effectively incorporate and implement all required safety precautions. The program shall, as a minimum, respond fully to the Safety Regulations and general construction practices for the safety of persons or property, including without limitation the WorkSafeBC regulations that may be applicable (e.g. WHMIS, dust control, etc.).
- 1.6 The Contractor shall provide a copy of the safety program described in Clause 1.5 to the District prior to the commencement of the work and shall, at all times require, as far as it is reasonably practical to do so, that every employer and worker performing work in respect of the project complies with such program.
- 1.7 The Contractor shall arrange regular safety meetings at its expense, record the minutes of such meetings and maintain a complete file for review by the appropriate authorities.
- 1.8 The Contractor shall supply and maintain, at its own expense, at its office or other well-known place at the work site, safety equipment necessary to protect the workers and general public against accident or injury as prescribed by the governing authorities.
- 1.9 The Contractor shall supply and maintain all articles necessary for giving first-aid to any person who may be injured on the work site and shall establish an emergency procedure for the immediate removal of any injured person to a hospital or a doctor's care in accordance with the Safety Regulations.
- 1.10 The Contractor shall, as required under the Safety Regulations, promptly report all accidents of any sort arising out of or in connection with the performance of the work whether on or adjacent to the work site, giving full details and statements of witnesses. The District shall be copied on all accident reports and investigation reports.

## **2.0 Security and Access**

- 2.1 **Site and Building Access:** The District's Maintenance Services Department will issue gate and building keys, electronic access cards (complete with instructions as to how to arm/disarm the building intrusion alarm system and how to contact the alarm monitoring station) and identification badges for the Contractor to enter the site and building, disarm/arm the building intrusion alarm system, and access the portions of the site where the Contractor's work is taking place. The Contractor and all subcontractors must check in at the school office (if occupied by District staff) prior to entering other parts of the building. The access cards, keys and identification badges shall be promptly returned to the District at the end of the contract.
- 2.2 **Security:** The Contractor shall assume all responsibility for the security of the work site. The Contractor must ensure that all windows, doors and gates are secure and the building intrusion alarm system is armed (unless District staff are still in the building) at the end of the workday. The Contractor must also safeguard the rest of the building and/or site from access through possible open construction areas. Security doors shall at all times remain closed and shall not be propped open, even for a short time. The Contractor is responsible for any costs arising when the District's security runner services is called to attend a work site for security matters resulting from the Contractor's negligence.
- 2.3 **Normal School Hours:** Normal hours of operation for the District are 0730h-1600h Monday to Friday, excluding statutory holidays. For after-hours and weekend work, the Contractor must notify the District's Maintenance Services Department at least one business day in advance of the work.

## **3.0 Conduct**

- 3.1 **Noise Due to Construction or Maintenance Activities:** In accordance with the Delta Noise Bylaw 1906, "no person shall carry on or cause to be carried any construction work, reconstruction, alteration, repair or demolition of a building or structure, the operation of machinery, or works in connection with any excavation or highway before 07:00h or after 1900h and day of the week from Monday to Friday, inclusive, before 0900h or after 1700h on Saturdays, or at any time Sundays. The Contractor shall respect the classroom operations in the vicinity of the work site and as such will make every attempt to limit noisy work to times outside of classroom operation or to adequately dampen, silence and/or soundproof equipment that generates noise to mitigate disruption to the classrooms.
- 3.2 **Communication devices:** Radio and cell phone volume shall be at the minimum volume which is consistent with the ability to operate the device.
- 3.3 **Roadways:** All speed limits and other traffic rules must be obeyed and access to the roadways should not be impeded. Parking and secure storage of materials and equipment by the Contractor and subcontractors shall only be in designated areas only.
- 3.4 **Cleanliness:** The work site must be maintained for an orderly appearance on a daily basis. Trash and construction debris shall be contained at all times and removed from the work site weekly.
- 3.5 **Toilets:** All temporary toilets shall have their doors faced away from streets. In no cases shall a worker utilize any staff washroom or other staff facilities at the work site, except as otherwise agreed in writing by the District. Under no circumstances will workers be permitted to use student washrooms.
- 3.6 **Identification Badges:** All workers shall have a District-assigned identification badge that clearly indicates the company's name and the worker's name. It is to be worn whenever at the work site.

- 3.7 **Smoking:** Smoking is not permitted on District property.
- 3.8 **Alcohol/Drugs:** No alcoholic beverages or non-prescription drugs shall be brought or consumed at the work site.
- 3.9 **Animals:** No dogs or other animals, are permitted at the work site without the written consent of the District.
- 3.10 **Fitness for Work:** All workers must be fit for work at all times. The District retains the right to request individuals leave the work site if unfit for any reason including, without limitation, inebriation, taking drugs, injury, fatigue, rudeness or any other reason that may affect the quality of the work or represents a breach of these rules.
- 3.11 **Theft:** Workers who steal from occupants or the District shall be immediately ejected from the work site. The Contractor is responsible for all such thefts irrespective of whether the worker is an employee of the Contractor or a subcontractor.
- 3.12 **Discrimination and Harassment:** The District actively promotes a safe and secure school environment and as such does not tolerate violations of human rights legislation, including:
- (a) discriminatory acts against any person with respect to the work or school environment or any educational program or service provided to or by that person because of race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age of that person, or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person;
  - (b) all forms of actual, attempted or threatened physical harm directed at any person; or
  - (c) any form of sexual harassment such as unwelcome sexual advances with actual or implied work related consequences; unwelcome remarks, questions, jokes or innuendo of a sexual nature including sexist comments or sexual invitations; verbal abuse, intimidation or threats of a sexual nature; unwelcome leering, staring or making sexual gestures; whistling or catcalls; display of pornographic or other sexual materials; offensive pictures, graffiti, cartoons or sayings; unwanted physical contact such as touching, patting, pinching or hugging; and physical assault of a sexual nature

## **SCHEDULE “C”**

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### **List of Environmental Reports**

**ASBESTOS MATERIALS SURVEY  
AND RISK ASSESSMENT**

**OF**

**DELTA SCHOOL BOARD NON-SCHOOL  
FACILITY BUILDINGS  
Delta, BC**

**PREPARED FOR:**

**DELTA SCHOOL DISTRICT  
Maintenance Facility  
7186 Brown Street  
Delta, BC  
V4G 1G8**

**PREPARED BY:**

**ACM ENVIRONMENTAL CORPORATION  
#217 - 2323 Quebec Street  
Vancouver, BC  
V5T 4S7  
604-873-8599**

**January 2006**

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## **EXECUTIVE SUMMARY**

A.C.M. Environmental Corporation (ACM) was retained by the Delta School District to perform an Asbestos Materials Survey and Risk Assessment for six (6) various non-school facilities owned by the Delta School Board located within the district.

The assessment involved an inspection of all areas of the buildings excluding the roofs. The objective of the assessment was to identify the types and extent of asbestos containing materials within the buildings and any risks associated with the materials and the regular usage of these buildings.

The assessment was conducted using both visual and physical assessment techniques. Samples of materials suspected of containing asbestos were collected and forwarded, using proper chain of custody protocols, to Prezant Associates, Inc. for asbestos analysis. Asbestos sample results are located in Appendix A of this report.

In summary, the findings from the assessment conclude that asbestos was found within the construction materials within some of the buildings, however, no PCB or Mercury containing materials were found within any of the equipment of the buildings inspected.

Two types of asbestos containing materials were observed within three (3) of the six buildings inspected. The materials are linoleum/vinyl sheet flooring underlay felts and vinyl floor tile mastic materials. Within the context of the report, buildings have been detailed as to the locations of the asbestos containing materials, the content of asbestos where applicable, and the required procedures to be followed for removal of these materials, as required.

The hazardous materials survey was conducted using non-destructive and some limited destructive testing methods. Areas within walls were not inspected as access was not possible without causing extensive damage to the walls. It should be noted that there is a possibility of asbestos containing materials existing within inaccessible wall and ceiling cavities, and under sub-floors. Possible asbestos-containing materials which may exist in these areas may include but are not limited to: insulation materials (mechanical or construction), secondary layers of drywall or flooring, etc.

Roofing materials were not sampled at this time as the integrity of the waterproof membrane would be compromised, possibly voiding insurance coverage in the event of a water leak. If the roofing materials are to be disturbed during a renovation project, they must be sampled prior to the work taking place.

A random number of fluorescent lighting fixtures were opened up and inspected for possible PCB containing ballasts. No PCB containing ballasts were observed within the fluorescent lighting fixtures inspected, although some may exist, as not all fixtures were opened. No Mercury containing thermostat switches were observed within the buildings inspected.

## **INTRODUCTION**

A.C.M. Environmental Corporation (ACM) was retained by the Delta School District to perform an Asbestos Materials Survey and Risk Assessment for the six various non-school facilities owned by the Delta School Board located within the district. All areas within the buildings and any adjacent storage buildings were inspected and/or sampled during this survey.

The objective of the assessment was to identify the types and extent of asbestos containing construction materials within the accessible areas of the buildings. The assessment at this time involved an inspection of all areas of the buildings not including the roofing materials.

The surveys and assessments were conducted on January 9<sup>th</sup> and 10<sup>th</sup>, 2006 by Mr. James McArthur, ASCT, Environmental Technician, and Mr. Barry O'Regan, BST, ISO14001, EMS, IA, Project Manager for ACM. Forty-six (46) representative bulk samples of materials suspected of containing asbestos were collected from all 6 facilities inspected for analysis and are included as Appendix A of this report.

## **METHODOLOGY**

The hazardous materials survey was conducted using non-destructive and some limited destructive testing methods. Areas within walls were not inspected as access was not possible without causing extensive damage to the walls. It should be noted that there is a possibility of asbestos containing materials existing within inaccessible wall and ceiling cavities, and under sub-floors. Possible asbestos-containing materials which may exist in these areas may include but are not limited to: insulation materials (mechanical or construction), secondary layers of drywall or flooring, etc.

The U.S. Environmental Protection Agency (USEPA) Guidance Document was selected for use in this study (1). The document identifies factors associated with the "condition" and the "potential for disturbance or erosion" of asbestos containing materials. These factors help to define the fibre release potential of the suspect asbestos containing materials and were used in a qualitative evaluation of materials found in the surveyed areas. Recommendations have been substantiated by additional information utilized from other documentation cited in the Reference Section of this report.

The bulk samples of suspect asbestos containing materials were forwarded, using proper chain of custody protocols, to Prezant Associates, Inc. for asbestos analysis. The samples were analyzed using polarized light microscopy (PLM) with dispersion staining in accordance with U.S. EPA method 600/R-93/116, "Method for Determination of Asbestos in Bulk Building Materials".

Other hazardous materials were visually inspected and are noted in this report.

The survey relied on the abilities and experience of the surveyor to gain access and identify possible asbestos containing materials. All areas of the building were accessed during the assessment excluding the roof.

## **RESULTS & ASSOCIATED RISK LEVELS**

### **ASBESTOS**

#### **Tilbury Maintenance Building**

One type of asbestos containing material was identified during this building inspection survey which will or could be affected by any potential renovation or demolition activities: vinyl floor tile materials. A breakdown for the type of material is as follows:

##### **Vinyl Floor Tile Materials:**

Asbestos containing vinyl floor tile materials were observed on vestibule - 117 adjacent to the main entrance of the building on the 1<sup>st</sup> floor. The asbestos was observed in the backing mastic of the 12" vinyl floor tile materials which were grey in color with dark and white brushes. The 12" vinyl floor tiles which were blue in color and adjacent to the asbestos mastic tiles were found to have no asbestos in the mastic. The bulk sample of the asbestos containing vinyl floor tile was found to contain 3% Chrysotile asbestos in the mastic. The floor tile materials are presently in fair to good condition.

Prior to any activities taking place which could disturb the asbestos containing vinyl floor tile mastic materials, they must first be removed and disposed of in accordance with applicable regulations. The removal of the vinyl floor tile & mastic materials will pose a moderate risk of asbestos exposure to the workers involved, therefore as a minimum, MODERATE RISK asbestos work procedures will be required for the removal of the asbestos containing floor tile mastic materials.

#### **Resource Centre Building**

One type of asbestos containing material was identified during this building inspection survey which will or could be affected by any potential renovation or demolition activities: linoleum flooring materials. A breakdown for the type of material is as follows:

##### **Linoleum Flooring Materials:**

Asbestos containing linoleum flooring materials were observed within the Men's and Woman's Washrooms of the building. The asbestos was found within the backing felt of the green colored linoleum flooring materials. The bulk sample of the asbestos containing linoleum flooring materials was found to contain 30%

Chrysotile asbestos in the backing felt. The materials are presently in fair to good condition.

Prior to any activities taking place which could disturb the asbestos containing linoleum materials, they must first be removed and disposed of in accordance with applicable regulations. The removal of the linoleum flooring materials will pose a modified moderate to high risk of asbestos exposure to the workers involved, therefore as a minimum, MODIFIED MODERATE RISK asbestos work procedures will be required for the removal of the asbestos containing linoleum flooring materials.

### **Delview Adult Learning Centre**

One type of asbestos containing material was identified during this building inspection survey which will or could be affected by any potential renovation or demolition activities: vinyl sheet flooring backing felt. A breakdown for the type of material is as follows:

#### Linoleum Flooring Materials:

Asbestos containing Linoleum flooring materials were observed within the Men's and Woman's Washrooms of the building. The asbestos was found within the backing felt of the yellow colored linoleum flooring materials. The bulk sample of the asbestos containing linoleum flooring materials was found to contain 35% Chrysotile asbestos in the backing felt. The materials are presently in fair to good condition.

Prior to any activities taking place which could disturb the asbestos containing linoleum materials, they must first be removed and disposed of in accordance with applicable regulations. The removal of the linoleum flooring materials will pose a modified moderate to high risk of asbestos exposure to the workers involved, therefore as a minimum, MODIFIED MODERATE RISK asbestos work procedures will be required for the removal of the asbestos containing linoleum flooring materials.

### **District Administration Building**

No asbestos containing materials were observed within the building. Sample results and locations are listed in Appendix A.

### **Provincial Outreach & Adult Education Building**

No asbestos containing materials were observed within the building. Sample results and locations are listed in Appendix A.

### **Job Club Building**

No asbestos containing materials were observed within the building. Sample results and locations are listed in Appendix A.

### **POLYCHLORINATED BIPHENYLS (PCBs)**

A random number of fluorescent light ballasts were visually inspected for possible PCB containing ballasts. No PCB containing ballasts were observed within the fluorescent lighting fixtures inspected in the buildings, although some may exist, as not all fixtures were opened up.

PCB containing fluorescent light ballasts do not pose a risk to occupants of the buildings. If any PCB containing ballasts are encountered during any renovations of the buildings, they must be separated from the fixtures and disposed of properly in accordance with applicable regulations.

### **MERCURY THERMOSTATS**

No thermostats observed within the buildings were found to have Mercury containing switches within them. If any Mercury containing thermostat switches are encountered within the buildings during renovation or repair activities, they must be removed intact from the thermostats and disposed of properly in accordance with applicable regulations.

## **RECOMMENDATIONS**

Prior to beginning any work that may impinge upon the hazardous materials within the building, the following must be performed:

- 1.) All asbestos containing materials must be removed from the building, utilizing as a minimum, the risk levels and/or procedures discussed in the results section of this report.
- 2.) If any Mercury containing thermostat switches are encountered during any renovation or repair activities within the building, they must be removed and disposed of in accordance with applicable regulations.
- 3.) If any PCB containing ballasts are encountered during any renovation or repair activities within the building, they must be removed and disposed of in accordance with applicable regulations.
- 4.) If any suspect asbestos containing materials are encountered within inaccessible wall or ceiling cavities, or under floors, during renovation or demolition activities, the work in the immediate area must stop and the supervisor contacted for further direction.

### **STATEMENT OF LIMITATIONS**

The ACM report is intended to direct the Client's attention to recognised environmental conditions and to potential sources of environmental contamination. The findings and conclusion regarding contamination of the property are based solely on the extent of observations and information gathered during the assessment. Nothing in the report is intended to express any legal opinion upon environmental liabilities relating to the site or whether operations legally conformed with relevant legislative requirements.

Furthermore, it must be understood that changing circumstances in the physical environment, the use of the property, as well in changes in any substances stored, used, handled at the property, could alter radically the conclusions and information contained in this report. Therefore, it is important that the property is periodically re-evaluated and the client kept informed as to developments, which may impact the property. This report is not intended to be used as contract specifications.

### **A.C.M. ENVIRONMENTAL CORPORATION**

---

James McArthur, ASCT  
Environmental Technician

**REFERENCES**

- 1) USEPA. 1985. U.S. Environmental Protection Agency. "Guidance for Controlling Asbestos-Containing Materials in Buildings". Washington, DC: Office of Toxic Substances, USEPA.
- 2) Lory EE, Coin DC. 1981. "Management Procedure for Assessment of Friable Asbestos Insulating Material". Port Hueneme, CA: Civil Engineering Laboratory, Naval Construction Battalion Center.
- 3) Workers' Compensation Board of British Columbia, effective 15 April 1998, and all current amendments. Occupational Health and Safety Regulations.
- 4) 2002 Edition - Workers' Compensation Board of British Columbia. Safe Work Practices for Handling Asbestos.

**APPENDIX A**  
**Bulk Sample Results**



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

**ACM Environmental**  
2323 Quebec Street, Suite 211  
Vancouver, BC

Project Location: Delview Adult Learning Center

PAI Batch Number: **06-0102**  
Client Job Number: **3048-46**  
Number of Samples: **6**  
Turn Around Time: **10 day**

Batch Number:	06-0102	<b>ACM Environmental</b>
Lab Sample Number:	06000630	<b>3048-46</b>
Client Sample Number:	<b>3048-651</b>	<i>Delview Adult Learning Center</i>

#### Black pliable rubbery putty-like material

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
60% Rubber Particles  
35% Resin and Binder  
5% Mineral Fragments

**Comments:**

Batch Number:	06-0102	<b>ACM Environmental</b>
Lab Sample Number:	06000631	<b>3048-46</b>
Client Sample Number:	<b>3048-652</b>	<i>Delview Adult Learning Center</i>

#### L-1 Pale tan paint

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
100% Paint

**Comments:**

Sampled By: Client  
Received By: John McCaslin 1/18/2006  
Reviewed By: George McCaslin 1/25/2006

Analyzed By: Deitrie Hanson 1/25/2006



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

#### L-2 White crystalline powdery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Calcite Filler and Binder
		8% Perlite
		2% Mineral Fragments

Comments:

#### L-3 Off-white fibrous papery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
	97% Cellulose	3% Filler and Binder

Comments:

#### L-4 White crystalline powdery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Calcite Filler and Binder
		6% Perlite
		4% Mineral Fragments

Comments:

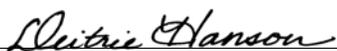
Batch Number: 06-0102	<b>ACM Environmental</b>
Lab Sample Number: 06000632	<b>3048-46</b>
Client Sample Number: 3048-653	<i>Delview Adult Learning Center</i>

#### Dull black thin strip of pliable rubbery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		85% Rubber Particles
		12% Calcite Filler and Binder
		3% Mineral Particles

Comments:

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

  
 Analyzed By: Deitrie Hanson 1/25/2006



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
 OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

## Bulk Asbestos Fiber Analysis

Batch Number:	06-0102	<b>ACM Environmental</b>
Lab Sample Number:	06000633	<b>3048-46</b>
Client Sample Number:	<b>3048-654</b>	<i>Delview Adult Learning Center</i>

### L-1 Black pliable rubbery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 90% Rubber Particles 10% Calcite Filler and Binder
--	---	---

**Comments:**

### L-2 White opaque pliable mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 80% Resin and Binder 15% Calcite Filler and Binder 5% Mineral Fragments
--	---	---

**Comments:**

### L-3 Off-white paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 100% Paint
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**Comments:**

### L-4 White crystalline powdery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 85% Calcite Filler and Binder 12% Perlite 3% Mineral Fragments
--	---	--

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 1/25/2006



NVLAP LAB CODE 200613-0



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### Bulk Asbestos Fiber Analysis

#### L-5 White fibrous papery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	97% Cellulose	3% Filler and Binder

Comments:

Batch Number: 06-0102	<b>ACM Environmental</b>
Lab Sample Number: 06000634	<b>3048-46</b>
Client Sample Number: 3048-655	<i>Delview Adult Learning Center</i>

#### L-1 Pale beige paint on white pliable vinyl material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Vinyl Filler and Binder
		10% Paint

Comments:

#### L-2 Tan and brown fibrous papery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	95% Cellulose	3% Filler and Binder
		2% Mineral Fragments

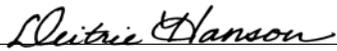
Comments:

#### L-3 White powdery fibrous material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	15% Cellulose	80% Talc Filler and Binder
		5% Mineral Fragments

Comments:

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

  
 Analyzed By: Deitrie Hanson 1/25/2006



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
 OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

**Bulk Asbestos Fiber Analysis**

Batch Number:	06-0102	<b>ACM Environmental</b>
Lab Sample Number:	06000635	<b>3048-46</b>
Client Sample Number:	<b>3048-656</b>	<i>Delview Adult Learning Center</i>

**L-1 Off-white, pale brown, and tan checkered opaque sheet vinyl tile material**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Plastic Particles
		10% Vinyl Filler and Binder

**Comments:**

**L-2 Pale beige fibrous papery backing**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>35% Chrysotile</b>	45% Cellulose	15% Talc Filler and Binder
		5% Filler and Binder

**Comments:**

**L-3 Golden tan mastic**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Resin and Binder
		10% Mineral Particles

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 1/25/2006



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

**ACM Environmental**  
2323 Quebec Street, Suite 211  
Vancouver, BC

Project Location: DSB Administration Building  
(Non School Facilities)

PAI Batch Number: **06-0098**  
Client Job Number: **3048-46**  
Number of Samples: **5**  
Turn Around Time: **10 day**

Batch Number:	06-0098	<b>ACM Environmental</b>
Lab Sample Number:	06000597	<b>3048-46</b>
Client Sample Number:	<b>3048-618</b>	<i>DSB Administration Building (Non School Facilities)</i>

**L-1 White hard tile material with black streaks**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
55% Calcite Filler and Binder  
40% Mineral Filler and Binder  
5% Vinyl Filler and Binder

**Comments:**

**L-2 Yellow resinous mastic**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
95% Resin and Binder  
3% Mineral Particles  
2% Filler and Binder

**Comments:**

Batch Number:	06-0098	<b>ACM Environmental</b>
Lab Sample Number:	06000598	<b>3048-46</b>
Client Sample Number:	<b>3048-619</b>	<i>DSB Administration Building (Non School Facilities)</i>

Sampled By: Client  
Received By: John McCaslin 1/18/2006  
Reviewed By: George McCaslin 1/23/2006

Analyzed By: Deitrie Hanson 1/23/2006



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

## Bulk Asbestos Fiber Analysis

### L-1 White paint

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		100% Paint

Comments:

### L-2 Pale tan fibrous opaque material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	40% Mineral Wool	20% Perlite
	16% Cellulose	20% Mineral Filler and Binder
		4% Filler and Binder

Comments:

Batch Number: 06-0098	<b>ACM Environmental</b>
Lab Sample Number: 06000599	<b>3048-46</b>
Client Sample Number: 3048-620	<i>DSB Administration Building (Non School Facilities)</i>

### L-1 Silver pliable metallic sheeting material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		100% Foil

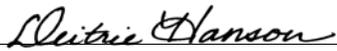
Comments:

### L-2 Dull orange and brown granular fibrous flaky material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	10% Wollastonite	55% Calcite Filler and Binder
	5% Cellulose	30% Vermiculite

Comments:

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/23/2006

  
 Analyzed By: Deitrie Hanson 1/23/2006



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### Bulk Asbestos Fiber Analysis

Batch Number:	06-0098	<b>ACM Environmental</b>
Lab Sample Number:	06000600	<b>3048-46</b>
Client Sample Number:	<b>3048-621</b>	<i>DSB Administration Building (Non School Facilities)</i>

#### L-1 White hard chalky powdery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		95% Calcite Filler and Binder
		3% Mineral Fragments
		2% Filler and Binder

Comments:

#### L-2 Pale brown and brown fibrous papery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
	99% Cellulose	1% Filler and Binder

Comments:

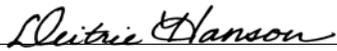
#### L-3 White powdery fibrous material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
	15% Cellulose	80% Talc Filler and Binder
		5% Mineral Fragments

Comments:

Batch Number:	06-0098	<b>ACM Environmental</b>
Lab Sample Number:	06000601	<b>3048-46</b>
Client Sample Number:	<b>3048-622</b>	<i>DSB Administration Building (Non School Facilities)</i>

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/23/2006

  
 Analyzed By: Deitrie Hanson 1/23/2006



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## Bulk Asbestos Fiber Analysis

**L-1 Pale grayish white hard tile material with gray streaks**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
 45% Calcite Filler and Binder  
 40% Mineral Filler and Binder  
 10% Vinyl Filler and Binder  
 5% Miscellaneous Particles

**Comments:**

**L-2 Black resinous mastic**

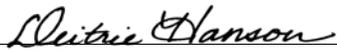
**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
 80% Asphalt Filler and Binder  
 15% Resin and Binder  
 5% Mineral Fragments

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/23/2006

  
 Analyzed By: Deitrie Hanson 1/23/2006



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### Bulk Asbestos Fiber Analysis

**ACM Environmental**  
2323 Quebec Street, Suite 211  
Vancouver, BC

Project Location: Provincial Outreach & Adult  
Education

PAI Batch Number: **06-0099**  
Client Job Number: **3048-46**  
Number of Samples: **8**  
Turn Around Time: **10 day**

Batch Number: 06-0099  
Lab Sample Number: 06000602  
Client Sample Number: **3048-623**

**ACM Environmental**  
**3048-46**  
*Provincial Outreach & Adult Education*

#### L-1 Dark gray granular material with debris

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
80% Mineral Particles  
15% Insect Parts  
5% Miscellaneous Particles

**Comments:**

#### L-2 Green powdery material

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
100% Plant Debris

**Comments:**

#### L-3 Off-white thick pliable rubbery mastic

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
92% Rubber Particles  
8% Paint

**Comments:**

This layer was ashed by lighter flame and no asbestos fibers were detected.

Sampled By: Client  
Received By: John McCaslin 1/18/2006  
Reviewed By: George McCaslin 1/24/2006

Analyzed By: Deitrie Hanson 1/24/2006



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### Bulk Asbestos Fiber Analysis

Batch Number:	06-0099	<b>ACM Environmental</b>
Lab Sample Number:	06000603	<b>3048-46</b>
Client Sample Number:	<b>3048-624</b>	<i>Provincial Outreach &amp; Adult Education</i>

#### L-1 Dark pink, pale pink, black, white, and brown speckled opaque pliable sheet vinyl tile material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	20% Glass Fiber	70% Plastic Particles
		7% Vinyl Filler and Binder
		3% Filler and Binder

Comments:

#### L-2 Pale yellow resinous mastic

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		95% Resin and Binder
		5% Sand

Comments:

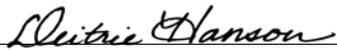
#### L-3 Gray fine granular material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		100% Sand

Comments:

Batch Number:	06-0099	<b>ACM Environmental</b>
Lab Sample Number:	06000604	<b>3048-46</b>
Client Sample Number:	<b>3048-625</b>	<i>Provincial Outreach &amp; Adult Education</i>

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/24/2006

  
 Analyzed By: Deitrie Hanson 1/24/2006



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### Bulk Asbestos Fiber Analysis

**L-1 White paint**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 100% Paint

**Comments:**

**L-2 Gray pliable rubbery material**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 90% Rubber Particles  
10% Calcite Filler and Binder

**Comments:**

Batch Number: 06-0099 **ACM Environmental**  
Lab Sample Number: 06000605 **3048-46**  
Client Sample Number: **3048-626** *Provincial Outreach & Adult Education*

**L-1 Pale gray, beige, and white opaque pliable sheet vinyl tile material**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 90% Plastic Particles  
10% Vinyl Filler and Binder

**Comments:**

**L-2 Pale tan fibrous papery backing**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 95% Cellulose 5% Filler and Binder

**Comments:**

Sampled By: Client  
Received By: John McCaslin 1/18/2006  
Reviewed By: George McCaslin 1/24/2006

*Deitrie Hanson*  
Analyzed By: Deitrie Hanson 1/24/2006



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## Bulk Asbestos Fiber Analysis

### L-3 Golden tan opaque brittle mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Resin and Binder
		10% Mineral Fragments

**Comments:**

Batch Number: 06-0099	<b>ACM Environmental</b>
Lab Sample Number: 06000606	<b>3048-46</b>
Client Sample Number: 3048-627	<i>Provincial Outreach &amp; Adult Education</i>

### L-1 Pale taupe paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		100% Paint

**Comments:**

### L-2 Pale beige opaque pliable rubbery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		85% Resin and Binder
		12% Mineral Particles
		3% Filler and Binder

**Comments:**

### L-3 Pale brown fibrous papery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
	97% Cellulose	3% Filler and Binder

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/24/2006

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 1/24/2006



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### Bulk Asbestos Fiber Analysis

Batch Number:	06-0099	<b>ACM Environmental</b>
Lab Sample Number:	06000607	<b>3048-46</b>
Client Sample Number:	<b>3048-628</b>	<i>Provincial Outreach &amp; Adult Education</i>

#### L-1 White paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		100% Paint

Comments:

#### L-2 Dark orange fibrous opaque material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
	96% Cellulose	2% Filler and Binder 2% Mineral Fragments

Comments:

Batch Number:	06-0099	<b>ACM Environmental</b>
Lab Sample Number:	06000608	<b>3048-46</b>
Client Sample Number:	<b>3048-629</b>	<i>Provincial Outreach &amp; Adult Education</i>

#### Dull black pliable rubbery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		90% Rubber Particles 10% Filler and Binder

Comments:

Batch Number:	06-0099	<b>ACM Environmental</b>
Lab Sample Number:	06000609	<b>3048-46</b>
Client Sample Number:	<b>3048-630</b>	<i>Provincial Outreach &amp; Adult Education</i>

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/24/2006

  
 Analyzed By: Deitrie Hanson 1/24/2006



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## Bulk Asbestos Fiber Analysis

**L-1 Pale pink and golden tan opaque pliable sheet vinyl tile material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 90% Plastic Particles 10% Vinyl Filler and Binder
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**Comments:**

**L-2 Golden tan woven twisted fiber bundles**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 95% Straw 5% Mineral Fragments
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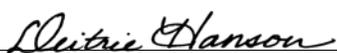
**Comments:**

**L-3 Golden tan mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 95% Resin and Binder 5% Mineral Fragments
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**Comments:**

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/24/2006

  
 Analyzed By: Deitrie Hanson 1/24/2006



NVLAP LAB CODE 200613-0



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### Bulk Asbestos Fiber Analysis

**ACM Environmental**  
2323 Quebec Street, Suite 211  
Vancouver, BC  
Project Location: Job Club

PAI Batch Number: **06-0100**  
Client Job Number: **3048-46**  
Number of Samples: **8**  
Turn Around Time: **10 day**

Batch Number:	06-0100	<b>ACM Environmental</b>
Lab Sample Number:	06000610	<b>3048-46</b>
Client Sample Number:	<b>3048-631</b>	<i>Job Club</i>

#### L-1 Pale beige paint on off-white paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 100% Paint
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Comments:

#### L-2 White hard chalky powdery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 65% Calcite Filler and Binder 30% Talc Filler and Binder 5% Mineral Fragments
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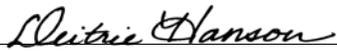
Comments:

#### L-3 Pale gray and white hard granular powdery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 92% Sand 5% Plant Debris 3% Filler and Binder
--	---	---

Comments:

Sampled By: Client  
Received By: John McCaslin 1/18/2006  
Reviewed By: George McCaslin 1/25/2006

  
Analyzed By: Deitrie Hanson 1/25/2006



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## Bulk Asbestos Fiber Analysis

Batch Number:	06-0100	<b>ACM Environmental</b>
Lab Sample Number:	06000611	<b>3048-46</b>
Client Sample Number:	<b>3048-632</b>	<i>Job Club</i>

### L-1 Teal paint on black pliable rubbery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		90% Rubber Particles
		10% Calcite Filler and Binder

Comments:

### L-2 White opaque pliable mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		80% Resin and Binder
		15% Calcite Filler and Binder
		5% Mineral Fragments

Comments:

Batch Number:	06-0100	<b>ACM Environmental</b>
Lab Sample Number:	06000612	<b>3048-46</b>
Client Sample Number:	<b>3048-633</b>	<i>Job Club</i>

### L-1 Tan shiny paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		100% Paint

Comments:

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 1/25/2006



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## Bulk Asbestos Fiber Analysis

### L-2 White pliable opaque rubbery thin material

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 90% Rubber Particles 10% Calcite Filler and Binder
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Comments:

### L-3 White woven twisted fiber bundles

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b> 95% Cotton	<b>Non-Fibrous Components:</b> 3% Filler and Binder 2% Mineral Fragments
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Comments:

### L-4 White crystalline powdery material

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 80% Calcite Filler and Binder 12% Perlite 6% Vermiculite 2% Mineral Filler and Binder
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Comments:

### L-5 Yellow mastic

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 90% Resin and Binder 10% Mineral Fragments
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Comments:

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

*Deitrie Hanson*

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Analyzed By: Deitrie Hanson 1/25/2006



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### Bulk Asbestos Fiber Analysis

**L-6 Dark orange wooden splinter material**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	92% Cellulose	5% Resin and Binder
		3% Mineral Fragments

**Comments:**

Batch Number:	06-0100	<b>ACM Environmental</b>
Lab Sample Number:	06000613	<b>3048-46</b>
Client Sample Number:	<b>3048-634</b>	<i>Job Club</i>

**L-1 White paint**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		100% Paint

**Comments:**

**L-2 White pliable crystalline powdery putty-like material**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		92% Calcite Filler and Binder
		5% Mineral Fragments
		3% Filler and Binder

**Comments:**

**L-3 Black dull pliable rubbery material**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		98% Rubber Particles
		2% Mineral Fragments

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 1/25/2006



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### Bulk Asbestos Fiber Analysis

Batch Number:	06-0100	<b>ACM Environmental</b>
Lab Sample Number:	06000614	<b>3048-46</b>
Client Sample Number:	<b>3048-635</b>	<i>Job Club</i>

#### L-1 White paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		100% Paint

Comments:

#### L-2 Pale grayish white opaque fibrous material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
	40% Mineral Wool	20% Perlite
	30% Cellulose	6% Mineral Filler and Binder
		4% Filler and Binder

Comments:

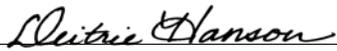
Batch Number:	06-0100	<b>ACM Environmental</b>
Lab Sample Number:	06000615	<b>3048-46</b>
Client Sample Number:	<b>3048-636</b>	<i>Job Club</i>

#### L-1 Dull gray hard tile material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		5% Miscellaneous Particles

Comments:

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

  
 Analyzed By: Deitrie Hanson 1/25/2006



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### Bulk Asbestos Fiber Analysis

**L-2 Black pliable mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Asphalt Filler and Binder
		10% Mineral Particles

**Comments:**

**L-3 Gray granular material on white fine powdery material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		65% Sand
		20% Talc Filler and Binder
		10% Mineral Fragments
		5% Filler and Binder

**Comments:**

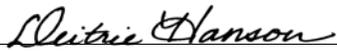
Batch Number:	06-0100	<b>ACM Environmental</b>
Lab Sample Number:	06000616	<b>3048-46</b>
Client Sample Number:	<b>3048-637</b>	<b>Job Club</b>

**L-1 Off-white hard tile material with brown thin streaks**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		5% Miscellaneous Particles

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

  
 Analyzed By: Deitrie Hanson 1/25/2006



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

**L-2 Yellow opaque pliable mastic**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Resin and Binder
		10% Mineral Fragments

Comments:

**L-3 Gray granular material**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		95% Sand
		5% Mineral Particles

Comments:

**L-4 Black mastic**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Asphalt Filler and Binder
		10% Mineral Particles

Comments:

**L-5 White powdery material**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Talc Filler and Binder
		10% Mineral Particles

Comments:

Batch Number:	06-0100	<b>ACM Environmental</b>
Lab Sample Number:	06000617	<b>3048-46</b>
Client Sample Number:	<b>3048-638</b>	<b>Job Club</b>

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 1/25/2006



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 OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

## Bulk Asbestos Fiber Analysis

**L-1 Dull turquoise paint on gray pliable rubbery material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 80% Rubber Particles 10% Calcite Filler and Binder 5% Paint 5% Resin and Binder
--	---	--

**Comments:**

**L-2 Yellow transparent sticky mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 100% Resin and Binder
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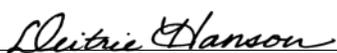
**Comments:**

**L-3 Brown fibrous papery material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b> 99% Cellulose	<b>Non-Fibrous Components:</b> 1% Filler and Binder
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**Comments:**

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

  
 \_\_\_\_\_  
 Analyzed By: Deitrie Hanson 1/25/2006



NVLAP LAB CODE 200613-0



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OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

**ACM Environmental**  
2323 Quebec Street, Suite 211  
Vancouver, BC  
Project Location: Resource Center

PAI Batch Number: **06-0101**  
Client Job Number: **3048-46**  
Number of Samples: **12**  
Turn Around Time: **10 day**

Batch Number:	06-0101	<b>ACM Environmental</b>
Lab Sample Number:	06000618	<b>3048-46</b>
Client Sample Number:	<b>3048-639</b>	<i>Resource Center</i>

**L-1 Dull pink and dark gray thick pliable sheet vinyl tile material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		85% Plastic Particles
		10% Vinyl Filler and Binder
		5% Resin and Binder

**Comments:**

**L-2 Brown woven twisted fiber bundles**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		95% Straw
		5% Filler and Binder

**Comments:**

Batch Number:	06-0101	<b>ACM Environmental</b>
Lab Sample Number:	06000619	<b>3048-46</b>
Client Sample Number:	<b>3048-640</b>	<i>Resource Center</i>

Sampled By: Client  
Received By: John McCaslin 1/18/2006  
Reviewed By: George McCaslin 1/25/2006

Analyzed By: Deitrie Hanson 1/25/2006



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## Bulk Asbestos Fiber Analysis

**L-1 Bluish gray thick pliable rubbery material**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 65% Plastic Particles 30% Vinyl Filler and Binder 5% Resin and Binder
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**Comments:**

**L-2 Golden tan resinous mastic**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 95% Resin and Binder 3% Mineral Particles 2% Filler and Binder
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**Comments:**

**L-3 Golden tan woven twisted fiber bundles**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 95% Straw 3% Mineral Particles 2% Filler and Binder
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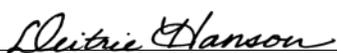
**Comments:**

**L-4 Black resinous mastic**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 90% Asphalt Filler and Binder 5% Mineral Filler and Binder 5% Filler and Binder
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**Comments:**

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

  
 Analyzed By: Deitrie Hanson 1/25/2006



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## Bulk Asbestos Fiber Analysis

Batch Number:	06-0101	<b>ACM Environmental</b>
Lab Sample Number:	06000620	<b>3048-46</b>
Client Sample Number:	<b>3048-641</b>	<i>Resource Center</i>

### L-1 Gray opaque sheet vinyl tile material with large white spots

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Plastic Particles
		10% Vinyl Filler and Binder

Comments:

### L-2 White fibrous papery backing

<b>Asbestos Fibrous Components:</b> <b>30% Chrysotile</b>	<b>Non-Asbestos Fibrous Components:</b> 45% Cellulose	<b>Non-Fibrous Components:</b> 20% Talc Filler and Binder 5% Mineral Fragments
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Comments:

### L-3 Golden tan resinous mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Resin and Binder
		10% Mineral Fragments

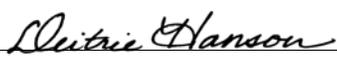
Comments:

### L-4 Golden tan wooden splinter material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b> 98% Cellulose	<b>Non-Fibrous Components:</b> 2% Filler and Binder
--	--	--

Comments:

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

  
 Analyzed By: Deitrie Hanson 1/25/2006



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### Bulk Asbestos Fiber Analysis

Batch Number:	06-0101	<b>ACM Environmental</b>
Lab Sample Number:	06000621	<b>3048-46</b>
Client Sample Number:	<b>3048-642</b>	<i>Resource Center</i>

#### L-1 Pale brown and white streaked hard tile material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		5% Filler and Binder

Comments:

#### L-2 Black resinous mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		96% Asphalt Filler and Binder
		4% Mineral Fragments

Comments:

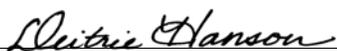
Batch Number:	06-0101	<b>ACM Environmental</b>
Lab Sample Number:	06000622	<b>3048-46</b>
Client Sample Number:	<b>3048-643</b>	<i>Resource Center</i>

#### L-1 Black pliable rubbery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Rubber Particles
		10% Calcite Filler and Binder

Comments:

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

  
 Analyzed By: Deitrie Hanson 1/25/2006



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### Bulk Asbestos Fiber Analysis

**L-2 White opaque pliable mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Resin and Binder
		10% Calcite Filler and Binder

**Comments:**

**L-3 Off-white paint**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		100% Paint

**Comments:**

**L-4 White crystalline powdery material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		85% Calcite Filler and Binder
		12% Perlite
		3% Mineral Fragments

**Comments:**

Batch Number: 06-0101	<b>ACM Environmental</b>
Lab Sample Number: 06000623	<b>3048-46</b>
Client Sample Number: <b>3048-644</b>	<i>Resource Center</i>

**L-1 Pale beige pliable thin vinyl material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		100% Vinyl Filler and Binder

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 1/25/2006



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### Bulk Asbestos Fiber Analysis

#### L-2 Off-white and brown fibrous papery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	98% Cellulose	2% Filler and Binder

**Comments:**

Batch Number:	06-0101	<b>ACM Environmental</b>
Lab Sample Number:	06000624	<b>3048-46</b>
Client Sample Number:	<b>3048-645</b>	<i>Resource Center</i>

#### Gray pliable rubbery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		95% Rubber Particles
		5% Mineral Fragments

**Comments:**

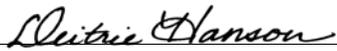
Batch Number:	06-0101	<b>ACM Environmental</b>
Lab Sample Number:	06000625	<b>3048-46</b>
Client Sample Number:	<b>3048-646</b>	<i>Resource Center</i>

#### L-1 Pale gray and brown thick pliable rubbery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		80% Rubber Particles
		15% Calcite Filler and Binder
		5% Vinyl Filler and Binder

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

  
 Analyzed By: Deitrie Hanson 1/25/2006



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### Bulk Asbestos Fiber Analysis

**L-2 Brown woven twisted thick fiber bundles**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Straw
		5% Filler and Binder
		5% Mineral Fragments

**Comments:**

Batch Number: 06-0101	<b>ACM Environmental</b>
Lab Sample Number: 06000626	<b>3048-46</b>
Client Sample Number: 3048-647	<i>Resource Center</i>

**L-1 Pale pinkish white pliable paint**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		100% Paint

**Comments:**

**L-2 White opaque pliable material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Paint
		10% Resin and Binder

**Comments:**

Batch Number: 06-0101	<b>ACM Environmental</b>
Lab Sample Number: 06000627	<b>3048-46</b>
Client Sample Number: 3048-648	<i>Resource Center</i>

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 1/25/2006



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## Bulk Asbestos Fiber Analysis

**L-1      Dark golden tan opaque brittle mastic**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 90%    Resin and Binder 10%    Mineral Particles
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**Comments:**

**L-2      White crystalline powdery material**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 87%    Calcite Filler and Binder 10%    Perlite 3%      Filler and Binder
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**Comments:**

**L-3      Dark golden tan opaque brittle mastic**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 95%    Resin and Binder 5%      Mineral Fragments
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**Comments:**

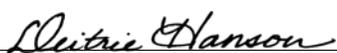
**L-4      Orange wooden splinter material**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b> 97%    Cellulose	<b>Non-Fibrous Components:</b> 3%      Resin and Binder
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**Comments:**

Batch Number:	06-0101	<b>ACM Environmental</b>
Lab Sample Number:	06000628	<b>3048-46</b>
Client Sample Number:	<b>3048-649</b>	<i>Resource Center</i>

Sampled By: Client  
 Received By: John McCaslin      1/18/2006  
 Reviewed By: George McCaslin    1/25/2006

  
 \_\_\_\_\_  
 Analyzed By: Deitrie Hanson      1/25/2006



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### Bulk Asbestos Fiber Analysis

#### L-1 Pale pinkish white pliable paint

Asbestos Fibrous Components: Non-Asbestos Fibrous Components: Non-Fibrous Components:  
No Asbestos Detected 100% Paint

Comments:

#### L-2 White crystalline powdery material

Asbestos Fibrous Components: Non-Asbestos Fibrous Components: Non-Fibrous Components:  
No Asbestos Detected 90% Calcite Filler and Binder  
5% Vermiculite  
5% Mineral Fragments

Comments:

#### L-3 Pale tan fibrous papery material

Asbestos Fibrous Components: Non-Asbestos Fibrous Components: Non-Fibrous Components:  
No Asbestos Detected 97% Cellulose 3% Filler and Binder

Comments:

Batch Number:	06-0101	ACM Environmental
Lab Sample Number:	06000629	3048-46
Client Sample Number:	3048-650	Resource Center

#### L-1 Pale pinkish white pliable paint

Asbestos Fibrous Components: Non-Asbestos Fibrous Components: Non-Fibrous Components:  
No Asbestos Detected 100% Paint

Comments:

Sampled By: Client  
Received By: John McCaslin 1/18/2006  
Reviewed By: George McCaslin 1/25/2006

Analyzed By: Deitrie Hanson 1/25/2006



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## Bulk Asbestos Fiber Analysis

### L-2 White crystalline powdery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		80% Calcite Filler and Binder
		15% Perlite
		5% Vermiculite

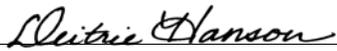
**Comments:**

### L-3 Off-white and green fibrous papery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
	97% Cellulose	3% Filler and Binder

**Comments:**

Sampled By: Client  
Received By: John McCaslin 1/18/2006  
Reviewed By: George McCaslin 1/25/2006

  
Analyzed By: Deitrie Hanson 1/25/2006



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### Bulk Asbestos Fiber Analysis

**ACM Environmental**  
2323 Quebec Street, Suite 211  
Vancouver, BC  
Project Location: Tilbury Maintenance

PAI Batch Number: **06-0097**  
Client Job Number: **3048-46**  
Number of Samples: **7**  
Turn Around Time: **10 day**

Batch Number:	06-0097	<b>ACM Environmental</b>
Lab Sample Number:	06000590	<b>3048-46</b>
Client Sample Number:	<b>3048-611</b>	<i>Tilbury Maintenance</i>

#### L-1 White paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		100% Paint

Comments:

#### L-2 Pale tan fibrous opaque material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
	55% Cellulose 35% Mineral Wool	15% Perlite 5% Filler and Binder

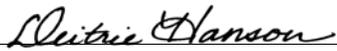
Comments:

#### L-3 White powdery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		92% Clay Filler and Binder 5% Mineral Particles 3% Filler and Binder

Comments:

Sampled By: Client  
Received By: John McCaslin 1/18/2006  
Reviewed By: George McCaslin 1/20/2006

  
Analyzed By: Deitrie Hanson 1/20/2006



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### Bulk Asbestos Fiber Analysis

Batch Number:	06-0097	<b>ACM Environmental</b>
Lab Sample Number:	06000591	<b>3048-46</b>
Client Sample Number:	<b>3048-612</b>	<i>Tilbury Maintenance</i>

#### L-1 Pale beige paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 100% Paint
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Comments:

#### L-2 Pale gray paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 100% Paint
--	----------------------------------	---------------------------------------

Comments:

#### L-3 White crystalline powdery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 95% Calcite Filler and Binder 3% Mineral Particles 2% Filler and Binder
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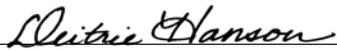
Comments:

#### L-4 Off-white thick hard chalky crystalline material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 95% Calcite Filler and Binder 3% Mineral Fragments 2% Filler and Binder
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Comments:

Sampled By: Client  
Received By: John McCaslin 1/18/2006  
Reviewed By: George McCaslin 1/20/2006

  
Analyzed By: Deitrie Hanson 1/20/2006



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OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

## Bulk Asbestos Fiber Analysis

Batch Number:	06-0097	<b>ACM Environmental</b>
Lab Sample Number:	06000592	<b>3048-46</b>
Client Sample Number:	<b>3048-613</b>	<i>Tilbury Maintenance</i>

### L-1 White paint spots

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 100% Paint
--	----------------------------------	---------------------------------------

Comments:

### L-2 Transparent brittle coating material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 100% Resin and Binder
--	----------------------------------	--

Comments:

### L-3 Dull turquoise hard tile material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 45% Calcite Filler and Binder 40% Mineral Particles 10% Vinyl Filler and Binder 5% Miscellaneous Particles
--	----------------------------------	--

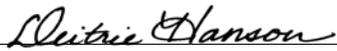
Comments:

### L-4 Black mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 90% Asphalt Filler and Binder 5% Mineral Particles 5% Filler and Binder
--	----------------------------------	--

Comments:

Sampled By: Client  
Received By: John McCaslin 1/18/2006  
Reviewed By: George McCaslin 1/20/2006

  
Analyzed By: Deitrie Hanson 1/20/2006





1730 Minor Avenue, Suite 900 Seattle, WA 98101  
 OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

**Bulk Asbestos Fiber Analysis**

**L-3 Black mastic**

<b>Asbestos Fibrous Components:</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
3% Chrysotile		90% Asphalt Filler and Binder
		5% Mineral Particles
		2% Miscellaneous Particles

**Comments:**

**(no layer exists for analysis)**

<b>Asbestos Fibrous Components:</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
-------------------------------------	---	--------------------------------

**Comments:**

**(no layer exists for analysis)**

<b>Asbestos Fibrous Components:</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
-------------------------------------	---	--------------------------------

**Comments:**

**(no layer exists for analysis)**

<b>Asbestos Fibrous Components:</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
-------------------------------------	---	--------------------------------

**Comments:**

**(no layer exists for analysis)**

<b>Asbestos Fibrous Components:</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
-------------------------------------	---	--------------------------------

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/20/2006

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 1/20/2006



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
 OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

## Bulk Asbestos Fiber Analysis

Batch Number:	06-0097	<b>ACM Environmental</b>
Lab Sample Number:	06000594	<b>3048-46</b>
Client Sample Number:	<b>3048-615</b>	<i>Tilbury Maintenance</i>

### L-1 White hard crystalline powdery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		92% Calcite Filler and Binder
		5% Mineral Particles
		3% Filler and Binder

Comments:

### L-2 Brown fibrous papery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
	99% Cellulose	1% Filler and Binder

Comments:

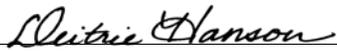
### L-3 Pale grayish white fine powdery fibrous material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
	15% Cellulose	80% Talc Filler and Binder
		5% Mineral Particles

Comments:

Batch Number:	06-0097	<b>ACM Environmental</b>
Lab Sample Number:	06000595	<b>3048-46</b>
Client Sample Number:	<b>3048-616</b>	<i>Tilbury Maintenance</i>

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/20/2006

  
 Analyzed By: Deitrie Hanson 1/20/2006



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

#### Dull gray pliable rubbery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Rubber Particles
		10% Calcite Filler and Binder

**Comments:**

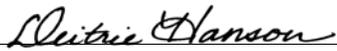
Batch Number:	06-0097	<b>ACM Environmental</b>
Lab Sample Number:	06000596	<b>3048-46</b>
Client Sample Number:	<b>3048-617</b>	<i>Tilbury Maintenance</i>

#### Dull pale gray fibrous opaque material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	88% Mineral Wool	10% Mineral Particles
	2% Cellulose	

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/20/2006

  
 Analyzed By: Deitrie Hanson 1/20/2006

**APPENDIX B**  
**Photographs**



12" Grey vinyl floor tiles with asbestos containing mastic (adjacent non-asbestos blue VFT) – Tilbury Maintenance building



Asbestos containing yellow flooring in Delview Learning Centre washroom

**ENERGY SYSTEM SERVICE AGREEMENT**

**ENGLISH BLUFF ELEMENTARY SCHOOL**

**THIS AGREEMENT** dated for reference the 26<sup>th</sup> day of September, 2011.

**BETWEEN:**

**THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 37 (DELTA)**  
a corporation established under the School Act R.S.B.C. 1996, c. 412 having an  
office at 4585 Harvest Drive, Delta, British Columbia, V4K 5B4

(the "District")

OF THE FIRST PART

**AND:**

**FORTISBC ENERGY INC.**, a company duly incorporated under the laws of the  
Province of British Columbia, having its registered office at 10th Floor, 1111  
West Georgia Street, Vancouver, B.C. V6E 4M3

("FEI")

OF THE SECOND PART

**WHEREAS:**

- A. The District is the owner of English Bluff Elementary School (the "Building") and lands located at 402, English Bluff Road, Delta, British Columbia, which lands are legally described as:

PID: 006-459-366 Property No: 113345

LOT 347 SECTION 3 TOWNSHIP 5 NEW WESTMINSTER DISTRICT PLAN 30232

(the "Lands")

- B. FEI wishes to supply to the Building, and the District wishes to purchase, Thermal Energy generated by an Energy System that FEI will construct on the Lands, and which FEI will own and operate, all pursuant to the terms of this Agreement.
- C. The Thermal Energy supplied by FEI to the Building pursuant to this Agreement will be priced at the rate set forth in the Energy System Rate Development Agreement between the Parties dated September 26<sup>th</sup>, 2011.

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT** in consideration of the premises and the covenants, agreements, representations, warranties and payments set out herein, the receipt and sufficiency of which is hereby acknowledged by each Party, the Parties covenant and agree as follows:

## **ARTICLE 1 - INTERPRETATION**

### 1.1 DEFINITIONS

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

- (a) “Adjusted Energy System Purchase Price” means, as of the date on which a purchase of the Energy System pursuant to Article 15 is effective, either:
  - (i) the Rate Base Value; or
  - (ii) such other purchase price for the Energy System as is determined by the BCUC; plus all applicable taxes;
- (b) “Affiliate” has the meaning set out in the *Business Corporation Act*, S.B.C. 2002, c.57 and includes FortisBC Inc.;
- (c) “Agreement” means this agreement, including the preamble hereto and any schedules attached hereto and the terms “this Agreement”, “hereof”, “herein”, “hereunder” and “hereinafter” and similar expressions refer to the Agreement and not to any particular Section or other portion thereof and includes any agreement supplementary or ancillary thereto;
- (d) “Acceptance Date” means the date of BCUC Acceptance;
- (e) “BCUC” means the British Columbia Utilities Commission, or any successor thereto;
- (f) “BCUC Acceptance” has the meaning assigned to that term in Section 11.1;
- (g) “Building” has the meaning assigned to that term on page one of this Agreement;
- (h) “Building System” means the space heating, cooling and ventilation, and domestic hot water distribution and control systems existing in the Building, to which the Energy System will be connected;
- (i) “Business Day” means any day except Saturday and Sunday or any day on which banks are generally not open for business in Vancouver, British Columbia;
- (j) “Capital Contribution” means \$ 160,000;
- (k) “Commissioned” means once the Energy System is certified complete and operating in accordance with the Specifications by a professional engineer under seal;

- (l) “Commission Date” means the day on which the Energy System is Commissioned;
- (m) “Contaminants” means, collectively, any contaminant, toxic substance, dangerous good, or pollutant or any other substance which when released to the natural environment is likely to cause, at some immediate or future time, material harm or degradation to the natural environment or material risk to human health, and includes any radioactive materials, asbestos materials, urea formaldehyde, underground or aboveground tanks, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive or toxic substances, hazardous waste or waste of any kind, pesticides, defoliant, or any other solid, liquid, gas, vapour, odour or any other substance .the storage, manufacture, disposal, handling, treatment, generation, use, transport, remediation or Release into the Environment of which is now or hereafter prohibited, controlled or regulated under Environmental Laws;
- (n) “Continuing Service Interruption Notice” has the meaning assigned to that term in Section 14.3(b);
- (o) “Contractor” means a prime contractor hired by FEI to oversee and complete the construction and installation of the Energy System;
- (p) “Design and Construction” means the total construction and related services required to design, construct and commission the Energy System and connected components of the Building System;
- (q) “Design Thermal Energy” means the maximum amount of Thermal Energy that the Energy System is capable of delivering through the Thermal Energy Meter and is included in the Specifications;
- (r) “Disclosed Contaminants” means Contaminants:
  - (i) the existence of which are specifically identified in the reports provided by the District to FEI and listed in Schedule C;
  - (ii) that were or ought to have been discovered, foreseen or anticipated upon reasonable inspection by FEI prior to the Effective Date; and
  - (iii) that were caused by FEI or any person for whom FEI is responsible at law;
- (s) “District” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (t) “District Losses” has the meaning assigned to that term in Section 12.6;
- (u) “District Site Rules for Contractors” means the rules set forth in Schedule “B”;
- (v) “Effective Date” means the date set out on page one of this Agreement;
- (w) “Energy System” means the equipment that FEI constructs and owns which will provide the Building with its energy needs for space heating, cooling and ventilation, and domestic hot water use, all as set forth in this Agreement;

- (x) “Energy System Service Agreement” has the meaning assigned to that term in the Energy System Rate Development Agreement;
- (y) “Energy System Rate Development Agreement” means that energy system rate development agreement between the District and FEI dated as of September 26<sup>th</sup>, 2011;
- (z) “Environment” includes the air (including all layers of the atmosphere), land (including soil, sediment deposited on land, fill, lands submerged under water, buildings, and improvements), water (including oceans, lakes, rivers, streams, groundwater, and surface water), and all other external conditions and influences under which humans, animals, and plants live or are developed and “Environmental” will have a corresponding meaning;
- (aa) “Environmental Attributes” means:
  - (i) all attributes associated with, or that may be derived from the Energy System installed having decreased environmental impacts relative to the use of conventional heating and cooling and hot water heating systems including any existing or future credit, allowance, certificate, right, benefit or advantage or proprietary or contractual right whether or not tradable;
  - (ii) any existing or future instrument, including without limitation any environmental emission allowances and environmental emission reduction credits, reduction right, allowance, certificate or other unit of any kind whatsoever, whether or not tradable and any other proprietary or contractual right, whether or not tradable, and any resulting from, or otherwise related to the actual assumed reduction, displacement or offset of emissions associated with, or that may be derived from the Energy System installed; and
  - (iii) all revenues, entitlement, benefits and other proceeds arising from or related to the foregoing;
- (bb) “Environmental Laws” means any and all statutes, laws, regulations, orders, bylaws, standards, guidelines, protocols, permits, and other lawful requirements of any Governmental Authority having jurisdiction over the Lands or the Energy System now or hereafter in force with respect in any way to the Environment, environmental assessment, health, occupational health and safety, protection of any form of plant or animal life, or transportation of dangerous goods, including the principles of common law and equity;
- (cc) “Expiry Date” means the earlier of:
  - (i) June 30, 2031, or the expiry of any renewal term thereof; and
  - (ii) the closure of the Building, or the Building otherwise ceasing to operate as a school (as defined under the *School Act* (British Columbia));
- (dd) “FEI” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (ee) “FEI Losses” has the meaning assigned to that term in Section 12.5;

- (ff) “Force Majeure” has the meaning assigned to that term in Section 17.2;
- (gg) “Governmental Authority” means any federal, provincial, regional, municipal, local or other government, governmental or public department, court, tribunal, arbitral body, commission, board, bureau or agency and any subdivision, agent, commission, board or authority thereof;
- (hh) “Lands” has the meaning assigned to that term in Recital A and includes the Building located on the Lands;
- (ii) “Laws” means laws, statutes, regulations, bylaws, Permits and orders of any Governmental Authority having jurisdiction, including without limitation, Environmental Laws;
- (jj) “Maintain” means to operate, service and maintain in a safe and reliable condition and “maintaining” and “maintenance” have corresponding meanings;
- (kk) “Monthly Charges” means that amount to be paid by the District to FEI with respect to the delivery of Thermal Energy to the Building pursuant to the Energy System Rate Development Agreement and any other payments due and owing by the District under this Agreement;
- (ll) “Notifying Party” has the meaning assigned to that term in Section 16.1;
- (mm) “Party” means a signatory to this Agreement, and the “Parties” means all of such signatories;
- (nn) “Permits” means all permits, licences, certificates, approvals, authorizations, consents and the like issued by any Governmental Authority;
- (oo) “Rate Base Value” means the value of the Energy System that the BCUC accepts from time to time in accordance with the Energy System Rate Development Agreement;
- (pp) “Release” includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, migration, disposal, or dumping;
- (qq) “Right of Access and Licence” means the right and licence granted herein by the District to FEI pursuant to Section 4.1 of this Agreement;
- (rr) “Service Failure Notice” has the meaning assigned to that term in Section 14.3(c);
- (ss) “Service Interruption” means, in any hour:
  - (i) a failure of the Energy System in that hour to deliver Thermal Energy at the Thermal Energy Meter sufficient to meet the Thermal Energy demand of the Building during that hour in accordance with the Specifications up to the Design Thermal Energy, and except where such failure is directly caused by:
    - a. the careless or wilful damage to the Energy System by the District or its agents or other persons for whom the District is responsible;

- b. damage caused to the Energy System as a result of the negligent acts or omissions of the District, its agents or those for whom in law the District is responsible;
  - c. an event of Force Majeure that triggers the suspension of FEI's obligations under the Agreement pursuant to Article 17; or
  - d. maintenance activities that FEI is performing on the Energy System that have been scheduled with the consent of the District (such consent not to be unreasonably withheld); and
- (ii) if the failure described in Section 1.1(rr)(i), FEI's failure in that hour to deliver to the Building through alternative means thermal energy sufficient to maintain an average temperature of 16 degrees Celsius in each room of the Building intended to be served by the Energy System (all as determined by the District, acting reasonably);
- (tt) "Service Interruption Notice" has the meaning assigned to that term in Section 14.3(a);
- (uu) "Services" means those services to be provided by FEI to supply Thermal Energy to a Building from an Energy System, and for greater certainty includes the services described in Articles 5 and 6, and excludes the Design and Construction;
- (vv) "Specifications" means the specifications for the Energy System prepared by FEI in consultation with the District in accordance with Section 2.3 and includes the Design Thermal Energy;
- (ww) "Term" has the meaning assigned to that term in Section 3.1;
- (xx) "Thermal Energy" means the amount of energy that FEI provides to the Building measured through a Thermal Energy Meter;
- (yy) "Thermal Energy Meter" means a device that complies with the International Organization of Legal Metrology recommendations for measuring thermal energy; and
- (zz) "UCA" means the *Utilities Commission Act*, R.S.B.C. 1996, c. 473 as may be amended from time to time.

## 1.2 SCHEDULES

The following Schedules, as may be amended from time to time, are incorporated by reference into this Agreement:

Schedule "A"	Energy System Description
Schedule "B"	Delta School District Site Rules for Contractors
Schedule "C"	List of Environmental Reports

### 1.3 AMENDMENTS TO SCHEDULES

The District and FEI acknowledge that during the construction phase of the Energy System there may be additions and alterations to the Specifications for the Energy System which would result in more efficient use and operation of the Energy System. If these additions or alterations result in changes to any of the above Schedules, the Parties mutually agree to amend the Schedules by way of a written amendment prior to the Commission Date.

### 1.4 INTERPRETATION

Except where the context requires otherwise or except as otherwise expressly provided, in this Agreement:

- (a) all references to a designated Article or Section are to the designated Article or Section of this Agreement unless otherwise specifically stated;
- (b) the singular of any term includes the plural, and vice versa, and the use of any term is equally applicable to any gender and, where applicable, body corporate;
- (c) any reference to a corporate entity includes and is also a reference to any corporate entity that is a successor by merger, amalgamation, consolidation or otherwise to such entity;
- (d) the preamble and all schedules referred to and attached to this Agreement are incorporated by reference and will form a part of this Agreement;
- (e) all sums of money which are referred to in this Agreement are in lawful money of Canada;
- (f) the headings of the Articles and Sections set out in this Agreement are for convenience only and will not be considered in any interpretation of this Agreement;

## **ARTICLE 2 - DESIGN AND CONSTRUCTION OF THE ENERGY SYSTEM**

### 2.1 CONSTRUCTION

FEI will perform the Design and Construction:

- (a) in accordance and in compliance with the Specifications;
- (b) in a good and workmanlike manner using qualified workers, and in accordance with sound and currently accepted industry standards and codes of practice normally employed, at the time and place of performance, in projects of a similar type and nature;
- (c) to ensure operational compatibility with the Building System;
- (d) in a safe and environmentally sound manner, and in accordance with all applicable Laws; and
- (e) in accordance with the terms of this Agreement.

## 2.2 CAPITAL CONTRIBUTION

The District will pay to FEI within 30 days of the Commission Date the Capital Contribution for the purpose of reducing the capital investment and the associated carrying cost of capital by FEI for provision of Service to the Building.

## 2.3 SPECIFICATIONS

Subject to and in accordance with this Section 2.3, FEI shall prepare and complete the Specifications promptly following the Acceptance Date.

FEI confirms the Energy System, as described in the Specifications and as contemplated by the Energy System description set out in Schedule A, will be designed to meet the thermal energy requirements of the Building and operational compatibility of the Building System based in part on information supplied by the District as to historical usage, which information has not been independently verified by FEI. FEI shall have no liability to the District for the failure of the Energy System to satisfy the requirements of the Building where such failure is attributable to the information supplied by the District being incorrect, inaccurate or incomplete.

FEI will prepare the Specifications in consultation with the District in order to ensure the Energy System can be appropriately accommodated within the Building and interface with the Building Systems. FEI will submit material changes to the Specifications, both before and during construction, to the District for review and comment prior to such changes taking place. If the District does not comment on the Specifications or material changes to the Specifications or advise that it has no comment within five (5) Business Days of receipt, FEI will be entitled to proceed on the basis of the information provided to the District. FEI will revise the Specifications based on the comments from the District provided that doing so will not impact FEI's costs or adversely affect system performance.

Review of and comment on the Specifications by the District does not impose any obligation on the District to verify the suitability of the Energy System or be construed as confirmation by the District that the Energy System satisfactorily meets the Building's energy requirements.

## 2.4 WORK SCHEDULE

Within ten (10) Business Days following the Acceptance Date, FEI will submit to the District for review and comment a Gantt chart schedule for the Design and Construction listing activities to be undertaken during the Design and Construction stages, key milestones and approval dates and other pertinent dates. Any revisions to the schedule must be reviewed and commented by the District, which review and comment will not be unreasonably withheld, conditioned or delayed.

In order to ensure that the Building System remains operational during normal school hours (as defined in Schedule B), the cut-over from the existing heating/cooling plant to the Energy System shall be performed outside normal school hours.

## 2.5 REPORTING

FEI shall produce and submit a monthly progress report for the Design and Construction to the District until the Energy System is Commissioned.

## 2.6 TESTING AND COMMISSIONING

FEI shall coordinate and supervise the start-up and testing of the Energy System to ensure the Energy System and other components of the Building System affected by the Design and Construction are operating in accordance with the Specifications, upon which the Energy System will be Commissioned. The District shall be invited to participate in the start-up and testing exercise.

# ARTICLE 3 - TERM AND RENEWAL

## 3.1 TERM

The term of this Agreement commences on the Effective Date and continues until the Expiry Date unless it is terminated earlier as authorized under this Agreement ("Term").

## 3.2 RENEWAL

This Agreement will automatically renew for periods of ten (10) years unless either Party provides written notice to the other Party no less than six (6) months prior to the Expiry Date, provided that there shall be no automatic renewal in the event that the Expiry Date arises as a result of the closure of the Building, or the Building otherwise ceases to operate as a school (as defined under the *School Act* (British Columbia)).

# ARTICLE 4 - ACCESS AND PERMITS

## 4.1 ACCESS RIGHTS

The District hereby grants to FEI, during the Term from and following the Acceptance Date, for so long as FEI shall require it, but subject to Section 4.4, a full, free and uninterrupted licence and right of way on, over and under the Lands and Building, for FEI, its assigns, employees, contractors, agents, invitees and licensees at all times hereafter for the purposes set out in this Agreement, provided FEI will avoid to the extent reasonably possible, and otherwise minimize interference with and inconvenience to, the occupants of the Building and the access rights of FEI will be limited to the extent reasonably necessary to fulfil FEI's obligations hereunder.

Without limiting the generality of the foregoing, but subject to Section 4.4, such right of way and licence shall include the full power, right and liberty to excavate for, install, place, construct, renew, alter, repair, maintain, operate, use, abandon, remove or replace its infrastructure, in whole or in part, and to enter upon, along, across, over or under the Lands or Building and have continual access to the Energy System, with or without vehicles, supplies, machinery or equipment, for any of the purposes set out in this Agreement, and to clear such portion of the Lands and keep it cleared of obstructions which, in the opinion of FEI, acting reasonably, may

interfere with any of the rights granted to FEI herein. The District may direct, in its discretion, FEI to use alternate routing for any Environmental or other reasonable purpose.

FEI covenants and agrees with the District not to do or knowingly permit to be done anything which may, in the opinion of the District acting reasonably, damage or interfere with the Building or impair the operating efficiency thereof or create any hazard.

#### 4.2 CONDITION OF LAND

The District represents and warrants to FEI that as of the Effective Date:

- (a) to the best of the District's knowledge, the Lands are free of Contaminants other than those specifically identified in the reports provided by the District to FEI and listed in Schedule C; and
- (b) there are no actions, proceedings, investigations, claims (including remediation cost recovery claims) pending, or to the knowledge of the District, threatened, that would interfere with FEI's access rights pursuant to Section 4.1.

#### 4.3 PERMITS

FEI will obtain and maintain at its own expense all Permits necessary for the Design and Construction and the Services.

#### 4.4 SAFETY, SECURITY AND BUILDING ACCESS

Notwithstanding anything to the contrary in this Agreement, FEI will adhere, and will cause all persons for whom it is responsible under this Agreement (including, without limitation, the Contractor) to adhere to the District Site Rules for Contractors.

#### 4.5 REMEDIATION

FEI shall promptly remediate any Disclosed Contaminants on the Lands as required by applicable Law that result from, or are Released as a result of the Design and Construction or the Services, except to the extent caused or contributed to by the District's negligence. In the event that Contaminants on the Lands, other than Disclosed Contaminants, are discovered by FEI, FEI will promptly notify the District of such discovery and the Parties will review the impact of such discovery, if any, on the Design and Construction or the Services.

### **ARTICLE 5 - SERVICE PROVISION**

#### 5.1 PROVISION OF SERVICE

Subject to the terms and conditions of the Agreement, FEI will provide the Services to the District throughout the Term.

## 5.2 SERVICE MONITORING AND REVIEW

The Parties acknowledge that FEI may be required from time to time to prepare and submit reports to the BCUC concerning the operation and performance of the Energy System, and the District shall provide FEI with reasonable cooperation in relation to the preparation of such reports.

## 5.3 STANDARD OF PERFORMANCE

In performing the Services, FEI will:

- (a) use only qualified personnel and exercise the same degree of care, skill and supervision as would be exercised by a reasonable and prudent owner experienced in performing like services;
- (b) perform the Services in accordance with all applicable Laws;
- (c) perform the Services in accordance with ongoing industry standards and codes of practice; and
- (d) without limiting the effect of the foregoing, abide by any standards of performance in relation to the Services that the BCUC may set from time to time according to the provisions of the UCA.

## 5.4 INTERRUPTION

No interruption of any of the on-site and off-site services, utilities and amenities provided by FEI to the Building will, except to the extent, if any, caused by any wrongful or negligent act of FEI or any person for whom FEI is responsible at law, render FEI liable to the District or any person claiming through or under the District, or relieve the District from any of its obligations under this Agreement. Notwithstanding the foregoing, FEI will use all reasonable diligence to remedy any such interruption if it is within its power and obligation to do so.

# **ARTICLE 6 - ENERGY SYSTEM MAINTENANCE AND OPERATION**

## 6.1 MAINTENANCE AND REPAIR OF ENERGY SYSTEM

Subject to Section 6.2, FEI will perform the Services and otherwise maintain or cause to be maintained and repaired the Energy System throughout the Term:

- (a) in accordance with the Energy System design and operating specifications and requirements as established by the qualified engineers engaged by FEI in the design and construction of the Energy System, and the equipment manufacturers;
- (b) in a good and workman-like manner using qualified workers, and in accordance with sound and currently accepted industry standards and codes of practice normally employed, at the time and place of performance, in projects of a similar type and nature;
- (c) to ensure operational compatibility with the Building System;

- (d) in a safe and environmentally sound manner, and in accordance with all applicable Laws; and
- (e) in accordance with the terms of this Agreement.

FEI will not delay repair of the Energy System for any reason, including as a result of a dispute with the District in relation to the costs and expenses of repair pursuant to Section 6.2.

## 6.2 REPAIR DAMAGE

The District will be responsible for all costs and expenses incurred by FEI in respect of any damage to the Energy System caused by or resulting from:

- (a) the careless or wilful damage to the Energy System by the District or its agents or other persons for whom at law the District is responsible; or
- (b) damage caused to the Energy System as a result of the negligent acts or omissions of the District, its agents or those for whom in law the District is responsible.

## **ARTICLE 7 - CHARGES**

### 7.1 MONTHLY CHARGES

The District throughout the Term commencing on the Commission Date in accordance with this Article 7 will pay to FEI when due for the Thermal Energy that FEI delivers and meters to the Building according to the rates set out in the Energy System Rate Development Agreement plus all applicable taxes (including harmonized sales tax applicable thereon) and any imposed taxes levied after the Commission Date by a government or regulatory agency that are related to the Energy System (including, but not limited to capital taxes or royalties) and any other payments due and owing by the District under this Agreement.

### 7.2 MONTHLY STATEMENT

FEI will, within 15 days following the end of each month, deliver to the District a statement setting out the Monthly Charges including all applicable taxes payable for that month.

### 7.3 PAYMENT

The District will pay the full amount specified in each statement provided to it in accordance with Section 7.2 within 30 days of receipt of such statement. All amounts payable to FEI will be made by cheque mailed to FEI at its address for service specified in Section 20.5.

### 7.4 PAYMENT DUE

Subject to Section 14.1, the obligation of the District to pay the Monthly Charges continues whether or not the Energy System is being used to provide the Building with its energy needs for space and ventilation heating, cooling and domestic hot water use.

#### 7.5 ARREARS TO BEAR INTEREST

If any amount owing to FEI or the District is not paid on or before the date on which it is due, a late payment charge of 1.5% per month will be assessed each month on all outstanding balances not paid by the due date.

### **ARTICLE 8 - OWNERSHIP OF THE ENERGY SYSTEM**

Notwithstanding the payments made by the District to FEI under this Article 8, any provision of this Agreement, any degree of annexation or affixation, or rule of law or equity to the contrary the District will have no proprietary interest in the Energy System which is, and shall remain, the property of FEI and may be used by FEI in its business or removed in whole or in part as it may see fit, and for any of such purposes, and FEI may enter in, upon and under all the Lands for the purposes of the maintenance, renewals, repair, removal or operation of the Energy System or any part thereof; provided that FEI shall not leave any part of the Energy System in such a state as to constitute a nuisance or a danger to the public through neglect, non-use and want of repair, and provided further that nothing in this clause shall nullify or otherwise impact or invalidate in any way the District's rights under Article 15 to purchase the Energy System.

### **ARTICLE 9 - ENVIRONMENTAL ATTRIBUTES**

#### 9.1 ENVIRONMENTAL ATTRIBUTES

All right, title and interest now existing or which may exist at any time in the future in the potential or actual commercial value of any Environmental Attributes that arise or accrue by virtue of the construction and operation of the Energy System will belong to the District. At the request of the District, FEI will reasonably cooperate with the District in applying for and assigning any Environmental Attributes to the District.

#### 9.2 GRANTS

Any grants from any Governmental Authority, a Crown Corporation or non-governmental authority that may be derived from a reduction in energy consumption by the Building will belong to the District.

### **ARTICLE 10 - REPRESENTATIONS AND WARRANTIES**

#### 10.1 DISTRICT'S REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties contained in this Agreement, the District hereby represents and warrants to FEI as follows and acknowledges that FEI is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) the District has the full right, power and authority to enter into this Agreement;

- (b) all necessary action on the part of the District has been taken to authorize and approve the execution and delivery of this Agreement and the performance by the District of its obligations hereunder;
- (c) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to the District as of the date of this Agreement;
- (d) the District is not party to any action, suit or legal proceeding, actual or, to the knowledge of the District, threatened, and there are no circumstances, matters or things known to the District which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or, to the knowledge of the District, threatened against the District before or by any Governmental Authority, which could affect the District's ability to perform its obligations under this Agreement; and
- (e) no person, firm or corporation has or will have as of the Commission Date, any agreement, right, or option or right capable of becoming an agreement, right, or option for the purchase or acquisition of the Energy System.

## 10.2 FEI'S REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties contained in this Agreement, FEI hereby represents and warrants to the District as follows and acknowledges that the District is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) FEI has the full right, power and authority to enter into this Agreement;
- (b) all necessary corporate action on the part of FEI has been taken to authorize and approve the execution and delivery of this Agreement and the performance by FEI of its obligations hereunder;
- (c) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to FEI as of the date of this Agreement;
- (d) FEI is not party to any action, suit or legal proceeding, actual or threatened, and there are no circumstances, matters or things known to FEI which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or threatened against FEI before or by any Governmental Authority, which could affect FEI's ability to perform its obligations under this Agreement; and
- (e) FEI has or will have all permits, licenses, authorizations and other documentation required for the operation of the Energy System after the Commission Date; and
- (f) FEI has all the required expertise to fulfill its obligations under this Agreement.

### 10.3 DELEGATION AND SUBCONTRACTING

FEI may delegate and subcontract its obligations under this Agreement with respect to Design and Construction and Services to any contractor, consultant, agent or representative provided that FEI shall be fully responsible for the acts and omissions of such persons and those either directly or indirectly employed by them to the same extent as FEI for its own acts or omissions.

## **ARTICLE 11 - BCUC ACCEPTANCE**

### 11.1 REGULATORY REVIEW TERMINATION

Subject to Section 11.3, either Party may terminate this Agreement if within 90 days following the Effective Date, this Agreement and the Energy System Rate Development Agreement, including the Market Rate and the SD37 Rate Rider as defined in that Agreement have not been accepted for filing by the BCUC (such acceptance being herein called "BCUC Acceptance").

### 11.2 REGULATORY FILING

FEI, on behalf of itself and the District, and at its own cost, shall file the Agreement with the BCUC within a reasonable time after the Effective Date. FEI shall take all steps reasonably required to secure BCUC Acceptance, which shall consist of those procedural steps related to filing the Agreement and providing argument and witnesses in support of filing.

### 11.3 TERMINATION

A Party entitled to terminate under Section 11.1 must do so by giving notice to terminate to the other Party at any time after the right to terminate arises pursuant to Section 11.1, and prior to:

- (a) the date of issuance of the BCUC Acceptance; and
- (b) the date that is 90 days after the Effective Date.

### 11.4 EFFECT OF BCUC ACCEPTANCE

The Parties acknowledge that upon BCUC Acceptance, the Services will be subject to regulation by the BCUC under the UCA, and will form another class of service that FEI provides as a public utility. The Parties acknowledge that the terms of the UCA may supersede the terms and conditions of this Agreement.

## **ARTICLE 12 - INDEMNITY**

### 12.1 FEI'S INDEMNITY

Without limiting any other obligations of FEI provided herein, FEI will indemnify, defend, and save harmless the District and its trustees, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including the full amount of all legal fees and expenses on a

solicitor-client basis) which may be paid by, incurred by, or asserted against the District or its directors, officers, employees, agents, successors, or assigns, arising from or in connection with:

- (a) the breach or non-performance by FEI of any of its obligations or warranties hereunder; or
- (b) the negligence or wilful misconduct of FEI, its employees, contractors or agents in respect of the Energy System, and in the performance of the obligations of FEI pursuant to this Agreement,

excluding only such of the foregoing as arise from the fraud, negligence or wilful misconduct of the District or its trustees, officers, directors, members, employees, contractors or agents, or the breach or non-performance by the District of any of its obligations or warranties hereunder.

## 12.2 DISTRICT'S INDEMNITY

Without limiting any other obligations of the District provided herein, the District will indemnify, defend, and save harmless FEI, its Affiliates and their respective shareholders, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including the full amount of all legal fees and expenses on a solicitor-client basis) which may be paid by, incurred by, or asserted against FEI, its Affiliates or their respective shareholders, directors, officers, employees, agents, successors, or assigns, arising from or in connection with:

- (a) the breach or non-performance by the District of any of its obligations or warranties hereunder; or
- (b) the negligence or wilful misconduct of the District, its employees, contractors or agents in respect of the Energy System, and in the performance of the obligations of the District pursuant to this Agreement,

excluding only such of the foregoing as arise from the fraud, negligence or wilful misconduct of FEI or its Affiliates or any of their respective officers, directors, members, employees, contractors or agents, or the breach or non-performance by FEI of any of its obligations or warranties hereunder.

## 12.3 CONSEQUENTIAL LOSS

In no event will the District or FEI or any of their respective officers, directors, employees, contractors or agents be liable to the other Party for any indirect or consequential loss, cost or expense whatsoever, including any loss of profits, revenues or other economic loss, suffered by the other Party or its officers, directors, employees, contractors or agents.

## 12.4 SURVIVAL OF INDEMNITY

The indemnity of each of the District and FEI provided under this Article 12 will survive the Term of this Agreement.

## 12.5 ENVIRONMENTAL INDEMNITY BY THE DISTRICT

The District will indemnify and save harmless FEI, its Affiliates, directors, officers, shareholders, employees, agents, successors and permitted assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants (but not including Disclosed Contaminants) and remediation of the Lands and any affected adjacent property) (collectively, "FEI Losses") which may be paid by, incurred by or asserted against FEI, its Affiliates and their respective directors, officers, shareholders, employees, agents, successors or permitted assigns, arising from or in connection with any Contaminants (but not including Disclosed Contaminants) existing on the Lands prior to the Commission Date or brought onto the Lands or Released onto the Lands by the District or any person for whom it is in law responsible, except to the extent the FEI Losses suffered were caused or contributed to by any act or omission of FEI or any person for whom FEI is in law responsible after FEI had knowledge of the Contaminants.

## 12.6 ENVIRONMENTAL INDEMNITY BY FEI

FEI will indemnify and save harmless the District, its Affiliates and their respective trustees, directors, officers, employees, agents, successors and permitted assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the Lands and any affected adjacent property) (collectively, "District Losses") which may be paid by, incurred by or asserted against the District, its Affiliates, and their respective trustees, directors, officers, employees, agents, successors or permitted assigns, arising from or in connection with any Contaminants brought onto the Lands or any Disclosed Contaminants Released onto the Lands by FEI or any person for whom it is in law responsible, except to the extent the District Losses suffered were caused or contributed to by any act or omission of the District or any person for whom the District is in law responsible after the District had knowledge of the Contaminants.

# ARTICLE 13 - INSURANCE

## 13.1 FEI INSURANCE COVERAGE.

- (a) FEI will obtain and maintain at its own expense throughout the Term, Commercial General Liability Insurance for bodily injury, death and property damage in the minimum amount of five million (\$5,000,000) dollars per occurrence. The policy will contain a cross liability provision and will be maintained for a period ending no sooner than 12 months after the expiry or termination of this Agreement.
- (b) FEI will be responsible for the full amount of all premiums and deductibles required under this Section 13.1. All policies required herein must be effective at the Commission Date. Insurance will be purchased from insurers registered and licensed to underwrite

insurance in British Columbia. Policies will contain waivers of subrogation against the District and all its officers, directors, members, employees, contractors and agents.

### 13.2 DISTRICT INSURANCE COVERAGE

- (a) The District will obtain and maintain at its own expense throughout the Term Commercial General Liability Insurance for bodily injury, death and property damage in the minimum amount of five million (\$5,000,000) dollars per occurrence. The policy will contain a cross liability provision and will be maintained for a period ending no sooner than 12 months after the expiry or termination of this Agreement.
- (b) The District will be responsible for the full amount of all premiums and deductibles required under this Section 13.2. All policies required herein must be effective at the date of this Agreement. Insurance will be provided by the Provincial self-insured program. Policies will contain waivers of subrogation against FEI and all its officers, directors, employees, contractors and agents.

### 13.3 PRIORITY

FEI will ensure that the District is an additional insured under the insurance to be obtained and maintained pursuant to Section 13.1. The District will ensure that FEI is an additional insured under the insurance to be obtained and maintained pursuant to Section 13.2. In the event of a claim, the insurance carried by the Party responsible for actions which give rise to such claim will be the primary insurance with respect to such claim.

## **ARTICLE 14 - DEFAULT**

### 14.1 DEFAULT BY FEI

- (a) FEI will be in default under this Agreement if FEI is in breach of a material term, covenant, agreement, condition or obligation imposed on it under this Agreement and fails to cure such default within ten (10) days after receipt of written notice thereof from the District, or, if such default is not capable of being cured within such ten (10) day notice period, fails to commence in good faith the curing of such default upon receipt of such written notice of default from the District and to continue to diligently pursue the curing of such default thereafter until cured. For the purposes of this Section 14.1, Section 4.4 is hereby deemed to be a material term of this Agreement.
- (b) If FEI is in default of this Agreement, the District may at its option and without liability therefore or prejudice to any other right or remedy it, including under the UCA, may have suspend or refuse to make any payments due hereunder until the default has been fully remedied, and no such suspension or refusal will relieve FEI from any of its obligations under this Agreement.
- (c) In the event the default is not fully remedied within thirty (30) days of receipt by FEI of written notice thereof from the District, the District may, at its option, undertake the necessary steps to remedy FEI's default at FEI's sole expense, which reasonable costs

shall be deducted from the Monthly Charges, and such actions will not relieve FEI from any of its obligations under this Agreement or, at its option, and without any liability, terminate this Agreement without prejudice to any other right the District may have hereunder or at law or otherwise.

#### 14.2 DEFAULT BY THE DISTRICT

- (a) The District will be in default under this Agreement if the District fails or refuses to make any payment due to FEI by the District under this Agreement within thirty (30) days of receiving written notice from FEI after the date that payment is due or if the District is in breach of a material term, covenant, agreement, condition or obligation imposed on it under this Agreement and fails to cure such default within ten (10) days after receipt by the District of written notice thereof from FEI or, if such default is not capable of being cured within such ten (10) day notice period, fails to commence in good faith the curing of such default forthwith upon receipt of such written notice thereof from FEI and to continue to diligently pursue the curing of such default thereafter until cured.
- (b) If the District is in default of this Agreement, FEI may at its option and without liability therefore or prejudice to any other right or remedy it may have, including under the UCA, cease performing the Services and no such actions will relieve the District from any of its obligations under this Agreement.
- (c) In the event the default by the District is not fully remedied within thirty (30) days of receipt by the District of written notice from FEI, FEI may undertake the necessary steps to remedy the District's default at the District's sole expense and such action will not relieve the District from any of its obligations under this Agreement or, at its option, and without any liability, take whatever steps necessary to shut down the Energy System and terminate this Agreement without prejudice to any other right FEI may have hereunder or at law or otherwise.

#### 14.3 CROSS DEFAULT

- (a) If any Building experiences a Service Interruption at any time, the District may deliver a notice of such Service Interruption to FEI (a "Service Interruption Notice" to FEI);
- (b) If a Service Interruption continues for a period of 48 consecutive hours after the delivery of a Service Interruption Notice pursuant to Section 14.3(a), the District may deliver a notice of such continuing Service Interruption to FEI (a "Continuing Service Interruption Notice");
- (c) If a Service Interruption continues for a period of 120 consecutive hours after the delivery of a Continuing Service Interruption Notice, the District may at its option deliver a notice of such continuing Service Interruption to FEI (a "Service Failure Notice"); Within 60 days of either:
  - (i) the District's delivery of a Service Failure Notice pursuant to Section 14.3(c); or

- (ii) the District's delivery of a Continuing Service Interruption Notice pursuant to Section 14.3(b) that constitutes the fifth or greater Continuing Service Interruption Notice delivered in that calendar year;

the District may, at its option and without liability:

- (iii) terminate this Agreement without prejudice to any other right the District may have hereunder at law or otherwise; or
  - (iv) terminate the Energy System Rate Development Agreement and all Energy System Service Agreements (inclusive of this Agreement), without prejudice to any other right the District may have hereunder at law or otherwise.
- (d) For greater certainty, this Agreement shall be deemed to be terminated in the event that the District exercises its right to terminate all Energy System Service Agreement under another Energy System Service Agreement.

#### 14.4 SURVIVAL

Upon expiry or earlier termination of this Agreement for any reason, all claims, causes of action or other outstanding obligations remaining or being unfulfilled as of the expiry or termination of this Agreement and all of the provisions of this Agreement relating to the obligation or either the Parties to account to or indemnify the other and to pay to the other any amounts owing as at the date of expiry or termination in connection with this Agreement will survive such expiry or termination.

### **ARTICLE 15 – EXPIRY AND TERMINATION**

#### 15.1 EXPIRY

Upon expiry of the Term, unless otherwise agreed between the Parties and subject to agreement by the BCUC (if required pursuant to applicable Laws), the District may, at its option and by written notice to FEI within 30 days following the termination:

- (a) require FEI to remove the Energy System at FEI's cost in accordance with Section 15.5; or
- (b) acquire the Energy System from FEI at the Adjusted Energy System Purchase Price.

#### 15.2 TERMINATION OF THE ENERGY SYSTEM RATE DEVELOPMENT AGREEMENT

- (a) If the Energy System Rate Development Agreement is terminated as a result of the adoption, approval or implementation of a thermal energy rate tariff by the BCUC, this Agreement will automatically terminate effective as of the date of termination of the Energy System Rate Development Agreement;
- (b) If the Energy System Rate Development Agreement is terminated for cause by the District, this Agreement will be deemed to have been terminated pursuant to Section

14.1(c) as of the date of termination of the Energy System Rate Development Agreement, and Section 15.3 shall apply; and

- (c) If the Energy System Rate Development Agreement is terminated for cause by FEI, this Agreement will be deemed to have been concurrently terminated pursuant to Section 14.2(c) as of the date of termination of the Energy System Rate Development Agreement, and Section 15.4 shall apply.

### 15.3 TERMINATION BY THE DISTRICT FOR CAUSE

If the District terminates this Agreement pursuant to Sections 14.1(c) or 14.3, the District may, at its option and by written notice to FEI within 30 days following the termination:

- (a) require FEI to remove the Energy System, at its own cost, in accordance with Section 15.5; or
- (b) acquire the Energy System from FEI at the Adjusted Energy System Purchase Price.

### 15.4 TERMINATION BY FEI FOR CAUSE

If FEI terminates this Agreement pursuant to Section 14.2(c), FEI may, at its option and by written notice to the District:

- (a) remove the Energy System, at its own cost, in accordance with Section 15.5; or
- (b) require the District to purchase the Energy System from FEI at the Adjusted Energy System Purchase Price.

### 15.5 REMOVAL OF THE ENERGY SYSTEM

If FEI is required to remove the Energy System pursuant to Sections 15.1(a), 15.3(a) or 15.4(a) or otherwise upon expiry of this Agreement, FEI shall promptly remove those portions of the Energy System located within the Building and at surface level at FEI's cost, and FEI shall perform such removal activities using standards of performance that are equivalent to those that apply to the performance of the Services under this Agreement. Any portion of the Energy System not removed by FEI prior to the 30<sup>th</sup> day following the termination or expiry of the Agreement will, as of such day, be deemed to be automatically transferred to the District, and become the property of the District, all at no cost to the District.

### 15.6 ACQUISITION OF THE ENERGY SYSTEM

If the District elects to acquire the Energy System pursuant to Sections 15.1(b), 15.3(b) or 15.4(b):

- (a) the District shall pay the Adjusted Energy System Purchase Price to FEI within the later of 30 days of (i) the effective date of expiration or termination, and (ii) confirmation of the Adjusted Energy System Purchase Price; and

- (b) FEI will promptly execute and deliver any documents and records reasonably required by the District to effect and facilitate the transfer of the Energy System to the District, including bills of sale, operation and maintenance manuals and warranties, and will use reasonable commercial efforts to obtain any consents and approvals that may be required in relation to the transfer (including, without limitation, BCUC approval), provided that (i) FEI's obligations under this Section 15.6(b) shall arise only upon FEI's receipt of all amounts due and owing to FEI from the District under this Agreement, and (ii) during the period between the expiration or termination of the Agreement and FEI's receipt of amounts due and owing to FEI from the District under this Agreement, FEI shall continue to maintain, or shall permit the District to maintain, the Energy System in good working order.

Notwithstanding the foregoing, the Parties acknowledge and agree that FEI's ability to sell or otherwise transfer its interest in and to the Energy System to the District may be subject to BCUC approval under applicable Laws.

## **ARTICLE 16 - NON-COMPLIANCE AND ENVIRONMENTAL**

### **16.1 NOTIFICATION OF NON-COMPLIANCE**

FEI or the District (as applicable, the "Notifying Party") will promptly, upon becoming aware thereof, notify the other Party in writing of:

- (a) a Release of a Contaminant or any other occurrence or condition in the Energy System, the Lands or any adjacent property which could subject the other Party to any fines, penalties, orders or proceedings under applicable Laws;
- (b) any charge, order, investigation or notice of violation or non-compliance issued against the Notifying Party relating to the Energy System, or the operation of the Energy System, under any applicable Laws; and
- (c) any notice, claim, action or other proceeding by any third party against the Notifying Party in respect of the Design and Construction or the Services or concerning the Release or alleged Release of any Contaminants at or from the Energy System or the Lands.

### **16.2 NOTIFICATION BY FEI**

FEI will notify the appropriate Governmental Authorities of any Release of any Contaminants at or from the Energy System in accordance with applicable Laws. The District may, but is not obligated to, notify the appropriate Governmental Authorities of any Release of any Contaminants at or from the Energy System in accordance with applicable Laws.

### **16.3 OWNERSHIP OF CONTAMINANTS**

Notwithstanding any rule of law to the contrary, any Disclosed Contaminant Released from the Energy System, or any top soil, earth or other material containing a Contaminant for which FEI is responsible pursuant to Section 4.5 that is removed from the Lands by FEI or any person for

whom it is in law responsible, will be and remain the sole and exclusive property and responsibility of FEI and will not become the property of the District, notwithstanding the degree of its affixation to the Lands and notwithstanding the expiry or earlier termination of this Agreement.

#### 16.4 SURVIVAL OF OBLIGATIONS

The obligations of the Parties under this Article 16 will survive the expiry or termination of this Agreement.

### **ARTICLE 17 - FORCE MAJEURE**

#### 17.1 SUSPENSION

Subject to the other provisions of this Article 17, if either Party is unable or fails by reason of Force Majeure to perform in whole or in part any obligation or covenant set forth in this Agreement, with the exception of unpaid financial obligations, such inability or failure will be deemed not to be a breach of such obligation or covenant and the obligations of both Parties under this Agreement will be suspended to the extent necessary during the continuation of any inability or failure so caused by such Force Majeure.

#### 17.2 DEFINITION OF FORCE MAJEURE

For purposes of this Agreement, the term "Force Majeure" means any event or occurrence not within the control of the Party claiming Force Majeure and which by the exercise of reasonable diligence such Party is unable to prevent or overcome, including any acts of God, including lightning, earthquakes, storms, washouts, landslides, avalanches, fires, epidemics and floods; strikes, lockouts or other industrial disturbances; acts of the Queen's or public enemies, sabotage, wars, blockades, insurrections, riots or civil disturbances, fires, explosions, breakages of or accidents to machinery or lines of pipe; the laws, orders, rules, regulations, acts or restraints of any court or governmental or regulatory authority. For the purposes of this Article 17, a Party is deemed to have control over the actions or omissions of those persons to which it, its agents, contractors or employees, have delegated, assigned or subcontracted its obligations and responsibilities. For greater certainty, a Force Majeure shall not include any weather related events that do not exceed 25 year events as recorded by Environment Canada or as otherwise may be determined by the BCUC from time to time.

#### 17.3 EXCEPTIONS

Neither Party will be entitled to the benefit of Section 17.1 under any of the following circumstances:

- (a) the Energy System not being Commissioned;
- (b) to the extent that the inability or failure was caused by the negligence or contributory negligence of the Party claiming Force Majeure;

- (c) to the extent that the inability or failure was caused by the Party claiming Force Majeure having failed to diligently attempt to remedy the condition by taking all reasonable acts and to resume the performance of such covenants and obligations with reasonable dispatch;
- (d) if the inability or failure was caused by lack of funds or is in respect of any amount due hereunder; or
- (e) unless, as soon as possible after the happening of the occurrence relied upon or as soon as possible after determining that the occurrence was in the nature of Force Majeure and would affect the claiming Party's ability to observe or perform any of its covenants or obligations under this Agreement, the claiming Party will have given to the other Party notice to the effect that the claiming Party is unable by reason of Force Majeure (the nature whereof will be therein specified) to perform the particular covenants or obligations.

#### 17.4 RESUMPTION OF OBLIGATIONS

The Party claiming Force Majeure will give notice to the other Party, as soon as possible after the Force Majeure condition is remedied, to the effect that the same had been remedied and that such Party has resumed, or is then in a position to resume, the performance of its suspended covenants and obligations hereunder either in whole or in part.

#### 17.5 SETTLEMENT OF LABOUR DISPUTES

Notwithstanding any of the provisions of this Article 17, and subject to Section 17.3, the settlement of labour disputes or industrial disturbances is entirely within the discretion of the particular Party involved and the Party may make settlement of it at the time and on terms and conditions as it may deem to be advisable and no delay in making settlement will deprive the Party of the benefit of Section 17.1.

### **ARTICLE 18 - CONDITIONS PRECEDENT**

#### 18.1 CONDITIONS PRECEDENT OF FEI

The obligation of FEI to carry out the transactions contemplated by this Agreement is subject to fulfillment of the following conditions on or before such date as may be specified, which is for the sole benefit of FEI, and which may be waived by FEI in accordance with Section 18.2:

- (a) FEI obtaining the approval by its board of directors of the terms and conditions of this Agreement on or before the 30th day following the Effective Date, provided that if such approval cannot be obtained by this date due to the fact that the board of directors has not yet considered the transaction FEI reserves the right to extend the period of time to that date when the board next convenes.

## 18.2 FEI NOTICE OF WAIVER

If a condition set out in Section 18.1 has not been satisfied on or before the date as may be specified for its fulfillment, FEI may waive compliance with the condition in whole or in part, in its sole discretion, by written notice to the District, failing which delivery of written notice of satisfaction or waiver of such condition, this Agreement will, to the extent any further obligations of the Parties which remain unfulfilled, be null and void, without liability between the Parties hereto, and, neither Party will be under any further obligation to the other to complete the transactions or future transactions, as the case may be, contemplated by this Agreement.

## **ARTICLE 19 - DISPUTE RESOLUTION**

### 19.1 REFERENCE TO ARBITRATION

The Parties will attempt to resolve all disputes which may arise under, out of, in connection with or in relation to this Agreement by negotiation. They will provide full and timely disclosure to one another of all facts relevant to the disputes to facilitate those negotiations. If any such dispute remains unresolved, for any reason, fifteen (15) days after either Party requested the other Party to enter into negotiations to resolve it, or if the Parties agree to waive negotiations in respect of it, then either Party may submit that dispute for final resolution by arbitration administered by the British Columbia International Commercial Arbitration Centre (“BCICAC”) under its “Shorter Rules for Domestic Commercial Arbitration”. The seat of that arbitration will be Vancouver, British Columbia, Canada. The language of that arbitration will be English. Alternatively, the Parties may agree, within the 15 days referred to above, to submit that dispute for final resolution by arbitration in another manner.

### 19.2 BINDING DECISION

The decision of the arbitrator, regardless of what arbitration procedure is used, will, for all purposes of this Agreement, be final and binding on the Parties.

### 19.3 CONTINUATION OF SERVICES

Each of the Parties will perform all of its respective obligations under this Agreement notwithstanding the existence of any dispute that arises from time to time between the Parties in respect of any matter related to this Agreement or during the resolution of any dispute in accordance with this Article 19.

### 19.4 COSTS

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 case, the non-prevailing Party shall pay all costs and expenses of the arbitration, but not those of the prevailing Party.

## ARTICLE 20 - GENERAL

### 20.1 RESPONSIBILITY FOR COSTS

FEI's performance of any of its obligations under this Agreement, including without limitation the obligation to design, construct and install the Energy System as provided in Section 2.1, shall be at FEI's sole cost and expense, unless expressly provided otherwise in this Agreement;

### 20.2 EXERCISE OF DISCRETION

Where anything in this Agreement is identified as being in either Party's discretion, such Party will have the right to exercise such discretion in its own best interest without regard for the interest of the other Party.

### 20.3 COOPERATION

FEI and the District will at all times extend co-operation to each other to ensure the orderly management and operation of the Energy System.

### 20.4 SOLICITATION

Nothing in this Agreement precludes either Party from soliciting or entering into, other contracts with the other Party.

### 20.5 NOTICES

Any notice or other communication required or permitted to be given under this Agreement will be effective only if in writing and when it is actually delivered (which delivery may be by telecopy or other telecommunications device) to the Party for whom it is intended at the following address or such other address in British Columbia as such Party may designate to the other Party by notice in writing delivered in accordance with this Section 20.5:

(a) if to FEI:

FortisBC Energy Inc.  
10th Floor, 1111 West Georgia Street  
Vancouver, B.C.  
V6E 4M3

Attention: Gareth Jones  
Telephone: 250-380-5972  
Telecopy: 250-388-6876

(b) if to the District:

Board of Education of School District No. 37 (Delta)  
4585 Harvest Drive  
Delta, B.C.  
V4K 5B4

Attention: Frank Geyer  
Telephone: 604-952-5336  
Telecopy: 604-952-5375

Notwithstanding the foregoing, notices with respect to Force Majeure will be given in writing by telecopy, or orally in person or by telephone (to be confirmed by telecopy), to the person or persons designated from time to time by the Parties as the person or persons authorized to receive such notices.

## 20.6 CONFIDENTIALITY

The District and FEI will treat as confidential the terms of this Agreement and all Confidential Information (as defined below) and will at all times during the term of this Agreement and for a reasonable time thereafter hold the terms of this Agreement and all Confidential Information in confidence and neither Party will, without the prior written consent of the other Party, disclose or divulge the terms of this Agreement or any Confidential Information to any person, provided that nothing in this Section 20.6 will restrict or prevent either Party from making any disclosure of such terms or any Confidential Information:

- (a) which is reasonably necessary or desirable for such Party to carry out and give full effect to the terms, conditions and intent of this Agreement and the matters contemplated hereby;
- (b) which is required by any Law, including the Freedom of Information and Protection of Privacy Act (British Columbia);
- (c) to any Governmental Authority;
- (d) to the British Columbia Utilities Commission or other regulatory agency as part or in support of any regulatory application or submission;
- (e) to the directors, officers or employees of such Party or to an Affiliate of such Party or to the directors, officers or employees of an Affiliate of such Party;
- (f) to the professional advisors of such Party on the same terms of confidentiality;
- (g) which is already in the public domain; or
- (h) in connection with legal proceedings or steps being taken to remedy a breach or default under this Agreement by the other Party.

For the purposes of this Section 20.6, "Confidential Information" means proprietary information of either Party such as data, plans, drawings, manuals, or specifications which have been provided by such Party, its employees, contractors, agents, subcontractors, Affiliates to the other Party pursuant to this Agreement or proprietary information either Party conceived or developed by or for such Party concerning construction practices, operation and maintenance practices, agreements, marketing plans and strategies, profits, costs, pricing and systems of procedure (provided that "Confidential Information" does not include information which was disclosed to the receiving Party by a third Party (unless, to the knowledge of the receiving Party, the third Party is under an obligation of confidentiality to the other Party) or any information developed or conceived by the receiving Party without using the "Confidential Information" of the other Party).

#### 20.7 SEVERABILITY

If any provision of this Agreement is found or determined to be invalid, illegal or unenforceable it will be construed to be separate and severable from this Agreement and will not impair the validity, legality or enforceability of any other provisions of this Agreement, and the remainder of this Agreement will continue to be binding on the Parties as if such provision had been deleted.

#### 20.8 NO WAIVER

No waiver by either Party of any default by the other in the performance of any of the provisions of this Agreement will operate or be construed as a waiver of any other or future default or defaults hereunder, whether of a like or a different character. To be binding, any waiver of any provision of this Agreement must be clearly expressed in writing to be signed by the waiving Party.

#### 20.9 BURDEN AND BENEFIT

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

#### 20.10 GOVERNING LAW

This Agreement and all matters arising hereunder will be governed by the laws of British Columbia and the federal laws of Canada applicable in British Columbia.

#### 20.11 ENTIRE AGREEMENT

This Agreement contains the whole agreement between the Parties in respect of the subject matter hereof and there are no terms, conditions or collateral agreements express, implied or statutory other than as expressly set forth in this Agreement and this Agreement supersedes all of the terms of any written or oral agreement or understanding between the Parties.

#### 20.12 TIME OF ESSENCE

Time is of the essence of this Agreement.

#### 20.13 FURTHER ASSURANCES

Each Party will, at all times hereafter on demand by the other, execute and deliver or cause to be executed and delivered all such further documents and do all such further acts and things as may be reasonably requested by the other Party to evidence, carry out and give full effect to the intent and meaning of this Agreement and to assure the completion of the transactions contemplated hereby.

#### 20.14 AMENDMENTS TO BE IN WRITING

Except as set out in this Agreement, no amendment or variation of this Agreement will be effective or binding upon the Parties unless such amendment or variation is set out in writing and duly executed by the Parties.

#### 20.15 FACSIMILE

This Agreement may be executed by the Parties and transmitted by facsimile transmission and, if so executed, transmitted and received, this Agreement will for all purposes be effective as if the Parties had delivered and executed the original Agreement and each Party undertakes to provide the other Party with a copy of this Agreement bearing original signatures forthwith upon demand.

#### 20.16 SUBJECT TO LEGISLATION

Notwithstanding any other provision hereof, this Agreement and the rights and obligations of FEI and the District under this Agreement are subject to all present and future laws, rules, regulations and orders of any legislative body, governmental agency or duly constituted authority now or hereafter having jurisdiction over FEI or the District.

#### 20.17 EXPENSES

Each Party to this Agreement shall be responsible for the payment of all costs, expenses, legal fees and disbursements incurred or to be incurred by it in negotiating and preparing this Agreement and all documents required to be delivered under this Agreement and otherwise relating to the transactions contemplated by this Agreement.

#### 20.18 NO CONTRARY AGREEMENT

No Party shall enter into an agreement or other commitment with any person if such agreement or commitment has terms or provisions in conflict with or inconsistent with the terms of this Agreement or which could reasonably be expected to lead to actions or consequences that would result in the Party being in breach of the commitments and obligations of the Party pursuant to this Agreement unless such other agreement or commitment is expressly approved by the other Parties.

#### 20.19 NO PARTNERSHIP

Nothing herein shall be deemed or construed to create a joint venture, partnership, employment or agency relationship between the Parties for any purpose.

20.20 ASSIGNMENT

Neither Party may assign this Agreement or any of its rights or obligations under this Agreement, and FEI may not assign, transfer or sell all or any part of the Energy System, except:

- (a) with the consent of the other Party, such consent not to be unreasonably withheld, delayed or conditioned; or
- (b) in the case of FEI, to an Affiliate of FEI which is a "public utility" as defined in the *UCA* on notice to, but without the consent of, the District.

20.21 COUNTERPARTS

This Agreement may be executed in counterparts with the same effect as if the Parties had signed the same document. All counterparts will be construed together and will constitute one agreement.

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

**FORTISBC ENERGY INC.**

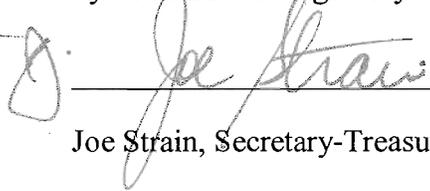
by its authorized signatory:

  
\_\_\_\_\_

Doug Stout,  
VP Energy Solutions & External Relations

**THE BOARD OF EDUCATION OF  
SCHOOL DISTRICT NO. 37 (DELTA)**

by its authorized signatory:

  
\_\_\_\_\_

Joe Strain, Secretary-Treasurer

# SAMPLE SCHEDULE “A”

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## Energy System Description

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### Mechanical Equipment Plans and Specifications

Equipment schedule:

- 1 ground source heat pumps water furnace 540NXW or equivalent and associated pumps. The heat pump and related equipment will be installed in the boiler room at the old boilers location on the concrete pad.
- Each heat pump will have 1 pump on condenser side (5 Hp, 90gpm, 100 ft).
- Piping, control valves and other equipment and accessories connected to the above equipment.
- Connection of the heat pumps on the return of the boiler and installation of the 3 way valves.
- 500 ft of piping 4 inches isolated between the field and the heat pump The pipes will be installed on the roof.
- Installation of geo-exchange field loop to match the designed performance of the system.
- Supply and do the injection of 800 usgals of propylene/glycol with a concentration of 25%.
- Control systems for the above mentioned equipment.
- BTU meters

Prior to commencement of the Mechanical Equipment construction, FEI shall provide detailed drawings to the District for review and acceptance.

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## **SCHEDULE “B”**

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# **Delta School District Site Rules for Contractors**

## **Delta School District Site Rules for Contractors**

### **1.0 Safety**

- 1.1 For the purposes of this section, “Safety Regulations” means the rules, regulations, and practices required by WorkSafeBC.
- 1.2 The Contractor shall be solely responsible for site safety during the execution of all assigned construction and maintenance activities, including work performed by subcontractors and suppliers, and for compliance with the Safety Regulations, and shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the work.
- 1.3 If the District is of the reasonable opinion that the Contractor has not taken such precautions as are necessary to ensure compliance with the requirements of Clause 1.2, the District may take or order any remedial measures which it deems necessary, including stopping the performance of all or any portion of the work, and the District may use the employees of itself, the Contractor, any subcontractor or any other contractors to perform such remedial measures. The Contractor acknowledges and agrees that any failure by the Contractor to comply with the Safety Regulations shall constitute a default of the Contractor's contractual obligations and the District may issue a written notice instructing the Contractor to correct the default in the two (2) working days immediately following receipt of such notice.
- 1.4 The Contractor shall file any notices or any similar document (including, without limitation, a Notice of Project where applicable) required pursuant to the Safety Regulations. This duty of the Contractor will be considered to be included in the work and no separate payment therefore will be made to the Contractor.
- 1.5 The Contractor shall develop, maintain and supervise for the duration of the work a comprehensive safety program that will effectively incorporate and implement all required safety precautions. The program shall, as a minimum, respond fully to the Safety Regulations and general construction practices for the safety of persons or property, including without limitation the WorkSafeBC regulations that may be applicable (e.g. WHMIS, dust control, etc.).
- 1.6 The Contractor shall provide a copy of the safety program described in Clause 1.5 to the District prior to the commencement of the work and shall, at all times require, as far as it is reasonably practical to do so, that every employer and worker performing work in respect of the project complies with such program.
- 1.7 The Contractor shall arrange regular safety meetings at its expense, record the minutes of such meetings and maintain a complete file for review by the appropriate authorities.
- 1.8 The Contractor shall supply and maintain, at its own expense, at its office or other well-known place at the work site, safety equipment necessary to protect the workers and general public against accident or injury as prescribed by the governing authorities.
- 1.9 The Contractor shall supply and maintain all articles necessary for giving first-aid to any person who may be injured on the work site and shall establish an emergency procedure for the immediate removal of any injured person to a hospital or a doctor's care in accordance with the Safety Regulations.
- 1.10 The Contractor shall, as required under the Safety Regulations, promptly report all accidents of any sort arising out of or in connection with the performance of the work whether on or adjacent to the work site, giving full details and statements of witnesses. The District shall be copied on all accident reports and investigation reports.

## **2.0 Security and Access**

- 2.1 **Site and Building Access:** The District's Maintenance Services Department will issue gate and building keys, electronic access cards (complete with instructions as to how to arm/disarm the building intrusion alarm system and how to contact the alarm monitoring station) and identification badges for the Contractor to enter the site and building, disarm/arm the building intrusion alarm system, and access the portions of the site where the Contractor's work is taking place. The Contractor and all subcontractors must check in at the school office (if occupied by District staff) prior to entering other parts of the building. The access cards, keys and identification badges shall be promptly returned to the District at the end of the contract.
- 2.2 **Security:** The Contractor shall assume all responsibility for the security of the work site. The Contractor must ensure that all windows, doors and gates are secure and the building intrusion alarm system is armed (unless District staff are still in the building) at the end of the workday. The Contractor must also safeguard the rest of the building and/or site from access through possible open construction areas. Security doors shall at all times remain closed and shall not be propped open, even for a short time. The Contractor is responsible for any costs arising when the District's security runner services is called to attend a work site for security matters resulting from the Contractor's negligence.
- 2.3 **Normal School Hours:** Normal hours of operation for the District are 0730h-1600h Monday to Friday, excluding statutory holidays. For after-hours and weekend work, the Contractor must notify the District's Maintenance Services Department at least one business day in advance of the work.

## **3.0 Conduct**

- 3.1 **Noise Due to Construction or Maintenance Activities:** In accordance with the Delta Noise Bylaw 1906, "no person shall carry on or cause to be carried any construction work, reconstruction, alteration, repair or demolition of a building or structure, the operation of machinery, or works in connection with any excavation or highway before 07:00h or after 1900h and day of the week from Monday to Friday, inclusive, before 0900h or after 1700h on Saturdays, or at any time Sundays. The Contractor shall respect the classroom operations in the vicinity of the work site and as such will make every attempt to limit noisy work to times outside of classroom operation or to adequately dampen, silence and/or soundproof equipment that generates noise to mitigate disruption to the classrooms.
- 3.2 **Communication devices:** Radio and cell phone volume shall be at the minimum volume which is consistent with the ability to operate the device.
- 3.3 **Roadways:** All speed limits and other traffic rules must be obeyed and access to the roadways should not be impeded. Parking and secure storage of materials and equipment by the Contractor and subcontractors shall only be in designated areas only.
- 3.4 **Cleanliness:** The work site must be maintained for an orderly appearance on a daily basis. Trash and construction debris shall be contained at all times and removed from the work site weekly.
- 3.5 **Toilets:** All temporary toilets shall have their doors faced away from streets. In no cases shall a worker utilize any staff washroom or other staff facilities at the work site, except as otherwise agreed in writing by the District. Under no circumstances will workers be permitted to use student washrooms.
- 3.6 **Identification Badges:** All workers shall have a District-assigned identification badge that clearly indicates the company's name and the worker's name. It is to be worn whenever at the work site.

- 3.7 **Smoking:** Smoking is not permitted on District property.
- 3.8 **Alcohol/Drugs:** No alcoholic beverages or non-prescription drugs shall be brought or consumed at the work site.
- 3.9 **Animals:** No dogs or other animals, are permitted at the work site without the written consent of the District.
- 3.10 **Fitness for Work:** All workers must be fit for work at all times. The District retains the right to request individuals leave the work site if unfit for any reason including, without limitation, inebriation, taking drugs, injury, fatigue, rudeness or any other reason that may affect the quality of the work or represents a breach of these rules.
- 3.11 **Theft:** Workers who steal from occupants or the District shall be immediately ejected from the work site. The Contractor is responsible for all such thefts irrespective of whether the worker is an employee of the Contractor or a subcontractor.
- 3.12 **Discrimination and Harassment:** The District actively promotes a safe and secure school environment and as such does not tolerate violations of human rights legislation, including:
- (a) discriminatory acts against any person with respect to the work or school environment or any educational program or service provided to or by that person because of race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age of that person, or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person;
  - (b) all forms of actual, attempted or threatened physical harm directed at any person; or
  - (c) any form of sexual harassment such as unwelcome sexual advances with actual or implied work related consequences; unwelcome remarks, questions, jokes or innuendo of a sexual nature including sexist comments or sexual invitations; verbal abuse, intimidation or threats of a sexual nature; unwelcome leering, staring or making sexual gestures; whistling or catcalls; display of pornographic or other sexual materials; offensive pictures, graffiti, cartoons or sayings; unwanted physical contact such as touching, patting, pinching or hugging; and physical assault of a sexual nature

## **SCHEDULE “C”**

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### **List of Environmental Reports**



**ASBESTOS MATERIALS SURVEY  
AND RISK ASSESSMENT**

**OF**

**ENGLISH BLUFF ELEMENTARY SCHOOL  
402 – 48<sup>th</sup> Street  
Delta, BC**

**PREPARED FOR:**

**DELTA SCHOOL DISTRICT  
Maintenance Facility  
7186 Brown Street  
Delta, BC  
V4G 1G8**

**PREPARED BY:**

**ACM ENVIRONMENTAL CORPORATION  
#217 -2323 Quebec Street  
Vancouver, BC  
V5T 4S7  
604-873-8599**

**September 2005**

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<b>STATEMENT OF LIMITATIONS</b>	<b>Page 10</b>
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<b>Photos</b>	<b>Appendix B</b>

## **EXECUTIVE SUMMARY**

A.C.M. Environmental Corporation (ACM) was retained by the Delta School District to perform an Asbestos Materials Survey and Risk Assessment for English Bluff Elementary located at 402 – 48<sup>th</sup> Street, Delta, BC.

The assessment involved an inspection of all areas of the building. The objective of the assessment was to identify the types and extent of asbestos containing materials within the building and any risks associated with the materials and the regular usage of the building.

The assessment was conducted using both visual and physical assessment techniques. Samples of materials suspected of containing asbestos were collected and forwarded, using proper chain of custody protocols, to Prezant Associates, Inc. for asbestos analysis. Asbestos sample results are located in Appendix A of this report.

Previous asbestos sampling information for the building was reviewed prior to conducting the survey assessment. ACM previously collected 3 bulk samples from the school on June 24<sup>th</sup>, 1990. The sampling identified 2 pipe elbows to be asbestos containing and was not re-sampled during the latest survey as most of the asbestos containing mechanical insulation has been abated. These areas as well as other areas which have mechanical pipe insulation were verified in the latest survey.

In summary, the findings from the assessment conclude that asbestos was found within the construction materials of the building. No Mercury containing switches or PCB containing materials were found within the equipment of the building.

Three types of asbestos containing materials were observed; vinyl floor tile materials, drywall taping compound materials and interior window putty materials. Within the context of the report, areas have been detailed as to the locations of the asbestos containing materials, the content of asbestos where applicable, and the required procedures to be followed for removal of these materials, as required.

The hazardous materials survey was conducted using non-destructive and some limited destructive testing methods. Areas within walls were not inspected as access was not possible without causing extensive damage to the walls. It should be noted that there is a possibility of asbestos containing materials existing within inaccessible wall and ceiling cavities, and under sub-floors. Possible asbestos-containing materials which may exist in these areas may

include but are not limited to: insulation materials (mechanical or construction), secondary layers of drywall or flooring, etc.

Roofing materials were not sampled at this time as the integrity of the waterproof membrane would be compromised, possibly voiding insurance coverage in the event of a water leak. If the roofing materials are to be disturbed during a renovation project, they must be sampled prior to the work taking place.

A random number of fluorescent lighting fixtures were opened up and inspected for possible PCB containing ballasts. No PCB containing ballasts were observed within the fluorescent lighting fixtures inspected, although some may exist, as not all fixtures were opened. No Mercury containing thermostat switches were observed within the building.

## **INTRODUCTION**

A.C.M. Environmental Corporation (ACM) was retained by the Delta School District to perform an Asbestos Materials Survey and Risk Assessment for English Bluff Elementary located at 402-48<sup>th</sup> Street, Delta, BC. The building may undergo renovations in the near future and all areas of the building were inspected and/or sampled during this survey.

The objective of the assessment was to identify the types and extent of asbestos containing construction materials within the accessible areas of the building. The assessment at this time involved an inspection of all areas of the building not including the roofing materials.

The survey and assessment was conducted on September 22<sup>nd</sup>, 2005 by Mr. James McArthur, AScT, Environmental Technician, for ACM Environmental. Nine (9) representative bulk samples of materials suspected of containing asbestos were collected for analysis and are included as Appendix A of this report.

Previous asbestos sampling information for the building was reviewed prior to conducting the survey assessment. ACM previously collected 3 bulk samples from the school on June 20<sup>th</sup>, 1990. The sampling identified the pipe elbow insulation to be asbestos containing and was not re-sampled during the latest survey as all mechanical insulation has been identified as non-asbestos containing.

## **METHODOLOGY**

The hazardous materials survey was conducted using non-destructive and some limited destructive testing methods. Areas within walls were not inspected as access was not possible without causing extensive damage to the walls. It should be noted that there is a possibility of asbestos containing materials existing within inaccessible wall and ceiling cavities, and under sub-floors. Possible asbestos-containing materials which may exist in these areas may include but are not limited to: insulation materials (mechanical or construction), secondary layers of drywall or flooring, etc.

The U.S. Environmental Protection Agency (USEPA) Guidance Document was selected for use in this study (1). The document identifies factors associated with the "condition" and the "potential for disturbance or erosion" of asbestos containing materials. These factors help to define the fibre release potential of the suspect asbestos containing materials and were used in a qualitative evaluation of materials found in the surveyed areas. Recommendations have been substantiated by additional information utilized from other documentation cited in the Reference Section of this report.

The bulk samples of suspect asbestos containing materials were forwarded, using proper chain of custody protocols, to Prezant Associates, Inc. for asbestos analysis. The samples were analyzed using polarized light microscopy (PLM) with dispersion staining in accordance with U.S. EPA method 600/R-93/116, "Method for Determination of Asbestos in Bulk Building Materials".

Other hazardous materials were visually inspected and are noted in this report.

The survey relied on the abilities and experience of the surveyor to gain access and identify possible asbestos containing materials. All areas of the building were accessed during the assessment excluding the roof.

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## **RESULTS & ASSOCIATED RISK LEVELS**

### **ASBESTOS**

Three types of asbestos containing materials were identified during this survey which will or could be affected by any potential renovation or demolition activities: vinyl floor tile materials, drywall taping compound materials and window putty materials. A breakdown for each type of material is as follows:

#### **Vinyl Floor Tile:**

Asbestos containing vinyl floor tile (VFT) materials were observed within several areas of the building. Two (2) types of 12" vinyl floor tile materials were observed to be asbestos containing. These include the Beige colored VFT with dark red & white streaks found in the Staff Room around the kitchen area and the Beige colored VFT with red & white streaks found in Storage Room 116 and Boys and Girl's change and storage room areas located in the Gym. The asbestos containing vinyl floor tile materials were all found to contain <1% Chrysotile asbestos. The materials are presently in fair to good condition.

WCB Regulations do not treat any materials with less than 1% asbestos as asbestos containing. Workers should still use moderate risk procedures when exposed to the vinyl floor tile materials, even in materials with less than 1% asbestos concentrations. The WCB states that workers must be properly protected from any potential exposure to airborne asbestos fibres. It is recommended that any work affecting all the vinyl floor tile materials be done using a minimum of moderate risk asbestos work procedures. Therefore as a minimum, MODERATE RISK asbestos work procedures will be required for the removal of the asbestos containing vinyl floor tile materials. Vinyl floor tile materials which are less than 1% do not have to be disposed of in accordance with applicable regulations as asbestos waste.

#### **Interior Window Putty:**

Asbestos containing window putty was observed on the interior of the window on the 2<sup>nd</sup> floor of the building. The asbestos containing interior window putty was sampled and found to contain 10% Chrysotile asbestos. The materials are presently in fair to good condition. All window putty materials within the building are to be treated as asbestos containing.

Prior to any renovation or demolition activities taking place which could disturb the asbestos containing interior window putty, it must first be removed and disposed of in accordance with applicable regulations. The removal of the

asbestos containing exterior window putty will pose a moderate risk of asbestos exposure to the workers involved, therefore as a minimum, MODERATE RISK asbestos work procedures will be required for the removal of the asbestos containing exterior window putty.

Drywall Taping Compound:

Asbestos containing drywall taping compound materials were observed within Room 212. Drywall taping compound materials were sampled in this area and found to contain <1% Chrysotile asbestos. The asbestos containing drywall taping compound materials are presently in good condition. All original drywall materials encountered within the building are to be treated as asbestos containing until further sampling determines otherwise.

WCB Regulations do not treat any materials with less than 1% asbestos as asbestos containing. Prior to any activities taking place which could disturb the asbestos containing drywall materials, workers should still use moderate risk procedures when exposed to the asbestos containing drywall materials, even in materials with less than 1% asbestos concentrations. The WCB states that workers must be properly protected from any potential exposure to airborne asbestos fibres. It is recommended that any work affecting the asbestos containing drywall materials be done using a minimum of moderate risk asbestos work procedures. Therefore as a minimum, MODERATE RISK asbestos work procedures will be required for the removal of the asbestos containing materials. The drywall materials which are less than 1% do not have to be disposed of in accordance with applicable regulations as asbestos waste.

**POLYCHLORINATED BIPHENYLS (PCBs)**

A random number of fluorescent light ballasts were visually inspected for possible PCB containing ballasts. No PCB containing ballasts were observed within the fluorescent lighting fixtures inspected in both buildings, although some may exist, as not all fixtures were opened up.

PCB containing fluorescent light ballasts do not pose a risk to occupants of the building. If any PCB containing ballasts are encountered during any renovations of the building, they must be separated from the fixtures and disposed of properly in accordance with applicable regulations.

**MERCURY THERMOSTATS**

Thermostats observed within the building were found to have mercury containing switches within them. If Mercury containing thermostat switches are encountered within the building during renovation or repair activities, they must be removed intact from the thermostats and disposed of properly in accordance with applicable regulations.

### **RECOMMENDATIONS**

Prior to beginning any work that may impinge upon the hazardous materials within the building, the following must be performed:

- 1.) Any affected asbestos containing vinyl floor tile, drywall materials and interior window putty materials in the building must be removed in accordance with applicable regulations. The removal of these asbestos containing materials will require MODERATE RISK asbestos work procedures to be followed. Materials which contain less than 1% Chrysotile asbestos, they will not have to be disposed of in accordance with the applicable regulations as asbestos waste.
- 2.) If any Mercury containing thermostat switches encountered during renovation or repair activities within the building, they must be removed and disposed of in accordance with applicable regulations.
- 3.) If any PCB containing ballasts are encountered during any renovation or repair activities within the building, they must be removed and disposed of in accordance with applicable regulations.
- 4.) If any suspect asbestos containing materials are encountered within inaccessible wall or ceiling cavities, or under floors, during renovation or demolition activities, the work in the immediate area must stop and the supervisor contacted for further direction.

### **STATEMENT OF LIMITATIONS**

The ACM report is intended to direct the Client's attention to recognised environmental conditions and to potential sources of environmental contamination. The findings and conclusion regarding contamination of the property are based solely on the extent of observations and information gathered during the assessment. Nothing in the report is intended to express any legal opinion upon environmental liabilities relating to the site or whether operations legally conformed with relevant legislative requirements.

Furthermore, it must be understood that changing circumstances in the physical environment, the use of the property, as well in changes in any substances stored, used, handled at the property, could alter radically the conclusions and information contained in this report. Therefore, it is important that the property is periodically re-evaluated and the client kept informed as to developments, which may impact the property. This report is not intended to be used as contract specifications.

### **A.C.M. ENVIRONMENTAL CORPORATION**

---

James McArthur, ASCT  
Environmental Technician

**REFERENCES**

- 1) USEPA. 1985. U.S. Environmental Protection Agency. "Guidance for Controlling Asbestos-Containing Materials in Buildings". Washington, DC: Office of Toxic Substances, USEPA.
- 2) Lory EE, Coin DC. 1981. "Management Procedure for Assessment of Friable Asbestos Insulating Material". Port Hueneme, CA: Civil Engineering Laboratory, Naval Construction Battalion Center.
- 3) Workers' Compensation Board of British Columbia, effective 15 April 1998, and all current amendments. Occupational Health and Safety Regulations.
- 4) 2002 Edition - Workers' Compensation Board of British Columbia. Safe Work Practices for Handling Asbestos.

**APPENDIX A**  
**Bulk Sample Results**



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

<b>ACM Environmental</b>	PAI Batch Number: <b>05-2556</b>
<b>2323 Quebec Street, Suite 211</b>	Client Job Number: <b>3048-29</b>
<b>Vancouver, BC</b>	Number of Samples: <b>9</b>
Project Location: English Bluff Elementary School	Turn Around Time: <b>10 day</b>

Batch Number: 05-2556	<b>ACM Environmental</b>
Lab Sample Number: 05014087	<b>3048-29</b>
Client Sample Number: <b>3148-349</b>	<i>English Bluff Elementary School</i>

#### L-1 White paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 100% Paint
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Comments:

#### L-2 Tan fibrous thick opaque material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components: 95% Cellulose	Non-Fibrous Components: 5% Filler and Binder
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Comments:

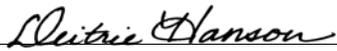
#### L-3 Pink mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 90% Resin and Binder 5% Mineral Fragments 5% Filler and Binder
--	----------------------------------	---

Comments:

Batch Number: 05-2556	<b>ACM Environmental</b>
Lab Sample Number: 05014088	<b>3048-29</b>
Client Sample Number: <b>3148-350</b>	<i>English Bluff Elementary School</i>

Sampled By: James McArthur  
 Received By: John McCaslin 10/17/2005  
 Reviewed By: George McCaslin 10/31/2005

  
 Analyzed By: Deitrie Hanson 10/31/2005



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

## Bulk Asbestos Fiber Analysis

### L-1 Pale beige hard tile with dark red and white streaks

<b>Asbestos Fibrous Components:</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
<1% <b>Chrysotile</b>		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		>4% Miscellaneous Particles

**Comments:**  
This tile contains <1% chrysotile asbestos.

### L-2 Black resinous mastic

<b>Asbestos Fibrous Components:</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
<b>No Asbestos Detected</b>		95% Asphalt Filler and Binder
		3% Mineral Fragments
		2% Filler and Binder

**Comments:**

### L-3 Pale gray hard granular material

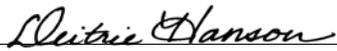
<b>Asbestos Fibrous Components:</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
<b>No Asbestos Detected</b>		85% Mineral Granules
		12% Sand
		3% Miscellaneous Particles

**Comments:**

Batch Number: 05-2556  
 Lab Sample Number: 05014089  
 Client Sample Number: 3148-351

**ACM Environmental**  
**3048-29**  
*English Bluff Elementary School*

Sampled By: James McArthur  
 Received By: John McCaslin 10/17/2005  
 Reviewed By: George McCaslin 10/31/2005

  
 Analyzed By: Deitrie Hanson 10/31/2005



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

**L-1 Pale beige opaque mastic**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Resin and Binder
		10% Calcite Filler and Binder

**Comments:**

**L-2 Pale gray hard tile material**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		65% Calcite Filler and Binder
		30% Mineral Filler and Binder
		5% Vinyl Filler and Binder

**Comments:**

Batch Number: 05-2556	<b>ACM Environmental</b>
Lab Sample Number: 05014090	<b>3048-29</b>
Client Sample Number: 3148-352	<i>English Bluff Elementary School</i>

**L-1 Golden tan mastic on pale beige hard tile with dark red and white streaks**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>&lt;1% Chrysotile</b>		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		>4% Miscellaneous Particles

**Comments:**

This tile contains <1% chrysotile asbestos.

Sampled By: James McArthur  
 Received By: John McCaslin 10/17/2005  
 Reviewed By: George McCaslin 10/31/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 10/31/2005



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

**L-2 Black resinous mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		92% Asphalt Filler and Binder
		5% Mineral Fragments
		3% Filler and Binder

**Comments:**

**L-3 Pale gray hard granular material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		65% Mineral Granules
		20% Sand
		10% Mineral Filler and Binder
		5% Miscellaneous Particles

**Comments:**

Batch Number: 05-2556  
 Lab Sample Number: 05014091  
 Client Sample Number: 3148-353

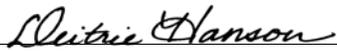
**ACM Environmental**  
**3048-29**  
*English Bluff Elementary School*

**L-1 White paint**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		100% Paint

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin 10/17/2005  
 Reviewed By: George McCaslin 10/31/2005

  
 Analyzed By: Deitrie Hanson 10/31/2005



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
 OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

## Bulk Asbestos Fiber Analysis

### L-2 Pale brown fibrous opaque material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b> 60% Cellulose	<b>Non-Fibrous Components:</b> 25% Filler and Binder 10% Perlite 5% Mineral Fragments
--	--	--

**Comments:**

Batch Number: 05-2556	<b>ACM Environmental</b>
Lab Sample Number: 05014092	<b>3048-29</b>
Client Sample Number: 3148-354	<i>English Bluff Elementary School</i>

### L-1 Pale bluish white paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 100% Paint
--	---	--

**Comments:**

### L-2 Pale grayish white crystalline powdery material

<b>Asbestos Fibrous Components:</b> <b>&lt;1% Chrysotile</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 90% Calcite Filler and Binder 5% Vermiculite >4% Mineral Particles
---	---	--

**Comments:**

This layer contains <1% chrysotile asbestos.

### L-3 Tan fibrous thin papery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b> 97% Cellulose	<b>Non-Fibrous Components:</b> 3% Filler and Binder
--	--	--

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin 10/17/2005  
 Reviewed By: George McCaslin 10/31/2005

*Deitrie Hanson*

---

Analyzed By: Deitrie Hanson 10/31/2005



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

Batch Number:	05-2556	<b>ACM Environmental</b>
Lab Sample Number:	05014093	<b>3048-29</b>
Client Sample Number:	<b>3148-355</b>	<i>English Bluff Elementary School</i>

#### L-1 Transparent pliable mastic

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		98% Resin and Binder
		2% Mineral Fragments

Comments:

#### L-2 Dull gray thick pliable rubbery material with gray and white swirls

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		80% Rubber Particles
		15% Calcite Filler and Binder
		5% Resin and Binder

Comments:

Batch Number:	05-2556	<b>ACM Environmental</b>
Lab Sample Number:	05014094	<b>3048-29</b>
Client Sample Number:	<b>3148-356</b>	<i>English Bluff Elementary School</i>

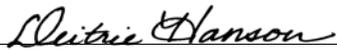
#### L-1 Pale beige hard tile with dark red and white streaks

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>&lt;1% Chrysotile</b>		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		>4% Mineral Fragments

Comments:

This tile contains <1% chrysotile asbestos.

Sampled By: James McArthur  
 Received By: John McCaslin 10/17/2005  
 Reviewed By: George McCaslin 10/31/2005

  
 Analyzed By: Deitrie Hanson 10/31/2005



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

**L-2 Black resinous mastic**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Asphalt Filler and Binder
		6% Mineral Fragments
		4% Filler and Binder

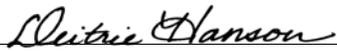
**Comments:**

Batch Number:	05-2556	<b>ACM Environmental</b>
Lab Sample Number:	05014095	<b>3048-29</b>
Client Sample Number:	<b>3148-357</b>	<i>English Bluff Elementary School</i>

**Dark gray pliable putty-like material**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>10% Chrysotile</b>		74% Calcite Filler and Binder
		8% Paint
		4% Mineral Fragments
		4% Miscellaneous Particles

**Comments:**

Sampled By: James McArthur			
Received By: John McCaslin	10/17/2005	Analyzed By: Deitrie Hanson	10/31/2005
Reviewed By: George McCaslin	10/31/2005		

**APPENDIX B**  
**Photos**



Asbestos containing 12" Beige vinyl floor tiles with dark red & white streaks

**ENERGY SYSTEM SERVICE AGREEMENT**

**HEATH ELEMENTARY SCHOOL**

**THIS AGREEMENT** dated for reference the 26<sup>th</sup> day of September, 2011.

**BETWEEN:**

**THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 37 (DELTA)**  
a corporation established under the School Act R.S.B.C. 1996, c. 412 having an  
office at 4585 Harvest Drive, Delta, British Columbia, V4K 5B4

(the "District")

OF THE FIRST PART

**AND:**

**FORTISBC ENERGY INC.,** a company duly incorporated under the laws of the  
Province of British Columbia, having its registered office at 10th Floor, 1111  
West Georgia Street, Vancouver, B.C. V6E 4M3

("FEI")

OF THE SECOND PART

**WHEREAS:**

- A. The District is the owner of Heath Elementary School (the "Building") and lands located at 11364 72<sup>nd</sup> Avenue, Delta, British Columbia, which lands are legally described as:

PID: 009-023-925 Property No: 102844

LOT 16 SECTION 13 TOWNSHIP 4 NEW WESTMINSTER DISTRICT PLAN 29399

(the "Lands")

- B. FEI wishes to supply to the Building, and the District wishes to purchase, Thermal Energy generated by an Energy System that FEI will construct on the Lands, and which FEI will own and operate, all pursuant to the terms of this Agreement.
- C. The Thermal Energy supplied by FEI to the Building pursuant to this Agreement will be priced at the rate set forth in the Energy System Rate Development Agreement between the Parties dated September 26<sup>th</sup>, 2011.

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT** in consideration of the premises and the covenants, agreements, representations, warranties and payments set out herein,

the receipt and sufficiency of which is hereby acknowledged by each Party, the Parties covenant and agree as follows:

## ARTICLE 1 - INTERPRETATION

### 1.1 DEFINITIONS

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

- (a) “Adjusted Energy System Purchase Price” means, as of the date on which a purchase of the Energy System pursuant to Article 15 is effective, either:
  - (i) the Rate Base Value; or
  - (ii) such other purchase price for the Energy System as is determined by the BCUC; plus all applicable taxes;
- (b) “Affiliate” has the meaning set out in the *Business Corporation Act*, S.B.C. 2002, c.57 and includes FortisBC Inc.;
- (c) “Agreement” means this agreement, including the preamble hereto and any schedules attached hereto and the terms “this Agreement”, “hereof”, “herein”, “hereunder” and “hereinafter” and similar expressions refer to the Agreement and not to any particular Section or other portion thereof and includes any agreement supplementary or ancillary thereto;
- (d) “Acceptance Date” means the date of BCUC Acceptance;
- (e) “BCUC” means the British Columbia Utilities Commission, or any successor thereto;
- (f) “BCUC Acceptance” has the meaning assigned to that term in Section 11.1;
- (g) “Building” has the meaning assigned to that term on page one of this Agreement;
- (h) “Building System” means the space heating, cooling and ventilation, and domestic hot water distribution and control systems existing in the Building, to which the Energy System will be connected;
- (i) “Business Day” means any day except Saturday and Sunday or any day on which banks are generally not open for business in Vancouver, British Columbia;
- (j) “Capital Contribution” means \$ 67,000
- (k) “Commissioned” means once the Energy System is certified complete and operating in accordance with the Specifications by a professional engineer under seal;
- (l) “Commission Date” means the day on which the Energy System is Commissioned;

- (m) “Contaminants” means, collectively, any contaminant, toxic substance, dangerous good, or pollutant or any other substance which when released to the natural environment is likely to cause, at some immediate or future time, material harm or degradation to the natural environment or material risk to human health, and includes any radioactive materials, asbestos materials, urea formaldehyde, underground or aboveground tanks, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive or toxic substances, hazardous waste or waste of any kind, pesticides, defoliants, or any other solid, liquid, gas, vapour, odour or any other substance .the storage, manufacture, disposal, handling, treatment, generation, use, transport, remediation or Release into the Environment of which is now or hereafter prohibited, controlled or regulated under Environmental Laws;
- (n) “Continuing Service Interruption Notice” has the meaning assigned to that term in Section 14.3(b);
- (o) “Contractor” means a prime contractor hired by FEI to oversee and complete the construction and installation of the Energy System;
- (p) “Design and Construction” means the total construction and related services required to design, construct and commission the Energy System and connected components of the Building System;
- (q) “Design Thermal Energy” means the maximum amount of Thermal Energy that the Energy System is capable of delivering through the Thermal Energy Meter and is included in the Specifications;
- (r) “Disclosed Contaminants” means Contaminants:
  - (i) the existence of which are specifically identified in the reports provided by the District to FEI and listed in Schedule C;
  - (ii) that were or ought to have been discovered, foreseen or anticipated upon reasonable inspection by FEI prior to the Effective Date; and
  - (iii) that were caused by FEI or any person for whom FEI is responsible at law;
- (s) “District” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (t) “District Losses” has the meaning assigned to that term in Section 12.6;
- (u) “District Site Rules for Contractors” means the rules set forth in Schedule “B”;
- (v) “Effective Date” means the date set out on page one of this Agreement;
- (w) “Energy System” means the equipment that FEI constructs and owns which will provide the Building with its energy needs for space heating, cooling and ventilation, and domestic hot water use, all as set forth in this Agreement;

- (x) “Energy System Service Agreement” has the meaning assigned to that term in the Energy System Rate Development Agreement;
- (y) “Energy System Rate Development Agreement” means that energy system rate development agreement between the District and FEI dated as of September 26<sup>th</sup>, 2011;
- (z) “Environment” includes the air (including all layers of the atmosphere), land (including soil, sediment deposited on land, fill, lands submerged under water, buildings, and improvements), water (including oceans, lakes, rivers, streams, groundwater, and surface water), and all other external conditions and influences under which humans, animals, and plants live or are developed and “Environmental” will have a corresponding meaning;
- (aa) “Environmental Attributes” means:
  - (i) all attributes associated with, or that may be derived from the Energy System installed having decreased environmental impacts relative to the use of conventional heating and cooling and hot water heating systems including any existing or future credit, allowance, certificate, right, benefit or advantage or proprietary or contractual right whether or not tradable;
  - (ii) any existing or future instrument, including without limitation any environmental emission allowances and environmental emission reduction credits, reduction right, allowance, certificate or other unit of any kind whatsoever, whether or not tradable and any other proprietary or contractual right, whether or not tradable, and any resulting from, or otherwise related to the actual assumed reduction, displacement or offset of emissions associated with, or that may be derived from the Energy System installed; and
  - (iii) all revenues, entitlement, benefits and other proceeds arising from or related to the foregoing;
- (bb) “Environmental Laws” means any and all statutes, laws, regulations, orders, bylaws, standards, guidelines, protocols, permits, and other lawful requirements of any Governmental Authority having jurisdiction over the Lands or the Energy System now or hereafter in force with respect in any way to the Environment, environmental assessment, health, occupational health and safety, protection of any form of plant or animal life, or transportation of dangerous goods, including the principles of common law and equity;
- (cc) “Expiry Date” means the earlier of:
  - (i) June 30, 2031, or the expiry of any renewal term thereof; and
  - (ii) the closure of the Building, or the Building otherwise ceasing to operate as a school (as defined under the *School Act* (British Columbia));
- (dd) “FEI” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (ee) “FEI Losses” has the meaning assigned to that term in Section 12.5;

- (ff) “Force Majeure” has the meaning assigned to that term in Section 17.2;
- (gg) “Governmental Authority” means any federal, provincial, regional, municipal, local or other government, governmental or public department, court, tribunal, arbitral body, commission, board, bureau or agency and any subdivision, agent, commission, board or authority thereof;
- (hh) “Lands” has the meaning assigned to that term in Recital A and includes the Building located on the Lands;
- (ii) “Laws” means laws, statutes, regulations, bylaws, Permits and orders of any Governmental Authority having jurisdiction, including without limitation, Environmental Laws;
- (jj) “Maintain” means to operate, service and maintain in a safe and reliable condition and “maintaining” and “maintenance” have corresponding meanings;
- (kk) “Monthly Charges” means that amount to be paid by the District to FEI with respect to the delivery of Thermal Energy to the Building pursuant to the Energy System Rate Development Agreement and any other payments due and owing by the District under this Agreement;
- (ll) “Notifying Party” has the meaning assigned to that term in Section 16.1;
- (mm) “Party” means a signatory to this Agreement, and the “Parties” means all of such signatories;
- (nn) “Permits” means all permits, licences, certificates, approvals, authorizations, consents and the like issued by any Governmental Authority;
- (oo) “Rate Base Value” means the value of the Energy System that the BCUC accepts from time to time in accordance with the Energy System Rate Development Agreement;
- (pp) “Release” includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, migration, disposal, or dumping;
- (qq) “Right of Access and Licence” means the right and licence granted herein by the District to FEI pursuant to Section 4.1 of this Agreement;
- (rr) “Service Failure Notice” has the meaning assigned to that term in Section 14.3(c);
- (ss) “Service Interruption” means, in any hour:
  - (i) a failure of the Energy System in that hour to deliver Thermal Energy at the Thermal Energy Meter sufficient to meet the Thermal Energy demand of the Building during that hour in accordance with the Specifications up to the Design Thermal Energy, and except where such failure is directly caused by:
    - a. the careless or wilful damage to the Energy System by the District or its agents or other persons for whom the District is responsible;

- b. damage caused to the Energy System as a result of the negligent acts or omissions of the District, its agents or those for whom in law the District is responsible;
  - c. an event of Force Majeure that triggers the suspension of FEI's obligations under the Agreement pursuant to Article 17; or
  - d. maintenance activities that FEI is performing on the Energy System that have been scheduled with the consent of the District (such consent not to be unreasonably withheld); and
- (ii) if the failure described in Section 1.1(rr)(i), FEI's failure in that hour to deliver to the Building through alternative means thermal energy sufficient to maintain an average temperature of 16 degrees Celsius in each room of the Building intended to be served by the Energy System (all as determined by the District, acting reasonably);
- (tt) "Service Interruption Notice" has the meaning assigned to that term in Section 14.3(a);
- (uu) "Services" means those services to be provided by FEI to supply Thermal Energy to a Building from an Energy System, and for greater certainty includes the services described in Articles 5 and 6, and excludes the Design and Construction;
- (vv) "Specifications" means the specifications for the Energy System prepared by FEI in consultation with the District in accordance with Section 2.3 and includes the Design Thermal Energy;
- (ww) "Term" has the meaning assigned to that term in Section 3.1;
- (xx) "Thermal Energy" means the amount of energy that FEI provides to the Building measured through a Thermal Energy Meter;
- (yy) "Thermal Energy Meter" means a device that complies with the International Organization of Legal Metrology recommendations for measuring thermal energy; and
- (zz) "UCA" means the *Utilities Commission Act*, R.S.B.C. 1996, c. 473 as may be amended from time to time.

## 1.2 SCHEDULES

The following Schedules, as may be amended from time to time, are incorporated by reference into this Agreement:

Schedule "A"	Energy System Description
Schedule "B"	Delta School District Site Rules for Contractors
Schedule "C"	List of Environmental Reports

### 1.3 AMENDMENTS TO SCHEDULES

The District and FEI acknowledge that during the construction phase of the Energy System there may be additions and alterations to the Specifications for the Energy System which would result in more efficient use and operation of the Energy System. If these additions or alterations result in changes to any of the above Schedules, the Parties mutually agree to amend the Schedules by way of a written amendment prior to the Commission Date.

### 1.4 INTERPRETATION

Except where the context requires otherwise or except as otherwise expressly provided, in this Agreement:

- (a) all references to a designated Article or Section are to the designated Article or Section of this Agreement unless otherwise specifically stated;
- (b) the singular of any term includes the plural, and vice versa, and the use of any term is equally applicable to any gender and, where applicable, body corporate;
- (c) any reference to a corporate entity includes and is also a reference to any corporate entity that is a successor by merger, amalgamation, consolidation or otherwise to such entity;
- (d) the preamble and all schedules referred to and attached to this Agreement are incorporated by reference and will form a part of this Agreement;
- (e) all sums of money which are referred to in this Agreement are in lawful money of Canada;
- (f) the headings of the Articles and Sections set out in this Agreement are for convenience only and will not be considered in any interpretation of this Agreement;

## **ARTICLE 2 - DESIGN AND CONSTRUCTION OF THE ENERGY SYSTEM**

### 2.1 CONSTRUCTION

FEI will perform the Design and Construction:

- (a) in accordance and in compliance with the Specifications;
- (b) in a good and workmanlike manner using qualified workers, and in accordance with sound and currently accepted industry standards and codes of practice normally employed, at the time and place of performance, in projects of a similar type and nature;
- (c) to ensure operational compatibility with the Building System;
- (d) in a safe and environmentally sound manner, and in accordance with all applicable Laws; and
- (e) in accordance with the terms of this Agreement.

## 2.2 CAPITAL CONTRIBUTION

The District will pay to FEI within 30 days of the Commission Date the Capital Contribution for the purpose of reducing the capital investment and the associated carrying cost of capital by FEI for provision of Service to the Building.

## 2.3 SPECIFICATIONS

Subject to and in accordance with this Section 2.3, FEI shall prepare and complete the Specifications promptly following the Acceptance Date.

FEI confirms the Energy System, as described in the Specifications and as contemplated by the Energy System description set out in Schedule A, will be designed to meet the thermal energy requirements of the Building and operational compatibility of the Building System based in part on information supplied by the District as to historical usage, which information has not been independently verified by FEI. FEI shall have no liability to the District for the failure of the Energy System to satisfy the requirements of the Building where such failure is attributable to the information supplied by the District being incorrect, inaccurate or incomplete.

FEI will prepare the Specifications in consultation with the District in order to ensure the Energy System can be appropriately accommodated within the Building and interface with the Building Systems. FEI will submit material changes to the Specifications, both before and during construction, to the District for review and comment prior to such changes taking place. If the District does not comment on the Specifications or material changes to the Specifications or advise that it has no comment within five (5) Business Days of receipt, FEI will be entitled to proceed on the basis of the information provided to the District. FEI will revise the Specifications based on the comments from the District provided that doing so will not impact FEI's costs or adversely affect system performance.

Review of and comment on the Specifications by the District does not impose any obligation on the District to verify the suitability of the Energy System or be construed as confirmation by the District that the Energy System satisfactorily meets the Building's energy requirements.

## 2.4 WORK SCHEDULE

Within ten (10) Business Days following the Acceptance Date, FEI will submit to the District for review and comment a Gantt chart schedule for the Design and Construction listing activities to be undertaken during the Design and Construction stages, key milestones and approval dates and other pertinent dates. Any revisions to the schedule must be reviewed and commented by the District, which review and comment will not be unreasonably withheld, conditioned or delayed.

In order to ensure that the Building System remains operational during normal school hours (as defined in Schedule B), the cut-over from the existing heating/cooling plant to the Energy System shall be performed outside normal school hours.

## 2.5 REPORTING

FEI shall produce and submit a monthly progress report for the Design and Construction to the District until the Energy System is Commissioned.

## 2.6 TESTING AND COMMISSIONING

FEI shall coordinate and supervise the start-up and testing of the Energy System to ensure the Energy System and other components of the Building System affected by the Design and Construction are operating in accordance with the Specifications, upon which the Energy System will be Commissioned. The District shall be invited to participate in the start-up and testing exercise.

# ARTICLE 3 - TERM AND RENEWAL

## 3.1 TERM

The term of this Agreement commences on the Effective Date and continues until the Expiry Date unless it is terminated earlier as authorized under this Agreement ("Term").

## 3.2 RENEWAL

This Agreement will automatically renew for periods of ten (10) years unless either Party provides written notice to the other Party no less than six (6) months prior to the Expiry Date, provided that there shall be no automatic renewal in the event that the Expiry Date arises as a result of the closure of the Building, or the Building otherwise ceases to operate as a school (as defined under the *School Act* (British Columbia)).

# ARTICLE 4 - ACCESS AND PERMITS

## 4.1 ACCESS RIGHTS

The District hereby grants to FEI, during the Term from and following the Acceptance Date, for so long as FEI shall require it, but subject to Section 4.4, a full, free and uninterrupted licence and right of way on, over and under the Lands and Building, for FEI, its assigns, employees, contractors, agents, invitees and licensees at all times hereafter for the purposes set out in this Agreement, provided FEI will avoid to the extent reasonably possible, and otherwise minimize interference with and inconvenience to, the occupants of the Building and the access rights of FEI will be limited to the extent reasonably necessary to fulfil FEI's obligations hereunder.

Without limiting the generality of the foregoing, but subject to Section 4.4, such right of way and licence shall include the full power, right and liberty to excavate for, install, place, construct, renew, alter, repair, maintain, operate, use, abandon, remove or replace its infrastructure, in whole or in part, and to enter upon, along, across, over or under the Lands or Building and have continual access to the Energy System, with or without vehicles, supplies, machinery or equipment, for any of the purposes set out in this Agreement, and to clear such portion of the Lands and keep it cleared of obstructions which, in the opinion of FEI, acting reasonably, may

interfere with any of the rights granted to FEI herein. The District may direct, in its discretion, FEI to use alternate routing for any Environmental or other reasonable purpose.

FEI covenants and agrees with the District not to do or knowingly permit to be done anything which may, in the opinion of the District acting reasonably, damage or interfere with the Building or impair the operating efficiency thereof or create any hazard.

#### 4.2 CONDITION OF LAND

The District represents and warrants to FEI that as of the Effective Date:

- (a) to the best of the District's knowledge, the Lands are free of Contaminants other than those specifically identified in the reports provided by the District to FEI and listed in Schedule C; and
- (b) there are no actions, proceedings, investigations, claims (including remediation cost recovery claims) pending, or to the knowledge of the District, threatened, that would interfere with FEI's access rights pursuant to Section 4.1.

#### 4.3 PERMITS

FEI will obtain and maintain at its own expense all Permits necessary for the Design and Construction and the Services.

#### 4.4 SAFETY, SECURITY AND BUILDING ACCESS

Notwithstanding anything to the contrary in this Agreement, FEI will adhere, and will cause all persons for whom it is responsible under this Agreement (including, without limitation, the Contractor) to adhere to the District Site Rules for Contractors.

#### 4.5 REMEDIATION

FEI shall promptly remediate any Disclosed Contaminants on the Lands as required by applicable Law that result from, or are Released as a result of the Design and Construction or the Services, except to the extent caused or contributed to by the District's negligence. In the event that Contaminants on the Lands, other than Disclosed Contaminants, are discovered by FEI, FEI will promptly notify the District of such discovery and the Parties will review the impact of such discovery, if any, on the Design and Construction or the Services.

### **ARTICLE 5 - SERVICE PROVISION**

#### 5.1 PROVISION OF SERVICE

Subject to the terms and conditions of the Agreement, FEI will provide the Services to the District throughout the Term.

## 5.2 SERVICE MONITORING AND REVIEW

The Parties acknowledge that FEI may be required from time to time to prepare and submit reports to the BCUC concerning the operation and performance of the Energy System, and the District shall provide FEI with reasonable cooperation in relation to the preparation of such reports.

## 5.3 STANDARD OF PERFORMANCE

In performing the Services, FEI will:

- (a) use only qualified personnel and exercise the same degree of care, skill and supervision as would be exercised by a reasonable and prudent owner experienced in performing like services;
- (b) perform the Services in accordance with all applicable Laws;
- (c) perform the Services in accordance with ongoing industry standards and codes of practice; and
- (d) without limiting the effect of the foregoing, abide by any standards of performance in relation to the Services that the BCUC may set from time to time according to the provisions of the UCA.

## 5.4 INTERRUPTION

No interruption of any of the on-site and off-site services, utilities and amenities provided by FEI to the Building will, except to the extent, if any, caused by any wrongful or negligent act of FEI or any person for whom FEI is responsible at law, render FEI liable to the District or any person claiming through or under the District, or relieve the District from any of its obligations under this Agreement. Notwithstanding the foregoing, FEI will use all reasonable diligence to remedy any such interruption if it is within its power and obligation to do so.

# **ARTICLE 6 - ENERGY SYSTEM MAINTENANCE AND OPERATION**

## 6.1 MAINTENANCE AND REPAIR OF ENERGY SYSTEM

Subject to Section 6.2, FEI will perform the Services and otherwise maintain or cause to be maintained and repaired the Energy System throughout the Term:

- (a) in accordance with the Energy System design and operating specifications and requirements as established by the qualified engineers engaged by FEI in the design and construction of the Energy System, and the equipment manufacturers;
- (b) in a good and workman-like manner using qualified workers, and in accordance with sound and currently accepted industry standards and codes of practice normally employed, at the time and place of performance, in projects of a similar type and nature;
- (c) to ensure operational compatibility with the Building System;

- (d) in a safe and environmentally sound manner, and in accordance with all applicable Laws; and
- (e) in accordance with the terms of this Agreement.

FEI will not delay repair of the Energy System for any reason, including as a result of a dispute with the District in relation to the costs and expenses of repair pursuant to Section 6.2.

## 6.2 REPAIR DAMAGE

The District will be responsible for all costs and expenses incurred by FEI in respect of any damage to the Energy System caused by or resulting from:

- (a) the careless or wilful damage to the Energy System by the District or its agents or other persons for whom at law the District is responsible; or
- (b) damage caused to the Energy System as a result of the negligent acts or omissions of the District, its agents or those for whom in law the District is responsible.

## **ARTICLE 7 - CHARGES**

### 7.1 MONTHLY CHARGES

The District throughout the Term commencing on the Commission Date in accordance with this Article 7 will pay to FEI when due for the Thermal Energy that FEI delivers and meters to the Building according to the rates set out in the Energy System Rate Development Agreement plus all applicable taxes (including harmonized sales tax applicable thereon) and any imposed taxes levied after the Commission Date by a government or regulatory agency that are related to the Energy System (including, but not limited to capital taxes or royalties) and any other payments due and owing by the District under this Agreement.

### 7.2 MONTHLY STATEMENT

FEI will, within 15 days following the end of each month, deliver to the District a statement setting out the Monthly Charges including all applicable taxes payable for that month.

### 7.3 PAYMENT

The District will pay the full amount specified in each statement provided to it in accordance with Section 7.2 within 30 days of receipt of such statement. All amounts payable to FEI will be made by cheque mailed to FEI at its address for service specified in Section 20.5.

### 7.4 PAYMENT DUE

Subject to Section 14.1, the obligation of the District to pay the Monthly Charges continues whether or not the Energy System is being used to provide the Building with its energy needs for space and ventilation heating, cooling and domestic hot water use.

#### 7.5 ARREARS TO BEAR INTEREST

If any amount owing to FEI or the District is not paid on or before the date on which it is due, a late payment charge of 1.5% per month will be assessed each month on all outstanding balances not paid by the due date.

### **ARTICLE 8 - OWNERSHIP OF THE ENERGY SYSTEM**

Notwithstanding the payments made by the District to FEI under this Article 8, any provision of this Agreement, any degree of annexation or affixation, or rule of law or equity to the contrary the District will have no proprietary interest in the Energy System which is, and shall remain, the property of FEI and may be used by FEI in its business or removed in whole or in part as it may see fit, and for any of such purposes, and FEI may enter in, upon and under all the Lands for the purposes of the maintenance, renewals, repair, removal or operation of the Energy System or any part thereof; provided that FEI shall not leave any part of the Energy System in such a state as to constitute a nuisance or a danger to the public through neglect, non-use and want of repair, and provided further that nothing in this clause shall nullify or otherwise impact or invalidate in any way the District's rights under Article 15 to purchase the Energy System.

### **ARTICLE 9 - ENVIRONMENTAL ATTRIBUTES**

#### 9.1 ENVIRONMENTAL ATTRIBUTES

All right, title and interest now existing or which may exist at any time in the future in the potential or actual commercial value of any Environmental Attributes that arise or accrue by virtue of the construction and operation of the Energy System will belong to the District. At the request of the District, FEI will reasonably cooperate with the District in applying for and assigning any Environmental Attributes to the District.

#### 9.2 GRANTS

Any grants from any Governmental Authority, a Crown Corporation or non-governmental authority that may be derived from a reduction in energy consumption by the Building will belong to the District.

### **ARTICLE 10 - REPRESENTATIONS AND WARRANTIES**

#### 10.1 DISTRICT'S REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties contained in this Agreement, the District hereby represents and warrants to FEI as follows and acknowledges that FEI is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) the District has the full right, power and authority to enter into this Agreement;

- (b) all necessary action on the part of the District has been taken to authorize and approve the execution and delivery of this Agreement and the performance by the District of its obligations hereunder;
- (c) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to the District as of the date of this Agreement;
- (d) the District is not party to any action, suit or legal proceeding, actual or, to the knowledge of the District, threatened, and there are no circumstances, matters or things known to the District which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or, to the knowledge of the District, threatened against the District before or by any Governmental Authority, which could affect the District's ability to perform its obligations under this Agreement; and
- (e) no person, firm or corporation has or will have as of the Commission Date, any agreement, right, or option or right capable of becoming an agreement, right, or option for the purchase or acquisition of the Energy System.

## 10.2 FEI'S REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties contained in this Agreement, FEI hereby represents and warrants to the District as follows and acknowledges that the District is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) FEI has the full right, power and authority to enter into this Agreement;
- (b) all necessary corporate action on the part of FEI has been taken to authorize and approve the execution and delivery of this Agreement and the performance by FEI of its obligations hereunder;
- (c) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to FEI as of the date of this Agreement;
- (d) FEI is not party to any action, suit or legal proceeding, actual or threatened, and there are no circumstances, matters or things known to FEI which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or threatened against FEI before or by any Governmental Authority, which could affect FEI's ability to perform its obligations under this Agreement; and
- (e) FEI has or will have all permits, licenses, authorizations and other documentation required for the operation of the Energy System after the Commission Date; and
- (f) FEI has all the required expertise to fulfill its obligations under this Agreement.

### 10.3 DELEGATION AND SUBCONTRACTING

FEI may delegate and subcontract its obligations under this Agreement with respect to Design and Construction and Services to any contractor, consultant, agent or representative provided that FEI shall be fully responsible for the acts and omissions of such persons and those either directly or indirectly employed by them to the same extent as FEI for its own acts or omissions.

## **ARTICLE 11 - BCUC ACCEPTANCE**

### 11.1 REGULATORY REVIEW TERMINATION

Subject to Section 11.3, either Party may terminate this Agreement if within 90 days following the Effective Date, this Agreement and the Energy System Rate Development Agreement, including the Market Rate and the SD37 Rate Rider as defined in that Agreement have not been accepted for filing by the BCUC (such acceptance being herein called "BCUC Acceptance").

### 11.2 REGULATORY FILING

FEI, on behalf of itself and the District, and at its own cost, shall file the Agreement with the BCUC within a reasonable time after the Effective Date. FEI shall take all steps reasonably required to secure BCUC Acceptance, which shall consist of those procedural steps related to filing the Agreement and providing argument and witnesses in support of filing.

### 11.3 TERMINATION

A Party entitled to terminate under Section 11.1 must do so by giving notice to terminate to the other Party at any time after the right to terminate arises pursuant to Section 11.1, and prior to:

- (a) the date of issuance of the BCUC Acceptance; and
- (b) the date that is 90 days after the Effective Date.

### 11.4 EFFECT OF BCUC ACCEPTANCE

The Parties acknowledge that upon BCUC Acceptance, the Services will be subject to regulation by the BCUC under the UCA, and will form another class of service that FEI provides as a public utility. The Parties acknowledge that the terms of the UCA may supersede the terms and conditions of this Agreement.

## **ARTICLE 12 - INDEMNITY**

### 12.1 FEI'S INDEMNITY

Without limiting any other obligations of FEI provided herein, FEI will indemnify, defend, and save harmless the District and its trustees, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including the full amount of all legal fees and expenses on a

solicitor-client basis) which may be paid by, incurred by, or asserted against the District or its directors, officers, employees, agents, successors, or assigns, arising from or in connection with:

- (a) the breach or non-performance by FEI of any of its obligations or warranties hereunder; or
- (b) the negligence or wilful misconduct of FEI, its employees, contractors or agents in respect of the Energy System, and in the performance of the obligations of FEI pursuant to this Agreement,

excluding only such of the foregoing as arise from the fraud, negligence or wilful misconduct of the District or its trustees, officers, directors, members, employees, contractors or agents, or the breach or non-performance by the District of any of its obligations or warranties hereunder.

## 12.2 DISTRICT'S INDEMNITY

Without limiting any other obligations of the District provided herein, the District will indemnify, defend, and save harmless FEI, its Affiliates and their respective shareholders, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including the full amount of all legal fees and expenses on a solicitor-client basis) which may be paid by, incurred by, or asserted against FEI, its Affiliates or their respective shareholders, directors, officers, employees, agents, successors, or assigns, arising from or in connection with:

- (a) the breach or non-performance by the District of any of its obligations or warranties hereunder; or
- (b) the negligence or wilful misconduct of the District, its employees, contractors or agents in respect of the Energy System, and in the performance of the obligations of the District pursuant to this Agreement,

excluding only such of the foregoing as arise from the fraud, negligence or wilful misconduct of FEI or its Affiliates or any of their respective officers, directors, members, employees, contractors or agents, or the breach or non-performance by FEI of any of its obligations or warranties hereunder.

## 12.3 CONSEQUENTIAL LOSS

In no event will the District or FEI or any of their respective officers, directors, employees, contractors or agents be liable to the other Party for any indirect or consequential loss, cost or expense whatsoever, including any loss of profits, revenues or other economic loss, suffered by the other Party or its officers, directors, employees, contractors or agents.

## 12.4 SURVIVAL OF INDEMNITY

The indemnity of each of the District and FEI provided under this Article 12 will survive the Term of this Agreement.

## 12.5 ENVIRONMENTAL INDEMNITY BY THE DISTRICT

The District will indemnify and save harmless FEI, its Affiliates, directors, officers, shareholders, employees, agents, successors and permitted assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants (but not including Disclosed Contaminants) and remediation of the Lands and any affected adjacent property) (collectively, "FEI Losses") which may be paid by, incurred by or asserted against FEI, its Affiliates and their respective directors, officers, shareholders, employees, agents, successors or permitted assigns, arising from or in connection with any Contaminants (but not including Disclosed Contaminants) existing on the Lands prior to the Commission Date or brought onto the Lands or Released onto the Lands by the District or any person for whom it is in law responsible, except to the extent the FEI Losses suffered were caused or contributed to by any act or omission of FEI or any person for whom FEI is in law responsible after FEI had knowledge of the Contaminants.

## 12.6 ENVIRONMENTAL INDEMNITY BY FEI

FEI will indemnify and save harmless the District, its Affiliates and their respective trustees, directors, officers, employees, agents, successors and permitted assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the Lands and any affected adjacent property) (collectively, "District Losses") which may be paid by, incurred by or asserted against the District, its Affiliates, and their respective trustees, directors, officers, employees, agents, successors or permitted assigns, arising from or in connection with any Contaminants brought onto the Lands or any Disclosed Contaminants Released onto the Lands by FEI or any person for whom it is in law responsible, except to the extent the District Losses suffered were caused or contributed to by any act or omission of the District or any person for whom the District is in law responsible after the District had knowledge of the Contaminants.

# ARTICLE 13 - INSURANCE

## 13.1 FEI INSURANCE COVERAGE.

- (a) FEI will obtain and maintain at its own expense throughout the Term, Commercial General Liability Insurance for bodily injury, death and property damage in the minimum amount of five million (\$5,000,000) dollars per occurrence. The policy will contain a cross liability provision and will be maintained for a period ending no sooner than 12 months after the expiry or termination of this Agreement.
- (b) FEI will be responsible for the full amount of all premiums and deductibles required under this Section 13.1. All policies required herein must be effective at the Commission Date. Insurance will be purchased from insurers registered and licensed to underwrite

insurance in British Columbia. Policies will contain waivers of subrogation against the District and all its officers, directors, members, employees, contractors and agents.

### 13.2 DISTRICT INSURANCE COVERAGE

- (a) The District will obtain and maintain at its own expense throughout the Term Commercial General Liability Insurance for bodily injury, death and property damage in the minimum amount of five million (\$5,000,000) dollars per occurrence. The policy will contain a cross liability provision and will be maintained for a period ending no sooner than 12 months after the expiry or termination of this Agreement.
- (b) The District will be responsible for the full amount of all premiums and deductibles required under this Section 13.2. All policies required herein must be effective at the date of this Agreement. Insurance will be provided by the Provincial self-insured program. Policies will contain waivers of subrogation against FEI and all its officers, directors, employees, contractors and agents.

### 13.3 PRIORITY

FEI will ensure that the District is an additional insured under the insurance to be obtained and maintained pursuant to Section 13.1. The District will ensure that FEI is an additional insured under the insurance to be obtained and maintained pursuant to Section 13.2. In the event of a claim, the insurance carried by the Party responsible for actions which give rise to such claim will be the primary insurance with respect to such claim.

## **ARTICLE 14 - DEFAULT**

### 14.1 DEFAULT BY FEI

- (a) FEI will be in default under this Agreement if FEI is in breach of a material term, covenant, agreement, condition or obligation imposed on it under this Agreement and fails to cure such default within ten (10) days after receipt of written notice thereof from the District, or, if such default is not capable of being cured within such ten (10) day notice period, fails to commence in good faith the curing of such default upon receipt of such written notice of default from the District and to continue to diligently pursue the curing of such default thereafter until cured. For the purposes of this Section 14.1, Section 4.4 is hereby deemed to be a material term of this Agreement.
- (b) If FEI is in default of this Agreement, the District may at its option and without liability therefore or prejudice to any other right or remedy it, including under the UCA, may have suspend or refuse to make any payments due hereunder until the default has been fully remedied, and no such suspension or refusal will relieve FEI from any of its obligations under this Agreement.
- (c) In the event the default is not fully remedied within thirty (30) days of receipt by FEI of written notice thereof from the District, the District may, at its option, undertake the necessary steps to remedy FEI's default at FEI's sole expense, which reasonable costs

shall be deducted from the Monthly Charges, and such actions will not relieve FEI from any of its obligations under this Agreement or, at its option, and without any liability, terminate this Agreement without prejudice to any other right the District may have hereunder or at law or otherwise.

#### 14.2 DEFAULT BY THE DISTRICT

- (a) The District will be in default under this Agreement if the District fails or refuses to make any payment due to FEI by the District under this Agreement within thirty (30) days of receiving written notice from FEI after the date that payment is due or if the District is in breach of a material term, covenant, agreement, condition or obligation imposed on it under this Agreement and fails to cure such default within ten (10) days after receipt by the District of written notice thereof from FEI or, if such default is not capable of being cured within such ten (10) day notice period, fails to commence in good faith the curing of such default forthwith upon receipt of such written notice thereof from FEI and to continue to diligently pursue the curing of such default thereafter until cured.
- (b) If the District is in default of this Agreement, FEI may at its option and without liability therefore or prejudice to any other right or remedy it may have, including under the UCA, cease performing the Services and no such actions will relieve the District from any of its obligations under this Agreement.
- (c) In the event the default by the District is not fully remedied within thirty (30) days of receipt by the District of written notice from FEI, FEI may undertake the necessary steps to remedy the District's default at the District's sole expense and such action will not relieve the District from any of its obligations under this Agreement or, at its option, and without any liability, take whatever steps necessary to shut down the Energy System and terminate this Agreement without prejudice to any other right FEI may have hereunder or at law or otherwise.

#### 14.3 CROSS DEFAULT

- (a) If any Building experiences a Service Interruption at any time, the District may deliver a notice of such Service Interruption to FEI (a "Service Interruption Notice" to FEI);
- (b) If a Service Interruption continues for a period of 48 consecutive hours after the delivery of a Service Interruption Notice pursuant to Section 14.3(a), the District may deliver a notice of such continuing Service Interruption to FEI (a "Continuing Service Interruption Notice");
- (c) If a Service Interruption continues for a period of 120 consecutive hours after the delivery of a Continuing Service Interruption Notice, the District may at its option deliver a notice of such continuing Service Interruption to FEI (a "Service Failure Notice"); Within 60 days of either:
  - (i) the District's delivery of a Service Failure Notice pursuant to Section 14.3(c); or

- (ii) the District's delivery of a Continuing Service Interruption Notice pursuant to Section 14.3(b) that constitutes the fifth or greater Continuing Service Interruption Notice delivered in that calendar year;

the District may, at its option and without liability:

- (iii) terminate this Agreement without prejudice to any other right the District may have hereunder at law or otherwise; or
  - (iv) terminate the Energy System Rate Development Agreement and all Energy System Service Agreements (inclusive of this Agreement), without prejudice to any other right the District may have hereunder at law or otherwise.
- (d) For greater certainty, this Agreement shall be deemed to be terminated in the event that the District exercises its right to terminate all Energy System Service Agreement under another Energy System Service Agreement.

#### 14.4 SURVIVAL

Upon expiry or earlier termination of this Agreement for any reason, all claims, causes of action or other outstanding obligations remaining or being unfulfilled as of the expiry or termination of this Agreement and all of the provisions of this Agreement relating to the obligation or either the Parties to account to or indemnify the other and to pay to the other any amounts owing as at the date of expiry or termination in connection with this Agreement will survive such expiry or termination.

### **ARTICLE 15 – EXPIRY AND TERMINATION**

#### 15.1 EXPIRY

Upon expiry of the Term, unless otherwise agreed between the Parties and subject to agreement by the BCUC (if required pursuant to applicable Laws), the District may, at its option and by written notice to FEI within 30 days following the termination:

- (a) require FEI to remove the Energy System at FEI's cost in accordance with Section 15.5; or
- (b) acquire the Energy System from FEI at the Adjusted Energy System Purchase Price.

#### 15.2 TERMINATION OF THE ENERGY SYSTEM RATE DEVELOPMENT AGREEMENT

- (a) If the Energy System Rate Development Agreement is terminated as a result of the adoption, approval or implementation of a thermal energy rate tariff by the BCUC, this Agreement will automatically terminate effective as of the date of termination of the Energy System Rate Development Agreement;
- (b) If the Energy System Rate Development Agreement is terminated for cause by the District, this Agreement will be deemed to have been terminated pursuant to Section

14.1(c) as of the date of termination of the Energy System Rate Development Agreement, and Section 15.3 shall apply; and

- (c) If the Energy System Rate Development Agreement is terminated for cause by FEI, this Agreement will be deemed to have been concurrently terminated pursuant to Section 14.2(c) as of the date of termination of the Energy System Rate Development Agreement, and Section 15.4 shall apply.

### 15.3 TERMINATION BY THE DISTRICT FOR CAUSE

If the District terminates this Agreement pursuant to Sections 14.1(c) or 14.3, the District may, at its option and by written notice to FEI within 30 days following the termination:

- (a) require FEI to remove the Energy System, at its own cost, in accordance with Section 15.5; or
- (b) acquire the Energy System from FEI at the Adjusted Energy System Purchase Price.

### 15.4 TERMINATION BY FEI FOR CAUSE

If FEI terminates this Agreement pursuant to Section 14.2(c), FEI may, at its option and by written notice to the District:

- (a) remove the Energy System, at its own cost, in accordance with Section 15.5; or
- (b) require the District to purchase the Energy System from FEI at the Adjusted Energy System Purchase Price.

### 15.5 REMOVAL OF THE ENERGY SYSTEM

If FEI is required to remove the Energy System pursuant to Sections 15.1(a), 15.3(a) or 15.4(a) or otherwise upon expiry of this Agreement, FEI shall promptly remove those portions of the Energy System located within the Building and at surface level at FEI's cost, and FEI shall perform such removal activities using standards of performance that are equivalent to those that apply to the performance of the Services under this Agreement. Any portion of the Energy System not removed by FEI prior to the 30<sup>th</sup> day following the termination or expiry of the Agreement will, as of such day, be deemed to be automatically transferred to the District, and become the property of the District, all at no cost to the District.

### 15.6 ACQUISITION OF THE ENERGY SYSTEM

If the District elects to acquire the Energy System pursuant to Sections 15.1(b), 15.3(b) or 15.4(b):

- (a) the District shall pay the Adjusted Energy System Purchase Price to FEI within the later of 30 days of (i) the effective date of expiration or termination, and (ii) confirmation of the Adjusted Energy System Purchase Price; and

- (b) FEI will promptly execute and deliver any documents and records reasonably required by the District to effect and facilitate the transfer of the Energy System to the District, including bills of sale, operation and maintenance manuals and warranties, and will use reasonable commercial efforts to obtain any consents and approvals that may be required in relation to the transfer (including, without limitation, BCUC approval), provided that (i) FEI's obligations under this Section 15.6(b) shall arise only upon FEI's receipt of all amounts due and owing to FEI from the District under this Agreement, and (ii) during the period between the expiration or termination of the Agreement and FEI's receipt of amounts due and owing to FEI from the District under this Agreement, FEI shall continue to maintain, or shall permit the District to maintain, the Energy System in good working order.

Notwithstanding the foregoing, the Parties acknowledge and agree that FEI's ability to sell or otherwise transfer its interest in and to the Energy System to the District may be subject to BCUC approval under applicable Laws.

## **ARTICLE 16 - NON-COMPLIANCE AND ENVIRONMENTAL**

### **16.1 NOTIFICATION OF NON-COMPLIANCE**

FEI or the District (as applicable, the "Notifying Party") will promptly, upon becoming aware thereof, notify the other Party in writing of:

- (a) a Release of a Contaminant or any other occurrence or condition in the Energy System, the Lands or any adjacent property which could subject the other Party to any fines, penalties, orders or proceedings under applicable Laws;
- (b) any charge, order, investigation or notice of violation or non-compliance issued against the Notifying Party relating to the Energy System, or the operation of the Energy System, under any applicable Laws; and
- (c) any notice, claim, action or other proceeding by any third party against the Notifying Party in respect of the Design and Construction or the Services or concerning the Release or alleged Release of any Contaminants at or from the Energy System or the Lands.

### **16.2 NOTIFICATION BY FEI**

FEI will notify the appropriate Governmental Authorities of any Release of any Contaminants at or from the Energy System in accordance with applicable Laws. The District may, but is not obligated to, notify the appropriate Governmental Authorities of any Release of any Contaminants at or from the Energy System in accordance with applicable Laws.

### **16.3 OWNERSHIP OF CONTAMINANTS**

Notwithstanding any rule of law to the contrary, any Disclosed Contaminant Released from the Energy System, or any top soil, earth or other material containing a Contaminant for which FEI is responsible pursuant to Section 4.5 that is removed from the Lands by FEI or any person for

whom it is in law responsible, will be and remain the sole and exclusive property and responsibility of FEI and will not become the property of the District, notwithstanding the degree of its affixation to the Lands and notwithstanding the expiry or earlier termination of this Agreement.

#### 16.4 SURVIVAL OF OBLIGATIONS

The obligations of the Parties under this Article 16 will survive the expiry or termination of this Agreement.

### **ARTICLE 17 - FORCE MAJEURE**

#### 17.1 SUSPENSION

Subject to the other provisions of this Article 17, if either Party is unable or fails by reason of Force Majeure to perform in whole or in part any obligation or covenant set forth in this Agreement, with the exception of unpaid financial obligations, such inability or failure will be deemed not to be a breach of such obligation or covenant and the obligations of both Parties under this Agreement will be suspended to the extent necessary during the continuation of any inability or failure so caused by such Force Majeure.

#### 17.2 DEFINITION OF FORCE MAJEURE

For purposes of this Agreement, the term "Force Majeure" means any event or occurrence not within the control of the Party claiming Force Majeure and which by the exercise of reasonable diligence such Party is unable to prevent or overcome, including any acts of God, including lightning, earthquakes, storms, washouts, landslides, avalanches, fires, epidemics and floods; strikes, lockouts or other industrial disturbances; acts of the Queen's or public enemies, sabotage, wars, blockades, insurrections, riots or civil disturbances, fires, explosions, breakages of or accidents to machinery or lines of pipe; the laws, orders, rules, regulations, acts or restraints of any court or governmental or regulatory authority. For the purposes of this Article 17, a Party is deemed to have control over the actions or omissions of those persons to which it, its agents, contractors or employees, have delegated, assigned or subcontracted its obligations and responsibilities. For greater certainty, a Force Majeure shall not include any weather related events that do not exceed 25 year events as recorded by Environment Canada or as otherwise may be determined by the BCUC from time to time.

#### 17.3 EXCEPTIONS

Neither Party will be entitled to the benefit of Section 17.1 under any of the following circumstances:

- (a) the Energy System not being Commissioned;
- (b) to the extent that the inability or failure was caused by the negligence or contributory negligence of the Party claiming Force Majeure;

- (c) to the extent that the inability or failure was caused by the Party claiming Force Majeure having failed to diligently attempt to remedy the condition by taking all reasonable acts and to resume the performance of such covenants and obligations with reasonable dispatch;
- (d) if the inability or failure was caused by lack of funds or is in respect of any amount due hereunder; or
- (e) unless, as soon as possible after the happening of the occurrence relied upon or as soon as possible after determining that the occurrence was in the nature of Force Majeure and would affect the claiming Party's ability to observe or perform any of its covenants or obligations under this Agreement, the claiming Party will have given to the other Party notice to the effect that the claiming Party is unable by reason of Force Majeure (the nature whereof will be therein specified) to perform the particular covenants or obligations.

#### 17.4 RESUMPTION OF OBLIGATIONS

The Party claiming Force Majeure will give notice to the other Party, as soon as possible after the Force Majeure condition is remedied, to the effect that the same had been remedied and that such Party has resumed, or is then in a position to resume, the performance of its suspended covenants and obligations hereunder either in whole or in part.

#### 17.5 SETTLEMENT OF LABOUR DISPUTES

Notwithstanding any of the provisions of this Article 17, and subject to Section 17.3, the settlement of labour disputes or industrial disturbances is entirely within the discretion of the particular Party involved and the Party may make settlement of it at the time and on terms and conditions as it may deem to be advisable and no delay in making settlement will deprive the Party of the benefit of Section 17.1.

### **ARTICLE 18 - CONDITIONS PRECEDENT**

#### 18.1 CONDITIONS PRECEDENT OF FEI

The obligation of FEI to carry out the transactions contemplated by this Agreement is subject to fulfillment of the following conditions on or before such date as may be specified, which is for the sole benefit of FEI, and which may be waived by FEI in accordance with Section 18.2:

- (a) FEI obtaining the approval by its board of directors of the terms and conditions of this Agreement on or before the 30th day following the Effective Date, provided that if such approval cannot be obtained by this date due to the fact that the board of directors has not yet considered the transaction FEI reserves the right to extend the period of time to that date when the board next convenes.

## 18.2 FEI NOTICE OF WAIVER

If a condition set out in Section 18.1 has not been satisfied on or before the date as may be specified for its fulfillment, FEI may waive compliance with the condition in whole or in part, in its sole discretion, by written notice to the District, failing which delivery of written notice of satisfaction or waiver of such condition, this Agreement will, to the extent any further obligations of the Parties which remain unfulfilled, be null and void, without liability between the Parties hereto, and, neither Party will be under any further obligation to the other to complete the transactions or future transactions, as the case may be, contemplated by this Agreement.

## **ARTICLE 19 - DISPUTE RESOLUTION**

### 19.1 REFERENCE TO ARBITRATION

The Parties will attempt to resolve all disputes which may arise under, out of, in connection with or in relation to this Agreement by negotiation. They will provide full and timely disclosure to one another of all facts relevant to the disputes to facilitate those negotiations. If any such dispute remains unresolved, for any reason, fifteen (15) days after either Party requested the other Party to enter into negotiations to resolve it, or if the Parties agree to waive negotiations in respect of it, then either Party may submit that dispute for final resolution by arbitration administered by the British Columbia International Commercial Arbitration Centre (“BCICAC”) under its “Shorter Rules for Domestic Commercial Arbitration”. The seat of that arbitration will be Vancouver, British Columbia, Canada. The language of that arbitration will be English. Alternatively, the Parties may agree, within the 15 days referred to above, to submit that dispute for final resolution by arbitration in another manner.

### 19.2 BINDING DECISION

The decision of the arbitrator, regardless of what arbitration procedure is used, will, for all purposes of this Agreement, be final and binding on the Parties.

### 19.3 CONTINUATION OF SERVICES

Each of the Parties will perform all of its respective obligations under this Agreement notwithstanding the existence of any dispute that arises from time to time between the Parties in respect of any matter related to this Agreement or during the resolution of any dispute in accordance with this Article 19.

### 19.4 COSTS

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 case, the non-prevailing Party shall pay all costs and expenses of the arbitration, but not those of the prevailing Party.

## ARTICLE 20 - GENERAL

### 20.1 RESPONSIBILITY FOR COSTS

FEI's performance of any of its obligations under this Agreement, including without limitation the obligation to design, construct and install the Energy System as provided in Section 2.1, shall be at FEI's sole cost and expense, unless expressly provided otherwise in this Agreement;

### 20.2 EXERCISE OF DISCRETION

Where anything in this Agreement is identified as being in either Party's discretion, such Party will have the right to exercise such discretion in its own best interest without regard for the interest of the other Party.

### 20.3 COOPERATION

FEI and the District will at all times extend co-operation to each other to ensure the orderly management and operation of the Energy System.

### 20.4 SOLICITATION

Nothing in this Agreement precludes either Party from soliciting or entering into, other contracts with the other Party.

### 20.5 NOTICES

Any notice or other communication required or permitted to be given under this Agreement will be effective only if in writing and when it is actually delivered (which delivery may be by telecopy or other telecommunications device) to the Party for whom it is intended at the following address or such other address in British Columbia as such Party may designate to the other Party by notice in writing delivered in accordance with this Section 20.5:

(a) if to FEI:

FortisBC Energy Inc.  
10th Floor, 1111 West Georgia Street  
Vancouver, B.C.  
V6E 4M3

Attention: Gareth Jones  
Telephone: 250-380-5972  
Telecopy: 250-388-6876

(b) if to the District:

Board of Education of School District No. 37 (Delta)  
4585 Harvest Drive  
Delta, B.C.  
V4K 5B4

Attention: Frank Geyer  
Telephone: 604-952-5336  
Telecopy: 604-952-5375

Notwithstanding the foregoing, notices with respect to Force Majeure will be given in writing by telecopy, or orally in person or by telephone (to be confirmed by telecopy), to the person or persons designated from time to time by the Parties as the person or persons authorized to receive such notices.

## 20.6 CONFIDENTIALITY

The District and FEI will treat as confidential the terms of this Agreement and all Confidential Information (as defined below) and will at all times during the term of this Agreement and for a reasonable time thereafter hold the terms of this Agreement and all Confidential Information in confidence and neither Party will, without the prior written consent of the other Party, disclose or divulge the terms of this Agreement or any Confidential Information to any person, provided that nothing in this Section 20.6 will restrict or prevent either Party from making any disclosure of such terms or any Confidential Information:

- (a) which is reasonably necessary or desirable for such Party to carry out and give full effect to the terms, conditions and intent of this Agreement and the matters contemplated hereby;
- (b) which is required by any Law, including the Freedom of Information and Protection of Privacy Act (British Columbia);
- (c) to any Governmental Authority;
- (d) to the British Columbia Utilities Commission or other regulatory agency as part or in support of any regulatory application or submission;
- (e) to the directors, officers or employees of such Party or to an Affiliate of such Party or to the directors, officers or employees of an Affiliate of such Party;
- (f) to the professional advisors of such Party on the same terms of confidentiality;
- (g) which is already in the public domain; or
- (h) in connection with legal proceedings or steps being taken to remedy a breach or default under this Agreement by the other Party.

For the purposes of this Section 20.6, “Confidential Information” means proprietary information of either Party such as data, plans, drawings, manuals, or specifications which have been provided by such Party, its employees, contractors, agents, subcontractors, Affiliates to the other Party pursuant to this Agreement or proprietary information either Party conceived or developed by or for such Party concerning construction practices, operation and maintenance practices, agreements, marketing plans and strategies, profits, costs, pricing and systems of procedure (provided that “Confidential Information” does not include information which was disclosed to the receiving Party by a third Party (unless, to the knowledge of the receiving Party, the third Party is under an obligation of confidentiality to the other Party) or any information developed or conceived by the receiving Party without using the “Confidential Information” of the other Party).

#### 20.7 SEVERABILITY

If any provision of this Agreement is found or determined to be invalid, illegal or unenforceable it will be construed to be separate and severable from this Agreement and will not impair the validity, legality or enforceability of any other provisions of this Agreement, and the remainder of this Agreement will continue to be binding on the Parties as if such provision had been deleted.

#### 20.8 NO WAIVER

No waiver by either Party of any default by the other in the performance of any of the provisions of this Agreement will operate or be construed as a waiver of any other or future default or defaults hereunder, whether of a like or a different character. To be binding, any waiver of any provision of this Agreement must be clearly expressed in writing to be signed by the waiving Party.

#### 20.9 BURDEN AND BENEFIT

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

#### 20.10 GOVERNING LAW

This Agreement and all matters arising hereunder will be governed by the laws of British Columbia and the federal laws of Canada applicable in British Columbia.

#### 20.11 ENTIRE AGREEMENT

This Agreement contains the whole agreement between the Parties in respect of the subject matter hereof and there are no terms, conditions or collateral agreements express, implied or statutory other than as expressly set forth in this Agreement and this Agreement supersedes all of the terms of any written or oral agreement or understanding between the Parties.

#### 20.12 TIME OF ESSENCE

Time is of the essence of this Agreement.

#### 20.13 FURTHER ASSURANCES

Each Party will, at all times hereafter on demand by the other, execute and deliver or cause to be executed and delivered all such further documents and do all such further acts and things as may be reasonably requested by the other Party to evidence, carry out and give full effect to the intent and meaning of this Agreement and to assure the completion of the transactions contemplated hereby.

#### 20.14 AMENDMENTS TO BE IN WRITING

Except as set out in this Agreement, no amendment or variation of this Agreement will be effective or binding upon the Parties unless such amendment or variation is set out in writing and duly executed by the Parties.

#### 20.15 FACSIMILE

This Agreement may be executed by the Parties and transmitted by facsimile transmission and, if so executed, transmitted and received, this Agreement will for all purposes be effective as if the Parties had delivered and executed the original Agreement and each Party undertakes to provide the other Party with a copy of this Agreement bearing original signatures forthwith upon demand.

#### 20.16 SUBJECT TO LEGISLATION

Notwithstanding any other provision hereof, this Agreement and the rights and obligations of FEI and the District under this Agreement are subject to all present and future laws, rules, regulations and orders of any legislative body, governmental agency or duly constituted authority now or hereafter having jurisdiction over FEI or the District.

#### 20.17 EXPENSES

Each Party to this Agreement shall be responsible for the payment of all costs, expenses, legal fees and disbursements incurred or to be incurred by it in negotiating and preparing this Agreement and all documents required to be delivered under this Agreement and otherwise relating to the transactions contemplated by this Agreement.

#### 20.18 NO CONTRARY AGREEMENT

No Party shall enter into an agreement or other commitment with any person if such agreement or commitment has terms or provisions in conflict with or inconsistent with the terms of this Agreement or which could reasonably be expected to lead to actions or consequences that would result in the Party being in breach of the commitments and obligations of the Party pursuant to this Agreement unless such other agreement or commitment is expressly approved by the other Parties.

#### 20.19 NO PARTNERSHIP

Nothing herein shall be deemed or construed to create a joint venture, partnership, employment or agency relationship between the Parties for any purpose.

20.20 ASSIGNMENT

Neither Party may assign this Agreement or any of its rights or obligations under this Agreement, and FEI may not assign, transfer or sell all or any part of the Energy System, except:

- (a) with the consent of the other Party, such consent not to be unreasonably withheld, delayed or conditioned; or
- (b) in the case of FEI, to an Affiliate of FEI which is a "public utility" as defined in the *UCA* on notice to, but without the consent of, the District.

20.21 COUNTERPARTS

This Agreement may be executed in counterparts with the same effect as if the Parties had signed the same document. All counterparts will be construed together and will constitute one agreement.

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

**FORTISBC ENERGY INC.**

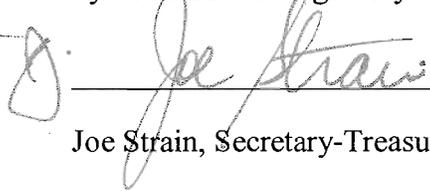
by its authorized signatory:

  
\_\_\_\_\_

Doug Stout,  
VP Energy Solutions & External Relations

**THE BOARD OF EDUCATION OF  
SCHOOL DISTRICT NO. 37 (DELTA)**

by its authorized signatory:

  
\_\_\_\_\_

Joe Strain, Secretary-Treasurer

# **SAMPLE SCHEDULE “A”**

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## **Energy System Description**

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### **Mechanical Equipment Plans and Specifications**

Equipment schedule:

- 6 boilers Mod Com 300 (By others)
- Pumps, piping, control valves and other equipment and accessories connected to the above equipment.
- BTU meter
- Roof Venting intake & exhaust.
- Control systems for the above mentioned equipment.

Prior to commencement of the Mechanical Equipment construction, FEI shall provide detailed drawings to the District for review and acceptance.

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## **SCHEDULE “B”**

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# **Delta School District Site Rules for Contractors**

## **Delta School District Site Rules for Contractors**

### **1.0 Safety**

- 1.1 For the purposes of this section, “Safety Regulations” means the rules, regulations, and practices required by WorkSafeBC.
- 1.2 The Contractor shall be solely responsible for site safety during the execution of all assigned construction and maintenance activities, including work performed by subcontractors and suppliers, and for compliance with the Safety Regulations, and shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the work.
- 1.3 If the District is of the reasonable opinion that the Contractor has not taken such precautions as are necessary to ensure compliance with the requirements of Clause 1.2, the District may take or order any remedial measures which it deems necessary, including stopping the performance of all or any portion of the work, and the District may use the employees of itself, the Contractor, any subcontractor or any other contractors to perform such remedial measures. The Contractor acknowledges and agrees that any failure by the Contractor to comply with the Safety Regulations shall constitute a default of the Contractor's contractual obligations and the District may issue a written notice instructing the Contractor to correct the default in the two (2) working days immediately following receipt of such notice.
- 1.4 The Contractor shall file any notices or any similar document (including, without limitation, a Notice of Project where applicable) required pursuant to the Safety Regulations. This duty of the Contractor will be considered to be included in the work and no separate payment therefore will be made to the Contractor.
- 1.5 The Contractor shall develop, maintain and supervise for the duration of the work a comprehensive safety program that will effectively incorporate and implement all required safety precautions. The program shall, as a minimum, respond fully to the Safety Regulations and general construction practices for the safety of persons or property, including without limitation the WorkSafeBC regulations that may be applicable (e.g. WHMIS, dust control, etc.).
- 1.6 The Contractor shall provide a copy of the safety program described in Clause 1.5 to the District prior to the commencement of the work and shall, at all times require, as far as it is reasonably practical to do so, that every employer and worker performing work in respect of the project complies with such program.
- 1.7 The Contractor shall arrange regular safety meetings at its expense, record the minutes of such meetings and maintain a complete file for review by the appropriate authorities.
- 1.8 The Contractor shall supply and maintain, at its own expense, at its office or other well-known place at the work site, safety equipment necessary to protect the workers and general public against accident or injury as prescribed by the governing authorities.
- 1.9 The Contractor shall supply and maintain all articles necessary for giving first-aid to any person who may be injured on the work site and shall establish an emergency procedure for the immediate removal of any injured person to a hospital or a doctor's care in accordance with the Safety Regulations.
- 1.10 The Contractor shall, as required under the Safety Regulations, promptly report all accidents of any sort arising out of or in connection with the performance of the work whether on or adjacent to the work site, giving full details and statements of witnesses. The District shall be copied on all accident reports and investigation reports.

## **2.0 Security and Access**

- 2.1 **Site and Building Access:** The District's Maintenance Services Department will issue gate and building keys, electronic access cards (complete with instructions as to how to arm/disarm the building intrusion alarm system and how to contact the alarm monitoring station) and identification badges for the Contractor to enter the site and building, disarm/arm the building intrusion alarm system, and access the portions of the site where the Contractor's work is taking place. The Contractor and all subcontractors must check in at the school office (if occupied by District staff) prior to entering other parts of the building. The access cards, keys and identification badges shall be promptly returned to the District at the end of the contract.
- 2.2 **Security:** The Contractor shall assume all responsibility for the security of the work site. The Contractor must ensure that all windows, doors and gates are secure and the building intrusion alarm system is armed (unless District staff are still in the building) at the end of the workday. The Contractor must also safeguard the rest of the building and/or site from access through possible open construction areas. Security doors shall at all times remain closed and shall not be propped open, even for a short time. The Contractor is responsible for any costs arising when the District's security runner services is called to attend a work site for security matters resulting from the Contractor's negligence.
- 2.3 **Normal School Hours:** Normal hours of operation for the District are 0730h-1600h Monday to Friday, excluding statutory holidays. For after-hours and weekend work, the Contractor must notify the District's Maintenance Services Department at least one business day in advance of the work.

## **3.0 Conduct**

- 3.1 **Noise Due to Construction or Maintenance Activities:** In accordance with the Delta Noise Bylaw 1906, "no person shall carry on or cause to be carried any construction work, reconstruction, alteration, repair or demolition of a building or structure, the operation of machinery, or works in connection with any excavation or highway before 07:00h or after 1900h and day of the week from Monday to Friday, inclusive, before 0900h or after 1700h on Saturdays, or at any time Sundays. The Contractor shall respect the classroom operations in the vicinity of the work site and as such will make every attempt to limit noisy work to times outside of classroom operation or to adequately dampen, silence and/or soundproof equipment that generates noise to mitigate disruption to the classrooms.
- 3.2 **Communication devices:** Radio and cell phone volume shall be at the minimum volume which is consistent with the ability to operate the device.
- 3.3 **Roadways:** All speed limits and other traffic rules must be obeyed and access to the roadways should not be impeded. Parking and secure storage of materials and equipment by the Contractor and subcontractors shall only be in designated areas only.
- 3.4 **Cleanliness:** The work site must be maintained for an orderly appearance on a daily basis. Trash and construction debris shall be contained at all times and removed from the work site weekly.
- 3.5 **Toilets:** All temporary toilets shall have their doors faced away from streets. In no cases shall a worker utilize any staff washroom or other staff facilities at the work site, except as otherwise agreed in writing by the District. Under no circumstances will workers be permitted to use student washrooms.
- 3.6 **Identification Badges:** All workers shall have a District-assigned identification badge that clearly indicates the company's name and the worker's name. It is to be worn whenever at the work site.

- 3.7 **Smoking:** Smoking is not permitted on District property.
- 3.8 **Alcohol/Drugs:** No alcoholic beverages or non-prescription drugs shall be brought or consumed at the work site.
- 3.9 **Animals:** No dogs or other animals, are permitted at the work site without the written consent of the District.
- 3.10 **Fitness for Work:** All workers must be fit for work at all times. The District retains the right to request individuals leave the work site if unfit for any reason including, without limitation, inebriation, taking drugs, injury, fatigue, rudeness or any other reason that may affect the quality of the work or represents a breach of these rules.
- 3.11 **Theft:** Workers who steal from occupants or the District shall be immediately ejected from the work site. The Contractor is responsible for all such thefts irrespective of whether the worker is an employee of the Contractor or a subcontractor.
- 3.12 **Discrimination and Harassment:** The District actively promotes a safe and secure school environment and as such does not tolerate violations of human rights legislation, including:
  - (a) discriminatory acts against any person with respect to the work or school environment or any educational program or service provided to or by that person because of race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age of that person, or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person;
  - (b) all forms of actual, attempted or threatened physical harm directed at any person; or
  - (c) any form of sexual harassment such as unwelcome sexual advances with actual or implied work related consequences; unwelcome remarks, questions, jokes or innuendo of a sexual nature including sexist comments or sexual invitations; verbal abuse, intimidation or threats of a sexual nature; unwelcome leering, staring or making sexual gestures; whistling or catcalls; display of pornographic or other sexual materials; offensive pictures, graffiti, cartoons or sayings; unwanted physical contact such as touching, patting, pinching or hugging; and physical assault of a sexual nature

## **SCHEDULE “C”**

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### **List of Environmental Reports**



**ASBESTOS MATERIALS SURVEY  
AND RISK ASSESSMENT**

**OF**

**HEATH ELEMENTARY SCHOOL  
11354 – 72<sup>nd</sup> Street  
Delta, BC**

**PREPARED FOR:**

**DELTA SCHOOL DISTRICT  
Maintenance Facility  
7186 Brown Street  
Delta, BC  
V4G 1G8**

**PREPARED BY:**

**ACM ENVIRONMENTAL CORPORATION  
#217 -2323 Quebec Street  
Vancouver, BC  
V5T 4S7  
604-873-8599**

**September 2005**

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## **EXECUTIVE SUMMARY**

A.C.M. Environmental Corporation (ACM) was retained by the Delta School District to perform an Asbestos Materials Survey and Risk Assessment for Heath Elementary located at 11354 – 72<sup>nd</sup> Street, Delta, BC.

The assessment involved an inspection of all areas of the building. The objective of the assessment was to identify the types and extent of asbestos containing materials within the building and any risks associated with the materials and the regular usage of the building.

The assessment was conducted using both visual and physical assessment techniques. Samples of materials suspected of containing asbestos were collected and forwarded, using proper chain of custody protocols, to Prezant Associates, Inc. for asbestos analysis. Asbestos sample results are located in Appendix A of this report.

In summary, the findings from the assessment conclude that asbestos was found within the construction materials of the building and Mercury was observed within a thermostat switch, however, no PCB containing materials were found within the equipment of the building.

Two types of asbestos containing building materials were observed during this survey which includes vinyl floor tile and ducting mastic materials. Within the context of the report, areas have been detailed as to the locations of the asbestos containing materials, the content of asbestos where applicable, and the essential procedures to be followed for removal of these materials, as required.

The hazardous materials survey was conducted using non-destructive and some limited destructive testing methods. Areas within walls were not inspected as access was not possible without causing extensive damage to the walls. It should be noted that there is a possibility of asbestos containing materials existing within inaccessible wall and ceiling cavities, and under sub-floors. Possible asbestos-containing materials which may exist in these areas may include but are not limited to: insulation materials (mechanical or construction), secondary layers of drywall or flooring, etc.

Roofing materials were not sampled at this time as the integrity of the waterproof membrane would be compromised, possibly voiding insurance coverage in the event of a water leak. If the roofing materials are to be disturbed during a renovation project, they must be sampled prior to the work taking place.

A random number of fluorescent lighting fixtures were opened up and inspected for possible PCB containing ballasts. No PCB containing ballasts were observed within the fluorescent lighting fixtures inspected, although some may exist, as not all fixtures were opened. A Mercury containing thermostat switch was observed within the building.

## **INTRODUCTION**

A.C.M. Environmental Corporation (ACM) was retained by the Delta School District to perform an Asbestos Materials Survey and Risk Assessment for Heath Elementary located at 11354 – 72<sup>nd</sup> Street, in Delta, BC. All areas of the building were inspected and/or sampled during this survey and photographs of the site are included as Appendix B.

The objective of the assessment was to identify the types and extent of asbestos containing construction materials within the accessible areas of the building. The assessment at this time involved an inspection of all areas of the building not including the roofing materials.

The survey and assessment was conducted on September 28, 2005 by Mr. James McArthur, AScT, Environmental Technician, for ACM. Seventeen (17) representative bulk samples of materials suspected of containing asbestos were collected from the latest survey and are included as Appendix A of this report.

## **METHODOLOGY**

The hazardous materials survey was conducted using non-destructive and some limited destructive testing methods. Areas within walls were not inspected as access was not possible without causing extensive damage to the walls. It should be noted that there is a possibility of asbestos containing materials existing within inaccessible wall and ceiling cavities, and under sub-floors. Possible asbestos-containing materials which may exist in these areas may include but are not limited to: insulation materials (mechanical or construction), secondary layers of drywall or flooring, etc.

The U.S. Environmental Protection Agency (USEPA) Guidance Document was selected for use in this study (1). The document identifies factors associated with the "condition" and the "potential for disturbance or erosion" of asbestos containing materials. These factors help to define the fibre release potential of the suspect asbestos containing materials and were used in a qualitative evaluation of materials found in the surveyed areas. Recommendations have been substantiated by additional information utilized from other documentation cited in the Reference Section of this report.

The bulk samples of suspect asbestos containing materials were forwarded, using proper chain of custody protocols, to Prezant Associates, Inc. for asbestos analysis. The samples were analyzed using polarized light microscopy (PLM) with dispersion staining in accordance with U.S. EPA method 600/R-93/116, "Method for Determination of Asbestos in Bulk Building Materials".

Other hazardous materials were visually inspected and are noted in this report.

The survey relied on the abilities and experience of the surveyor to gain access and identify possible asbestos containing materials. All areas of the building were accessed during the assessment excluding the roof.

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## **RESULTS & ASSOCIATED RISK LEVELS**

### **ASBESTOS**

Two types of asbestos containing materials were identified during the survey which could be affected by any potential renovation or demolition activities. These are vinyl floor tile materials and duct mastic materials. A breakdown for each type of material is as follows:

#### **Vinyl Floor Tile Materials:**

Asbestos containing vinyl floor tile materials were observed in various areas of the building. These would include; 12" Beige floor tiles with dark streaks observed in the Copy Room 126, 12" Beige floor tiles with dark orange streaks observed in Storage Room 124, Beige floor tiles with white & orange streaks observed in the Gym girl's change room 119, 119A & B and 12" Beige floor tiles with white & dark streaks observed in Storage Room 114. Asbestos containing flooring materials were also observed underneath carpet in Room 109A. Asbestos flooring may exist underneath carpet or new flooring in other areas of the building however all suspect areas were inspected. All of the above noted samples of the flooring materials were found to contain <1% Chrysotile asbestos in these tiles. The materials are all presently in fair to good condition.

WCB Regulations do not treat any materials with less than 1% asbestos as asbestos containing. Workers should still use moderate risk procedures when exposed to the vinyl floor tile materials, even in materials with less than 1% asbestos concentrations. The WCB states that workers must be properly protected from any potential exposure to airborne asbestos fibres. It is recommended that any work affecting all the vinyl floor tile materials be done using a minimum of moderate risk asbestos work procedures. Therefore as a minimum, MODERATE RISK asbestos work procedures will be required for the removal of the asbestos containing vinyl floor tile materials. Vinyl floor tile materials which are less than 1% do not have to be disposed of in accordance with applicable regulations as asbestos waste.

#### **Duct Mastics:**

Asbestos containing duct mastic materials were observed within the ceiling space sections and exposed in various areas of the school. The original square HVAC ducting which was painted yellow was found to have asbestos containing grey duct mastic. A sample of the asbestos containing duct mastic was collected from Room 123 and found to contain 3% Chrysotile asbestos. The materials are presently in good condition. All original ducting (which may or may not be

painted yellow) mastic observed within the building is to be treated as asbestos containing.

Prior to any demolition activities taking place which could disturb the asbestos containing duct mastic materials, it must first be removed and disposed of in accordance with applicable regulations. The removal of the asbestos containing duct mastic will pose a moderate risk of asbestos exposure to the workers involved, therefore as a minimum, MODERATE RISK asbestos work procedures will be required for the removal of the asbestos containing duct mastic.

### **POLYCHLORINATED BIPHENYLS (PCBs)**

A random number of fluorescent light ballasts were visually inspected for possible PCB containing ballasts. No PCB containing ballasts were observed within the fluorescent lighting fixtures inspected in both buildings, although some may exist, as not all fixtures were opened up.

PCB containing fluorescent light ballasts do not pose a risk to occupants of the building. If any PCB containing ballasts are encountered during any renovations of the building, they must be separated from the fixtures and disposed of properly in accordance with applicable regulations.

### **MERCURY THERMOSTATS**

A thermostat observed within the building in room 124 was found to have a Mercury containing switch. If any Mercury containing thermostat switches are encountered within the building during renovation or repair activities, they must be removed intact from the thermostats and disposed of properly in accordance with applicable regulations.

### **RECOMMENDATIONS**

Prior to beginning any work that may impinge upon the hazardous materials within the building, the following must be performed:

- 1.) Any affected asbestos containing 12" vinyl floor tiles or ducting mastic materials should be removed in accordance with applicable regulations. The removal of the asbestos containing vinyl floor tile or duct mastic materials will require MODERATE RISK asbestos work procedures to be followed. The vinyl floor tile materials do not have to be disposed of as asbestos waste (<1% Chrysotile asbestos).
- 2.) If any Mercury containing thermostat switches are encountered during any renovation or repair activities within the building, they must be removed and disposed of in accordance with applicable regulations.
- 3.) If any PCB containing ballasts are encountered during any renovation or repair activities within the building, they must be removed and disposed of in accordance with applicable regulations.
- 4.) If any suspect asbestos containing materials are encountered within inaccessible wall or ceiling cavities, or under floors, during renovation or demolition activities, the work in the immediate area must stop and the supervisor contacted for further direction.

**STATEMENT OF LIMITATIONS**

The ACM report is intended to direct the Client's attention to recognised environmental conditions and to potential sources of environmental contamination. The findings and conclusion regarding contamination of the property are based solely on the extent of observations and information gathered during the assessment. Nothing in the report is intended to express any legal opinion upon environmental liabilities relating to the site or whether operations legally conformed with relevant legislative requirements.

Furthermore, it must be understood that changing circumstances in the physical environment, the use of the property, as well in changes in any substances stored, used, handled at the property, could alter radically the conclusions and information contained in this report. Therefore, it is important that the property is periodically re-evaluated and the client kept informed as to developments, which may impact the property. This report is not intended to be used as contract specifications.

**A.C.M. ENVIRONMENTAL CORPORATION**

---

James McArthur, ASCT  
Environmental Technician

**REFERENCES**

- 1) USEPA. 1985. U.S. Environmental Protection Agency. "Guidance for Controlling Asbestos-Containing Materials in Buildings". Washington, DC: Office of Toxic Substances, USEPA.
- 2) Lory EE, Coin DC. 1981. "Management Procedure for Assessment of Friable Asbestos Insulating Material". Port Hueneme, CA: Civil Engineering Laboratory, Naval Construction Battalion Center.
- 3) Workers' Compensation Board of British Columbia, effective 15 April 1998, and all current amendments. Occupational Health and Safety Regulations.
- 4) 2002 Edition - Workers' Compensation Board of British Columbia. Safe Work Practices for Handling Asbestos.

**APPENDIX A**  
**Bulk Sample Results**



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

**ACM Environmental**  
2323 Quebec Street, Suite 211  
Vancouver, BC

Project Location: Heath Elementary School

PAI Batch Number: **05-2557**  
Client Job Number: **3048-33**  
Number of Samples: **17**  
Turn Around Time: **10 day**

Batch Number:	05-2557	<b>ACM Environmental</b>
Lab Sample Number:	05014096	<b>3048-33</b>
Client Sample Number:	<b>3148-358</b>	<i>Heath Elementary School</i>

#### L-1 Pale brown hard tile material

**Asbestos Fibrous Components:**  
<1% **Chrysotile**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
45% Calcite Filler and Binder  
40% Mineral Filler and Binder  
10% Vinyl Filler and Binder  
>4% Mineral Fragments

**Comments:**

This tile contains <1% chrysotile asbestos.

#### L-2 Black pliable mastic

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
90% Asphalt Filler and Binder  
5% Mineral Fragments  
5% Resin and Binder

**Comments:**

Batch Number:	05-2557	<b>ACM Environmental</b>
Lab Sample Number:	05014097	<b>3048-33</b>
Client Sample Number:	<b>3148-359</b>	<i>Heath Elementary School</i>

Sampled By: James McArthur  
Received By: John McCaslin 10/17/2005  
Reviewed By: George McCaslin 11/2/2005

Analyzed By: Deitrie Hanson 11/2/2005



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## Bulk Asbestos Fiber Analysis

### L-1 White paint

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 100% Paint
---	----------------------------------	---------------------------------------

Comments:

### L-2 Pale brown fibrous opaque material

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	Non-Asbestos Fibrous Components: 50% Cellulose 30% Mineral Wool	Non-Fibrous Components: 15% Perlite 5% Mineral Fragments
---	---	--

Comments:

### L-3 White brittle opaque material

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 92% Paint 5% Mineral Particles 3% Filler and Binder
---	----------------------------------	--

Comments:

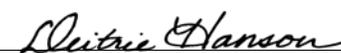
Batch Number: 05-2557	<b>ACM Environmental</b>
Lab Sample Number: 05014098	<b>3048-33</b>
Client Sample Number: 3148-360	<i>Heath Elementary School</i>

### L-1 Pale gray hard tile material

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 55% Calcite Filler and Binder 40% Mineral Filler and Binder 5% Vinyl Filler and Binder
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Comments:

Sampled By: James McArthur  
 Received By: John McCaslin 10/17/2005  
 Reviewed By: George McCaslin 11/2/2005

  
 Analyzed By: Deitrie Hanson 11/2/2005



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## Bulk Asbestos Fiber Analysis

### L-2 Black mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 92% Asphalt Filler and Binder 5% Mineral Fragments 3% Filler and Binder
--	----------------------------------	--

**Comments:**

Batch Number: 05-2557	<b>ACM Environmental</b>
Lab Sample Number: 05014099	<b>3048-33</b>
Client Sample Number: 3148-361	<i>Heath Elementary School</i>

### L-1 Yellow opaque pliable mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 90% Resin and Binder 10% Mineral Particles
--	----------------------------------	--

**Comments:**

### L-2 Dull gray hard granular material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 92% Sand 5% Mineral Filler and Binder 3% Filler and Binder
--	----------------------------------	---

**Comments:**

### L-3 Black shiny material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 100% Mineral Particles
--	----------------------------------	---

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin 10/17/2005  
 Reviewed By: George McCaslin 11/2/2005

*Deitrie Hanson*

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Analyzed By: Deitrie Hanson 11/2/2005



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### Bulk Asbestos Fiber Analysis

#### L-4 Brown wooden splinter material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	98% Cellulose	2% Resin and Binder

**Comments:**

Batch Number:	05-2557	<b>ACM Environmental</b>
Lab Sample Number:	05014100	<b>3048-33</b>
Client Sample Number:	<b>3148-362</b>	<i>Heath Elementary School</i>

#### L-1 Pale beige hard tile with dark orange streaks

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>&lt;1% Chrysotile</b>		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		>4% Mineral Fragments

**Comments:**

This tile contains <1% chrysotile asbestos.

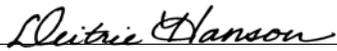
#### L-2 Black resinous mastic

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Asphalt Filler and Binder
		5% Mineral Fragments
		5% Filler and Binder

**Comments:**

Batch Number:	05-2557	<b>ACM Environmental</b>
Lab Sample Number:	05014101	<b>3048-33</b>
Client Sample Number:	<b>3148-363</b>	<i>Heath Elementary School</i>

Sampled By: James McArthur  
 Received By: John McCaslin 10/17/2005  
 Reviewed By: George McCaslin 11/2/2005

  
 Analyzed By: Deitrie Hanson 11/2/2005



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### Bulk Asbestos Fiber Analysis

**L-1 White paint**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 100% Paint

**Comments:**

**L-2 White crystalline powdery material**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 90% Calcite Filler and Binder  
5% Vermiculite  
5% Mineral Fragments

**Comments:**

**L-3 White fibrous papery material**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 97% Cellulose 3% Filler and Binder

**Comments:**

Batch Number: 05-2557 **ACM Environmental**  
Lab Sample Number: 05014102 **3048-33**  
Client Sample Number: **3148-364** *Heath Elementary School*

**L-1 White paint on black shiny paint**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 100% Paint

**Comments:**

Sampled By: James McArthur  
Received By: John McCaslin 10/17/2005  
Reviewed By: George McCaslin 11/2/2005

*Deitrie Hanson*  
Analyzed By: Deitrie Hanson 11/2/2005



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**Bulk Asbestos Fiber Analysis**

**L-2 Dark orange-brown fibrous opaque material**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	97% Cellulose	3% Filler and Binder

**Comments:**

Batch Number: 05-2557	<b>ACM Environmental</b>
Lab Sample Number: 05014103	<b>3048-33</b>
Client Sample Number: 3148-365	<i>Heath Elementary School</i>

**L-1 Pink thick pliable rubbery material with dark red and white swirls**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Rubber Particles
		10% Calcite Filler and Binder

**Comments:**

**L-2 Greenish gray opaque mastic**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		87% Resin and Binder
		10% Mineral Filler and Binder
		3% Miscellaneous Particles

**Comments:**

**L-3 Golden tan opaque mastic**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Resin and Binder
		10% Calcite Filler and Binder

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin 10/17/2005  
 Reviewed By: George McCaslin 11/2/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 11/2/2005



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### Bulk Asbestos Fiber Analysis

#### L-4 Golden tan twisted fiber bundles

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		98% Straw
		2% Resin and Binder

**Comments:**

Batch Number: 05-2557	<b>ACM Environmental</b>
Lab Sample Number: 05014104	<b>3048-33</b>
Client Sample Number: 3148-366	<i>Heath Elementary School</i>

#### L-1 Pale yellowish beige thick paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		100% Paint

**Comments:**

#### L-2 Gray dull thick hard crystalline powdery material

<b>Asbestos Fibrous Components:</b> <b>3% Chrysotile</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Calcite Filler and Binder
		5% Mineral Particles
		2% Filler and Binder

**Comments:**

Batch Number: 05-2557	<b>ACM Environmental</b>
Lab Sample Number: 05014105	<b>3048-33</b>
Client Sample Number: 3148-367	<i>Heath Elementary School</i>

Sampled By: James McArthur  
 Received By: John McCaslin 10/17/2005  
 Reviewed By: George McCaslin 11/2/2005

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### Bulk Asbestos Fiber Analysis

**L-1 White paint**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 100% Paint

**Comments:**

**L-2 White crystalline powdery material**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 92% Calcite Filler and Binder  
5% Vermiculite  
3% Mineral Fragments

**Comments:**

**L-3 White thin papery material**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 97% Cellulose 3% Filler and Binder

**Comments:**

**L-4 Brown fibrous papery material**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 90% Cellulose 5% Insect Parts  
3% Filler and Binder  
2% Mineral Fragments

**Comments:**

Batch Number: 05-2557 **ACM Environmental**  
Lab Sample Number: 05014106 **3048-33**  
Client Sample Number: **3148-368** *Heath Elementary School*

Sampled By: James McArthur  
Received By: John McCaslin 10/17/2005  
Reviewed By: George McCaslin 11/2/2005

*Deitrie Hanson*  
Analyzed By: Deitrie Hanson 11/2/2005



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### Bulk Asbestos Fiber Analysis

**L-1 Pale beige paint**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 100% Paint

**Comments:**

**L-2 White crystalline powdery material**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 92% Calcite Filler and Binder  
5% Mineral Particles  
3% Filler and Binder

**Comments:**

**L-3 White, gray, and black granular powdery material**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 5% Cellulose 50% Sand  
40% Talc Filler and Binder  
5% Mineral Fragments

**Comments:**

Batch Number:	05-2557	<b>ACM Environmental</b>
Lab Sample Number:	05014107	<b>3048-33</b>
Client Sample Number:	<b>3148-369</b>	<i>Heath Elementary School</i>

Sampled By: James McArthur  
Received By: John McCaslin 10/17/2005  
Reviewed By: George McCaslin 11/2/2005

*Deitrie Hanson*  
Analyzed By: Deitrie Hanson 11/2/2005



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## Bulk Asbestos Fiber Analysis

**L-1 Pale gray hard tile material with brown streaks**

<b>Asbestos Fibrous Components:</b> <1% <b>Chrysotile</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 45% Calcite Filler and Binder 40% Mineral Filler and Binder 10% Vinyl Filler and Binder >4% Lizardite
--	---	--

**Comments:**  
 This layer contains <1% chrysotile asbestos.

**L-2 Black mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 92% Asphalt Filler and Binder 5% Mineral Fragments 3% Filler and Binder
--	---	---

**Comments:**

Batch Number: 05-2557	<b>ACM Environmental</b>
Lab Sample Number: 05014108	<b>3048-33</b>
Client Sample Number: <b>3148-370</b>	<i>Heath Elementary School</i>

**L-1 Gray glossy topped hard tile material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 50% Mineral Filler and Binder 45% Calcite Filler and Binder 5% Vinyl Filler and Binder
--	---	--

**Comments:**

Sampled By: James McArthur			
Received By: John McCaslin	10/17/2005	Analyzed By: Deitrie Hanson	11/2/2005
Reviewed By: George McCaslin	11/2/2005		



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### Bulk Asbestos Fiber Analysis

**L-2 Black mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		92% Asphalt Filler and Binder
		5% Mineral Fragments
		3% Filler and Binder

**Comments:**

**L-3 Tan mastic with tan fibers**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
	92% Cellulose	5% Mineral Fragments
		3% Filler and Binder

**Comments:**

Batch Number: 05-2557	<b>ACM Environmental</b>
Lab Sample Number: 05014109	<b>3048-33</b>
Client Sample Number: <b>3148-371</b>	<i>Heath Elementary School</i>

**L-1 Pale taupe and brown streaked hard tile material**

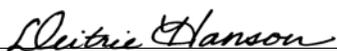
<b>Asbestos Fibrous Components:</b> <b>&lt;1% Chrysotile</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		45% Mineral Filler and Binder
		40% Calcite Filler and Binder
		10% Vinyl Filler and Binder
		>4% Lizardite

**Comments:**

This tile contains <1% chrysotile asbestos.

Sampled By: James McArthur  
Received By: John McCaslin  
Reviewed By: George McCaslin

10/17/2005  
11/2/2005



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Analyzed By: Deitrie Hanson 11/2/2005



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### Bulk Asbestos Fiber Analysis

**L-2 Black mastic**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		92% Asphalt Filler and Binder
		5% Mineral Fragments
		3% Filler and Binder

**Comments:**

Batch Number: 05-2557	<b>ACM Environmental</b>
Lab Sample Number: 05014110	<b>3048-33</b>
Client Sample Number: 3148-372	<i>Heath Elementary School</i>

**L-1 Pale olive green thin hard tile material**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>&lt;1% Chrysotile</b>		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		>4% Lizardite

**Comments:**

This tile contains <1% chrysotile asbestos.

**L-2 Black mastic**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		95% Asphalt Filler and Binder
		5% Mineral Fragments

**Comments:**

Batch Number: 05-2557	<b>ACM Environmental</b>
Lab Sample Number: 05014111	<b>3048-33</b>
Client Sample Number: 3148-373	<i>Heath Elementary School</i>

Sampled By: James McArthur  
 Received By: John McCaslin 10/17/2005  
 Reviewed By: George McCaslin 11/2/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 11/2/2005



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OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

**L-1 Golden yellow resinous mastic**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		95% Resin and Binder
		5% Mineral Fragments

Comments:

**L-2 Pale pink thick pliable sheet vinyl tile material with red bottom**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		65% Rubber Particles
		30% Calcite Filler and Binder
		5% Vinyl Filler and Binder

Comments:

**L-3 Golden tan twisted fiber bundles**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		97% Straw
		3% Filler and Binder

Comments:

Batch Number: 05-2557	<b>ACM Environmental</b>
Lab Sample Number: 05014112	<b>3048-33</b>
Client Sample Number: 3148-374	<i>Heath Elementary School</i>

**L-1 Pale grayish white paint on pale green paint**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		100% Paint

Comments:

Sampled By: James McArthur  
 Received By: John McCaslin 10/17/2005  
 Reviewed By: George McCaslin 11/2/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 11/2/2005



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### Bulk Asbestos Fiber Analysis

**L-2 White hard crystalline powdery material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 65% Calcite Filler and Binder 30% Mineral Filler and Binder 5% Filler and Binder
--	----------------------------------	---

**Comments:**

**L-3 Gray hard granular mortar-like material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 90% Sand 10% Mineral Filler and Binder
--	----------------------------------	--

**Comments:**

Sampled By: James McArthur  
 Received By: John McCaslin 10/17/2005  
 Reviewed By: George McCaslin 11/2/2005

*Deitrie Hanson*

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Analyzed By: Deitrie Hanson 11/2/2005

**APPENDIX B**  
**Photographs**



Asbestos containing 12" Beige vinyl floor tiles with orange streaks (Room 124)



Asbestos containing 12" Brown VFT with dark streaks observed in room 126



Asbestos containing 12" Beige VFT with dark & white streaks observed in  
The Girl's change room area.

**ENERGY SYSTEM SERVICE AGREEMENT**

**HOLLY ELEMENTARY SCHOOL**

**THIS AGREEMENT** dated for reference the 26<sup>th</sup> day of September, 2011.

**BETWEEN:**

**THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 37 (DELTA)**  
a corporation established under the School Act R.S.B.C. 1996, c. 412 having an  
office at 4585 Harvest Drive, Delta, British Columbia, V4K 5B4

(the "District")

OF THE FIRST PART

**AND:**

**FORTISBC ENERGY INC.**, a company duly incorporated under the laws of the  
Province of British Columbia, having its registered office at 10th Floor, 1111  
West Georgia Street, Vancouver, B.C. V6E 4M3

("FEI")

OF THE SECOND PART

**WHEREAS:**

- A. The District is the owner of Holly Elementary School (the "Building") and lands located at 4630, 62<sup>nd</sup> Street Avenue, Delta, Delta, British Columbia, which lands are legally described as:

PID: 007-910-223      Property No: 118564

LOT 1 SECTION 35 TOWNSHIP 5 NEW WESTMINSTER DISTRICT PLAN 22893

(the "Lands")

- B. FEI wishes to supply to the Building, and the District wishes to purchase, Thermal Energy generated by an Energy System that FEI will construct on the Lands, and which FEI will own and operate, all pursuant to the terms of this Agreement.
- C. The Thermal Energy supplied by FEI to the Building pursuant to this Agreement will be priced at the rate set forth in the Energy System Rate Development Agreement between the Parties dated September 26<sup>th</sup>, 2011.

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT** in consideration of the premises and the covenants, agreements, representations, warranties and payments set out herein, the receipt and sufficiency of which is hereby acknowledged by each Party, the Parties covenant and agree as follows:

## **ARTICLE 1 - INTERPRETATION**

### 1.1 DEFINITIONS

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

- (a) “Adjusted Energy System Purchase Price” means, as of the date on which a purchase of the Energy System pursuant to Article 15 is effective, either:
  - (i) the Rate Base Value; or
  - (ii) such other purchase price for the Energy System as is determined by the BCUC; plus all applicable taxes;
- (b) “Affiliate” has the meaning set out in the *Business Corporation Act*, S.B.C. 2002, c.57 and includes FortisBC Inc.;
- (c) “Agreement” means this agreement, including the preamble hereto and any schedules attached hereto and the terms “this Agreement”, “hereof”, “herein”, “hereunder” and “hereinafter” and similar expressions refer to the Agreement and not to any particular Section or other portion thereof and includes any agreement supplementary or ancillary thereto;
- (d) “Acceptance Date” means the date of BCUC Acceptance;
- (e) “BCUC” means the British Columbia Utilities Commission, or any successor thereto;
- (f) “BCUC Acceptance” has the meaning assigned to that term in Section 11.1;
- (g) “Building” has the meaning assigned to that term on page one of this Agreement;
- (h) “Building System” means the space heating, cooling and ventilation, and domestic hot water distribution and control systems existing in the Building, to which the Energy System will be connected;
- (i) “Business Day” means any day except Saturday and Sunday or any day on which banks are generally not open for business in Vancouver, British Columbia;
- (j) “Capital Contribution” means \$ 67,000;
- (k) “Commissioned” means once the Energy System is certified complete and operating in accordance with the Specifications by a professional engineer under seal;

- (l) “Commission Date” means the day on which the Energy System is Commissioned;
- (m) “Contaminants” means, collectively, any contaminant, toxic substance, dangerous good, or pollutant or any other substance which when released to the natural environment is likely to cause, at some immediate or future time, material harm or degradation to the natural environment or material risk to human health, and includes any radioactive materials, asbestos materials, urea formaldehyde, underground or aboveground tanks, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive or toxic substances, hazardous waste or waste of any kind, pesticides, defoliants, or any other solid, liquid, gas, vapour, odour or any other substance .the storage, manufacture, disposal, handling, treatment, generation, use, transport, remediation or Release into the Environment of which is now or hereafter prohibited, controlled or regulated under Environmental Laws;
- (n) “Continuing Service Interruption Notice” has the meaning assigned to that term in Section 14.3(b);
- (o) “Contractor” means a prime contractor hired by FEI to oversee and complete the construction and installation of the Energy System;
- (p) “Design and Construction” means the total construction and related services required to design, construct and commission the Energy System and connected components of the Building System;
- (q) “Design Thermal Energy” means the maximum amount of Thermal Energy that the Energy System is capable of delivering through the Thermal Energy Meter and is included in the Specifications;
- (r) “Disclosed Contaminants” means Contaminants:
  - (i) the existence of which are specifically identified in the reports provided by the District to FEI and listed in Schedule C;
  - (ii) that were or ought to have been discovered, foreseen or anticipated upon reasonable inspection by FEI prior to the Effective Date; and
  - (iii) that were caused by FEI or any person for whom FEI is responsible at law;
- (s) “District” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (t) “District Losses” has the meaning assigned to that term in Section 12.6;
- (u) “District Site Rules for Contractors” means the rules set forth in Schedule “B”;
- (v) “Effective Date” means the date set out on page one of this Agreement;
- (w) “Energy System” means the equipment that FEI constructs and owns which will provide the Building with its energy needs for space heating, cooling and ventilation, and domestic hot water use, all as set forth in this Agreement;

- (x) “Energy System Service Agreement” has the meaning assigned to that term in the Energy System Rate Development Agreement;
- (y) “Energy System Rate Development Agreement” means that energy system rate development agreement between the District and FEI dated as of September 26<sup>th</sup>, 2011;
- (z) “Environment” includes the air (including all layers of the atmosphere), land (including soil, sediment deposited on land, fill, lands submerged under water, buildings, and improvements), water (including oceans, lakes, rivers, streams, groundwater, and surface water), and all other external conditions and influences under which humans, animals, and plants live or are developed and “Environmental” will have a corresponding meaning;
- (aa) “Environmental Attributes” means:
  - (i) all attributes associated with, or that may be derived from the Energy System installed having decreased environmental impacts relative to the use of conventional heating and cooling and hot water heating systems including any existing or future credit, allowance, certificate, right, benefit or advantage or proprietary or contractual right whether or not tradable;
  - (ii) any existing or future instrument, including without limitation any environmental emission allowances and environmental emission reduction credits, reduction right, allowance, certificate or other unit of any kind whatsoever, whether or not tradable and any other proprietary or contractual right, whether or not tradable, and any resulting from, or otherwise related to the actual assumed reduction, displacement or offset of emissions associated with, or that may be derived from the Energy System installed; and
  - (iii) all revenues, entitlement, benefits and other proceeds arising from or related to the foregoing;
- (bb) “Environmental Laws” means any and all statutes, laws, regulations, orders, bylaws, standards, guidelines, protocols, permits, and other lawful requirements of any Governmental Authority having jurisdiction over the Lands or the Energy System now or hereafter in force with respect in any way to the Environment, environmental assessment, health, occupational health and safety, protection of any form of plant or animal life, or transportation of dangerous goods, including the principles of common law and equity;
- (cc) “Expiry Date” means the earlier of:
  - (i) June 30, 2031, or the expiry of any renewal term thereof; and
  - (ii) the closure of the Building, or the Building otherwise ceasing to operate as a school (as defined under the *School Act* (British Columbia));
- (dd) “FEI” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (ee) “FEI Losses” has the meaning assigned to that term in Section 12.5;

- (ff) “Force Majeure” has the meaning assigned to that term in Section 17.2;
- (gg) “Governmental Authority” means any federal, provincial, regional, municipal, local or other government, governmental or public department, court, tribunal, arbitral body, commission, board, bureau or agency and any subdivision, agent, commission, board or authority thereof;
- (hh) “Lands” has the meaning assigned to that term in Recital A and includes the Building located on the Lands;
- (ii) “Laws” means laws, statutes, regulations, bylaws, Permits and orders of any Governmental Authority having jurisdiction, including without limitation, Environmental Laws;
- (jj) “Maintain” means to operate, service and maintain in a safe and reliable condition and “maintaining” and “maintenance” have corresponding meanings;
- (kk) “Monthly Charges” means that amount to be paid by the District to FEI with respect to the delivery of Thermal Energy to the Building pursuant to the Energy System Rate Development Agreement and any other payments due and owing by the District under this Agreement;
- (ll) “Notifying Party” has the meaning assigned to that term in Section 16.1;
- (mm) “Party” means a signatory to this Agreement, and the “Parties” means all of such signatories;
- (nn) “Permits” means all permits, licences, certificates, approvals, authorizations, consents and the like issued by any Governmental Authority;
- (oo) “Rate Base Value” means the value of the Energy System that the BCUC accepts from time to time in accordance with the Energy System Rate Development Agreement;
- (pp) “Release” includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, migration, disposal, or dumping;
- (qq) “Right of Access and Licence” means the right and licence granted herein by the District to FEI pursuant to Section 4.1 of this Agreement;
- (rr) “Service Failure Notice” has the meaning assigned to that term in Section 14.3(c);
- (ss) “Service Interruption” means, in any hour:
  - (i) a failure of the Energy System in that hour to deliver Thermal Energy at the Thermal Energy Meter sufficient to meet the Thermal Energy demand of the Building during that hour in accordance with the Specifications up to the Design Thermal Energy, and except where such failure is directly caused by:
    - a. the careless or wilful damage to the Energy System by the District or its agents or other persons for whom the District is responsible;

- b. damage caused to the Energy System as a result of the negligent acts or omissions of the District, its agents or those for whom in law the District is responsible;
  - c. an event of Force Majeure that triggers the suspension of FEI's obligations under the Agreement pursuant to Article 17; or
  - d. maintenance activities that FEI is performing on the Energy System that have been scheduled with the consent of the District (such consent not to be unreasonably withheld); and
- (ii) if the failure described in Section 1.1(rr)(i), FEI's failure in that hour to deliver to the Building through alternative means thermal energy sufficient to maintain an average temperature of 16 degrees Celsius in each room of the Building intended to be served by the Energy System (all as determined by the District, acting reasonably);
- (tt) "Service Interruption Notice" has the meaning assigned to that term in Section 14.3(a);
- (uu) "Services" means those services to be provided by FEI to supply Thermal Energy to a Building from an Energy System, and for greater certainty includes the services described in Articles 5 and 6, and excludes the Design and Construction;
- (vv) "Specifications" means the specifications for the Energy System prepared by FEI in consultation with the District in accordance with Section 2.3 and includes the Design Thermal Energy;
- (ww) "Term" has the meaning assigned to that term in Section 3.1;
- (xx) "Thermal Energy" means the amount of energy that FEI provides to the Building measured through a Thermal Energy Meter;
- (yy) "Thermal Energy Meter" means a device that complies with the International Organization of Legal Metrology recommendations for measuring thermal energy; and
- (zz) "UCA" means the *Utilities Commission Act*, R.S.B.C. 1996, c. 473 as may be amended from time to time.

## 1.2 SCHEDULES

The following Schedules, as may be amended from time to time, are incorporated by reference into this Agreement:

Schedule "A"	Energy System Description
Schedule "B"	Delta School District Site Rules for Contractors
Schedule "C"	List of Environmental Reports

### 1.3 AMENDMENTS TO SCHEDULES

The District and FEI acknowledge that during the construction phase of the Energy System there may be additions and alterations to the Specifications for the Energy System which would result in more efficient use and operation of the Energy System. If these additions or alterations result in changes to any of the above Schedules, the Parties mutually agree to amend the Schedules by way of a written amendment prior to the Commission Date.

### 1.4 INTERPRETATION

Except where the context requires otherwise or except as otherwise expressly provided, in this Agreement:

- (a) all references to a designated Article or Section are to the designated Article or Section of this Agreement unless otherwise specifically stated;
- (b) the singular of any term includes the plural, and vice versa, and the use of any term is equally applicable to any gender and, where applicable, body corporate;
- (c) any reference to a corporate entity includes and is also a reference to any corporate entity that is a successor by merger, amalgamation, consolidation or otherwise to such entity;
- (d) the preamble and all schedules referred to and attached to this Agreement are incorporated by reference and will form a part of this Agreement;
- (e) all sums of money which are referred to in this Agreement are in lawful money of Canada;
- (f) the headings of the Articles and Sections set out in this Agreement are for convenience only and will not be considered in any interpretation of this Agreement;

## **ARTICLE 2 - DESIGN AND CONSTRUCTION OF THE ENERGY SYSTEM**

### 2.1 CONSTRUCTION

FEI will perform the Design and Construction:

- (a) in accordance and in compliance with the Specifications;
- (b) in a good and workmanlike manner using qualified workers, and in accordance with sound and currently accepted industry standards and codes of practice normally employed, at the time and place of performance, in projects of a similar type and nature;
- (c) to ensure operational compatibility with the Building System;
- (d) in a safe and environmentally sound manner, and in accordance with all applicable Laws; and
- (e) in accordance with the terms of this Agreement.

## 2.2 CAPITAL CONTRIBUTION

The District will pay to FEI within 30 days of the Commission Date the Capital Contribution for the purpose of reducing the capital investment and the associated carrying cost of capital by FEI for provision of Service to the Building.

## 2.3 SPECIFICATIONS

Subject to and in accordance with this Section 2.3, FEI shall prepare and complete the Specifications promptly following the Acceptance Date.

FEI confirms the Energy System, as described in the Specifications and as contemplated by the Energy System description set out in Schedule A, will be designed to meet the thermal energy requirements of the Building and operational compatibility of the Building System based in part on information supplied by the District as to historical usage, which information has not been independently verified by FEI. FEI shall have no liability to the District for the failure of the Energy System to satisfy the requirements of the Building where such failure is attributable to the information supplied by the District being incorrect, inaccurate or incomplete.

FEI will prepare the Specifications in consultation with the District in order to ensure the Energy System can be appropriately accommodated within the Building and interface with the Building Systems. FEI will submit material changes to the Specifications, both before and during construction, to the District for review and comment prior to such changes taking place. If the District does not comment on the Specifications or material changes to the Specifications or advise that it has no comment within five (5) Business Days of receipt, FEI will be entitled to proceed on the basis of the information provided to the District. FEI will revise the Specifications based on the comments from the District provided that doing so will not impact FEI's costs or adversely affect system performance.

Review of and comment on the Specifications by the District does not impose any obligation on the District to verify the suitability of the Energy System or be construed as confirmation by the District that the Energy System satisfactorily meets the Building's energy requirements.

## 2.4 WORK SCHEDULE

Within ten (10) Business Days following the Acceptance Date, FEI will submit to the District for review and comment a Gantt chart schedule for the Design and Construction listing activities to be undertaken during the Design and Construction stages, key milestones and approval dates and other pertinent dates. Any revisions to the schedule must be reviewed and commented by the District, which review and comment will not be unreasonably withheld, conditioned or delayed.

In order to ensure that the Building System remains operational during normal school hours (as defined in Schedule B), the cut-over from the existing heating/cooling plant to the Energy System shall be performed outside normal school hours.

## 2.5 REPORTING

FEI shall produce and submit a monthly progress report for the Design and Construction to the District until the Energy System is Commissioned.

## 2.6 TESTING AND COMMISSIONING

FEI shall coordinate and supervise the start-up and testing of the Energy System to ensure the Energy System and other components of the Building System affected by the Design and Construction are operating in accordance with the Specifications, upon which the Energy System will be Commissioned. The District shall be invited to participate in the start-up and testing exercise.

# ARTICLE 3 - TERM AND RENEWAL

## 3.1 TERM

The term of this Agreement commences on the Effective Date and continues until the Expiry Date unless it is terminated earlier as authorized under this Agreement ("Term").

## 3.2 RENEWAL

This Agreement will automatically renew for periods of ten (10) years unless either Party provides written notice to the other Party no less than six (6) months prior to the Expiry Date, provided that there shall be no automatic renewal in the event that the Expiry Date arises as a result of the closure of the Building, or the Building otherwise ceases to operate as a school (as defined under the *School Act* (British Columbia)).

# ARTICLE 4 - ACCESS AND PERMITS

## 4.1 ACCESS RIGHTS

The District hereby grants to FEI, during the Term from and following the Acceptance Date, for so long as FEI shall require it, but subject to Section 4.4, a full, free and uninterrupted licence and right of way on, over and under the Lands and Building, for FEI, its assigns, employees, contractors, agents, invitees and licensees at all times hereafter for the purposes set out in this Agreement, provided FEI will avoid to the extent reasonably possible, and otherwise minimize interference with and inconvenience to, the occupants of the Building and the access rights of FEI will be limited to the extent reasonably necessary to fulfil FEI's obligations hereunder.

Without limiting the generality of the foregoing, but subject to Section 4.4, such right of way and licence shall include the full power, right and liberty to excavate for, install, place, construct, renew, alter, repair, maintain, operate, use, abandon, remove or replace its infrastructure, in whole or in part, and to enter upon, along, across, over or under the Lands or Building and have continual access to the Energy System, with or without vehicles, supplies, machinery or equipment, for any of the purposes set out in this Agreement, and to clear such portion of the Lands and keep it cleared of obstructions which, in the opinion of FEI, acting reasonably, may

interfere with any of the rights granted to FEI herein. The District may direct, in its discretion, FEI to use alternate routing for any Environmental or other reasonable purpose.

FEI covenants and agrees with the District not to do or knowingly permit to be done anything which may, in the opinion of the District acting reasonably, damage or interfere with the Building or impair the operating efficiency thereof or create any hazard.

#### 4.2 CONDITION OF LAND

The District represents and warrants to FEI that as of the Effective Date:

- (a) to the best of the District's knowledge, the Lands are free of Contaminants other than those specifically identified in the reports provided by the District to FEI and listed in Schedule C; and
- (b) there are no actions, proceedings, investigations, claims (including remediation cost recovery claims) pending, or to the knowledge of the District, threatened, that would interfere with FEI's access rights pursuant to Section 4.1.

#### 4.3 PERMITS

FEI will obtain and maintain at its own expense all Permits necessary for the Design and Construction and the Services.

#### 4.4 SAFETY, SECURITY AND BUILDING ACCESS

Notwithstanding anything to the contrary in this Agreement, FEI will adhere, and will cause all persons for whom it is responsible under this Agreement (including, without limitation, the Contractor) to adhere to the District Site Rules for Contractors.

#### 4.5 REMEDIATION

FEI shall promptly remediate any Disclosed Contaminants on the Lands as required by applicable Law that result from, or are Released as a result of the Design and Construction or the Services, except to the extent caused or contributed to by the District's negligence. In the event that Contaminants on the Lands, other than Disclosed Contaminants, are discovered by FEI, FEI will promptly notify the District of such discovery and the Parties will review the impact of such discovery, if any, on the Design and Construction or the Services.

### **ARTICLE 5 - SERVICE PROVISION**

#### 5.1 PROVISION OF SERVICE

Subject to the terms and conditions of the Agreement, FEI will provide the Services to the District throughout the Term.

## 5.2 SERVICE MONITORING AND REVIEW

The Parties acknowledge that FEI may be required from time to time to prepare and submit reports to the BCUC concerning the operation and performance of the Energy System, and the District shall provide FEI with reasonable cooperation in relation to the preparation of such reports.

## 5.3 STANDARD OF PERFORMANCE

In performing the Services, FEI will:

- (a) use only qualified personnel and exercise the same degree of care, skill and supervision as would be exercised by a reasonable and prudent owner experienced in performing like services;
- (b) perform the Services in accordance with all applicable Laws;
- (c) perform the Services in accordance with ongoing industry standards and codes of practice; and
- (d) without limiting the effect of the foregoing, abide by any standards of performance in relation to the Services that the BCUC may set from time to time according to the provisions of the UCA.

## 5.4 INTERRUPTION

No interruption of any of the on-site and off-site services, utilities and amenities provided by FEI to the Building will, except to the extent, if any, caused by any wrongful or negligent act of FEI or any person for whom FEI is responsible at law, render FEI liable to the District or any person claiming through or under the District, or relieve the District from any of its obligations under this Agreement. Notwithstanding the foregoing, FEI will use all reasonable diligence to remedy any such interruption if it is within its power and obligation to do so.

# **ARTICLE 6 - ENERGY SYSTEM MAINTENANCE AND OPERATION**

## 6.1 MAINTENANCE AND REPAIR OF ENERGY SYSTEM

Subject to Section 6.2, FEI will perform the Services and otherwise maintain or cause to be maintained and repaired the Energy System throughout the Term:

- (a) in accordance with the Energy System design and operating specifications and requirements as established by the qualified engineers engaged by FEI in the design and construction of the Energy System, and the equipment manufacturers;
- (b) in a good and workman-like manner using qualified workers, and in accordance with sound and currently accepted industry standards and codes of practice normally employed, at the time and place of performance, in projects of a similar type and nature;
- (c) to ensure operational compatibility with the Building System;

- (d) in a safe and environmentally sound manner, and in accordance with all applicable Laws; and
- (e) in accordance with the terms of this Agreement.

FEI will not delay repair of the Energy System for any reason, including as a result of a dispute with the District in relation to the costs and expenses of repair pursuant to Section 6.2.

## 6.2 REPAIR DAMAGE

The District will be responsible for all costs and expenses incurred by FEI in respect of any damage to the Energy System caused by or resulting from:

- (a) the careless or wilful damage to the Energy System by the District or its agents or other persons for whom at law the District is responsible; or
- (b) damage caused to the Energy System as a result of the negligent acts or omissions of the District, its agents or those for whom in law the District is responsible.

## **ARTICLE 7 - CHARGES**

### 7.1 MONTHLY CHARGES

The District throughout the Term commencing on the Commission Date in accordance with this Article 7 will pay to FEI when due for the Thermal Energy that FEI delivers and meters to the Building according to the rates set out in the Energy System Rate Development Agreement plus all applicable taxes (including harmonized sales tax applicable thereon) and any imposed taxes levied after the Commission Date by a government or regulatory agency that are related to the Energy System (including, but not limited to capital taxes or royalties) and any other payments due and owing by the District under this Agreement.

### 7.2 MONTHLY STATEMENT

FEI will, within 15 days following the end of each month, deliver to the District a statement setting out the Monthly Charges including all applicable taxes payable for that month.

### 7.3 PAYMENT

The District will pay the full amount specified in each statement provided to it in accordance with Section 7.2 within 30 days of receipt of such statement. All amounts payable to FEI will be made by cheque mailed to FEI at its address for service specified in Section 20.5.

### 7.4 PAYMENT DUE

Subject to Section 14.1, the obligation of the District to pay the Monthly Charges continues whether or not the Energy System is being used to provide the Building with its energy needs for space and ventilation heating, cooling and domestic hot water use.

#### 7.5 ARREARS TO BEAR INTEREST

If any amount owing to FEI or the District is not paid on or before the date on which it is due, a late payment charge of 1.5% per month will be assessed each month on all outstanding balances not paid by the due date.

### **ARTICLE 8 - OWNERSHIP OF THE ENERGY SYSTEM**

Notwithstanding the payments made by the District to FEI under this Article 8, any provision of this Agreement, any degree of annexation or affixation, or rule of law or equity to the contrary the District will have no proprietary interest in the Energy System which is, and shall remain, the property of FEI and may be used by FEI in its business or removed in whole or in part as it may see fit, and for any of such purposes, and FEI may enter in, upon and under all the Lands for the purposes of the maintenance, renewals, repair, removal or operation of the Energy System or any part thereof; provided that FEI shall not leave any part of the Energy System in such a state as to constitute a nuisance or a danger to the public through neglect, non-use and want of repair, and provided further that nothing in this clause shall nullify or otherwise impact or invalidate in any way the District's rights under Article 15 to purchase the Energy System.

### **ARTICLE 9 - ENVIRONMENTAL ATTRIBUTES**

#### 9.1 ENVIRONMENTAL ATTRIBUTES

All right, title and interest now existing or which may exist at any time in the future in the potential or actual commercial value of any Environmental Attributes that arise or accrue by virtue of the construction and operation of the Energy System will belong to the District. At the request of the District, FEI will reasonably cooperate with the District in applying for and assigning any Environmental Attributes to the District.

#### 9.2 GRANTS

Any grants from any Governmental Authority, a Crown Corporation or non-governmental authority that may be derived from a reduction in energy consumption by the Building will belong to the District.

### **ARTICLE 10 - REPRESENTATIONS AND WARRANTIES**

#### 10.1 DISTRICT'S REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties contained in this Agreement, the District hereby represents and warrants to FEI as follows and acknowledges that FEI is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) the District has the full right, power and authority to enter into this Agreement;

- (b) all necessary action on the part of the District has been taken to authorize and approve the execution and delivery of this Agreement and the performance by the District of its obligations hereunder;
- (c) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to the District as of the date of this Agreement;
- (d) the District is not party to any action, suit or legal proceeding, actual or, to the knowledge of the District, threatened, and there are no circumstances, matters or things known to the District which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or, to the knowledge of the District, threatened against the District before or by any Governmental Authority, which could affect the District's ability to perform its obligations under this Agreement; and
- (e) no person, firm or corporation has or will have as of the Commission Date, any agreement, right, or option or right capable of becoming an agreement, right, or option for the purchase or acquisition of the Energy System.

## 10.2 FEI'S REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties contained in this Agreement, FEI hereby represents and warrants to the District as follows and acknowledges that the District is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) FEI has the full right, power and authority to enter into this Agreement;
- (b) all necessary corporate action on the part of FEI has been taken to authorize and approve the execution and delivery of this Agreement and the performance by FEI of its obligations hereunder;
- (c) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to FEI as of the date of this Agreement;
- (d) FEI is not party to any action, suit or legal proceeding, actual or threatened, and there are no circumstances, matters or things known to FEI which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or threatened against FEI before or by any Governmental Authority, which could affect FEI's ability to perform its obligations under this Agreement; and
- (e) FEI has or will have all permits, licenses, authorizations and other documentation required for the operation of the Energy System after the Commission Date; and
- (f) FEI has all the required expertise to fulfill its obligations under this Agreement.

### 10.3 DELEGATION AND SUBCONTRACTING

FEI may delegate and subcontract its obligations under this Agreement with respect to Design and Construction and Services to any contractor, consultant, agent or representative provided that FEI shall be fully responsible for the acts and omissions of such persons and those either directly or indirectly employed by them to the same extent as FEI for its own acts or omissions.

## **ARTICLE 11 - BCUC ACCEPTANCE**

### 11.1 REGULATORY REVIEW TERMINATION

Subject to Section 11.3, either Party may terminate this Agreement if within 90 days following the Effective Date, this Agreement and the Energy System Rate Development Agreement, including the Market Rate and the SD37 Rate Rider as defined in that Agreement have not been accepted for filing by the BCUC (such acceptance being herein called "BCUC Acceptance").

### 11.2 REGULATORY FILING

FEI, on behalf of itself and the District, and at its own cost, shall file the Agreement with the BCUC within a reasonable time after the Effective Date. FEI shall take all steps reasonably required to secure BCUC Acceptance, which shall consist of those procedural steps related to filing the Agreement and providing argument and witnesses in support of filing.

### 11.3 TERMINATION

A Party entitled to terminate under Section 11.1 must do so by giving notice to terminate to the other Party at any time after the right to terminate arises pursuant to Section 11.1, and prior to:

- (a) the date of issuance of the BCUC Acceptance; and
- (b) the date that is 90 days after the Effective Date.

### 11.4 EFFECT OF BCUC ACCEPTANCE

The Parties acknowledge that upon BCUC Acceptance, the Services will be subject to regulation by the BCUC under the UCA, and will form another class of service that FEI provides as a public utility. The Parties acknowledge that the terms of the UCA may supersede the terms and conditions of this Agreement.

## **ARTICLE 12 - INDEMNITY**

### 12.1 FEI'S INDEMNITY

Without limiting any other obligations of FEI provided herein, FEI will indemnify, defend, and save harmless the District and its trustees, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including the full amount of all legal fees and expenses on a

solicitor-client basis) which may be paid by, incurred by, or asserted against the District or its directors, officers, employees, agents, successors, or assigns, arising from or in connection with:

- (a) the breach or non-performance by FEI of any of its obligations or warranties hereunder; or
- (b) the negligence or wilful misconduct of FEI, its employees, contractors or agents in respect of the Energy System, and in the performance of the obligations of FEI pursuant to this Agreement,

excluding only such of the foregoing as arise from the fraud, negligence or wilful misconduct of the District or its trustees, officers, directors, members, employees, contractors or agents, or the breach or non-performance by the District of any of its obligations or warranties hereunder.

## 12.2 DISTRICT'S INDEMNITY

Without limiting any other obligations of the District provided herein, the District will indemnify, defend, and save harmless FEI, its Affiliates and their respective shareholders, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including the full amount of all legal fees and expenses on a solicitor-client basis) which may be paid by, incurred by, or asserted against FEI, its Affiliates or their respective shareholders, directors, officers, employees, agents, successors, or assigns, arising from or in connection with:

- (a) the breach or non-performance by the District of any of its obligations or warranties hereunder; or
- (b) the negligence or wilful misconduct of the District, its employees, contractors or agents in respect of the Energy System, and in the performance of the obligations of the District pursuant to this Agreement,

excluding only such of the foregoing as arise from the fraud, negligence or wilful misconduct of FEI or its Affiliates or any of their respective officers, directors, members, employees, contractors or agents, or the breach or non-performance by FEI of any of its obligations or warranties hereunder.

## 12.3 CONSEQUENTIAL LOSS

In no event will the District or FEI or any of their respective officers, directors, employees, contractors or agents be liable to the other Party for any indirect or consequential loss, cost or expense whatsoever, including any loss of profits, revenues or other economic loss, suffered by the other Party or its officers, directors, employees, contractors or agents.

## 12.4 SURVIVAL OF INDEMNITY

The indemnity of each of the District and FEI provided under this Article 12 will survive the Term of this Agreement.

## 12.5 ENVIRONMENTAL INDEMNITY BY THE DISTRICT

The District will indemnify and save harmless FEI, its Affiliates, directors, officers, shareholders, employees, agents, successors and permitted assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants (but not including Disclosed Contaminants) and remediation of the Lands and any affected adjacent property) (collectively, "FEI Losses") which may be paid by, incurred by or asserted against FEI, its Affiliates and their respective directors, officers, shareholders, employees, agents, successors or permitted assigns, arising from or in connection with any Contaminants (but not including Disclosed Contaminants) existing on the Lands prior to the Commission Date or brought onto the Lands or Released onto the Lands by the District or any person for whom it is in law responsible, except to the extent the FEI Losses suffered were caused or contributed to by any act or omission of FEI or any person for whom FEI is in law responsible after FEI had knowledge of the Contaminants.

## 12.6 ENVIRONMENTAL INDEMNITY BY FEI

FEI will indemnify and save harmless the District, its Affiliates and their respective trustees, directors, officers, employees, agents, successors and permitted assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the Lands and any affected adjacent property) (collectively, "District Losses") which may be paid by, incurred by or asserted against the District, its Affiliates, and their respective trustees, directors, officers, employees, agents, successors or permitted assigns, arising from or in connection with any Contaminants brought onto the Lands or any Disclosed Contaminants Released onto the Lands by FEI or any person for whom it is in law responsible, except to the extent the District Losses suffered were caused or contributed to by any act or omission of the District or any person for whom the District is in law responsible after the District had knowledge of the Contaminants.

# ARTICLE 13 - INSURANCE

## 13.1 FEI INSURANCE COVERAGE.

- (a) FEI will obtain and maintain at its own expense throughout the Term, Commercial General Liability Insurance for bodily injury, death and property damage in the minimum amount of five million (\$5,000,000) dollars per occurrence. The policy will contain a cross liability provision and will be maintained for a period ending no sooner than 12 months after the expiry or termination of this Agreement.
- (b) FEI will be responsible for the full amount of all premiums and deductibles required under this Section 13.1. All policies required herein must be effective at the Commission Date. Insurance will be purchased from insurers registered and licensed to underwrite

insurance in British Columbia. Policies will contain waivers of subrogation against the District and all its officers, directors, members, employees, contractors and agents.

### 13.2 DISTRICT INSURANCE COVERAGE

- (a) The District will obtain and maintain at its own expense throughout the Term Commercial General Liability Insurance for bodily injury, death and property damage in the minimum amount of five million (\$5,000,000) dollars per occurrence. The policy will contain a cross liability provision and will be maintained for a period ending no sooner than 12 months after the expiry or termination of this Agreement.
- (b) The District will be responsible for the full amount of all premiums and deductibles required under this Section 13.2. All policies required herein must be effective at the date of this Agreement. Insurance will be provided by the Provincial self-insured program. Policies will contain waivers of subrogation against FEI and all its officers, directors, employees, contractors and agents.

### 13.3 PRIORITY

FEI will ensure that the District is an additional insured under the insurance to be obtained and maintained pursuant to Section 13.1. The District will ensure that FEI is an additional insured under the insurance to be obtained and maintained pursuant to Section 13.2. In the event of a claim, the insurance carried by the Party responsible for actions which give rise to such claim will be the primary insurance with respect to such claim.

## **ARTICLE 14 - DEFAULT**

### 14.1 DEFAULT BY FEI

- (a) FEI will be in default under this Agreement if FEI is in breach of a material term, covenant, agreement, condition or obligation imposed on it under this Agreement and fails to cure such default within ten (10) days after receipt of written notice thereof from the District, or, if such default is not capable of being cured within such ten (10) day notice period, fails to commence in good faith the curing of such default upon receipt of such written notice of default from the District and to continue to diligently pursue the curing of such default thereafter until cured. For the purposes of this Section 14.1, Section 4.4 is hereby deemed to be a material term of this Agreement.
- (b) If FEI is in default of this Agreement, the District may at its option and without liability therefore or prejudice to any other right or remedy it, including under the UCA, may have suspend or refuse to make any payments due hereunder until the default has been fully remedied, and no such suspension or refusal will relieve FEI from any of its obligations under this Agreement.
- (c) In the event the default is not fully remedied within thirty (30) days of receipt by FEI of written notice thereof from the District, the District may, at its option, undertake the necessary steps to remedy FEI's default at FEI's sole expense, which reasonable costs

shall be deducted from the Monthly Charges, and such actions will not relieve FEI from any of its obligations under this Agreement or, at its option, and without any liability, terminate this Agreement without prejudice to any other right the District may have hereunder or at law or otherwise.

#### 14.2 DEFAULT BY THE DISTRICT

- (a) The District will be in default under this Agreement if the District fails or refuses to make any payment due to FEI by the District under this Agreement within thirty (30) days of receiving written notice from FEI after the date that payment is due or if the District is in breach of a material term, covenant, agreement, condition or obligation imposed on it under this Agreement and fails to cure such default within ten (10) days after receipt by the District of written notice thereof from FEI or, if such default is not capable of being cured within such ten (10) day notice period, fails to commence in good faith the curing of such default forthwith upon receipt of such written notice thereof from FEI and to continue to diligently pursue the curing of such default thereafter until cured.
- (b) If the District is in default of this Agreement, FEI may at its option and without liability therefore or prejudice to any other right or remedy it may have, including under the UCA, cease performing the Services and no such actions will relieve the District from any of its obligations under this Agreement.
- (c) In the event the default by the District is not fully remedied within thirty (30) days of receipt by the District of written notice from FEI, FEI may undertake the necessary steps to remedy the District's default at the District's sole expense and such action will not relieve the District from any of its obligations under this Agreement or, at its option, and without any liability, take whatever steps necessary to shut down the Energy System and terminate this Agreement without prejudice to any other right FEI may have hereunder or at law or otherwise.

#### 14.3 CROSS DEFAULT

- (a) If any Building experiences a Service Interruption at any time, the District may deliver a notice of such Service Interruption to FEI (a "Service Interruption Notice" to FEI);
- (b) If a Service Interruption continues for a period of 48 consecutive hours after the delivery of a Service Interruption Notice pursuant to Section 14.3(a), the District may deliver a notice of such continuing Service Interruption to FEI (a "Continuing Service Interruption Notice");
- (c) If a Service Interruption continues for a period of 120 consecutive hours after the delivery of a Continuing Service Interruption Notice, the District may at its option deliver a notice of such continuing Service Interruption to FEI (a "Service Failure Notice"); Within 60 days of either:
  - (i) the District's delivery of a Service Failure Notice pursuant to Section 14.3(c); or

- (ii) the District's delivery of a Continuing Service Interruption Notice pursuant to Section 14.3(b) that constitutes the fifth or greater Continuing Service Interruption Notice delivered in that calendar year;

the District may, at its option and without liability:

- (iii) terminate this Agreement without prejudice to any other right the District may have hereunder at law or otherwise; or
  - (iv) terminate the Energy System Rate Development Agreement and all Energy System Service Agreements (inclusive of this Agreement), without prejudice to any other right the District may have hereunder at law or otherwise.
- (d) For greater certainty, this Agreement shall be deemed to be terminated in the event that the District exercises its right to terminate all Energy System Service Agreement under another Energy System Service Agreement.

#### 14.4 SURVIVAL

Upon expiry or earlier termination of this Agreement for any reason, all claims, causes of action or other outstanding obligations remaining or being unfulfilled as of the expiry or termination of this Agreement and all of the provisions of this Agreement relating to the obligation or either the Parties to account to or indemnify the other and to pay to the other any amounts owing as at the date of expiry or termination in connection with this Agreement will survive such expiry or termination.

### **ARTICLE 15 – EXPIRY AND TERMINATION**

#### 15.1 EXPIRY

Upon expiry of the Term, unless otherwise agreed between the Parties and subject to agreement by the BCUC (if required pursuant to applicable Laws), the District may, at its option and by written notice to FEI within 30 days following the termination:

- (a) require FEI to remove the Energy System at FEI's cost in accordance with Section 15.5; or
- (b) acquire the Energy System from FEI at the Adjusted Energy System Purchase Price.

#### 15.2 TERMINATION OF THE ENERGY SYSTEM RATE DEVELOPMENT AGREEMENT

- (a) If the Energy System Rate Development Agreement is terminated as a result of the adoption, approval or implementation of a thermal energy rate tariff by the BCUC, this Agreement will automatically terminate effective as of the date of termination of the Energy System Rate Development Agreement;
- (b) If the Energy System Rate Development Agreement is terminated for cause by the District, this Agreement will be deemed to have been terminated pursuant to Section

14.1(c) as of the date of termination of the Energy System Rate Development Agreement, and Section 15.3 shall apply; and

- (c) If the Energy System Rate Development Agreement is terminated for cause by FEI, this Agreement will be deemed to have been concurrently terminated pursuant to Section 14.2(c) as of the date of termination of the Energy System Rate Development Agreement, and Section 15.4 shall apply.

### 15.3 TERMINATION BY THE DISTRICT FOR CAUSE

If the District terminates this Agreement pursuant to Sections 14.1(c) or 14.3, the District may, at its option and by written notice to FEI within 30 days following the termination:

- (a) require FEI to remove the Energy System, at its own cost, in accordance with Section 15.5; or
- (b) acquire the Energy System from FEI at the Adjusted Energy System Purchase Price.

### 15.4 TERMINATION BY FEI FOR CAUSE

If FEI terminates this Agreement pursuant to Section 14.2(c), FEI may, at its option and by written notice to the District:

- (a) remove the Energy System, at its own cost, in accordance with Section 15.5; or
- (b) require the District to purchase the Energy System from FEI at the Adjusted Energy System Purchase Price.

### 15.5 REMOVAL OF THE ENERGY SYSTEM

If FEI is required to remove the Energy System pursuant to Sections 15.1(a), 15.3(a) or 15.4(a) or otherwise upon expiry of this Agreement, FEI shall promptly remove those portions of the Energy System located within the Building and at surface level at FEI's cost, and FEI shall perform such removal activities using standards of performance that are equivalent to those that apply to the performance of the Services under this Agreement. Any portion of the Energy System not removed by FEI prior to the 30<sup>th</sup> day following the termination or expiry of the Agreement will, as of such day, be deemed to be automatically transferred to the District, and become the property of the District, all at no cost to the District.

### 15.6 ACQUISITION OF THE ENERGY SYSTEM

If the District elects to acquire the Energy System pursuant to Sections 15.1(b), 15.3(b) or 15.4(b):

- (a) the District shall pay the Adjusted Energy System Purchase Price to FEI within the later of 30 days of (i) the effective date of expiration or termination, and (ii) confirmation of the Adjusted Energy System Purchase Price; and

- (b) FEI will promptly execute and deliver any documents and records reasonably required by the District to effect and facilitate the transfer of the Energy System to the District, including bills of sale, operation and maintenance manuals and warranties, and will use reasonable commercial efforts to obtain any consents and approvals that may be required in relation to the transfer (including, without limitation, BCUC approval), provided that (i) FEI's obligations under this Section 15.6(b) shall arise only upon FEI's receipt of all amounts due and owing to FEI from the District under this Agreement, and (ii) during the period between the expiration or termination of the Agreement and FEI's receipt of amounts due and owing to FEI from the District under this Agreement, FEI shall continue to maintain, or shall permit the District to maintain, the Energy System in good working order.

Notwithstanding the foregoing, the Parties acknowledge and agree that FEI's ability to sell or otherwise transfer its interest in and to the Energy System to the District may be subject to BCUC approval under applicable Laws.

## **ARTICLE 16 - NON-COMPLIANCE AND ENVIRONMENTAL**

### 16.1 NOTIFICATION OF NON-COMPLIANCE

FEI or the District (as applicable, the "Notifying Party") will promptly, upon becoming aware thereof, notify the other Party in writing of:

- (a) a Release of a Contaminant or any other occurrence or condition in the Energy System, the Lands or any adjacent property which could subject the other Party to any fines, penalties, orders or proceedings under applicable Laws;
- (b) any charge, order, investigation or notice of violation or non-compliance issued against the Notifying Party relating to the Energy System, or the operation of the Energy System, under any applicable Laws; and
- (c) any notice, claim, action or other proceeding by any third party against the Notifying Party in respect of the Design and Construction or the Services or concerning the Release or alleged Release of any Contaminants at or from the Energy System or the Lands.

### 16.2 NOTIFICATION BY FEI

FEI will notify the appropriate Governmental Authorities of any Release of any Contaminants at or from the Energy System in accordance with applicable Laws. The District may, but is not obligated to, notify the appropriate Governmental Authorities of any Release of any Contaminants at or from the Energy System in accordance with applicable Laws.

### 16.3 OWNERSHIP OF CONTAMINANTS

Notwithstanding any rule of law to the contrary, any Disclosed Contaminant Released from the Energy System, or any top soil, earth or other material containing a Contaminant for which FEI is responsible pursuant to Section 4.5 that is removed from the Lands by FEI or any person for

whom it is in law responsible, will be and remain the sole and exclusive property and responsibility of FEI and will not become the property of the District, notwithstanding the degree of its affixation to the Lands and notwithstanding the expiry or earlier termination of this Agreement.

#### 16.4 SURVIVAL OF OBLIGATIONS

The obligations of the Parties under this Article 16 will survive the expiry or termination of this Agreement.

### **ARTICLE 17 - FORCE MAJEURE**

#### 17.1 SUSPENSION

Subject to the other provisions of this Article 17, if either Party is unable or fails by reason of Force Majeure to perform in whole or in part any obligation or covenant set forth in this Agreement, with the exception of unpaid financial obligations, such inability or failure will be deemed not to be a breach of such obligation or covenant and the obligations of both Parties under this Agreement will be suspended to the extent necessary during the continuation of any inability or failure so caused by such Force Majeure.

#### 17.2 DEFINITION OF FORCE MAJEURE

For purposes of this Agreement, the term "Force Majeure" means any event or occurrence not within the control of the Party claiming Force Majeure and which by the exercise of reasonable diligence such Party is unable to prevent or overcome, including any acts of God, including lightning, earthquakes, storms, washouts, landslides, avalanches, fires, epidemics and floods; strikes, lockouts or other industrial disturbances; acts of the Queen's or public enemies, sabotage, wars, blockades, insurrections, riots or civil disturbances, fires, explosions, breakages of or accidents to machinery or lines of pipe; the laws, orders, rules, regulations, acts or restraints of any court or governmental or regulatory authority. For the purposes of this Article 17, a Party is deemed to have control over the actions or omissions of those persons to which it, its agents, contractors or employees, have delegated, assigned or subcontracted its obligations and responsibilities. For greater certainty, a Force Majeure shall not include any weather related events that do not exceed 25 year events as recorded by Environment Canada or as otherwise may be determined by the BCUC from time to time.

#### 17.3 EXCEPTIONS

Neither Party will be entitled to the benefit of Section 17.1 under any of the following circumstances:

- (a) the Energy System not being Commissioned;
- (b) to the extent that the inability or failure was caused by the negligence or contributory negligence of the Party claiming Force Majeure;

- (c) to the extent that the inability or failure was caused by the Party claiming Force Majeure having failed to diligently attempt to remedy the condition by taking all reasonable acts and to resume the performance of such covenants and obligations with reasonable dispatch;
- (d) if the inability or failure was caused by lack of funds or is in respect of any amount due hereunder; or
- (e) unless, as soon as possible after the happening of the occurrence relied upon or as soon as possible after determining that the occurrence was in the nature of Force Majeure and would affect the claiming Party's ability to observe or perform any of its covenants or obligations under this Agreement, the claiming Party will have given to the other Party notice to the effect that the claiming Party is unable by reason of Force Majeure (the nature whereof will be therein specified) to perform the particular covenants or obligations.

#### 17.4 RESUMPTION OF OBLIGATIONS

The Party claiming Force Majeure will give notice to the other Party, as soon as possible after the Force Majeure condition is remedied, to the effect that the same had been remedied and that such Party has resumed, or is then in a position to resume, the performance of its suspended covenants and obligations hereunder either in whole or in part.

#### 17.5 SETTLEMENT OF LABOUR DISPUTES

Notwithstanding any of the provisions of this Article 17, and subject to Section 17.3, the settlement of labour disputes or industrial disturbances is entirely within the discretion of the particular Party involved and the Party may make settlement of it at the time and on terms and conditions as it may deem to be advisable and no delay in making settlement will deprive the Party of the benefit of Section 17.1.

### **ARTICLE 18 - CONDITIONS PRECEDENT**

#### 18.1 CONDITIONS PRECEDENT OF FEI

The obligation of FEI to carry out the transactions contemplated by this Agreement is subject to fulfillment of the following conditions on or before such date as may be specified, which is for the sole benefit of FEI, and which may be waived by FEI in accordance with Section 18.2:

- (a) FEI obtaining the approval by its board of directors of the terms and conditions of this Agreement on or before the 30th day following the Effective Date, provided that if such approval cannot be obtained by this date due to the fact that the board of directors has not yet considered the transaction FEI reserves the right to extend the period of time to that date when the board next convenes.

## 18.2 FEI NOTICE OF WAIVER

If a condition set out in Section 18.1 has not been satisfied on or before the date as may be specified for its fulfillment, FEI may waive compliance with the condition in whole or in part, in its sole discretion, by written notice to the District, failing which delivery of written notice of satisfaction or waiver of such condition, this Agreement will, to the extent any further obligations of the Parties which remain unfulfilled, be null and void, without liability between the Parties hereto, and, neither Party will be under any further obligation to the other to complete the transactions or future transactions, as the case may be, contemplated by this Agreement.

## **ARTICLE 19 - DISPUTE RESOLUTION**

### 19.1 REFERENCE TO ARBITRATION

The Parties will attempt to resolve all disputes which may arise under, out of, in connection with or in relation to this Agreement by negotiation. They will provide full and timely disclosure to one another of all facts relevant to the disputes to facilitate those negotiations. If any such dispute remains unresolved, for any reason, fifteen (15) days after either Party requested the other Party to enter into negotiations to resolve it, or if the Parties agree to waive negotiations in respect of it, then either Party may submit that dispute for final resolution by arbitration administered by the British Columbia International Commercial Arbitration Centre (“BCICAC”) under its “Shorter Rules for Domestic Commercial Arbitration”. The seat of that arbitration will be Vancouver, British Columbia, Canada. The language of that arbitration will be English. Alternatively, the Parties may agree, within the 15 days referred to above, to submit that dispute for final resolution by arbitration in another manner.

### 19.2 BINDING DECISION

The decision of the arbitrator, regardless of what arbitration procedure is used, will, for all purposes of this Agreement, be final and binding on the Parties.

### 19.3 CONTINUATION OF SERVICES

Each of the Parties will perform all of its respective obligations under this Agreement notwithstanding the existence of any dispute that arises from time to time between the Parties in respect of any matter related to this Agreement or during the resolution of any dispute in accordance with this Article 19.

### 19.4 COSTS

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 case, the non-prevailing Party shall pay all costs and expenses of the arbitration, but not those of the prevailing Party.

## ARTICLE 20 - GENERAL

### 20.1 RESPONSIBILITY FOR COSTS

FEI's performance of any of its obligations under this Agreement, including without limitation the obligation to design, construct and install the Energy System as provided in Section 2.1, shall be at FEI's sole cost and expense, unless expressly provided otherwise in this Agreement;

### 20.2 EXERCISE OF DISCRETION

Where anything in this Agreement is identified as being in either Party's discretion, such Party will have the right to exercise such discretion in its own best interest without regard for the interest of the other Party.

### 20.3 COOPERATION

FEI and the District will at all times extend co-operation to each other to ensure the orderly management and operation of the Energy System.

### 20.4 SOLICITATION

Nothing in this Agreement precludes either Party from soliciting or entering into, other contracts with the other Party.

### 20.5 NOTICES

Any notice or other communication required or permitted to be given under this Agreement will be effective only if in writing and when it is actually delivered (which delivery may be by telecopy or other telecommunications device) to the Party for whom it is intended at the following address or such other address in British Columbia as such Party may designate to the other Party by notice in writing delivered in accordance with this Section 20.5:

(a) if to FEI:

FortisBC Energy Inc.  
10th Floor, 1111 West Georgia Street  
Vancouver, B.C.  
V6E 4M3

Attention: Gareth Jones  
Telephone: 250-380-5972  
Telecopy: 250-388-6876

(b) if to the District:

Board of Education of School District No. 37 (Delta)  
4585 Harvest Drive  
Delta, B.C.  
V4K 5B4

Attention: Frank Geyer  
Telephone: 604-952-5336  
Telecopy: 604-952-5375

Notwithstanding the foregoing, notices with respect to Force Majeure will be given in writing by telecopy, or orally in person or by telephone (to be confirmed by telecopy), to the person or persons designated from time to time by the Parties as the person or persons authorized to receive such notices.

## 20.6 CONFIDENTIALITY

The District and FEI will treat as confidential the terms of this Agreement and all Confidential Information (as defined below) and will at all times during the term of this Agreement and for a reasonable time thereafter hold the terms of this Agreement and all Confidential Information in confidence and neither Party will, without the prior written consent of the other Party, disclose or divulge the terms of this Agreement or any Confidential Information to any person, provided that nothing in this Section 20.6 will restrict or prevent either Party from making any disclosure of such terms or any Confidential Information:

- (a) which is reasonably necessary or desirable for such Party to carry out and give full effect to the terms, conditions and intent of this Agreement and the matters contemplated hereby;
- (b) which is required by any Law, including the Freedom of Information and Protection of Privacy Act (British Columbia);
- (c) to any Governmental Authority;
- (d) to the British Columbia Utilities Commission or other regulatory agency as part or in support of any regulatory application or submission;
- (e) to the directors, officers or employees of such Party or to an Affiliate of such Party or to the directors, officers or employees of an Affiliate of such Party;
- (f) to the professional advisors of such Party on the same terms of confidentiality;
- (g) which is already in the public domain; or
- (h) in connection with legal proceedings or steps being taken to remedy a breach or default under this Agreement by the other Party.

For the purposes of this Section 20.6, "Confidential Information" means proprietary information of either Party such as data, plans, drawings, manuals, or specifications which have been provided by such Party, its employees, contractors, agents, subcontractors, Affiliates to the other Party pursuant to this Agreement or proprietary information either Party conceived or developed by or for such Party concerning construction practices, operation and maintenance practices, agreements, marketing plans and strategies, profits, costs, pricing and systems of procedure (provided that "Confidential Information" does not include information which was disclosed to the receiving Party by a third Party (unless, to the knowledge of the receiving Party, the third Party is under an obligation of confidentiality to the other Party) or any information developed or conceived by the receiving Party without using the "Confidential Information" of the other Party).

#### 20.7 SEVERABILITY

If any provision of this Agreement is found or determined to be invalid, illegal or unenforceable it will be construed to be separate and severable from this Agreement and will not impair the validity, legality or enforceability of any other provisions of this Agreement, and the remainder of this Agreement will continue to be binding on the Parties as if such provision had been deleted.

#### 20.8 NO WAIVER

No waiver by either Party of any default by the other in the performance of any of the provisions of this Agreement will operate or be construed as a waiver of any other or future default or defaults hereunder, whether of a like or a different character. To be binding, any waiver of any provision of this Agreement must be clearly expressed in writing to be signed by the waiving Party.

#### 20.9 BURDEN AND BENEFIT

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

#### 20.10 GOVERNING LAW

This Agreement and all matters arising hereunder will be governed by the laws of British Columbia and the federal laws of Canada applicable in British Columbia.

#### 20.11 ENTIRE AGREEMENT

This Agreement contains the whole agreement between the Parties in respect of the subject matter hereof and there are no terms, conditions or collateral agreements express, implied or statutory other than as expressly set forth in this Agreement and this Agreement supersedes all of the terms of any written or oral agreement or understanding between the Parties.

#### 20.12 TIME OF ESSENCE

Time is of the essence of this Agreement.

#### 20.13 FURTHER ASSURANCES

Each Party will, at all times hereafter on demand by the other, execute and deliver or cause to be executed and delivered all such further documents and do all such further acts and things as may be reasonably requested by the other Party to evidence, carry out and give full effect to the intent and meaning of this Agreement and to assure the completion of the transactions contemplated hereby.

#### 20.14 AMENDMENTS TO BE IN WRITING

Except as set out in this Agreement, no amendment or variation of this Agreement will be effective or binding upon the Parties unless such amendment or variation is set out in writing and duly executed by the Parties.

#### 20.15 FACSIMILE

This Agreement may be executed by the Parties and transmitted by facsimile transmission and, if so executed, transmitted and received, this Agreement will for all purposes be effective as if the Parties had delivered and executed the original Agreement and each Party undertakes to provide the other Party with a copy of this Agreement bearing original signatures forthwith upon demand.

#### 20.16 SUBJECT TO LEGISLATION

Notwithstanding any other provision hereof, this Agreement and the rights and obligations of FEI and the District under this Agreement are subject to all present and future laws, rules, regulations and orders of any legislative body, governmental agency or duly constituted authority now or hereafter having jurisdiction over FEI or the District.

#### 20.17 EXPENSES

Each Party to this Agreement shall be responsible for the payment of all costs, expenses, legal fees and disbursements incurred or to be incurred by it in negotiating and preparing this Agreement and all documents required to be delivered under this Agreement and otherwise relating to the transactions contemplated by this Agreement.

#### 20.18 NO CONTRARY AGREEMENT

No Party shall enter into an agreement or other commitment with any person if such agreement or commitment has terms or provisions in conflict with or inconsistent with the terms of this Agreement or which could reasonably be expected to lead to actions or consequences that would result in the Party being in breach of the commitments and obligations of the Party pursuant to this Agreement unless such other agreement or commitment is expressly approved by the other Parties.

#### 20.19 NO PARTNERSHIP

Nothing herein shall be deemed or construed to create a joint venture, partnership, employment or agency relationship between the Parties for any purpose.

20.20 ASSIGNMENT

Neither Party may assign this Agreement or any of its rights or obligations under this Agreement, and FEI may not assign, transfer or sell all or any part of the Energy System, except:

- (a) with the consent of the other Party, such consent not to be unreasonably withheld, delayed or conditioned; or
- (b) in the case of FEI, to an Affiliate of FEI which is a "public utility" as defined in the *UCA* on notice to, but without the consent of, the District.

20.21 COUNTERPARTS

This Agreement may be executed in counterparts with the same effect as if the Parties had signed the same document. All counterparts will be construed together and will constitute one agreement.

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

**FORTISBC ENERGY INC.**

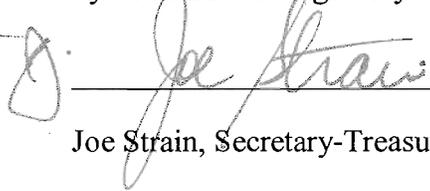
by its authorized signatory:

  
\_\_\_\_\_

Doug Stout,  
VP Energy Solutions & External Relations

**THE BOARD OF EDUCATION OF  
SCHOOL DISTRICT NO. 37 (DELTA)**

by its authorized signatory:

  
\_\_\_\_\_

Joe Strain, Secretary-Treasurer

# **SAMPLE SCHEDULE “A”**

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## **Energy System Description**

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### **Mechanical Equipment Plans and Specifications**

Equipment schedule:

- 2 boilers Mod Com 300 (By others)
- Pumps, piping, control valves and other equipment and accessories connected to the above equipment.
- BTU Meter
- Control systems for the above mentioned equipment.

Prior to commencement of the Mechanical Equipment construction, FEI shall provide detailed drawings to the District for review and acceptance.

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## **SCHEDULE “B”**

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# **Delta School District Site Rules for Contractors**

## **Delta School District Site Rules for Contractors**

### **1.0 Safety**

- 1.1 For the purposes of this section, “Safety Regulations” means the rules, regulations, and practices required by WorkSafeBC.
- 1.2 The Contractor shall be solely responsible for site safety during the execution of all assigned construction and maintenance activities, including work performed by subcontractors and suppliers, and for compliance with the Safety Regulations, and shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the work.
- 1.3 If the District is of the reasonable opinion that the Contractor has not taken such precautions as are necessary to ensure compliance with the requirements of Clause 1.2, the District may take or order any remedial measures which it deems necessary, including stopping the performance of all or any portion of the work, and the District may use the employees of itself, the Contractor, any subcontractor or any other contractors to perform such remedial measures. The Contractor acknowledges and agrees that any failure by the Contractor to comply with the Safety Regulations shall constitute a default of the Contractor's contractual obligations and the District may issue a written notice instructing the Contractor to correct the default in the two (2) working days immediately following receipt of such notice.
- 1.4 The Contractor shall file any notices or any similar document (including, without limitation, a Notice of Project where applicable) required pursuant to the Safety Regulations. This duty of the Contractor will be considered to be included in the work and no separate payment therefore will be made to the Contractor.
- 1.5 The Contractor shall develop, maintain and supervise for the duration of the work a comprehensive safety program that will effectively incorporate and implement all required safety precautions. The program shall, as a minimum, respond fully to the Safety Regulations and general construction practices for the safety of persons or property, including without limitation the WorkSafeBC regulations that may be applicable (e.g. WHMIS, dust control, etc.).
- 1.6 The Contractor shall provide a copy of the safety program described in Clause 1.5 to the District prior to the commencement of the work and shall, at all times require, as far as it is reasonably practical to do so, that every employer and worker performing work in respect of the project complies with such program.
- 1.7 The Contractor shall arrange regular safety meetings at its expense, record the minutes of such meetings and maintain a complete file for review by the appropriate authorities.
- 1.8 The Contractor shall supply and maintain, at its own expense, at its office or other well-known place at the work site, safety equipment necessary to protect the workers and general public against accident or injury as prescribed by the governing authorities.
- 1.9 The Contractor shall supply and maintain all articles necessary for giving first-aid to any person who may be injured on the work site and shall establish an emergency procedure for the immediate removal of any injured person to a hospital or a doctor's care in accordance with the Safety Regulations.
- 1.10 The Contractor shall, as required under the Safety Regulations, promptly report all accidents of any sort arising out of or in connection with the performance of the work whether on or adjacent to the work site, giving full details and statements of witnesses. The District shall be copied on all accident reports and investigation reports.

## **2.0 Security and Access**

- 2.1 **Site and Building Access:** The District's Maintenance Services Department will issue gate and building keys, electronic access cards (complete with instructions as to how to arm/disarm the building intrusion alarm system and how to contact the alarm monitoring station) and identification badges for the Contractor to enter the site and building, disarm/arm the building intrusion alarm system, and access the portions of the site where the Contractor's work is taking place. The Contractor and all subcontractors must check in at the school office (if occupied by District staff) prior to entering other parts of the building. The access cards, keys and identification badges shall be promptly returned to the District at the end of the contract.
- 2.2 **Security:** The Contractor shall assume all responsibility for the security of the work site. The Contractor must ensure that all windows, doors and gates are secure and the building intrusion alarm system is armed (unless District staff are still in the building) at the end of the workday. The Contractor must also safeguard the rest of the building and/or site from access through possible open construction areas. Security doors shall at all times remain closed and shall not be propped open, even for a short time. The Contractor is responsible for any costs arising when the District's security runner services is called to attend a work site for security matters resulting from the Contractor's negligence.
- 2.3 **Normal School Hours:** Normal hours of operation for the District are 0730h-1600h Monday to Friday, excluding statutory holidays. For after-hours and weekend work, the Contractor must notify the District's Maintenance Services Department at least one business day in advance of the work.

## **3.0 Conduct**

- 3.1 **Noise Due to Construction or Maintenance Activities:** In accordance with the Delta Noise Bylaw 1906, "no person shall carry on or cause to be carried any construction work, reconstruction, alteration, repair or demolition of a building or structure, the operation of machinery, or works in connection with any excavation or highway before 07:00h or after 1900h and day of the week from Monday to Friday, inclusive, before 0900h or after 1700h on Saturdays, or at any time Sundays. The Contractor shall respect the classroom operations in the vicinity of the work site and as such will make every attempt to limit noisy work to times outside of classroom operation or to adequately dampen, silence and/or soundproof equipment that generates noise to mitigate disruption to the classrooms.
- 3.2 **Communication devices:** Radio and cell phone volume shall be at the minimum volume which is consistent with the ability to operate the device.
- 3.3 **Roadways:** All speed limits and other traffic rules must be obeyed and access to the roadways should not be impeded. Parking and secure storage of materials and equipment by the Contractor and subcontractors shall only be in designated areas only.
- 3.4 **Cleanliness:** The work site must be maintained for an orderly appearance on a daily basis. Trash and construction debris shall be contained at all times and removed from the work site weekly.
- 3.5 **Toilets:** All temporary toilets shall have their doors faced away from streets. In no cases shall a worker utilize any staff washroom or other staff facilities at the work site, except as otherwise agreed in writing by the District. Under no circumstances will workers be permitted to use student washrooms.
- 3.6 **Identification Badges:** All workers shall have a District-assigned identification badge that clearly indicates the company's name and the worker's name. It is to be worn whenever at the work site.

- 3.7 **Smoking:** Smoking is not permitted on District property.
- 3.8 **Alcohol/Drugs:** No alcoholic beverages or non-prescription drugs shall be brought or consumed at the work site.
- 3.9 **Animals:** No dogs or other animals, are permitted at the work site without the written consent of the District.
- 3.10 **Fitness for Work:** All workers must be fit for work at all times. The District retains the right to request individuals leave the work site if unfit for any reason including, without limitation, inebriation, taking drugs, injury, fatigue, rudeness or any other reason that may affect the quality of the work or represents a breach of these rules.
- 3.11 **Theft:** Workers who steal from occupants or the District shall be immediately ejected from the work site. The Contractor is responsible for all such thefts irrespective of whether the worker is an employee of the Contractor or a subcontractor.
- 3.12 **Discrimination and Harassment:** The District actively promotes a safe and secure school environment and as such does not tolerate violations of human rights legislation, including:
  - (a) discriminatory acts against any person with respect to the work or school environment or any educational program or service provided to or by that person because of race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age of that person, or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person;
  - (b) all forms of actual, attempted or threatened physical harm directed at any person; or
  - (c) any form of sexual harassment such as unwelcome sexual advances with actual or implied work related consequences; unwelcome remarks, questions, jokes or innuendo of a sexual nature including sexist comments or sexual invitations; verbal abuse, intimidation or threats of a sexual nature; unwelcome leering, staring or making sexual gestures; whistling or catcalls; display of pornographic or other sexual materials; offensive pictures, graffiti, cartoons or sayings; unwanted physical contact such as touching, patting, pinching or hugging; and physical assault of a sexual nature

**ASBESTOS MATERIALS SURVEY  
AND RISK ASSESSMENT**

**OF**

**HOLLY ELEMENTARY  
4625 – 62<sup>nd</sup> Street  
Delta, BC**

**PREPARED FOR:**

**DELTA SCHOOL DISTRICT  
Maintenance Facility  
7186 Brown Street  
Delta, BC  
V4G 1G8**

**PREPARED BY:**

**ACM ENVIRONMENTAL CORPORATION  
#217 -2323 Quebec Street  
Vancouver, BC  
V5T 4S7  
604-873-8599**

**December 2005**

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**EXECUTIVE SUMMARY**

A.C.M. Environmental Corporation (ACM) was retained by the Delta School District to perform an Asbestos Materials Survey and Risk Assessment for Holly Elementary located at 4625 - 62<sup>nd</sup>, Delta, BC.

The assessment involved an inspection of all areas of the building. The objective of the assessment was to identify the types and extent of asbestos containing materials within the building and any risks associated with the materials and the regular usage of the building.

The assessment was conducted using both visual and physical assessment techniques. Samples of materials suspected of containing asbestos were collected and forwarded, using proper chain of custody protocols, to Prezant Associates, Inc. for asbestos analysis. Asbestos sample results are located in Appendix A of this report.

In summary, the findings from the assessment conclude that asbestos was found within the construction materials of the building, however, no PCB or Mercury containing materials were found within the equipment of the building.

Two types of asbestos containing building materials were observed during this survey which includes vinyl floor tile and ducting mastic materials. Within the context of the report, areas have been detailed as to the locations of the asbestos containing materials, the content of asbestos where applicable, and the essential procedures to be followed for removal of these materials, as required.

The hazardous materials survey was conducted using non-destructive and some limited destructive testing methods. Areas within walls were not inspected as access was not possible without causing extensive damage to the walls. It should be noted that there is a possibility of asbestos containing materials existing within inaccessible wall and ceiling cavities, and under sub-floors. Possible asbestos-containing materials which may exist in these areas may include but are not limited to: insulation materials (mechanical or construction), secondary layers of drywall or flooring, etc.

Roofing materials were not sampled at this time as the integrity of the waterproof membrane would be compromised, possibly voiding insurance coverage in the event of a water leak. If the roofing materials are to be disturbed during a renovation project, they must be sampled prior to the work taking place.

A random number of fluorescent lighting fixtures were opened up and inspected for possible PCB containing ballasts. No PCB containing ballasts were observed

within the fluorescent lighting fixtures inspected, although some may exist, as not all fixtures were opened. No Mercury containing thermostat switches were observed within the building.

## **INTRODUCTION**

A.C.M. Environmental Corporation (ACM) was retained by the Delta School District to perform an Asbestos Materials Survey and Risk Assessment for Holly Elementary located at 4625 - 62<sup>nd</sup>, Delta, BC. All areas of the building were inspected and/or sampled during this survey and photographs of the site are included as Appendix B.

The objective of the assessment was to identify the types and extent of asbestos containing construction materials within the accessible areas of the building. The assessment at this time involved an inspection of all areas of the building not including the roofing materials.

The survey and assessment was conducted on November 7, 2005 by Mr. James McArthur, ASCT, Environmental Technician for ACM. Six (6) representative bulk samples of materials suspected of containing asbestos were collected from the latest survey and are included as Appendix A of this report. Some of the flooring observed and known to contain asbestos was not re-sampled but the location was identified.

## **METHODOLOGY**

The hazardous materials survey was conducted using non-destructive and some limited destructive testing methods. Areas within walls were not inspected as access was not possible without causing extensive damage to the walls. It should be noted that there is a possibility of asbestos containing materials existing within inaccessible wall and ceiling cavities, and under sub-floors. Possible asbestos-containing materials which may exist in these areas may include but are not limited to: insulation materials (mechanical or construction), secondary layers of drywall or flooring, etc.

The U.S. Environmental Protection Agency (USEPA) Guidance Document was selected for use in this study (1). The document identifies factors associated with the "condition" and the "potential for disturbance or erosion" of asbestos containing materials. These factors help to define the fibre release potential of the suspect asbestos containing materials and were used in a qualitative evaluation of materials found in the surveyed areas. Recommendations have been substantiated by additional information utilized from other documentation cited in the Reference Section of this report.

The bulk samples of suspect asbestos containing materials were forwarded, using proper chain of custody protocols, to Prezant Associates, Inc. for asbestos analysis. The samples were analyzed using polarized light microscopy (PLM) with dispersion staining in accordance with U.S. EPA method 600/R-93/116, "Method for Determination of Asbestos in Bulk Building Materials".

Other hazardous materials were visually inspected and are noted in this report.

The survey relied on the abilities and experience of the surveyor to gain access and identify possible asbestos containing materials. All areas of the building were accessed during the assessment excluding the roof.

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## **RESULTS & ASSOCIATED RISK LEVELS**

### **ASBESTOS**

Two types of asbestos containing materials were identified during the survey which could be affected by any potential renovation or demolition activities. These are vinyl floor tile materials and duct mastic materials. A breakdown for each type of material is as follows:

#### **Vinyl Floor Tile Materials:**

Asbestos containing vinyl floor tile materials were observed in various areas of the building. These would include; 12" Light brown floor tiles with small brown streaks observed in the Copy Room (Note: This was not sampled however, has been previously observed to be <1% Chrysotile asbestos); 12" Beige floor tiles with red streaks observed in the Custodian room 143, Gym storage room - 139, Girl's and Boy's change room area (137,137A&B, 138, 138A&B, and adjoining storage rooms). This same vinyl floor tile also exists in the corridor 152 (south), central corridor and north corridor between Pod 'A' and Pod 'B' as well as within the Pod 'B' common area and front half of each classroom; 12" Beige floor tiles with white & orange streaks observed in the Medical room 145A and Pod 'A' common area 134. All of the asbestos containing floor tile materials were found to contain <1% Chrysotile asbestos. The materials are all presently in fair to good condition. The 12" cream coloured vinyl floor tiles with dark streaks and the 12" grey vinyl floor tiles with black streaks have been observed to be non-asbestos containing from the previous surveys conducted.

WCB Regulations do not treat any materials with less than 1% asbestos as asbestos containing. Workers should still use moderate risk procedures when exposed to the vinyl floor tile materials, even in materials with less than 1% asbestos concentrations. The WCB states that workers must be properly protected from any potential exposure to airborne asbestos fibres. It is recommended that any work affecting all the vinyl floor tile materials be done using a minimum of moderate risk asbestos work procedures. Therefore as a minimum, MODERATE RISK asbestos work procedures will be required for the removal of the asbestos containing vinyl floor tile materials. Vinyl floor tile materials which are less than 1% do not have to be disposed of in accordance with applicable regulations as asbestos waste.

#### **Duct Mastics:**

Asbestos containing duct mastic materials were observed within the ceiling space sections and exposed in various areas of the school. The original square HVAC

ducting was found to have asbestos containing grey/green duct mastic on the seals and joints. A sample of the asbestos containing duct mastic was collected from the gym storage room 139 found to contain 2% Chrysotile asbestos. The materials are presently in good condition. All original grey/green ducting mastic observed within the building is to be treated as asbestos containing.

Prior to any activities taking place which could disturb the asbestos containing duct mastic materials, it must first be removed and disposed of in accordance with applicable regulations. The removal of the asbestos containing duct mastic will pose a moderate risk of asbestos exposure to the workers involved, therefore as a minimum, MODERATE RISK asbestos work procedures will be required for the removal of the asbestos containing duct mastic.

### **POLYCHLORINATED BIPHENYLS (PCBs)**

A random number of fluorescent light ballasts were visually inspected for possible PCB containing ballasts. No PCB containing ballasts were observed within the fluorescent lighting fixtures inspected in both buildings, although some may exist, as not all fixtures were opened up.

PCB containing fluorescent light ballasts do not pose a risk to occupants of the building. If any PCB containing ballasts are encountered during any renovations of the building, they must be separated from the fixtures and disposed of properly in accordance with applicable regulations.

### **MERCURY THERMOSTATS**

No thermostats observed within the building were found to have a mercury containing switch. If any Mercury containing thermostat switches are encountered within the building during renovation or repair activities, they must be removed intact from the thermostats and disposed of properly in accordance with applicable regulations.

### **RECOMMENDATIONS**

Prior to beginning any work that may impinge upon the hazardous materials within the building, the following must be performed:

- 1.) Any affected asbestos containing 12" vinyl floor tiles or ducting mastic materials should be removed in accordance with applicable regulations. The removal of the asbestos containing vinyl floor tile or duct mastic materials will require MODERATE RISK asbestos work procedures to be followed. The vinyl floor tile materials do not have to be disposed of as asbestos waste (<1% Chrysotile asbestos).
- 2.) If any Mercury containing thermostat switches are encountered during any renovation or repair activities within the building, they must be removed and disposed of in accordance with applicable regulations.
- 3.) If any PCB containing ballasts are encountered during any renovation or repair activities within the building, they must be removed and disposed of in accordance with applicable regulations.
- 4.) If any suspect asbestos containing materials are encountered within inaccessible wall or ceiling cavities, or under floors, during renovation or demolition activities, the work in the immediate area must stop and the supervisor contacted for further direction.

**STATEMENT OF LIMITATIONS**

The ACM report is intended to direct the Client's attention to recognised environmental conditions and to potential sources of environmental contamination. The findings and conclusion regarding contamination of the property are based solely on the extent of observations and information gathered during the assessment. Nothing in the report is intended to express any legal opinion upon environmental liabilities relating to the site or whether operations legally conformed with relevant legislative requirements.

Furthermore, it must be understood that changing circumstances in the physical environment, the use of the property, as well in changes in any substances stored, used, handled at the property, could alter radically the conclusions and information contained in this report. Therefore, it is important that the property is periodically re-evaluated and the client kept informed as to developments, which may impact the property. This report is not intended to be used as contract specifications.

**A.C.M. ENVIRONMENTAL CORPORATION**

---

James McArthur, ASCT  
Environmental Technician

**REFERENCES**

- 1) USEPA. 1985. U.S. Environmental Protection Agency. "Guidance for Controlling Asbestos-Containing Materials in Buildings". Washington, DC: Office of Toxic Substances, USEPA.
- 2) Lory EE, Coin DC. 1981. "Management Procedure for Assessment of Friable Asbestos Insulating Material". Port Hueneme, CA: Civil Engineering Laboratory, Naval Construction Battalion Center.
- 3) Workers' Compensation Board of British Columbia, effective 15 April 1998, and all current amendments. Occupational Health and Safety Regulations.
- 4) 2002 Edition - Workers' Compensation Board of British Columbia. Safe Work Practices for Handling Asbestos.

## **APPENDIX A**

### **Bulk Sample Results**



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
 OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

## Bulk Asbestos Fiber Analysis

<b>ACM Environmental</b> 2323 Quebec Street, Suite 211 Vancouver, BC Project Location: Holly Elementary School	PAI Batch Number: <b>05-3022</b> Client Job Number: <b>3048-35</b> Number of Samples: <b>6</b> Turn Around Time: <b>5 day</b>
---	--

Batch Number: 05-3022	<b>ACM Environmental</b>
Lab Sample Number: 05016641	<b>3048-35</b>
Client Sample Number: <b>3048-509</b>	<i>Holly Elementary School</i>

**L-1 Dull gray paint**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 100% Paint
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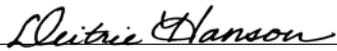
**Comments:**

**L-2 White crystalline powdery material**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 80% Calcite Filler and Binder 15% Perlite 5% Mineral Particles
---	----------------------------------	---

**Comments:**

Batch Number: 05-3022	<b>ACM Environmental</b>
Lab Sample Number: 05016642	<b>3048-35</b>
Client Sample Number: <b>3048-510</b>	<i>Holly Elementary School</i>

Sampled By: Client		
Received By: John McCaslin	12/12/2005	
Reviewed By: George McCaslin	12/16/2005	Analyzed By: Deitrie Hanson



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
 OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

## Bulk Asbestos Fiber Analysis

**L-1 Beige hard tile material with orange and white streaks**

<b>Asbestos Fibrous Components:</b> <1% <b>Chrysotile</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 45% Calcite Filler and Binder 40% Mineral Filler and Binder 10% Vinyl Filler and Binder >4% Miscellaneous Particles
--	---	--

**Comments:**  
 This tile contains <1% chrysotile asbestos.

**L-2 Black resinous mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 90% Asphalt Filler and Binder 5% Mineral Particles 5% Filler and Binder
--	---	---

**Comments:**

Batch Number: 05-3022	<b>ACM Environmental</b>
Lab Sample Number: 05016643	<b>3048-35</b>
Client Sample Number: 3048-511	<i>Holly Elementary School</i>

**L-1 White paint**

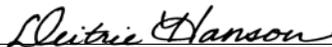
<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 100% Paint
--	---	--

**Comments:**

**L-2 Pale gray and tan fibrous opaque material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b> 55% Cellulose 30% Mineral Wool	<b>Non-Fibrous Components:</b> 10% Perlite 5% Filler and Binder
--	--	---

**Comments:**

Sampled By: Client		
Received By: John McCaslin	12/12/2005	Analyzed By: Deitrie Hanson
Reviewed By: George McCaslin	12/16/2005	12/16/2005



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
 OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

## Bulk Asbestos Fiber Analysis

### L-3 Pink opaque brittle material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Resin and Binder
		5% Mineral Particles
		5% Filler and Binder

**Comments:**

Batch Number: 05-3022	<b>ACM Environmental</b>
Lab Sample Number: 05016644	<b>3048-35</b>
Client Sample Number: 3048-512	<i>Holly Elementary School</i>

### L-1 White paint

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		100% Paint

**Comments:**

### L-2 Pale tan and brown fibrous opaque material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	55% Cellulose	10% Perlite
	30% Mineral Wool	5% Filler and Binder

**Comments:**

### L-3 Pink thick brittle opaque material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Resin and Binder
		5% Mineral Particles
		5% Filler and Binder

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 12/12/2005  
 Reviewed By: George McCaslin 12/16/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 12/16/2005



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
 OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

## Bulk Asbestos Fiber Analysis

Batch Number:	05-3022	<b>ACM Environmental</b>
Lab Sample Number:	05016645	<b>3048-35</b>
Client Sample Number:	<b>3048-513</b>	<i>Holly Elementary School</i>

### L-1 Pale beige hard tile material with red and brown streaks

<b>Asbestos Fibrous Components:</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
<1% <b>Chrysotile</b>		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		>4% Miscellaneous Particles

**Comments:**

This tile contains <1% chrysotile asbestos.

### L-2 Black mastic

<b>Asbestos Fibrous Components:</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
<b>No Asbestos Detected</b>		90% Asphalt Filler and Binder
		5% Mineral Particles
		5% Filler and Binder

**Comments:**

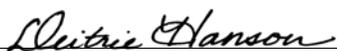
Batch Number:	05-3022	<b>ACM Environmental</b>
Lab Sample Number:	05016646	<b>3048-35</b>
Client Sample Number:	<b>3048-514</b>	<i>Holly Elementary School</i>

### Gray thick pliable ducting mastic

<b>Asbestos Fibrous Components:</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
2% <b>Chrysotile</b>		90% Calcite Filler and Binder
		6% Resin and Binder
		2% Mineral Fragments

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 12/12/2005  
 Reviewed By: George McCaslin 12/16/2005

  
 Analyzed By: Deitrie Hanson 12/16/2005

## **APPENDIX B**

### **Photographs**



Asbestos containing 12" Light brown VFT with orange streaks



Asbestos containing 12" Beige VFT with orange/ white streaks observed in custodian storage room

## **SCHEDULE “C”**

---

### **List of Environmental Reports**

# DELTA SCHOOL DISTRICT ASBESTOS MANAGEMENT PROGRAM

Building: Holly Elementary

Date: November 7, 2005

Surveyor: James McArthur (ACM Environmental Corporation)

Room No.	AREA CONTAINS WRAPPED OR NON-FRIABLE ASBESTOS, DO NOT DISTURB								AREA CONTAMINATED WITH ASBESTOS, SPECIAL ENTRY PROCEDURES REQUIRED								Comments
	1	2	3	4	5	6	7	8	1	2	3	4	5	6	7	8	
ALL	X																Original Duct Mastic (above ceiling) (except classrooms 113-117, 120-125)
104						X											12" Beige Vinyl Floor Tile with Red Streaks (<1%)
105						X											12" Beige Vinyl Floor Tile with Red Streaks (<1%)
106						X											12" Beige Vinyl Floor Tile with Red Streaks (<1%)
107						X											12" Beige Vinyl Floor Tile with Red Streaks (<1%)
133						X											12" Beige Vinyl Floor Tile with White and Orange Streaks (<1%)
134						X											12" Beige Vinyl Floor Tile with White and Orange Streaks (<1%)
135						X											12" Beige Vinyl Floor Tile with Red Streaks (<1%)
137					X	X											12" Beige Vinyl Floor Tile with Red Streaks (<1%), Exposed Original Duct Mastic
137A						X											12" Beige Vinyl Floor Tile with Red Streaks (<1%)
137B						X											12" Beige Vinyl Floor Tile with Red Streaks (<1%)
138					X	X											12" Beige Vinyl Floor Tile with Red Streaks (<1%), Exposed Original Duct Mastic
138A						X											12" Beige Vinyl Floor Tile with Red Streaks (<1%)
138B						X											12" Beige Vinyl Floor Tile with Red Streaks (<1%)
139					X	X											12" Beige Vinyl Floor Tile with Red Streaks (<1%), Exposed Original Duct Mastic
143						X											12" Beige Vinyl Floor Tile with Red Streaks (<1%)
145A						X											12" Beige Vinyl Floor Tile with White and Orange Streaks (<1%)
152 (Corr)						X											12" Beige Vinyl Floor Tile with Red Streaks (<1%)

**Legend**

- |   |   |   |   |
|---|---|---|---|
| 1 | ASBESTOS IN ABOVE-CEILING SPACES            | 5 | ASBESTOS ON VISIBLE PIPING AND/OR DUCTING |
| 2 | ASBESTOS ON CEILING SURFACES                | 6 | ASBESTOS IN FLOORING MATERIAL             |
| 3 | ASBESTOS ON WALLS (DRYWALL OR CEMENT BOARD) | 7 | ASBESTOS IN FIRE DOORS                    |
| 4 | ASBESTOS IN BELOW-FLOOR AREAS               | 8 | ASBESTOS IN WINDOW PUTTY                  |

**ENERGY SYSTEM SERVICE AGREEMENT**

**LADNER ELEMENTARY SCHOOL**

**THIS AGREEMENT** dated for reference the 26<sup>th</sup> day of September, 2011.

**BETWEEN:**

**THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 37 (DELTA)**  
a corporation established under the School Act R.S.B.C. 1996, c. 412 having an  
office at 4585 Harvest Drive, Delta, British Columbia, V4K 5B4

(the "District")

OF THE FIRST PART

**AND:**

**FORTISBC ENERGY INC.**, a company duly incorporated under the laws of the  
Province of British Columbia, having its registered office at 10th Floor, 1111  
West Georgia Street, Vancouver, B.C. V6E 4M3

("FEI")

OF THE SECOND PART

**WHEREAS:**

- A. The District is the owner of Ladner Elementary School (the "Building") and lands located at 5016, 44<sup>th</sup> Avenue, Delta, Delta, British Columbia, which lands are legally described as:

PID: 009-286-730 Property No: 122478

LOT B EXCEPT FIRSTLY PART ON PLAN WITH BYLAW FILED A36980  
SECONDLY PART DEDICATED AS ROAD ON PLAN 39236 DISTRICT LOT 115  
GROUP 2 NEW WESTMINSTER DISTRICT PLAN 22964

(the "Lands")

- B. FEI wishes to supply to the Building, and the District wishes to purchase, Thermal Energy generated by an Energy System that FEI will construct on the Lands, and which FEI will own and operate, all pursuant to the terms of this Agreement.
- C. The Thermal Energy supplied by FEI to the Building pursuant to this Agreement will be priced at the rate set forth in the Energy System Rate Development Agreement between the Parties dated September 26<sup>th</sup>, 2011.

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT** in consideration of the premises and the covenants, agreements, representations, warranties and payments set out herein, the receipt and sufficiency of which is hereby acknowledged by each Party, the Parties covenant and agree as follows:

## **ARTICLE 1 - INTERPRETATION**

### 1.1 DEFINITIONS

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

- (a) “Adjusted Energy System Purchase Price” means, as of the date on which a purchase of the Energy System pursuant to Article 15 is effective, either:
  - (i) the Rate Base Value; or
  - (ii) such other purchase price for the Energy System as is determined by the BCUC; plus all applicable taxes;
- (b) “Affiliate” has the meaning set out in the *Business Corporation Act*, S.B.C. 2002, c.57 and includes FortisBC Inc.;
- (c) “Agreement” means this agreement, including the preamble hereto and any schedules attached hereto and the terms “this Agreement”, “hereof”, “herein”, “hereunder” and “hereinafter” and similar expressions refer to the Agreement and not to any particular Section or other portion thereof and includes any agreement supplementary or ancillary thereto;
- (d) “Acceptance Date” means the date of BCUC Acceptance;
- (e) “BCUC” means the British Columbia Utilities Commission, or any successor thereto;
- (f) “BCUC Acceptance” has the meaning assigned to that term in Section 11.1;
- (g) “Building” has the meaning assigned to that term on page one of this Agreement;
- (h) “Building System” means the space heating, cooling and ventilation, and domestic hot water distribution and control systems existing in the Building, to which the Energy System will be connected;
- (i) “Business Day” means any day except Saturday and Sunday or any day on which banks are generally not open for business in Vancouver, British Columbia;
- (j) “Capital Contribution” means \$ 67,000
- (k) “Commissioned” means once the Energy System is certified complete and operating in accordance with the Specifications by a professional engineer under seal;

- (l) “Commission Date” means the day on which the Energy System is Commissioned;
- (m) “Contaminants” means, collectively, any contaminant, toxic substance, dangerous good, or pollutant or any other substance which when released to the natural environment is likely to cause, at some immediate or future time, material harm or degradation to the natural environment or material risk to human health, and includes any radioactive materials, asbestos materials, urea formaldehyde, underground or aboveground tanks, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive or toxic substances, hazardous waste or waste of any kind, pesticides, defoliants, or any other solid, liquid, gas, vapour, odour or any other substance .the storage, manufacture, disposal, handling, treatment, generation, use, transport, remediation or Release into the Environment of which is now or hereafter prohibited, controlled or regulated under Environmental Laws;
- (n) “Continuing Service Interruption Notice” has the meaning assigned to that term in Section 14.3(b);
- (o) “Contractor” means a prime contractor hired by FEI to oversee and complete the construction and installation of the Energy System;
- (p) “Design and Construction” means the total construction and related services required to design, construct and commission the Energy System and connected components of the Building System;
- (q) “Design Thermal Energy” means the maximum amount of Thermal Energy that the Energy System is capable of delivering through the Thermal Energy Meter and is included in the Specifications;
- (r) “Disclosed Contaminants” means Contaminants:
  - (i) the existence of which are specifically identified in the reports provided by the District to FEI and listed in Schedule C;
  - (ii) that were or ought to have been discovered, foreseen or anticipated upon reasonable inspection by FEI prior to the Effective Date; and
  - (iii) that were caused by FEI or any person for whom FEI is responsible at law;
- (s) “District” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (t) “District Losses” has the meaning assigned to that term in Section 12.6;
- (u) “District Site Rules for Contractors” means the rules set forth in Schedule “B”;
- (v) “Effective Date” means the date set out on page one of this Agreement;
- (w) “Energy System” means the equipment that FEI constructs and owns which will provide the Building with its energy needs for space heating, cooling and ventilation, and domestic hot water use, all as set forth in this Agreement;

- (x) “Energy System Service Agreement” has the meaning assigned to that term in the Energy System Rate Development Agreement;
- (y) “Energy System Rate Development Agreement” means that energy system rate development agreement between the District and FEI dated as of September 26<sup>th</sup>, 2011;
- (z) “Environment” includes the air (including all layers of the atmosphere), land (including soil, sediment deposited on land, fill, lands submerged under water, buildings, and improvements), water (including oceans, lakes, rivers, streams, groundwater, and surface water), and all other external conditions and influences under which humans, animals, and plants live or are developed and “Environmental” will have a corresponding meaning;
- (aa) “Environmental Attributes” means:
  - (i) all attributes associated with, or that may be derived from the Energy System installed having decreased environmental impacts relative to the use of conventional heating and cooling and hot water heating systems including any existing or future credit, allowance, certificate, right, benefit or advantage or proprietary or contractual right whether or not tradable;
  - (ii) any existing or future instrument, including without limitation any environmental emission allowances and environmental emission reduction credits, reduction right, allowance, certificate or other unit of any kind whatsoever, whether or not tradable and any other proprietary or contractual right, whether or not tradable, and any resulting from, or otherwise related to the actual assumed reduction, displacement or offset of emissions associated with, or that may be derived from the Energy System installed; and
  - (iii) all revenues, entitlement, benefits and other proceeds arising from or related to the foregoing;
- (bb) “Environmental Laws” means any and all statutes, laws, regulations, orders, bylaws, standards, guidelines, protocols, permits, and other lawful requirements of any Governmental Authority having jurisdiction over the Lands or the Energy System now or hereafter in force with respect in any way to the Environment, environmental assessment, health, occupational health and safety, protection of any form of plant or animal life, or transportation of dangerous goods, including the principles of common law and equity;
- (cc) “Expiry Date” means the earlier of:
  - (i) June 30, 2031, or the expiry of any renewal term thereof; and
  - (ii) the closure of the Building, or the Building otherwise ceasing to operate as a school (as defined under the *School Act* (British Columbia));
- (dd) “FEI” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (ee) “FEI Losses” has the meaning assigned to that term in Section 12.5;

- (ff) “Force Majeure” has the meaning assigned to that term in Section 17.2;
- (gg) “Governmental Authority” means any federal, provincial, regional, municipal, local or other government, governmental or public department, court, tribunal, arbitral body, commission, board, bureau or agency and any subdivision, agent, commission, board or authority thereof;
- (hh) “Lands” has the meaning assigned to that term in Recital A and includes the Building located on the Lands;
- (ii) “Laws” means laws, statutes, regulations, bylaws, Permits and orders of any Governmental Authority having jurisdiction, including without limitation, Environmental Laws;
- (jj) “Maintain” means to operate, service and maintain in a safe and reliable condition and “maintaining” and “maintenance” have corresponding meanings;
- (kk) “Monthly Charges” means that amount to be paid by the District to FEI with respect to the delivery of Thermal Energy to the Building pursuant to the Energy System Rate Development Agreement and any other payments due and owing by the District under this Agreement;
- (ll) “Notifying Party” has the meaning assigned to that term in Section 16.1;
- (mm) “Party” means a signatory to this Agreement, and the “Parties” means all of such signatories;
- (nn) “Permits” means all permits, licences, certificates, approvals, authorizations, consents and the like issued by any Governmental Authority;
- (oo) “Rate Base Value” means the value of the Energy System that the BCUC accepts from time to time in accordance with the Energy System Rate Development Agreement;
- (pp) “Release” includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, migration, disposal, or dumping;
- (qq) “Right of Access and Licence” means the right and licence granted herein by the District to FEI pursuant to Section 4.1 of this Agreement;
- (rr) “Service Failure Notice” has the meaning assigned to that term in Section 14.3(c);
- (ss) “Service Interruption” means, in any hour:
  - (i) a failure of the Energy System in that hour to deliver Thermal Energy at the Thermal Energy Meter sufficient to meet the Thermal Energy demand of the Building during that hour in accordance with the Specifications up to the Design Thermal Energy, and except where such failure is directly caused by:
    - a. the careless or wilful damage to the Energy System by the District or its agents or other persons for whom the District is responsible;

- b. damage caused to the Energy System as a result of the negligent acts or omissions of the District, its agents or those for whom in law the District is responsible;
  - c. an event of Force Majeure that triggers the suspension of FEI's obligations under the Agreement pursuant to Article 17; or
  - d. maintenance activities that FEI is performing on the Energy System that have been scheduled with the consent of the District (such consent not to be unreasonably withheld); and
- (ii) if the failure described in Section 1.1(rr)(i), FEI's failure in that hour to deliver to the Building through alternative means thermal energy sufficient to maintain an average temperature of 16 degrees Celsius in each room of the Building intended to be served by the Energy System (all as determined by the District, acting reasonably);
- (tt) "Service Interruption Notice" has the meaning assigned to that term in Section 14.3(a);
- (uu) "Services" means those services to be provided by FEI to supply Thermal Energy to a Building from an Energy System, and for greater certainty includes the services described in Articles 5 and 6, and excludes the Design and Construction;
- (vv) "Specifications" means the specifications for the Energy System prepared by FEI in consultation with the District in accordance with Section 2.3 and includes the Design Thermal Energy;
- (ww) "Term" has the meaning assigned to that term in Section 3.1;
- (xx) "Thermal Energy" means the amount of energy that FEI provides to the Building measured through a Thermal Energy Meter;
- (yy) "Thermal Energy Meter" means a device that complies with the International Organization of Legal Metrology recommendations for measuring thermal energy; and
- (zz) "UCA" means the *Utilities Commission Act*, R.S.B.C. 1996, c. 473 as may be amended from time to time.

## 1.2 SCHEDULES

The following Schedules, as may be amended from time to time, are incorporated by reference into this Agreement:

Schedule "A"	Energy System Description
Schedule "B"	Delta School District Site Rules for Contractors
Schedule "C"	List of Environmental Reports

### 1.3 AMENDMENTS TO SCHEDULES

The District and FEI acknowledge that during the construction phase of the Energy System there may be additions and alterations to the Specifications for the Energy System which would result in more efficient use and operation of the Energy System. If these additions or alterations result in changes to any of the above Schedules, the Parties mutually agree to amend the Schedules by way of a written amendment prior to the Commission Date.

### 1.4 INTERPRETATION

Except where the context requires otherwise or except as otherwise expressly provided, in this Agreement:

- (a) all references to a designated Article or Section are to the designated Article or Section of this Agreement unless otherwise specifically stated;
- (b) the singular of any term includes the plural, and vice versa, and the use of any term is equally applicable to any gender and, where applicable, body corporate;
- (c) any reference to a corporate entity includes and is also a reference to any corporate entity that is a successor by merger, amalgamation, consolidation or otherwise to such entity;
- (d) the preamble and all schedules referred to and attached to this Agreement are incorporated by reference and will form a part of this Agreement;
- (e) all sums of money which are referred to in this Agreement are in lawful money of Canada;
- (f) the headings of the Articles and Sections set out in this Agreement are for convenience only and will not be considered in any interpretation of this Agreement;

## **ARTICLE 2 - DESIGN AND CONSTRUCTION OF THE ENERGY SYSTEM**

### 2.1 CONSTRUCTION

FEI will perform the Design and Construction:

- (a) in accordance and in compliance with the Specifications;
- (b) in a good and workmanlike manner using qualified workers, and in accordance with sound and currently accepted industry standards and codes of practice normally employed, at the time and place of performance, in projects of a similar type and nature;
- (c) to ensure operational compatibility with the Building System;
- (d) in a safe and environmentally sound manner, and in accordance with all applicable Laws; and
- (e) in accordance with the terms of this Agreement.

## 2.2 CAPITAL CONTRIBUTION

The District will pay to FEI within 30 days of the Commission Date the Capital Contribution for the purpose of reducing the capital investment and the associated carrying cost of capital by FEI for provision of Service to the Building.

## 2.3 SPECIFICATIONS

Subject to and in accordance with this Section 2.3, FEI shall prepare and complete the Specifications promptly following the Acceptance Date.

FEI confirms the Energy System, as described in the Specifications and as contemplated by the Energy System description set out in Schedule A, will be designed to meet the thermal energy requirements of the Building and operational compatibility of the Building System based in part on information supplied by the District as to historical usage, which information has not been independently verified by FEI. FEI shall have no liability to the District for the failure of the Energy System to satisfy the requirements of the Building where such failure is attributable to the information supplied by the District being incorrect, inaccurate or incomplete.

FEI will prepare the Specifications in consultation with the District in order to ensure the Energy System can be appropriately accommodated within the Building and interface with the Building Systems. FEI will submit material changes to the Specifications, both before and during construction, to the District for review and comment prior to such changes taking place. If the District does not comment on the Specifications or material changes to the Specifications or advise that it has no comment within five (5) Business Days of receipt, FEI will be entitled to proceed on the basis of the information provided to the District. FEI will revise the Specifications based on the comments from the District provided that doing so will not impact FEI's costs or adversely affect system performance.

Review of and comment on the Specifications by the District does not impose any obligation on the District to verify the suitability of the Energy System or be construed as confirmation by the District that the Energy System satisfactorily meets the Building's energy requirements.

## 2.4 WORK SCHEDULE

Within ten (10) Business Days following the Acceptance Date, FEI will submit to the District for review and comment a Gantt chart schedule for the Design and Construction listing activities to be undertaken during the Design and Construction stages, key milestones and approval dates and other pertinent dates. Any revisions to the schedule must be reviewed and commented by the District, which review and comment will not be unreasonably withheld, conditioned or delayed.

In order to ensure that the Building System remains operational during normal school hours (as defined in Schedule B), the cut-over from the existing heating/cooling plant to the Energy System shall be performed outside normal school hours.

## 2.5 REPORTING

FEI shall produce and submit a monthly progress report for the Design and Construction to the District until the Energy System is Commissioned.

## 2.6 TESTING AND COMMISSIONING

FEI shall coordinate and supervise the start-up and testing of the Energy System to ensure the Energy System and other components of the Building System affected by the Design and Construction are operating in accordance with the Specifications, upon which the Energy System will be Commissioned. The District shall be invited to participate in the start-up and testing exercise.

# ARTICLE 3 - TERM AND RENEWAL

## 3.1 TERM

The term of this Agreement commences on the Effective Date and continues until the Expiry Date unless it is terminated earlier as authorized under this Agreement ("Term").

## 3.2 RENEWAL

This Agreement will automatically renew for periods of ten (10) years unless either Party provides written notice to the other Party no less than six (6) months prior to the Expiry Date, provided that there shall be no automatic renewal in the event that the Expiry Date arises as a result of the closure of the Building, or the Building otherwise ceases to operate as a school (as defined under the *School Act* (British Columbia)).

# ARTICLE 4 - ACCESS AND PERMITS

## 4.1 ACCESS RIGHTS

The District hereby grants to FEI, during the Term from and following the Acceptance Date, for so long as FEI shall require it, but subject to Section 4.4, a full, free and uninterrupted licence and right of way on, over and under the Lands and Building, for FEI, its assigns, employees, contractors, agents, invitees and licensees at all times hereafter for the purposes set out in this Agreement, provided FEI will avoid to the extent reasonably possible, and otherwise minimize interference with and inconvenience to, the occupants of the Building and the access rights of FEI will be limited to the extent reasonably necessary to fulfil FEI's obligations hereunder.

Without limiting the generality of the foregoing, but subject to Section 4.4, such right of way and licence shall include the full power, right and liberty to excavate for, install, place, construct, renew, alter, repair, maintain, operate, use, abandon, remove or replace its infrastructure, in whole or in part, and to enter upon, along, across, over or under the Lands or Building and have continual access to the Energy System, with or without vehicles, supplies, machinery or equipment, for any of the purposes set out in this Agreement, and to clear such portion of the Lands and keep it cleared of obstructions which, in the opinion of FEI, acting reasonably, may

interfere with any of the rights granted to FEI herein. The District may direct, in its discretion, FEI to use alternate routing for any Environmental or other reasonable purpose.

FEI covenants and agrees with the District not to do or knowingly permit to be done anything which may, in the opinion of the District acting reasonably, damage or interfere with the Building or impair the operating efficiency thereof or create any hazard.

#### 4.2 CONDITION OF LAND

The District represents and warrants to FEI that as of the Effective Date:

- (a) to the best of the District's knowledge, the Lands are free of Contaminants other than those specifically identified in the reports provided by the District to FEI and listed in Schedule C; and
- (b) there are no actions, proceedings, investigations, claims (including remediation cost recovery claims) pending, or to the knowledge of the District, threatened, that would interfere with FEI's access rights pursuant to Section 4.1.

#### 4.3 PERMITS

FEI will obtain and maintain at its own expense all Permits necessary for the Design and Construction and the Services.

#### 4.4 SAFETY, SECURITY AND BUILDING ACCESS

Notwithstanding anything to the contrary in this Agreement, FEI will adhere, and will cause all persons for whom it is responsible under this Agreement (including, without limitation, the Contractor) to adhere to the District Site Rules for Contractors.

#### 4.5 REMEDIATION

FEI shall promptly remediate any Disclosed Contaminants on the Lands as required by applicable Law that result from, or are Released as a result of the Design and Construction or the Services, except to the extent caused or contributed to by the District's negligence. In the event that Contaminants on the Lands, other than Disclosed Contaminants, are discovered by FEI, FEI will promptly notify the District of such discovery and the Parties will review the impact of such discovery, if any, on the Design and Construction or the Services.

### **ARTICLE 5 - SERVICE PROVISION**

#### 5.1 PROVISION OF SERVICE

Subject to the terms and conditions of the Agreement, FEI will provide the Services to the District throughout the Term.

## 5.2 SERVICE MONITORING AND REVIEW

The Parties acknowledge that FEI may be required from time to time to prepare and submit reports to the BCUC concerning the operation and performance of the Energy System, and the District shall provide FEI with reasonable cooperation in relation to the preparation of such reports.

## 5.3 STANDARD OF PERFORMANCE

In performing the Services, FEI will:

- (a) use only qualified personnel and exercise the same degree of care, skill and supervision as would be exercised by a reasonable and prudent owner experienced in performing like services;
- (b) perform the Services in accordance with all applicable Laws;
- (c) perform the Services in accordance with ongoing industry standards and codes of practice; and
- (d) without limiting the effect of the foregoing, abide by any standards of performance in relation to the Services that the BCUC may set from time to time according to the provisions of the UCA.

## 5.4 INTERRUPTION

No interruption of any of the on-site and off-site services, utilities and amenities provided by FEI to the Building will, except to the extent, if any, caused by any wrongful or negligent act of FEI or any person for whom FEI is responsible at law, render FEI liable to the District or any person claiming through or under the District, or relieve the District from any of its obligations under this Agreement. Notwithstanding the foregoing, FEI will use all reasonable diligence to remedy any such interruption if it is within its power and obligation to do so.

# **ARTICLE 6 - ENERGY SYSTEM MAINTENANCE AND OPERATION**

## 6.1 MAINTENANCE AND REPAIR OF ENERGY SYSTEM

Subject to Section 6.2, FEI will perform the Services and otherwise maintain or cause to be maintained and repaired the Energy System throughout the Term:

- (a) in accordance with the Energy System design and operating specifications and requirements as established by the qualified engineers engaged by FEI in the design and construction of the Energy System, and the equipment manufacturers;
- (b) in a good and workman-like manner using qualified workers, and in accordance with sound and currently accepted industry standards and codes of practice normally employed, at the time and place of performance, in projects of a similar type and nature;
- (c) to ensure operational compatibility with the Building System;

- (d) in a safe and environmentally sound manner, and in accordance with all applicable Laws; and
- (e) in accordance with the terms of this Agreement.

FEI will not delay repair of the Energy System for any reason, including as a result of a dispute with the District in relation to the costs and expenses of repair pursuant to Section 6.2.

## 6.2 REPAIR DAMAGE

The District will be responsible for all costs and expenses incurred by FEI in respect of any damage to the Energy System caused by or resulting from:

- (a) the careless or wilful damage to the Energy System by the District or its agents or other persons for whom at law the District is responsible; or
- (b) damage caused to the Energy System as a result of the negligent acts or omissions of the District, its agents or those for whom in law the District is responsible.

## **ARTICLE 7 - CHARGES**

### 7.1 MONTHLY CHARGES

The District throughout the Term commencing on the Commission Date in accordance with this Article 7 will pay to FEI when due for the Thermal Energy that FEI delivers and meters to the Building according to the rates set out in the Energy System Rate Development Agreement plus all applicable taxes (including harmonized sales tax applicable thereon) and any imposed taxes levied after the Commission Date by a government or regulatory agency that are related to the Energy System (including, but not limited to capital taxes or royalties) and any other payments due and owing by the District under this Agreement.

### 7.2 MONTHLY STATEMENT

FEI will, within 15 days following the end of each month, deliver to the District a statement setting out the Monthly Charges including all applicable taxes payable for that month.

### 7.3 PAYMENT

The District will pay the full amount specified in each statement provided to it in accordance with Section 7.2 within 30 days of receipt of such statement. All amounts payable to FEI will be made by cheque mailed to FEI at its address for service specified in Section 20.5.

### 7.4 PAYMENT DUE

Subject to Section 14.1, the obligation of the District to pay the Monthly Charges continues whether or not the Energy System is being used to provide the Building with its energy needs for space and ventilation heating, cooling and domestic hot water use.

#### 7.5 ARREARS TO BEAR INTEREST

If any amount owing to FEI or the District is not paid on or before the date on which it is due, a late payment charge of 1.5% per month will be assessed each month on all outstanding balances not paid by the due date.

### **ARTICLE 8 - OWNERSHIP OF THE ENERGY SYSTEM**

Notwithstanding the payments made by the District to FEI under this Article 8, any provision of this Agreement, any degree of annexation or affixation, or rule of law or equity to the contrary the District will have no proprietary interest in the Energy System which is, and shall remain, the property of FEI and may be used by FEI in its business or removed in whole or in part as it may see fit, and for any of such purposes, and FEI may enter in, upon and under all the Lands for the purposes of the maintenance, renewals, repair, removal or operation of the Energy System or any part thereof; provided that FEI shall not leave any part of the Energy System in such a state as to constitute a nuisance or a danger to the public through neglect, non-use and want of repair, and provided further that nothing in this clause shall nullify or otherwise impact or invalidate in any way the District's rights under Article 15 to purchase the Energy System.

### **ARTICLE 9 - ENVIRONMENTAL ATTRIBUTES**

#### 9.1 ENVIRONMENTAL ATTRIBUTES

All right, title and interest now existing or which may exist at any time in the future in the potential or actual commercial value of any Environmental Attributes that arise or accrue by virtue of the construction and operation of the Energy System will belong to the District. At the request of the District, FEI will reasonably cooperate with the District in applying for and assigning any Environmental Attributes to the District.

#### 9.2 GRANTS

Any grants from any Governmental Authority, a Crown Corporation or non-governmental authority that may be derived from a reduction in energy consumption by the Building will belong to the District.

### **ARTICLE 10 - REPRESENTATIONS AND WARRANTIES**

#### 10.1 DISTRICT'S REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties contained in this Agreement, the District hereby represents and warrants to FEI as follows and acknowledges that FEI is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) the District has the full right, power and authority to enter into this Agreement;

- (b) all necessary action on the part of the District has been taken to authorize and approve the execution and delivery of this Agreement and the performance by the District of its obligations hereunder;
- (c) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to the District as of the date of this Agreement;
- (d) the District is not party to any action, suit or legal proceeding, actual or, to the knowledge of the District, threatened, and there are no circumstances, matters or things known to the District which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or, to the knowledge of the District, threatened against the District before or by any Governmental Authority, which could affect the District's ability to perform its obligations under this Agreement; and
- (e) no person, firm or corporation has or will have as of the Commission Date, any agreement, right, or option or right capable of becoming an agreement, right, or option for the purchase or acquisition of the Energy System.

## 10.2 FEI'S REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties contained in this Agreement, FEI hereby represents and warrants to the District as follows and acknowledges that the District is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) FEI has the full right, power and authority to enter into this Agreement;
- (b) all necessary corporate action on the part of FEI has been taken to authorize and approve the execution and delivery of this Agreement and the performance by FEI of its obligations hereunder;
- (c) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to FEI as of the date of this Agreement;
- (d) FEI is not party to any action, suit or legal proceeding, actual or threatened, and there are no circumstances, matters or things known to FEI which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or threatened against FEI before or by any Governmental Authority, which could affect FEI's ability to perform its obligations under this Agreement; and
- (e) FEI has or will have all permits, licenses, authorizations and other documentation required for the operation of the Energy System after the Commission Date; and
- (f) FEI has all the required expertise to fulfill its obligations under this Agreement.

### 10.3 DELEGATION AND SUBCONTRACTING

FEI may delegate and subcontract its obligations under this Agreement with respect to Design and Construction and Services to any contractor, consultant, agent or representative provided that FEI shall be fully responsible for the acts and omissions of such persons and those either directly or indirectly employed by them to the same extent as FEI for its own acts or omissions.

## **ARTICLE 11 - BCUC ACCEPTANCE**

### 11.1 REGULATORY REVIEW TERMINATION

Subject to Section 11.3, either Party may terminate this Agreement if within 90 days following the Effective Date, this Agreement and the Energy System Rate Development Agreement, including the Market Rate and the SD37 Rate Rider as defined in that Agreement have not been accepted for filing by the BCUC (such acceptance being herein called "BCUC Acceptance").

### 11.2 REGULATORY FILING

FEI, on behalf of itself and the District, and at its own cost, shall file the Agreement with the BCUC within a reasonable time after the Effective Date. FEI shall take all steps reasonably required to secure BCUC Acceptance, which shall consist of those procedural steps related to filing the Agreement and providing argument and witnesses in support of filing.

### 11.3 TERMINATION

A Party entitled to terminate under Section 11.1 must do so by giving notice to terminate to the other Party at any time after the right to terminate arises pursuant to Section 11.1, and prior to:

- (a) the date of issuance of the BCUC Acceptance; and
- (b) the date that is 90 days after the Effective Date.

### 11.4 EFFECT OF BCUC ACCEPTANCE

The Parties acknowledge that upon BCUC Acceptance, the Services will be subject to regulation by the BCUC under the UCA, and will form another class of service that FEI provides as a public utility. The Parties acknowledge that the terms of the UCA may supersede the terms and conditions of this Agreement.

## **ARTICLE 12 - INDEMNITY**

### 12.1 FEI'S INDEMNITY

Without limiting any other obligations of FEI provided herein, FEI will indemnify, defend, and save harmless the District and its trustees, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including the full amount of all legal fees and expenses on a

solicitor-client basis) which may be paid by, incurred by, or asserted against the District or its directors, officers, employees, agents, successors, or assigns, arising from or in connection with:

- (a) the breach or non-performance by FEI of any of its obligations or warranties hereunder; or
- (b) the negligence or wilful misconduct of FEI, its employees, contractors or agents in respect of the Energy System, and in the performance of the obligations of FEI pursuant to this Agreement,

excluding only such of the foregoing as arise from the fraud, negligence or wilful misconduct of the District or its trustees, officers, directors, members, employees, contractors or agents, or the breach or non-performance by the District of any of its obligations or warranties hereunder.

## 12.2 DISTRICT'S INDEMNITY

Without limiting any other obligations of the District provided herein, the District will indemnify, defend, and save harmless FEI, its Affiliates and their respective shareholders, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including the full amount of all legal fees and expenses on a solicitor-client basis) which may be paid by, incurred by, or asserted against FEI, its Affiliates or their respective shareholders, directors, officers, employees, agents, successors, or assigns, arising from or in connection with:

- (a) the breach or non-performance by the District of any of its obligations or warranties hereunder; or
- (b) the negligence or wilful misconduct of the District, its employees, contractors or agents in respect of the Energy System, and in the performance of the obligations of the District pursuant to this Agreement,

excluding only such of the foregoing as arise from the fraud, negligence or wilful misconduct of FEI or its Affiliates or any of their respective officers, directors, members, employees, contractors or agents, or the breach or non-performance by FEI of any of its obligations or warranties hereunder.

## 12.3 CONSEQUENTIAL LOSS

In no event will the District or FEI or any of their respective officers, directors, employees, contractors or agents be liable to the other Party for any indirect or consequential loss, cost or expense whatsoever, including any loss of profits, revenues or other economic loss, suffered by the other Party or its officers, directors, employees, contractors or agents.

## 12.4 SURVIVAL OF INDEMNITY

The indemnity of each of the District and FEI provided under this Article 12 will survive the Term of this Agreement.

## 12.5 ENVIRONMENTAL INDEMNITY BY THE DISTRICT

The District will indemnify and save harmless FEI, its Affiliates, directors, officers, shareholders, employees, agents, successors and permitted assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants (but not including Disclosed Contaminants) and remediation of the Lands and any affected adjacent property) (collectively, "FEI Losses") which may be paid by, incurred by or asserted against FEI, its Affiliates and their respective directors, officers, shareholders, employees, agents, successors or permitted assigns, arising from or in connection with any Contaminants (but not including Disclosed Contaminants) existing on the Lands prior to the Commission Date or brought onto the Lands or Released onto the Lands by the District or any person for whom it is in law responsible, except to the extent the FEI Losses suffered were caused or contributed to by any act or omission of FEI or any person for whom FEI is in law responsible after FEI had knowledge of the Contaminants.

## 12.6 ENVIRONMENTAL INDEMNITY BY FEI

FEI will indemnify and save harmless the District, its Affiliates and their respective trustees, directors, officers, employees, agents, successors and permitted assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the Lands and any affected adjacent property) (collectively, "District Losses") which may be paid by, incurred by or asserted against the District, its Affiliates, and their respective trustees, directors, officers, employees, agents, successors or permitted assigns, arising from or in connection with any Contaminants brought onto the Lands or any Disclosed Contaminants Released onto the Lands by FEI or any person for whom it is in law responsible, except to the extent the District Losses suffered were caused or contributed to by any act or omission of the District or any person for whom the District is in law responsible after the District had knowledge of the Contaminants.

# ARTICLE 13 - INSURANCE

## 13.1 FEI INSURANCE COVERAGE.

- (a) FEI will obtain and maintain at its own expense throughout the Term, Commercial General Liability Insurance for bodily injury, death and property damage in the minimum amount of five million (\$5,000,000) dollars per occurrence. The policy will contain a cross liability provision and will be maintained for a period ending no sooner than 12 months after the expiry or termination of this Agreement.
- (b) FEI will be responsible for the full amount of all premiums and deductibles required under this Section 13.1. All policies required herein must be effective at the Commission Date. Insurance will be purchased from insurers registered and licensed to underwrite

insurance in British Columbia. Policies will contain waivers of subrogation against the District and all its officers, directors, members, employees, contractors and agents.

### 13.2 DISTRICT INSURANCE COVERAGE

- (a) The District will obtain and maintain at its own expense throughout the Term Commercial General Liability Insurance for bodily injury, death and property damage in the minimum amount of five million (\$5,000,000) dollars per occurrence. The policy will contain a cross liability provision and will be maintained for a period ending no sooner than 12 months after the expiry or termination of this Agreement.
- (b) The District will be responsible for the full amount of all premiums and deductibles required under this Section 13.2. All policies required herein must be effective at the date of this Agreement. Insurance will be provided by the Provincial self-insured program. Policies will contain waivers of subrogation against FEI and all its officers, directors, employees, contractors and agents.

### 13.3 PRIORITY

FEI will ensure that the District is an additional insured under the insurance to be obtained and maintained pursuant to Section 13.1. The District will ensure that FEI is an additional insured under the insurance to be obtained and maintained pursuant to Section 13.2. In the event of a claim, the insurance carried by the Party responsible for actions which give rise to such claim will be the primary insurance with respect to such claim.

## **ARTICLE 14 - DEFAULT**

### 14.1 DEFAULT BY FEI

- (a) FEI will be in default under this Agreement if FEI is in breach of a material term, covenant, agreement, condition or obligation imposed on it under this Agreement and fails to cure such default within ten (10) days after receipt of written notice thereof from the District, or, if such default is not capable of being cured within such ten (10) day notice period, fails to commence in good faith the curing of such default upon receipt of such written notice of default from the District and to continue to diligently pursue the curing of such default thereafter until cured. For the purposes of this Section 14.1, Section 4.4 is hereby deemed to be a material term of this Agreement.
- (b) If FEI is in default of this Agreement, the District may at its option and without liability therefore or prejudice to any other right or remedy it, including under the UCA, may have suspend or refuse to make any payments due hereunder until the default has been fully remedied, and no such suspension or refusal will relieve FEI from any of its obligations under this Agreement.
- (c) In the event the default is not fully remedied within thirty (30) days of receipt by FEI of written notice thereof from the District, the District may, at its option, undertake the necessary steps to remedy FEI's default at FEI's sole expense, which reasonable costs

shall be deducted from the Monthly Charges, and such actions will not relieve FEI from any of its obligations under this Agreement or, at its option, and without any liability, terminate this Agreement without prejudice to any other right the District may have hereunder or at law or otherwise.

#### 14.2 DEFAULT BY THE DISTRICT

- (a) The District will be in default under this Agreement if the District fails or refuses to make any payment due to FEI by the District under this Agreement within thirty (30) days of receiving written notice from FEI after the date that payment is due or if the District is in breach of a material term, covenant, agreement, condition or obligation imposed on it under this Agreement and fails to cure such default within ten (10) days after receipt by the District of written notice thereof from FEI or, if such default is not capable of being cured within such ten (10) day notice period, fails to commence in good faith the curing of such default forthwith upon receipt of such written notice thereof from FEI and to continue to diligently pursue the curing of such default thereafter until cured.
- (b) If the District is in default of this Agreement, FEI may at its option and without liability therefore or prejudice to any other right or remedy it may have, including under the UCA, cease performing the Services and no such actions will relieve the District from any of its obligations under this Agreement.
- (c) In the event the default by the District is not fully remedied within thirty (30) days of receipt by the District of written notice from FEI, FEI may undertake the necessary steps to remedy the District's default at the District's sole expense and such action will not relieve the District from any of its obligations under this Agreement or, at its option, and without any liability, take whatever steps necessary to shut down the Energy System and terminate this Agreement without prejudice to any other right FEI may have hereunder or at law or otherwise.

#### 14.3 CROSS DEFAULT

- (a) If any Building experiences a Service Interruption at any time, the District may deliver a notice of such Service Interruption to FEI (a "Service Interruption Notice" to FEI);
- (b) If a Service Interruption continues for a period of 48 consecutive hours after the delivery of a Service Interruption Notice pursuant to Section 14.3(a), the District may deliver a notice of such continuing Service Interruption to FEI (a "Continuing Service Interruption Notice");
- (c) If a Service Interruption continues for a period of 120 consecutive hours after the delivery of a Continuing Service Interruption Notice, the District may at its option deliver a notice of such continuing Service Interruption to FEI (a "Service Failure Notice"); Within 60 days of either:
  - (i) the District's delivery of a Service Failure Notice pursuant to Section 14.3(c); or

- (ii) the District's delivery of a Continuing Service Interruption Notice pursuant to Section 14.3(b) that constitutes the fifth or greater Continuing Service Interruption Notice delivered in that calendar year;

the District may, at its option and without liability:

- (iii) terminate this Agreement without prejudice to any other right the District may have hereunder at law or otherwise; or
  - (iv) terminate the Energy System Rate Development Agreement and all Energy System Service Agreements (inclusive of this Agreement), without prejudice to any other right the District may have hereunder at law or otherwise.
- (d) For greater certainty, this Agreement shall be deemed to be terminated in the event that the District exercises its right to terminate all Energy System Service Agreement under another Energy System Service Agreement.

#### 14.4 SURVIVAL

Upon expiry or earlier termination of this Agreement for any reason, all claims, causes of action or other outstanding obligations remaining or being unfulfilled as of the expiry or termination of this Agreement and all of the provisions of this Agreement relating to the obligation or either the Parties to account to or indemnify the other and to pay to the other any amounts owing as at the date of expiry or termination in connection with this Agreement will survive such expiry or termination.

### **ARTICLE 15 – EXPIRY AND TERMINATION**

#### 15.1 EXPIRY

Upon expiry of the Term, unless otherwise agreed between the Parties and subject to agreement by the BCUC (if required pursuant to applicable Laws), the District may, at its option and by written notice to FEI within 30 days following the termination:

- (a) require FEI to remove the Energy System at FEI's cost in accordance with Section 15.5; or
- (b) acquire the Energy System from FEI at the Adjusted Energy System Purchase Price.

#### 15.2 TERMINATION OF THE ENERGY SYSTEM RATE DEVELOPMENT AGREEMENT

- (a) If the Energy System Rate Development Agreement is terminated as a result of the adoption, approval or implementation of a thermal energy rate tariff by the BCUC, this Agreement will automatically terminate effective as of the date of termination of the Energy System Rate Development Agreement;
- (b) If the Energy System Rate Development Agreement is terminated for cause by the District, this Agreement will be deemed to have been terminated pursuant to Section

14.1(c) as of the date of termination of the Energy System Rate Development Agreement, and Section 15.3 shall apply; and

- (c) If the Energy System Rate Development Agreement is terminated for cause by FEI, this Agreement will be deemed to have been concurrently terminated pursuant to Section 14.2(c) as of the date of termination of the Energy System Rate Development Agreement, and Section 15.4 shall apply.

### 15.3 TERMINATION BY THE DISTRICT FOR CAUSE

If the District terminates this Agreement pursuant to Sections 14.1(c) or 14.3, the District may, at its option and by written notice to FEI within 30 days following the termination:

- (a) require FEI to remove the Energy System, at its own cost, in accordance with Section 15.5; or
- (b) acquire the Energy System from FEI at the Adjusted Energy System Purchase Price.

### 15.4 TERMINATION BY FEI FOR CAUSE

If FEI terminates this Agreement pursuant to Section 14.2(c), FEI may, at its option and by written notice to the District:

- (a) remove the Energy System, at its own cost, in accordance with Section 15.5; or
- (b) require the District to purchase the Energy System from FEI at the Adjusted Energy System Purchase Price.

### 15.5 REMOVAL OF THE ENERGY SYSTEM

If FEI is required to remove the Energy System pursuant to Sections 15.1(a), 15.3(a) or 15.4(a) or otherwise upon expiry of this Agreement, FEI shall promptly remove those portions of the Energy System located within the Building and at surface level at FEI's cost, and FEI shall perform such removal activities using standards of performance that are equivalent to those that apply to the performance of the Services under this Agreement. Any portion of the Energy System not removed by FEI prior to the 30<sup>th</sup> day following the termination or expiry of the Agreement will, as of such day, be deemed to be automatically transferred to the District, and become the property of the District, all at no cost to the District.

### 15.6 ACQUISITION OF THE ENERGY SYSTEM

If the District elects to acquire the Energy System pursuant to Sections 15.1(b), 15.3(b) or 15.4(b):

- (a) the District shall pay the Adjusted Energy System Purchase Price to FEI within the later of 30 days of (i) the effective date of expiration or termination, and (ii) confirmation of the Adjusted Energy System Purchase Price; and

- (b) FEI will promptly execute and deliver any documents and records reasonably required by the District to effect and facilitate the transfer of the Energy System to the District, including bills of sale, operation and maintenance manuals and warranties, and will use reasonable commercial efforts to obtain any consents and approvals that may be required in relation to the transfer (including, without limitation, BCUC approval), provided that (i) FEI's obligations under this Section 15.6(b) shall arise only upon FEI's receipt of all amounts due and owing to FEI from the District under this Agreement, and (ii) during the period between the expiration or termination of the Agreement and FEI's receipt of amounts due and owing to FEI from the District under this Agreement, FEI shall continue to maintain, or shall permit the District to maintain, the Energy System in good working order.

Notwithstanding the foregoing, the Parties acknowledge and agree that FEI's ability to sell or otherwise transfer its interest in and to the Energy System to the District may be subject to BCUC approval under applicable Laws.

## **ARTICLE 16 - NON-COMPLIANCE AND ENVIRONMENTAL**

### 16.1 NOTIFICATION OF NON-COMPLIANCE

FEI or the District (as applicable, the "Notifying Party") will promptly, upon becoming aware thereof, notify the other Party in writing of:

- (a) a Release of a Contaminant or any other occurrence or condition in the Energy System, the Lands or any adjacent property which could subject the other Party to any fines, penalties, orders or proceedings under applicable Laws;
- (b) any charge, order, investigation or notice of violation or non-compliance issued against the Notifying Party relating to the Energy System, or the operation of the Energy System, under any applicable Laws; and
- (c) any notice, claim, action or other proceeding by any third party against the Notifying Party in respect of the Design and Construction or the Services or concerning the Release or alleged Release of any Contaminants at or from the Energy System or the Lands.

### 16.2 NOTIFICATION BY FEI

FEI will notify the appropriate Governmental Authorities of any Release of any Contaminants at or from the Energy System in accordance with applicable Laws. The District may, but is not obligated to, notify the appropriate Governmental Authorities of any Release of any Contaminants at or from the Energy System in accordance with applicable Laws.

### 16.3 OWNERSHIP OF CONTAMINANTS

Notwithstanding any rule of law to the contrary, any Disclosed Contaminant Released from the Energy System, or any top soil, earth or other material containing a Contaminant for which FEI is responsible pursuant to Section 4.5 that is removed from the Lands by FEI or any person for

whom it is in law responsible, will be and remain the sole and exclusive property and responsibility of FEI and will not become the property of the District, notwithstanding the degree of its affixation to the Lands and notwithstanding the expiry or earlier termination of this Agreement.

#### 16.4 SURVIVAL OF OBLIGATIONS

The obligations of the Parties under this Article 16 will survive the expiry or termination of this Agreement.

### **ARTICLE 17 - FORCE MAJEURE**

#### 17.1 SUSPENSION

Subject to the other provisions of this Article 17, if either Party is unable or fails by reason of Force Majeure to perform in whole or in part any obligation or covenant set forth in this Agreement, with the exception of unpaid financial obligations, such inability or failure will be deemed not to be a breach of such obligation or covenant and the obligations of both Parties under this Agreement will be suspended to the extent necessary during the continuation of any inability or failure so caused by such Force Majeure.

#### 17.2 DEFINITION OF FORCE MAJEURE

For purposes of this Agreement, the term "Force Majeure" means any event or occurrence not within the control of the Party claiming Force Majeure and which by the exercise of reasonable diligence such Party is unable to prevent or overcome, including any acts of God, including lightning, earthquakes, storms, washouts, landslides, avalanches, fires, epidemics and floods; strikes, lockouts or other industrial disturbances; acts of the Queen's or public enemies, sabotage, wars, blockades, insurrections, riots or civil disturbances, fires, explosions, breakages of or accidents to machinery or lines of pipe; the laws, orders, rules, regulations, acts or restraints of any court or governmental or regulatory authority. For the purposes of this Article 17, a Party is deemed to have control over the actions or omissions of those persons to which it, its agents, contractors or employees, have delegated, assigned or subcontracted its obligations and responsibilities. For greater certainty, a Force Majeure shall not include any weather related events that do not exceed 25 year events as recorded by Environment Canada or as otherwise may be determined by the BCUC from time to time.

#### 17.3 EXCEPTIONS

Neither Party will be entitled to the benefit of Section 17.1 under any of the following circumstances:

- (a) the Energy System not being Commissioned;
- (b) to the extent that the inability or failure was caused by the negligence or contributory negligence of the Party claiming Force Majeure;

- (c) to the extent that the inability or failure was caused by the Party claiming Force Majeure having failed to diligently attempt to remedy the condition by taking all reasonable acts and to resume the performance of such covenants and obligations with reasonable dispatch;
- (d) if the inability or failure was caused by lack of funds or is in respect of any amount due hereunder; or
- (e) unless, as soon as possible after the happening of the occurrence relied upon or as soon as possible after determining that the occurrence was in the nature of Force Majeure and would affect the claiming Party's ability to observe or perform any of its covenants or obligations under this Agreement, the claiming Party will have given to the other Party notice to the effect that the claiming Party is unable by reason of Force Majeure (the nature whereof will be therein specified) to perform the particular covenants or obligations.

#### 17.4 RESUMPTION OF OBLIGATIONS

The Party claiming Force Majeure will give notice to the other Party, as soon as possible after the Force Majeure condition is remedied, to the effect that the same had been remedied and that such Party has resumed, or is then in a position to resume, the performance of its suspended covenants and obligations hereunder either in whole or in part.

#### 17.5 SETTLEMENT OF LABOUR DISPUTES

Notwithstanding any of the provisions of this Article 17, and subject to Section 17.3, the settlement of labour disputes or industrial disturbances is entirely within the discretion of the particular Party involved and the Party may make settlement of it at the time and on terms and conditions as it may deem to be advisable and no delay in making settlement will deprive the Party of the benefit of Section 17.1.

### **ARTICLE 18 - CONDITIONS PRECEDENT**

#### 18.1 CONDITIONS PRECEDENT OF FEI

The obligation of FEI to carry out the transactions contemplated by this Agreement is subject to fulfillment of the following conditions on or before such date as may be specified, which is for the sole benefit of FEI, and which may be waived by FEI in accordance with Section 18.2:

- (a) FEI obtaining the approval by its board of directors of the terms and conditions of this Agreement on or before the 30th day following the Effective Date, provided that if such approval cannot be obtained by this date due to the fact that the board of directors has not yet considered the transaction FEI reserves the right to extend the period of time to that date when the board next convenes.

## 18.2 FEI NOTICE OF WAIVER

If a condition set out in Section 18.1 has not been satisfied on or before the date as may be specified for its fulfillment, FEI may waive compliance with the condition in whole or in part, in its sole discretion, by written notice to the District, failing which delivery of written notice of satisfaction or waiver of such condition, this Agreement will, to the extent any further obligations of the Parties which remain unfulfilled, be null and void, without liability between the Parties hereto, and, neither Party will be under any further obligation to the other to complete the transactions or future transactions, as the case may be, contemplated by this Agreement.

## **ARTICLE 19 - DISPUTE RESOLUTION**

### 19.1 REFERENCE TO ARBITRATION

The Parties will attempt to resolve all disputes which may arise under, out of, in connection with or in relation to this Agreement by negotiation. They will provide full and timely disclosure to one another of all facts relevant to the disputes to facilitate those negotiations. If any such dispute remains unresolved, for any reason, fifteen (15) days after either Party requested the other Party to enter into negotiations to resolve it, or if the Parties agree to waive negotiations in respect of it, then either Party may submit that dispute for final resolution by arbitration administered by the British Columbia International Commercial Arbitration Centre (“BCICAC”) under its “Shorter Rules for Domestic Commercial Arbitration”. The seat of that arbitration will be Vancouver, British Columbia, Canada. The language of that arbitration will be English. Alternatively, the Parties may agree, within the 15 days referred to above, to submit that dispute for final resolution by arbitration in another manner.

### 19.2 BINDING DECISION

The decision of the arbitrator, regardless of what arbitration procedure is used, will, for all purposes of this Agreement, be final and binding on the Parties.

### 19.3 CONTINUATION OF SERVICES

Each of the Parties will perform all of its respective obligations under this Agreement notwithstanding the existence of any dispute that arises from time to time between the Parties in respect of any matter related to this Agreement or during the resolution of any dispute in accordance with this Article 19.

### 19.4 COSTS

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 case, the non-prevailing Party shall pay all costs and expenses of the arbitration, but not those of the prevailing Party.

## ARTICLE 20 - GENERAL

### 20.1 RESPONSIBILITY FOR COSTS

FEI's performance of any of its obligations under this Agreement, including without limitation the obligation to design, construct and install the Energy System as provided in Section 2.1, shall be at FEI's sole cost and expense, unless expressly provided otherwise in this Agreement;

### 20.2 EXERCISE OF DISCRETION

Where anything in this Agreement is identified as being in either Party's discretion, such Party will have the right to exercise such discretion in its own best interest without regard for the interest of the other Party.

### 20.3 COOPERATION

FEI and the District will at all times extend co-operation to each other to ensure the orderly management and operation of the Energy System.

### 20.4 SOLICITATION

Nothing in this Agreement precludes either Party from soliciting or entering into, other contracts with the other Party.

### 20.5 NOTICES

Any notice or other communication required or permitted to be given under this Agreement will be effective only if in writing and when it is actually delivered (which delivery may be by telecopy or other telecommunications device) to the Party for whom it is intended at the following address or such other address in British Columbia as such Party may designate to the other Party by notice in writing delivered in accordance with this Section 20.5:

(a) if to FEI:

FortisBC Energy Inc.  
10th Floor, 1111 West Georgia Street  
Vancouver, B.C.  
V6E 4M3

Attention: Gareth Jones  
Telephone: 250-380-5972  
Telecopy: 250-388-6876

(b) if to the District:

Board of Education of School District No. 37 (Delta)  
4585 Harvest Drive  
Delta, B.C.  
V4K 5B4

Attention: Frank Geyer  
Telephone: 604-952-5336  
Telecopy: 604-952-5375

Notwithstanding the foregoing, notices with respect to Force Majeure will be given in writing by telecopy, or orally in person or by telephone (to be confirmed by telecopy), to the person or persons designated from time to time by the Parties as the person or persons authorized to receive such notices.

## 20.6 CONFIDENTIALITY

The District and FEI will treat as confidential the terms of this Agreement and all Confidential Information (as defined below) and will at all times during the term of this Agreement and for a reasonable time thereafter hold the terms of this Agreement and all Confidential Information in confidence and neither Party will, without the prior written consent of the other Party, disclose or divulge the terms of this Agreement or any Confidential Information to any person, provided that nothing in this Section 20.6 will restrict or prevent either Party from making any disclosure of such terms or any Confidential Information:

- (a) which is reasonably necessary or desirable for such Party to carry out and give full effect to the terms, conditions and intent of this Agreement and the matters contemplated hereby;
- (b) which is required by any Law, including the Freedom of Information and Protection of Privacy Act (British Columbia);
- (c) to any Governmental Authority;
- (d) to the British Columbia Utilities Commission or other regulatory agency as part or in support of any regulatory application or submission;
- (e) to the directors, officers or employees of such Party or to an Affiliate of such Party or to the directors, officers or employees of an Affiliate of such Party;
- (f) to the professional advisors of such Party on the same terms of confidentiality;
- (g) which is already in the public domain; or
- (h) in connection with legal proceedings or steps being taken to remedy a breach or default under this Agreement by the other Party.

For the purposes of this Section 20.6, "Confidential Information" means proprietary information of either Party such as data, plans, drawings, manuals, or specifications which have been provided by such Party, its employees, contractors, agents, subcontractors, Affiliates to the other Party pursuant to this Agreement or proprietary information either Party conceived or developed by or for such Party concerning construction practices, operation and maintenance practices, agreements, marketing plans and strategies, profits, costs, pricing and systems of procedure (provided that "Confidential Information" does not include information which was disclosed to the receiving Party by a third Party (unless, to the knowledge of the receiving Party, the third Party is under an obligation of confidentiality to the other Party) or any information developed or conceived by the receiving Party without using the "Confidential Information" of the other Party).

#### 20.7 SEVERABILITY

If any provision of this Agreement is found or determined to be invalid, illegal or unenforceable it will be construed to be separate and severable from this Agreement and will not impair the validity, legality or enforceability of any other provisions of this Agreement, and the remainder of this Agreement will continue to be binding on the Parties as if such provision had been deleted.

#### 20.8 NO WAIVER

No waiver by either Party of any default by the other in the performance of any of the provisions of this Agreement will operate or be construed as a waiver of any other or future default or defaults hereunder, whether of a like or a different character. To be binding, any waiver of any provision of this Agreement must be clearly expressed in writing to be signed by the waiving Party.

#### 20.9 BURDEN AND BENEFIT

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

#### 20.10 GOVERNING LAW

This Agreement and all matters arising hereunder will be governed by the laws of British Columbia and the federal laws of Canada applicable in British Columbia.

#### 20.11 ENTIRE AGREEMENT

This Agreement contains the whole agreement between the Parties in respect of the subject matter hereof and there are no terms, conditions or collateral agreements express, implied or statutory other than as expressly set forth in this Agreement and this Agreement supersedes all of the terms of any written or oral agreement or understanding between the Parties.

#### 20.12 TIME OF ESSENCE

Time is of the essence of this Agreement.

#### 20.13 FURTHER ASSURANCES

Each Party will, at all times hereafter on demand by the other, execute and deliver or cause to be executed and delivered all such further documents and do all such further acts and things as may be reasonably requested by the other Party to evidence, carry out and give full effect to the intent and meaning of this Agreement and to assure the completion of the transactions contemplated hereby.

#### 20.14 AMENDMENTS TO BE IN WRITING

Except as set out in this Agreement, no amendment or variation of this Agreement will be effective or binding upon the Parties unless such amendment or variation is set out in writing and duly executed by the Parties.

#### 20.15 FACSIMILE

This Agreement may be executed by the Parties and transmitted by facsimile transmission and, if so executed, transmitted and received, this Agreement will for all purposes be effective as if the Parties had delivered and executed the original Agreement and each Party undertakes to provide the other Party with a copy of this Agreement bearing original signatures forthwith upon demand.

#### 20.16 SUBJECT TO LEGISLATION

Notwithstanding any other provision hereof, this Agreement and the rights and obligations of FEI and the District under this Agreement are subject to all present and future laws, rules, regulations and orders of any legislative body, governmental agency or duly constituted authority now or hereafter having jurisdiction over FEI or the District.

#### 20.17 EXPENSES

Each Party to this Agreement shall be responsible for the payment of all costs, expenses, legal fees and disbursements incurred or to be incurred by it in negotiating and preparing this Agreement and all documents required to be delivered under this Agreement and otherwise relating to the transactions contemplated by this Agreement.

#### 20.18 NO CONTRARY AGREEMENT

No Party shall enter into an agreement or other commitment with any person if such agreement or commitment has terms or provisions in conflict with or inconsistent with the terms of this Agreement or which could reasonably be expected to lead to actions or consequences that would result in the Party being in breach of the commitments and obligations of the Party pursuant to this Agreement unless such other agreement or commitment is expressly approved by the other Parties.

#### 20.19 NO PARTNERSHIP

Nothing herein shall be deemed or construed to create a joint venture, partnership, employment or agency relationship between the Parties for any purpose.

20.20 ASSIGNMENT

Neither Party may assign this Agreement or any of its rights or obligations under this Agreement, and FEI may not assign, transfer or sell all or any part of the Energy System, except:

- (a) with the consent of the other Party, such consent not to be unreasonably withheld, delayed or conditioned; or
- (b) in the case of FEI, to an Affiliate of FEI which is a "public utility" as defined in the *UCA* on notice to, but without the consent of, the District.

20.21 COUNTERPARTS

This Agreement may be executed in counterparts with the same effect as if the Parties had signed the same document. All counterparts will be construed together and will constitute one agreement.

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

**FORTISBC ENERGY INC.**

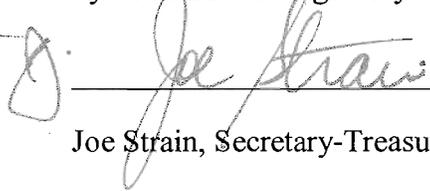
by its authorized signatory:

  
\_\_\_\_\_

Doug Stout,  
VP Energy Solutions & External Relations

**THE BOARD OF EDUCATION OF  
SCHOOL DISTRICT NO. 37 (DELTA)**

by its authorized signatory:

  
\_\_\_\_\_

Joe Strain, Secretary-Treasurer

# **SAMPLE SCHEDULE “A”**

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## **Energy System Description**

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### **Mechanical Equipment Plans and Specifications**

Equipment schedule:

- 2 boilers Mod Com 300 (By others)
- Pumps, piping, control valves and other equipment and accessories connected to the above equipment.
- BTU meter
- Roof Venting intake & exhaust.
- Control systems for the above mentioned equipment.

Prior to commencement of the Mechanical Equipment construction, FEI shall provide detailed drawings to the District for review and acceptance.

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## **SCHEDULE “B”**

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# **Delta School District Site Rules for Contractors**

## **Delta School District Site Rules for Contractors**

### **1.0 Safety**

- 1.1 For the purposes of this section, “Safety Regulations” means the rules, regulations, and practices required by WorkSafeBC.
- 1.2 The Contractor shall be solely responsible for site safety during the execution of all assigned construction and maintenance activities, including work performed by subcontractors and suppliers, and for compliance with the Safety Regulations, and shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the work.
- 1.3 If the District is of the reasonable opinion that the Contractor has not taken such precautions as are necessary to ensure compliance with the requirements of Clause 1.2, the District may take or order any remedial measures which it deems necessary, including stopping the performance of all or any portion of the work, and the District may use the employees of itself, the Contractor, any subcontractor or any other contractors to perform such remedial measures. The Contractor acknowledges and agrees that any failure by the Contractor to comply with the Safety Regulations shall constitute a default of the Contractor's contractual obligations and the District may issue a written notice instructing the Contractor to correct the default in the two (2) working days immediately following receipt of such notice.
- 1.4 The Contractor shall file any notices or any similar document (including, without limitation, a Notice of Project where applicable) required pursuant to the Safety Regulations. This duty of the Contractor will be considered to be included in the work and no separate payment therefore will be made to the Contractor.
- 1.5 The Contractor shall develop, maintain and supervise for the duration of the work a comprehensive safety program that will effectively incorporate and implement all required safety precautions. The program shall, as a minimum, respond fully to the Safety Regulations and general construction practices for the safety of persons or property, including without limitation the WorkSafeBC regulations that may be applicable (e.g. WHMIS, dust control, etc.).
- 1.6 The Contractor shall provide a copy of the safety program described in Clause 1.5 to the District prior to the commencement of the work and shall, at all times require, as far as it is reasonably practical to do so, that every employer and worker performing work in respect of the project complies with such program.
- 1.7 The Contractor shall arrange regular safety meetings at its expense, record the minutes of such meetings and maintain a complete file for review by the appropriate authorities.
- 1.8 The Contractor shall supply and maintain, at its own expense, at its office or other well-known place at the work site, safety equipment necessary to protect the workers and general public against accident or injury as prescribed by the governing authorities.
- 1.9 The Contractor shall supply and maintain all articles necessary for giving first-aid to any person who may be injured on the work site and shall establish an emergency procedure for the immediate removal of any injured person to a hospital or a doctor's care in accordance with the Safety Regulations.
- 1.10 The Contractor shall, as required under the Safety Regulations, promptly report all accidents of any sort arising out of or in connection with the performance of the work whether on or adjacent to the work site, giving full details and statements of witnesses. The District shall be copied on all accident reports and investigation reports.

## **2.0 Security and Access**

- 2.1 **Site and Building Access:** The District's Maintenance Services Department will issue gate and building keys, electronic access cards (complete with instructions as to how to arm/disarm the building intrusion alarm system and how to contact the alarm monitoring station) and identification badges for the Contractor to enter the site and building, disarm/arm the building intrusion alarm system, and access the portions of the site where the Contractor's work is taking place. The Contractor and all subcontractors must check in at the school office (if occupied by District staff) prior to entering other parts of the building. The access cards, keys and identification badges shall be promptly returned to the District at the end of the contract.
- 2.2 **Security:** The Contractor shall assume all responsibility for the security of the work site. The Contractor must ensure that all windows, doors and gates are secure and the building intrusion alarm system is armed (unless District staff are still in the building) at the end of the workday. The Contractor must also safeguard the rest of the building and/or site from access through possible open construction areas. Security doors shall at all times remain closed and shall not be propped open, even for a short time. The Contractor is responsible for any costs arising when the District's security runner services is called to attend a work site for security matters resulting from the Contractor's negligence.
- 2.3 **Normal School Hours:** Normal hours of operation for the District are 0730h-1600h Monday to Friday, excluding statutory holidays. For after-hours and weekend work, the Contractor must notify the District's Maintenance Services Department at least one business day in advance of the work.

## **3.0 Conduct**

- 3.1 **Noise Due to Construction or Maintenance Activities:** In accordance with the Delta Noise Bylaw 1906, "no person shall carry on or cause to be carried any construction work, reconstruction, alteration, repair or demolition of a building or structure, the operation of machinery, or works in connection with any excavation or highway before 07:00h or after 1900h and day of the week from Monday to Friday, inclusive, before 0900h or after 1700h on Saturdays, or at any time Sundays. The Contractor shall respect the classroom operations in the vicinity of the work site and as such will make every attempt to limit noisy work to times outside of classroom operation or to adequately dampen, silence and/or soundproof equipment that generates noise to mitigate disruption to the classrooms.
- 3.2 **Communication devices:** Radio and cell phone volume shall be at the minimum volume which is consistent with the ability to operate the device.
- 3.3 **Roadways:** All speed limits and other traffic rules must be obeyed and access to the roadways should not be impeded. Parking and secure storage of materials and equipment by the Contractor and subcontractors shall only be in designated areas only.
- 3.4 **Cleanliness:** The work site must be maintained for an orderly appearance on a daily basis. Trash and construction debris shall be contained at all times and removed from the work site weekly.
- 3.5 **Toilets:** All temporary toilets shall have their doors faced away from streets. In no cases shall a worker utilize any staff washroom or other staff facilities at the work site, except as otherwise agreed in writing by the District. Under no circumstances will workers be permitted to use student washrooms.
- 3.6 **Identification Badges:** All workers shall have a District-assigned identification badge that clearly indicates the company's name and the worker's name. It is to be worn whenever at the work site.

- 3.7 **Smoking:** Smoking is not permitted on District property.
- 3.8 **Alcohol/Drugs:** No alcoholic beverages or non-prescription drugs shall be brought or consumed at the work site.
- 3.9 **Animals:** No dogs or other animals, are permitted at the work site without the written consent of the District.
- 3.10 **Fitness for Work:** All workers must be fit for work at all times. The District retains the right to request individuals leave the work site if unfit for any reason including, without limitation, inebriation, taking drugs, injury, fatigue, rudeness or any other reason that may affect the quality of the work or represents a breach of these rules.
- 3.11 **Theft:** Workers who steal from occupants or the District shall be immediately ejected from the work site. The Contractor is responsible for all such thefts irrespective of whether the worker is an employee of the Contractor or a subcontractor.
- 3.12 **Discrimination and Harassment:** The District actively promotes a safe and secure school environment and as such does not tolerate violations of human rights legislation, including:
- (a) discriminatory acts against any person with respect to the work or school environment or any educational program or service provided to or by that person because of race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age of that person, or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person;
  - (b) all forms of actual, attempted or threatened physical harm directed at any person; or
  - (c) any form of sexual harassment such as unwelcome sexual advances with actual or implied work related consequences; unwelcome remarks, questions, jokes or innuendo of a sexual nature including sexist comments or sexual invitations; verbal abuse, intimidation or threats of a sexual nature; unwelcome leering, staring or making sexual gestures; whistling or catcalls; display of pornographic or other sexual materials; offensive pictures, graffiti, cartoons or sayings; unwanted physical contact such as touching, patting, pinching or hugging; and physical assault of a sexual nature

## **SCHEDULE “C”**

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### **List of Environmental Reports**



**ASBESTOS MATERIALS SURVEY  
AND RISK ASSESSMENT**

**OF**

**LADNER ELEMENTARY SCHOOL  
5016 – 44<sup>th</sup> Avenue  
Delta, BC**

**PREPARED FOR:**

**DELTA SCHOOL DISTRICT  
Maintenance Facility  
7186 Brown Street  
Delta, BC  
V4G 1G8**

**PREPARED BY:**

**ACM ENVIRONMENTAL CORPORATION  
#217 - 2323 Quebec Street  
Vancouver, BC  
V5T 4S7  
604-873-8599**

**October 2005**

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## **EXECUTIVE SUMMARY**

A.C.M. Environmental Corporation (ACM) was retained by the Delta School District to perform an Asbestos Materials Survey and Risk Assessment for Ladner Elementary located at 5016 – 44<sup>th</sup> Avenue, Delta, BC.

The assessment involved an inspection of all areas of the building. The objective of the assessment was to identify the types and extent of asbestos containing materials within the building and any risks associated with the materials and the regular usage of the building.

The assessment was conducted using both visual and physical assessment techniques. Samples of materials suspected of containing asbestos were collected and forwarded, using proper chain of custody protocols, to Prezant Associates, Inc. for asbestos analysis. Asbestos sample results are located in Appendix A of this report.

In summary, the findings from the assessment conclude that asbestos was found within the construction materials of the building, however, no PCB or Mercury containing materials were found within the equipment of the building.

One type of asbestos containing materials was observed as vinyl floor tile materials. Within the context of the report, areas have been detailed as to the locations of the asbestos containing materials, the content of asbestos where applicable, and the required procedures to be followed for removal of these materials, as required.

The hazardous materials survey was conducted using non-destructive and some limited destructive testing methods. Areas within walls were not inspected as access was not possible without causing extensive damage to the walls. It should be noted that there is a possibility of asbestos containing materials existing within inaccessible wall and ceiling cavities, and under sub-floors. Possible asbestos-containing materials which may exist in these areas may include but are not limited to: insulation materials (mechanical or construction), secondary layers of drywall or flooring, etc.

Roofing materials were not sampled at this time as the integrity of the waterproof membrane would be compromised, possibly voiding insurance coverage in the event of a water leak. If the roofing materials are to be disturbed during a renovation project, they must be sampled prior to the work taking place.

A random number of fluorescent lighting fixtures were opened up and inspected for possible PCB containing ballasts. No PCB containing ballasts were observed

within the fluorescent lighting fixtures inspected, although some may exist, as not all fixtures were opened. No Mercury containing thermostat switches were observed within the building.

## **INTRODUCTION**

A.C.M. Environmental Corporation (ACM) was retained by the Delta School District to perform an Asbestos Materials Survey and Risk Assessment for Ladner Elementary located at 5016 – 44<sup>th</sup> Avenue, Delta, BC. The building may undergo renovations in the near future and all areas of the building were inspected and/or sampled during this survey.

The objective of the assessment was to identify the types and extent of asbestos containing construction materials within the accessible areas of the building. The assessment at this time involved an inspection of all areas of the building not including the roofing materials.

The survey and assessment was conducted on October 25<sup>th</sup>, 2005 by Mr. Barry O'Regan, BST, ISO14001, EMS, IA, Project Manager, for ACM. Twenty-two (22) representative bulk samples of materials suspected of containing asbestos were collected for analysis and are included as Appendix A of this report.

## **METHODOLOGY**

The hazardous materials survey was conducted using non-destructive and some limited destructive testing methods. Areas within walls were not inspected as access was not possible without causing extensive damage to the walls. It should be noted that there is a possibility of asbestos containing materials existing within inaccessible wall and ceiling cavities, and under sub-floors. Possible asbestos-containing materials which may exist in these areas may include but are not limited to: insulation materials (mechanical or construction), secondary layers of drywall or flooring, etc.

The U.S. Environmental Protection Agency (USEPA) Guidance Document was selected for use in this study (1). The document identifies factors associated with the "condition" and the "potential for disturbance or erosion" of asbestos containing materials. These factors help to define the fibre release potential of the suspect asbestos containing materials and were used in a qualitative evaluation of materials found in the surveyed areas. Recommendations have been substantiated by additional information utilized from other documentation cited in the Reference Section of this report.

The bulk samples of suspect asbestos containing materials were forwarded, using proper chain of custody protocols, to Prezant Associates, Inc. for asbestos analysis. The samples were analyzed using polarized light microscopy (PLM) with dispersion staining in accordance with U.S. EPA method 600/R-93/116, "Method for Determination of Asbestos in Bulk Building Materials".

Other hazardous materials were visually inspected and are noted in this report.

The survey relied on the abilities and experience of the surveyor to gain access and identify possible asbestos containing materials. All areas of the building were accessed during the assessment excluding the roof.

---

## **RESULTS & ASSOCIATED RISK LEVELS**

### **ASBESTOS**

One type of asbestos containing material was identified during this survey which could be affected by any potential renovation or demolition activities: vinyl floor tiles. A breakdown for the type of material is as follows:

#### **Vinyl Floor Tile Materials:**

Asbestos containing 12" vinyl floor tile materials were observed in several locations of the school. These include vinyl floor tiles which were beige in color with orange streaks observed in custodian storage room (no number) adjacent to the Art Storage Room – 123. These same floor tiles were observed in rooms 118, 120 (under carpet), Girl's Change Room – 149 and Boy's Change Room area 153 and 154. The bulk sample of this vinyl floor tile material was found to contain <1% Chrysotile asbestos in the tiles. Asbestos containing 9" Olive coloured vinyl floor tiles with cream coloured streaks were observed in rooms 128 and 129. The bulk sample of this vinyl floor tile material was found to contain 2% Chrysotile asbestos in the tiles. The materials are presently in good condition. All other 12" vinyl floor tiles observed on the 1<sup>st</sup> and 2<sup>nd</sup> floor are non-asbestos containing.

Prior to any demolition activities taking place which could disturb the asbestos containing vinyl floor tile materials (which contain more than 1% Chrysotile asbestos), it must first be removed and disposed of in accordance with applicable regulations. The removal of the asbestos containing vinyl floor tile materials will pose a moderate risk of asbestos exposure to the workers involved, therefore as a minimum, MODERATE RISK asbestos work procedures will be required for the removal of the asbestos containing vinyl floor tile materials.

WCB Regulations do not treat any materials with less than 1% asbestos as asbestos containing. Workers should still use moderate risk procedures when exposed to the vinyl floor tile materials, even in materials with less than 1% asbestos concentrations. The WCB states that workers must be properly protected from any potential exposure to airborne asbestos fibres. It is recommended that any work affecting the materials be done using a minimum of moderate risk asbestos work procedures. The vinyl floor tile materials do not have to be disposed in accordance with applicable regulations as asbestos waste.

### **POLYCHLORINATED BIPHENYLS (PCBs)**

A random number of fluorescent light ballasts were visually inspected for possible PCB containing ballasts. No PCB containing ballasts were observed within the fluorescent lighting fixtures inspected in both buildings, although some may exist, as not all fixtures were opened up.

PCB containing fluorescent light ballasts do not pose a risk to occupants of the building. If any PCB containing ballasts are encountered during any renovations of the building, they must be separated from the fixtures and disposed of properly in accordance with applicable regulations.

### **MERCURY THERMOSTATS**

No thermostats observed within the building were found to have Mercury containing switches within them. If any Mercury containing thermostat switches are encountered within the building during renovation or repair activities, they must be removed intact from the thermostats and disposed of properly in accordance with applicable regulations.

### **RECOMMENDATIONS**

Prior to beginning any work that may impinge upon the hazardous materials within the building, the following must be performed:

- 1.) Any affected asbestos containing vinyl floor tile materials in the building must be removed and disposed of in accordance with applicable regulations. The removal of the asbestos containing vinyl floor tile materials will require MODERATE RISK asbestos work procedures to be followed.
- 2.) If any Mercury containing thermostat switches are encountered during any renovation or repair activities within the building, they must be removed and disposed of in accordance with applicable regulations.
- 3.) If any PCB containing ballasts are encountered during any renovation or repair activities within the building, they must be removed and disposed of in accordance with applicable regulations.
- 4.) If any suspect asbestos containing materials are encountered within inaccessible wall or ceiling cavities, or under floors, during renovation or demolition activities, the work in the immediate area must stop and the supervisor contacted for further direction.

**STATEMENT OF LIMITATIONS**

The ACM report is intended to direct the Client's attention to recognised environmental conditions and to potential sources of environmental contamination. The findings and conclusion regarding contamination of the property are based solely on the extent of observations and information gathered during the assessment. Nothing in the report is intended to express any legal opinion upon environmental liabilities relating to the site or whether operations legally conformed with relevant legislative requirements.

Furthermore, it must be understood that changing circumstances in the physical environment, the use of the property, as well in changes in any substances stored, used, handled at the property, could alter radically the conclusions and information contained in this report. Therefore, it is important that the property is periodically re-evaluated and the client kept informed as to developments, which may impact the property. This report is not intended to be used as contract specifications.

**A.C.M. ENVIRONMENTAL CORPORATION**

---

James McArthur, ASCT  
Environmental Technician

**REFERENCES**

- 1) USEPA. 1985. U.S. Environmental Protection Agency. "Guidance for Controlling Asbestos-Containing Materials in Buildings". Washington, DC: Office of Toxic Substances, USEPA.
- 2) Lory EE, Coin DC. 1981. "Management Procedure for Assessment of Friable Asbestos Insulating Material". Port Hueneme, CA: Civil Engineering Laboratory, Naval Construction Battalion Center.
- 3) Workers' Compensation Board of British Columbia, effective 15 April 1998, and all current amendments. Occupational Health and Safety Regulations.
- 4) 2002 Edition - Workers' Compensation Board of British Columbia. Safe Work Practices for Handling Asbestos.

## **APPENDIX A**

### **Bulk Sample Results**



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

<b>ACM Environmental</b>	PAI Batch Number: <b>05-2771</b>
<b>2323 Quebec Street, Suite 211</b>	Client Job Number: <b>3048-37</b>
<b>Vancouver, BC</b>	Number of Samples: <b>22</b>
Project Location: <b>Ladner Elementary School</b>	Turn Around Time: <b>10 day</b>

Batch Number: 05-2771	<b>ACM Environmental</b>
Lab Sample Number: 05015202	<b>3048-37</b>
Client Sample Number: <b>3048-456</b>	<i>Ladner Elementary School</i>

#### L-1 Pale beige hard tile material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		55% Calcite Filler and Binder
		40% Mineral Filler and Binder
		5% Vinyl Filler and Binder

Comments:

#### L-2 Black resinous mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		92% Asphalt Filler and Binder
		5% Mineral Particles
		3% Filler and Binder

Comments:

#### L-3 Green paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		100% Paint

Comments:

Sampled By: Client  
 Received By: John McCaslin 11/10/2005  
 Reviewed By: George McCaslin 11/15/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 11/15/2005



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

## Bulk Asbestos Fiber Analysis

Batch Number:	05-2771	<b>ACM Environmental</b>
Lab Sample Number:	05015203	<b>3048-37</b>
Client Sample Number:	<b>3048-457</b>	<i>Ladner Elementary School</i>

### L-1 White crystalline powdery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		85% Calcite Filler and Binder
		12% Perlite
		3% Vermiculite

Comments:

### L-2 Pale tan fibrous tape-like papery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	97% Cellulose	3% Filler and Binder

Comments:

### L-3 White crystalline powdery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		80% Calcite Filler and Binder
		15% Perlite
		5% Mineral Fragments

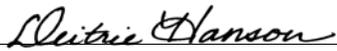
Comments:

### L-4 Dull brown fibrous papery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	99% Cellulose	1% Filler and Binder

Comments:

Sampled By: Client  
 Received By: John McCaslin 11/10/2005  
 Reviewed By: George McCaslin 11/15/2005

  
 Analyzed By: Deitrie Hanson 11/15/2005



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
 OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

## Bulk Asbestos Fiber Analysis

**L-5 White powdery fibrous material with brown flakes**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b> 15% Glass Fiber	<b>Non-Fibrous Components:</b> 80% Talc Filler and Binder 3% Vermiculite 2% Mineral Fragments
---	--	--

**Comments:**

Batch Number: 05-2771	<b>ACM Environmental</b>
Lab Sample Number: 05015204	<b>3048-37</b>
Client Sample Number: <b>3048-458</b>	<i>Ladner Elementary School</i>

**L-1 Pale gray paint**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 100% Paint
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**Comments:**

**L-2 White crystalline powdery material**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 85% Calcite Filler and Binder 12% Perlite 3% Mineral Fragments
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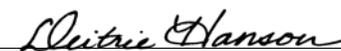
**Comments:**

**L-3 Pale tan fibrous tape-like papery material**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b> 97% Cellulose	<b>Non-Fibrous Components:</b> 3% Filler and Binder
---	--	--

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 11/10/2005  
 Reviewed By: George McCaslin 11/15/2005

  
 Analyzed By: Deitrie Hanson 11/15/2005



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
 OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

## Bulk Asbestos Fiber Analysis

### L-4 White crystalline powdery material

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		80% Calcite Filler and Binder
		15% Perlite
		5% Vermiculite

**Comments:**

### L-5 Pale gray and brown fibrous papery material

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
	97% Cellulose	3% Filler and Binder

**Comments:**

### L-6 White powdery fibrous material

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
	15% Cellulose	80% Talc Filler and Binder
		5% Mineral Fragments

**Comments:**

Batch Number: 05-2771	<b>ACM Environmental</b>
Lab Sample Number: 05015205	<b>3048-37</b>
Client Sample Number: 3048-459	<i>Ladner Elementary School</i>

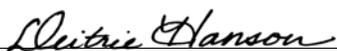
### L-1 Pale beige hard thin tile material with orange streaks

<b>Asbestos Fibrous Components:</b> <1% Chrysotile	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		>4% Miscellaneous Particles

**Comments:**

This tile contains <1% chrysotile asbestos.

Sampled By: Client	
Received By: John McCaslin	11/10/2005
Reviewed By: George McCaslin	11/15/2005

  
 \_\_\_\_\_  
 Analyzed By: Deitrie Hanson 11/15/2005



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

**L-2 Tan mastic**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Resin and Binder
		10% Mineral Particles

**Comments:**

Batch Number: 05-2771	<b>ACM Environmental</b>
Lab Sample Number: 05015206	<b>3048-37</b>
Client Sample Number: <b>3048-460</b>	<i>Ladner Elementary School</i>

**L-1 Pale beige hard thin tile material with orange streaks**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>&lt;1% Chrysotile</b>		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		>4% Miscellaneous Particles

**Comments:**

This tile contains <1% chrysotile asbestos.

**L-2 Dark golden tan resinous mastic**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Resin and Binder
		10% Mineral Particles

**Comments:**

**L-3 Red paint**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		100% Paint

**Comments:**

Sampled By: Client			
Received By: John McCaslin	11/10/2005		
Reviewed By: George McCaslin	11/15/2005	Analyzed By: Deitrie Hanson	11/15/2005



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1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

Batch Number:	05-2771	<b>ACM Environmental</b>
Lab Sample Number:	05015207	<b>3048-37</b>
Client Sample Number:	<b>3048-461</b>	<i>Ladner Elementary School</i>

**L-1 Pale gray paint**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		100% Paint

**Comments:**

**L-2 White crystalline powdery material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		80% Calcite Filler and Binder
		13% Perlite
		5% Vermiculite
		2% Mineral Fragments

**Comments:**

Batch Number:	05-2771	<b>ACM Environmental</b>
Lab Sample Number:	05015208	<b>3048-37</b>
Client Sample Number:	<b>3048-462</b>	<i>Ladner Elementary School</i>

**L-1 White paint**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		100% Paint

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 11/10/2005  
 Reviewed By: George McCaslin 11/15/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 11/15/2005



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## Bulk Asbestos Fiber Analysis

### L-2 Pale tan fibrous opaque material on pink backing

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b> 45% Cellulose 35% Mineral Wool	<b>Non-Fibrous Components:</b> 15% Perlite 3% Resin and Binder 2% Filler and Binder
--	--	--

**Comments:**

Batch Number: 05-2771	<b>ACM Environmental</b>
Lab Sample Number: 05015209	<b>3048-37</b>
Client Sample Number: <b>3048-463</b>	<i>Ladner Elementary School</i>

### L-1 White paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 100% Paint
--	---	--

**Comments:**

### L-2 Pale tan opaque fibrous material with pink backing

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b> 45% Cellulose 35% Mineral Wool	<b>Non-Fibrous Components:</b> 15% Perlite 3% Filler and Binder 2% Resin and Binder
--	--	--

**Comments:**

Batch Number: 05-2771	<b>ACM Environmental</b>
Lab Sample Number: 05015210	<b>3048-37</b>
Client Sample Number: <b>3048-464</b>	<i>Ladner Elementary School</i>

Sampled By: Client  
 Received By: John McCaslin 11/10/2005  
 Reviewed By: George McCaslin 11/15/2005

*Deitrie Hanson*

---

Analyzed By: Deitrie Hanson 11/15/2005



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### Bulk Asbestos Fiber Analysis

**L-1 White paint**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 100% Paint

**Comments:**

**L-2 Dark orange fibrous opaque material**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 75% Cellulose 5% Filler and Binder  
20% Mineral Wool

**Comments:**

**L-3 White paint**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 100% Paint

**Comments:**

Batch Number: 05-2771 **ACM Environmental**  
Lab Sample Number: 05015211 **3048-37**  
Client Sample Number: **3048-465** *Ladner Elementary School*

**L-1 White paint**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 100% Paint

**Comments:**

Sampled By: Client  
Received By: John McCaslin 11/10/2005  
Reviewed By: George McCaslin 11/15/2005

*Deitrie Hanson*  
Analyzed By: Deitrie Hanson 11/15/2005



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### Bulk Asbestos Fiber Analysis

#### L-2 Pale gray fibrous opaque material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	45% Cellulose	10% Perlite
	40% Mineral Wool	5% Filler and Binder

**Comments:**

Batch Number:	05-2771	<b>ACM Environmental</b>
Lab Sample Number:	05015212	<b>3048-37</b>
Client Sample Number:	<b>3048-466</b>	<i>Ladner Elementary School</i>

#### L-1 Golden orange pliable resinous mastic

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		95% Resin and Binder
		5% Mineral Fragments

**Comments:**

#### L-2 Pale cream hard tile material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>&lt;1% Chrysotile</b>		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		>4% Miscellaneous Particles

**Comments:**

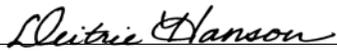
This tile contains <1% chrysotile asbestos.

#### L-3 Golden orange pliable resinous mastic

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		98% Resin and Binder
		2% Mineral Particles

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 11/10/2005  
 Reviewed By: George McCaslin 11/15/2005

  
 Analyzed By: Deitrie Hanson 11/15/2005



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 OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

## Bulk Asbestos Fiber Analysis

Batch Number: 05-2771	<b>ACM Environmental</b>
Lab Sample Number: 05015213	<b>3048-37</b>
Client Sample Number: <b>3048-467</b>	<i>Ladner Elementary School</i>

**L-1 Pale gray hard tile material with dark gray streaks**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 55% Calcite Filler and Binder 40% Mineral Filler and Binder 5% Vinyl Filler and Binder
--	----------------------------------	---

**Comments:**

**L-2 Black resinous pliable mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 92% Asphalt Filler and Binder 5% Mineral Fragments 3% Filler and Binder
--	----------------------------------	--

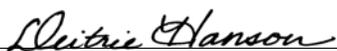
**Comments:**

Batch Number: 05-2771	<b>ACM Environmental</b>
Lab Sample Number: 05015214	<b>3048-37</b>
Client Sample Number: <b>3048-468</b>	<i>Ladner Elementary School</i>

**L-1 Light green olive hard tile material with cream streaks**

<b>Asbestos Fibrous Components:</b> <b>2% Chrysotile</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 45% Calcite Filler and Binder 40% Mineral Filler and Binder 10% Vinyl Filler and Binder 3% Miscellaneous Particles
---	----------------------------------	--

**Comments:**

Sampled By: Client		
Received By: John McCaslin	11/10/2005	Analyzed By: Deitrie Hanson
Reviewed By: George McCaslin	11/15/2005	11/15/2005



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### Bulk Asbestos Fiber Analysis

#### L-2 Yellow resinous mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		95% Resin and Binder
		3% Mineral Fragments
		2% Filler and Binder

**Comments:**

Batch Number: 05-2771	<b>ACM Environmental</b>
Lab Sample Number: 05015215	<b>3048-37</b>
Client Sample Number: <b>3048-469</b>	<i>Ladner Elementary School</i>

#### L-1 Dull brown hard tile material with white and brown streaks

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		5% Miscellaneous Particles

**Comments:**

#### L-2 Black mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		92% Asphalt Filler and Binder
		5% Mineral Fragments
		3% Filler and Binder

**Comments:**

Batch Number: 05-2771	<b>ACM Environmental</b>
Lab Sample Number: 05015216	<b>3048-37</b>
Client Sample Number: <b>3048-470</b>	<i>Ladner Elementary School</i>

Sampled By: Client				
Received By: John McCaslin	11/10/2005			
Reviewed By: George McCaslin	11/15/2005	Analyzed By: Deitrie Hanson		11/15/2005



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## Bulk Asbestos Fiber Analysis

**L-1 Pale beige paint**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 100% Paint
---	----------------------------------	---------------------------------------

**Comments:**

**L-2 White crystalline powdery material**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 75% Calcite Filler and Binder 20% Perlite 5% Vermiculite
---	----------------------------------	---

**Comments:**

**L-3 Pale tan fibrous papery material**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	Non-Asbestos Fibrous Components: 97% Cellulose	Non-Fibrous Components: 3% Filler and Binder
---	---	---

**Comments:**

**L-4 White crystalline powdery material**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 90% Calcite Filler and Binder 8% Perlite 2% Vermiculite
---	----------------------------------	--

**Comments:**

**L-5 Brown fibrous papery material**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	Non-Asbestos Fibrous Components: 99% Cellulose	Non-Fibrous Components: 1% Filler and Binder
---	---	---

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 11/10/2005  
 Reviewed By: George McCaslin 11/15/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 11/15/2005



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### Bulk Asbestos Fiber Analysis

#### L-6 White powdery fibrous material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	15% Cellulose	80% Talc Filler and Binder
		5% Mineral Fragments

**Comments:**

Batch Number:	05-2771	<b>ACM Environmental</b>
Lab Sample Number:	05015217	<b>3048-37</b>
Client Sample Number:	<b>3048-471</b>	<i>Ladner Elementary School</i>

#### L-1 Dull gray hard tile material with dark gray streaks

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		5% Miscellaneous Particles

**Comments:**

#### L-2 Golden yellow resinous mastic

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		97% Resin and Binder
		3% Mineral Particles

**Comments:**

Batch Number:	05-2771	<b>ACM Environmental</b>
Lab Sample Number:	05015218	<b>3048-37</b>
Client Sample Number:	<b>3048-472</b>	<i>Ladner Elementary School</i>

Sampled By: Client  
 Received By: John McCaslin 11/10/2005  
 Reviewed By: George McCaslin 11/15/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 11/15/2005



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### Bulk Asbestos Fiber Analysis

**L-1 Shiny black thin asphaltic material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		92% Plastic Particles
		5% Mineral Particles
		3% Filler and Binder

**Comments:**

**L-2 Dark gray fibrous hard papery material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
	75% Cellulose	20% Filler and Binder
		5% Mineral Fragments

**Comments:**

Batch Number: 05-2771	<b>ACM Environmental</b>
Lab Sample Number: 05015219	<b>3048-37</b>
Client Sample Number: <b>3048-473</b>	<i>Ladner Elementary School</i>

**Dull pink thick pliable rubbery material with dark pink and white swirls**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		85% Rubber Particles
		12% Calcite Filler and Binder
		3% Vinyl Filler and Binder

**Comments:**

Batch Number: 05-2771	<b>ACM Environmental</b>
Lab Sample Number: 05015220	<b>3048-37</b>
Client Sample Number: <b>3048-474</b>	<i>Ladner Elementary School</i>

Sampled By: Client  
 Received By: John McCaslin 11/10/2005  
 Reviewed By: George McCaslin 11/15/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 11/15/2005



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### Bulk Asbestos Fiber Analysis

#### L-1 White paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		100% Paint

Comments:

#### L-2 Pale gray fibrous opaque material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
	55% Cellulose 30% Mineral Wool	10% Perlite 5% Mineral Fragments

Comments:

Batch Number: 05-2771	<b>ACM Environmental</b>
Lab Sample Number: 05015221	<b>3048-37</b>
Client Sample Number: 3048-475	<i>Ladner Elementary School</i>

#### Pink, beige, gray, and dark red thick pliable rubbery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		80% Rubber Particles 15% Calcite Filler and Binder 5% Resin and Binder

Comments:

Batch Number: 05-2771	<b>ACM Environmental</b>
Lab Sample Number: 05015222	<b>3048-37</b>
Client Sample Number: 3048-476	<i>Ladner Elementary School</i>

Sampled By: Client  
 Received By: John McCaslin 11/10/2005  
 Reviewed By: George McCaslin 11/15/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 11/15/2005



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## Bulk Asbestos Fiber Analysis

**L-1 Dull gray paint**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 100% Paint
---	----------------------------------	---------------------------------------

**Comments:**

**L-2 White crystalline powdery material**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 80% Calcite Filler and Binder 15% Perlite 5% Vermiculite
---	----------------------------------	---

**Comments:**

**L-3 Pale tan fibrous tape-like material**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	Non-Asbestos Fibrous Components: 97% Cellulose	Non-Fibrous Components: 3% Filler and Binder
---	---	---

**Comments:**

**L-4 White crystalline powdery material**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 85% Calcite Filler and Binder 12% Perlite 3% Mineral Fragments
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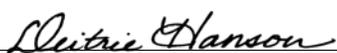
**Comments:**

**L-5 Brown fibrous papery material**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	Non-Asbestos Fibrous Components: 99% Cellulose	Non-Fibrous Components: 1% Filler and Binder
---	---	---

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 11/10/2005  
 Reviewed By: George McCaslin 11/15/2005

  
 Analyzed By: Deitrie Hanson 11/15/2005



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### Bulk Asbestos Fiber Analysis

Batch Number:	05-2771	<b>ACM Environmental</b>
Lab Sample Number:	05015223	<b>3048-37</b>
Client Sample Number:	<b>3048-477</b>	<i>Ladner Elementary School</i>

#### L-1 White paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		100% Paint

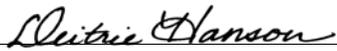
Comments:

#### L-2 Pale brown fibrous opaque material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
	50% Cellulose	10% Perlite
	35% Mineral Wool	5% Filler and Binder

Comments:

Sampled By: Client  
 Received By: John McCaslin 11/10/2005  
 Reviewed By: George McCaslin 11/15/2005

  
 Analyzed By: Deitrie Hanson 11/15/2005

## **APPENDIX B**

### **Photographs**



Typical new non-asbestos containing flooring observed



Asbestos containing 9" Olive VTF with white streaks in Room 128



Asbestos containing 12" Beige VFT with orange streaks  
observed in several areas

**ENERGY SYSTEM SERVICE AGREEMENT**

**NEILSON GROVE ELEMENTARY SCHOOL**

**THIS AGREEMENT** dated for reference the 26<sup>th</sup> day of September, 2011.

**BETWEEN:**

**THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 37 (DELTA)**  
a corporation established under the School Act R.S.B.C. 1996, c. 412 having an  
office at 4585 Harvest Drive, Delta, British Columbia, V4K 5B4

(the "District")

OF THE FIRST PART

**AND:**

**FORTISBC ENERGY INC.**, a company duly incorporated under the laws of the  
Province of British Columbia, having its registered office at 10th Floor, 1111  
West Georgia Street, Vancouver, B.C. V6E 4M3

("FEI")

OF THE SECOND PART

**WHEREAS:**

- A. The District is the owner of Neilson Grove Elementary School (the "Building") and lands located at 5500, Admiral Boulevard, Delta, British Columbia, which lands are legally described as:

PID: 023-585-439 Property No: 130382

LOT 1 DISTRICT LOT 471 GROUP 2 NEW WESTMINSTER DISTRICT PLAN  
LMP30586

(the "Lands")

- B. FEI wishes to supply to the Building, and the District wishes to purchase, Thermal Energy generated by an Energy System that FEI will construct on the Lands, and which FEI will own and operate, all pursuant to the terms of this Agreement.
- C. The Thermal Energy supplied by FEI to the Building pursuant to this Agreement will be priced at the rate set forth in the Energy System Rate Development Agreement between the Parties dated September 26<sup>th</sup>, 2011.

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT** in consideration of the premises and the covenants, agreements, representations, warranties and payments set out herein, the receipt and sufficiency of which is hereby acknowledged by each Party, the Parties covenant and agree as follows:

## **ARTICLE 1 - INTERPRETATION**

### 1.1 DEFINITIONS

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

- (a) “Adjusted Energy System Purchase Price” means, as of the date on which a purchase of the Energy System pursuant to Article 15 is effective, either:
  - (i) the Rate Base Value; or
  - (ii) such other purchase price for the Energy System as is determined by the BCUC; plus all applicable taxes;
- (b) “Affiliate” has the meaning set out in the *Business Corporation Act, S.B.C. 2002, c.57* and includes FortisBC Inc.;
- (c) “Agreement” means this agreement, including the preamble hereto and any schedules attached hereto and the terms “this Agreement”, “hereof”, “herein”, “hereunder” and “hereinafter” and similar expressions refer to the Agreement and not to any particular Section or other portion thereof and includes any agreement supplementary or ancillary thereto;
- (d) “Acceptance Date” means the date of BCUC Acceptance;
- (e) “BCUC” means the British Columbia Utilities Commission, or any successor thereto;
- (f) “BCUC Acceptance” has the meaning assigned to that term in Section 11.1;
- (g) “Building” has the meaning assigned to that term on page one of this Agreement;
- (h) “Building System” means the space heating, cooling and ventilation, and domestic hot water distribution and control systems existing in the Building, to which the Energy System will be connected;
- (i) “Business Day” means any day except Saturday and Sunday or any day on which banks are generally not open for business in Vancouver, British Columbia;
- (j) “Capital Contribution” means \$ 105,000;
- (k) “Commissioned” means once the Energy System is certified complete and operating in accordance with the Specifications by a professional engineer under seal;

- (l) “Commission Date” means the day on which the Energy System is Commissioned;
- (m) “Contaminants” means, collectively, any contaminant, toxic substance, dangerous good, or pollutant or any other substance which when released to the natural environment is likely to cause, at some immediate or future time, material harm or degradation to the natural environment or material risk to human health, and includes any radioactive materials, asbestos materials, urea formaldehyde, underground or aboveground tanks, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive or toxic substances, hazardous waste or waste of any kind, pesticides, defoliants, or any other solid, liquid, gas, vapour, odour or any other substance .the storage, manufacture, disposal, handling, treatment, generation, use, transport, remediation or Release into the Environment of which is now or hereafter prohibited, controlled or regulated under Environmental Laws;
- (n) “Continuing Service Interruption Notice” has the meaning assigned to that term in Section 14.3(b);
- (o) “Contractor” means a prime contractor hired by FEI to oversee and complete the construction and installation of the Energy System;
- (p) “Design and Construction” means the total construction and related services required to design, construct and commission the Energy System and connected components of the Building System;
- (q) “Design Thermal Energy” means the maximum amount of Thermal Energy that the Energy System is capable of delivering through the Thermal Energy Meter and is included in the Specifications;
- (r) “Disclosed Contaminants” means Contaminants:
  - (i) that were or ought to have been discovered, foreseen or anticipated upon reasonable inspection by FEI prior to the Effective Date; and
  - (ii) that were caused by FEI or any person for whom FEI is responsible at law;
- (s) “District” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (t) “District Losses” has the meaning assigned to that term in Section 12.6;
- (u) “District Site Rules for Contractors” means the rules set forth in Schedule “B”;
- (v) “Effective Date” means the date set out on page one of this Agreement;
- (w) “Energy System” means the equipment that FEI constructs and owns which will provide the Building with its energy needs for space heating, cooling and ventilation, and domestic hot water use, all as set forth in this Agreement;

- (x) “Energy System Service Agreement” has the meaning assigned to that term in the Energy System Rate Development Agreement;
- (y) “Energy System Rate Development Agreement” means that energy system rate development agreement between the District and FEI dated as of September 26<sup>th</sup>, 2011;
- (z) “Environment” includes the air (including all layers of the atmosphere), land (including soil, sediment deposited on land, fill, lands submerged under water, buildings, and improvements), water (including oceans, lakes, rivers, streams, groundwater, and surface water), and all other external conditions and influences under which humans, animals, and plants live or are developed and “Environmental” will have a corresponding meaning;
- (aa) “Environmental Attributes” means:
  - (i) all attributes associated with, or that may be derived from the Energy System installed having decreased environmental impacts relative to the use of conventional heating and cooling and hot water heating systems including any existing or future credit, allowance, certificate, right, benefit or advantage or proprietary or contractual right whether or not tradable;
  - (ii) any existing or future instrument, including without limitation any environmental emission allowances and environmental emission reduction credits, reduction right, allowance, certificate or other unit of any kind whatsoever, whether or not tradable and any other proprietary or contractual right, whether or not tradable, and any resulting from, or otherwise related to the actual assumed reduction, displacement or offset of emissions associated with, or that may be derived from the Energy System installed; and
  - (iii) all revenues, entitlement, benefits and other proceeds arising from or related to the foregoing;
- (bb) “Environmental Laws” means any and all statutes, laws, regulations, orders, bylaws, standards, guidelines, protocols, permits, and other lawful requirements of any Governmental Authority having jurisdiction over the Lands or the Energy System now or hereafter in force with respect in any way to the Environment, environmental assessment, health, occupational health and safety, protection of any form of plant or animal life, or transportation of dangerous goods, including the principles of common law and equity;
- (cc) “Expiry Date” means the earlier of:
  - (i) June 30, 2031, or the expiry of any renewal term thereof; and
  - (ii) the closure of the Building, or the Building otherwise ceasing to operate as a school (as defined under the *School Act* (British Columbia));
- (dd) “FEI” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (ee) “FEI Losses” has the meaning assigned to that term in Section 12.5;

- (ff) “Force Majeure” has the meaning assigned to that term in Section 17.2;
- (gg) “Governmental Authority” means any federal, provincial, regional, municipal, local or other government, governmental or public department, court, tribunal, arbitral body, commission, board, bureau or agency and any subdivision, agent, commission, board or authority thereof;
- (hh) “Lands” has the meaning assigned to that term in Recital A and includes the Building located on the Lands;
- (ii) “Laws” means laws, statutes, regulations, bylaws, Permits and orders of any Governmental Authority having jurisdiction, including without limitation, Environmental Laws;
- (jj) “Maintain” means to operate, service and maintain in a safe and reliable condition and “maintaining” and “maintenance” have corresponding meanings;
- (kk) “Monthly Charges” means that amount to be paid by the District to FEI with respect to the delivery of Thermal Energy to the Building pursuant to the Energy System Rate Development Agreement and any other payments due and owing by the District under this Agreement;
- (ll) “Notifying Party” has the meaning assigned to that term in Section 16.1;
- (mm) “Party” means a signatory to this Agreement, and the “Parties” means all of such signatories;
- (nn) “Permits” means all permits, licences, certificates, approvals, authorizations, consents and the like issued by any Governmental Authority;
- (oo) “Rate Base Value” means the value of the Energy System that the BCUC accepts from time to time in accordance with the Energy System Rate Development Agreement;
- (pp) “Release” includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, migration, disposal, or dumping;
- (qq) “Right of Access and Licence” means the right and licence granted herein by the District to FEI pursuant to Section 4.1 of this Agreement;
- (rr) “Service Failure Notice” has the meaning assigned to that term in Section 14.3(c);
- (ss) “Service Interruption” means, in any hour:
  - (i) a failure of the Energy System in that hour to deliver Thermal Energy at the Thermal Energy Meter sufficient to meet the Thermal Energy demand of the Building during that hour in accordance with the Specifications up to the Design Thermal Energy, and except where such failure is directly caused by:
    - a. the careless or wilful damage to the Energy System by the District or its agents or other persons for whom the District is responsible;

- b. damage caused to the Energy System as a result of the negligent acts or omissions of the District, its agents or those for whom in law the District is responsible;
  - c. an event of Force Majeure that triggers the suspension of FEI's obligations under the Agreement pursuant to Article 17; or
  - d. maintenance activities that FEI is performing on the Energy System that have been scheduled with the consent of the District (such consent not to be unreasonably withheld); and
- (ii) if the failure described in Section 1.1(rr)(i), FEI's failure in that hour to deliver to the Building through alternative means thermal energy sufficient to maintain an average temperature of 16 degrees Celsius in each room of the Building intended to be served by the Energy System (all as determined by the District, acting reasonably);
- (tt) "Service Interruption Notice" has the meaning assigned to that term in Section 14.3(a);
- (uu) "Services" means those services to be provided by FEI to supply Thermal Energy to a Building from an Energy System, and for greater certainty includes the services described in Articles 5 and 6, and excludes the Design and Construction;
- (vv) "Specifications" means the specifications for the Energy System prepared by FEI in consultation with the District in accordance with Section 2.3 and includes the Design Thermal Energy;
- (ww) "Term" has the meaning assigned to that term in Section 3.1;
- (xx) "Thermal Energy" means the amount of energy that FEI provides to the Building measured through a Thermal Energy Meter;
- (yy) "Thermal Energy Meter" means a device that complies with the International Organization of Legal Metrology recommendations for measuring thermal energy; and
- (zz) "UCA" means the *Utilities Commission Act*, R.S.B.C. 1996, c. 473 as may be amended from time to time.

## 1.2 SCHEDULES

The following Schedules, as may be amended from time to time, are incorporated by reference into this Agreement:

Schedule "A"	Energy System Description
Schedule "B"	Delta School District Site Rules for Contractors

## 1.3 AMENDMENTS TO SCHEDULES

The District and FEI acknowledge that during the construction phase of the Energy System there may be additions and alterations to the Specifications for the Energy System which would result

in more efficient use and operation of the Energy System. If these additions or alterations result in changes to any of the above Schedules, the Parties mutually agree to amend the Schedules by way of a written amendment prior to the Commission Date.

#### 1.4 INTERPRETATION

Except where the context requires otherwise or except as otherwise expressly provided, in this Agreement:

- (a) all references to a designated Article or Section are to the designated Article or Section of this Agreement unless otherwise specifically stated;
- (b) the singular of any term includes the plural, and vice versa, and the use of any term is equally applicable to any gender and, where applicable, body corporate;
- (c) any reference to a corporate entity includes and is also a reference to any corporate entity that is a successor by merger, amalgamation, consolidation or otherwise to such entity;
- (d) the preamble and all schedules referred to and attached to this Agreement are incorporated by reference and will form a part of this Agreement;
- (e) all sums of money which are referred to in this Agreement are in lawful money of Canada;
- (f) the headings of the Articles and Sections set out in this Agreement are for convenience only and will not be considered in any interpretation of this Agreement;

### **ARTICLE 2 - DESIGN AND CONSTRUCTION OF THE ENERGY SYSTEM**

#### 2.1 CONSTRUCTION

FEI will perform the Design and Construction:

- (a) in accordance and in compliance with the Specifications;
- (b) in a good and workmanlike manner using qualified workers, and in accordance with sound and currently accepted industry standards and codes of practice normally employed, at the time and place of performance, in projects of a similar type and nature;
- (c) to ensure operational compatibility with the Building System;
- (d) in a safe and environmentally sound manner, and in accordance with all applicable Laws; and
- (e) in accordance with the terms of this Agreement.

## 2.2 CAPITAL CONTRIBUTION

The District will pay to FEI within 30 days of the Commission Date the Capital Contribution for the purpose of reducing the capital investment and the associated carrying cost of capital by FEI for provision of Service to the Building.

## 2.3 SPECIFICATIONS

Subject to and in accordance with this Section 2.3, FEI shall prepare and complete the Specifications promptly following the Acceptance Date.

FEI confirms the Energy System, as described in the Specifications and as contemplated by the Energy System description set out in Schedule A, will be designed to meet the thermal energy requirements of the Building and operational compatibility of the Building System based in part on information supplied by the District as to historical usage, which information has not been independently verified by FEI. FEI shall have no liability to the District for the failure of the Energy System to satisfy the requirements of the Building where such failure is attributable to the information supplied by the District being incorrect, inaccurate or incomplete.

FEI will prepare the Specifications in consultation with the District in order to ensure the Energy System can be appropriately accommodated within the Building and interface with the Building Systems. FEI will submit material changes to the Specifications, both before and during construction, to the District for review and comment prior to such changes taking place. If the District does not comment on the Specifications or material changes to the Specifications or advise that it has no comment within five (5) Business Days of receipt, FEI will be entitled to proceed on the basis of the information provided to the District. FEI will revise the Specifications based on the comments from the District provided that doing so will not impact FEI's costs or adversely affect system performance.

Review of and comment on the Specifications by the District does not impose any obligation on the District to verify the suitability of the Energy System or be construed as confirmation by the District that the Energy System satisfactorily meets the Building's energy requirements.

## 2.4 WORK SCHEDULE

Within ten (10) Business Days following the Acceptance Date, FEI will submit to the District for review and comment a Gantt chart schedule for the Design and Construction listing activities to be undertaken during the Design and Construction stages, key milestones and approval dates and other pertinent dates. Any revisions to the schedule must be reviewed and commented by the District, which review and comment will not be unreasonably withheld, conditioned or delayed.

In order to ensure that the Building System remains operational during normal school hours (as defined in Schedule B), the cut-over from the existing heating/cooling plant to the Energy System shall be performed outside normal school hours.

## 2.5 REPORTING

FEI shall produce and submit a monthly progress report for the Design and Construction to the District until the Energy System is Commissioned.

## 2.6 TESTING AND COMMISSIONING

FEI shall coordinate and supervise the start-up and testing of the Energy System to ensure the Energy System and other components of the Building System affected by the Design and Construction are operating in accordance with the Specifications, upon which the Energy System will be Commissioned. The District shall be invited to participate in the start-up and testing exercise.

# ARTICLE 3 - TERM AND RENEWAL

## 3.1 TERM

The term of this Agreement commences on the Effective Date and continues until the Expiry Date unless it is terminated earlier as authorized under this Agreement ("Term").

## 3.2 RENEWAL

This Agreement will automatically renew for periods of ten (10) years unless either Party provides written notice to the other Party no less than six (6) months prior to the Expiry Date, provided that there shall be no automatic renewal in the event that the Expiry Date arises as a result of the closure of the Building, or the Building otherwise ceases to operate as a school (as defined under the *School Act* (British Columbia)).

# ARTICLE 4 - ACCESS AND PERMITS

## 4.1 ACCESS RIGHTS

The District hereby grants to FEI, during the Term from and following the Acceptance Date, for so long as FEI shall require it, but subject to Section 4.4, a full, free and uninterrupted licence and right of way on, over and under the Lands and Building, for FEI, its assigns, employees, contractors, agents, invitees and licensees at all times hereafter for the purposes set out in this Agreement, provided FEI will avoid to the extent reasonably possible, and otherwise minimize interference with and inconvenience to, the occupants of the Building and the access rights of FEI will be limited to the extent reasonably necessary to fulfil FEI's obligations hereunder.

Without limiting the generality of the foregoing, but subject to Section 4.4, such right of way and licence shall include the full power, right and liberty to excavate for, install, place, construct, renew, alter, repair, maintain, operate, use, abandon, remove or replace its infrastructure, in whole or in part, and to enter upon, along, across, over or under the Lands or Building and have continual access to the Energy System, with or without vehicles, supplies, machinery or equipment, for any of the purposes set out in this Agreement, and to clear such portion of the Lands and keep it cleared of obstructions which, in the opinion of FEI, acting reasonably, may

interfere with any of the rights granted to FEI herein. The District may direct, in its discretion, FEI to use alternate routing for any Environmental or other reasonable purpose.

FEI covenants and agrees with the District not to do or knowingly permit to be done anything which may, in the opinion of the District acting reasonably, damage or interfere with the Building or impair the operating efficiency thereof or create any hazard.

#### 4.2 CONDITION OF LAND

The District represents and warrants to FEI that as of the Effective Date:

- (a) to the best of the District's knowledge, the Lands are free of Contaminants; and
- (b) there are no actions, proceedings, investigations, claims (including remediation cost recovery claims) pending, or to the knowledge of the District, threatened, that would interfere with FEI's access rights pursuant to Section 4.1.

#### 4.3 PERMITS

FEI will obtain and maintain at its own expense all Permits necessary for the Design and Construction and the Services.

#### 4.4 SAFETY, SECURITY AND BUILDING ACCESS

Notwithstanding anything to the contrary in this Agreement, FEI will adhere, and will cause all persons for whom it is responsible under this Agreement (including, without limitation, the Contractor) to adhere to the District Site Rules for Contractors.

#### 4.5 REMEDIATION

FEI shall promptly remediate any Disclosed Contaminants on the Lands as required by applicable Law that result from, or are Released as a result of the Design and Construction or the Services, except to the extent caused or contributed to by the District's negligence. In the event that Contaminants on the Lands, other than Disclosed Contaminants, are discovered by FEI, FEI will promptly notify the District of such discovery and the Parties will review the impact of such discovery, if any, on the Design and Construction or the Services.

### **ARTICLE 5 - SERVICE PROVISION**

#### 5.1 PROVISION OF SERVICE

Subject to the terms and conditions of the Agreement, FEI will provide the Services to the District throughout the Term.

## 5.2 SERVICE MONITORING AND REVIEW

The Parties acknowledge that FEI may be required from time to time to prepare and submit reports to the BCUC concerning the operation and performance of the Energy System, and the District shall provide FEI with reasonable cooperation in relation to the preparation of such reports.

## 5.3 STANDARD OF PERFORMANCE

In performing the Services, FEI will:

- (a) use only qualified personnel and exercise the same degree of care, skill and supervision as would be exercised by a reasonable and prudent owner experienced in performing like services;
- (b) perform the Services in accordance with all applicable Laws;
- (c) perform the Services in accordance with ongoing industry standards and codes of practice; and
- (d) without limiting the effect of the foregoing, abide by any standards of performance in relation to the Services that the BCUC may set from time to time according to the provisions of the UCA.

## 5.4 INTERRUPTION

No interruption of any of the on-site and off-site services, utilities and amenities provided by FEI to the Building will, except to the extent, if any, caused by any wrongful or negligent act of FEI or any person for whom FEI is responsible at law, render FEI liable to the District or any person claiming through or under the District, or relieve the District from any of its obligations under this Agreement. Notwithstanding the foregoing, FEI will use all reasonable diligence to remedy any such interruption if it is within its power and obligation to do so.

# **ARTICLE 6 - ENERGY SYSTEM MAINTENANCE AND OPERATION**

## 6.1 MAINTENANCE AND REPAIR OF ENERGY SYSTEM

Subject to Section 6.2, FEI will perform the Services and otherwise maintain or cause to be maintained and repaired the Energy System throughout the Term:

- (a) in accordance with the Energy System design and operating specifications and requirements as established by the qualified engineers engaged by FEI in the design and construction of the Energy System, and the equipment manufacturers;
- (b) in a good and workman-like manner using qualified workers, and in accordance with sound and currently accepted industry standards and codes of practice normally employed, at the time and place of performance, in projects of a similar type and nature;
- (c) to ensure operational compatibility with the Building System;

- (d) in a safe and environmentally sound manner, and in accordance with all applicable Laws; and
- (e) in accordance with the terms of this Agreement.

FEI will not delay repair of the Energy System for any reason, including as a result of a dispute with the District in relation to the costs and expenses of repair pursuant to Section 6.2.

## 6.2 REPAIR DAMAGE

The District will be responsible for all costs and expenses incurred by FEI in respect of any damage to the Energy System caused by or resulting from:

- (a) the careless or wilful damage to the Energy System by the District or its agents or other persons for whom at law the District is responsible; or
- (b) damage caused to the Energy System as a result of the negligent acts or omissions of the District, its agents or those for whom in law the District is responsible.

## ARTICLE 7 - CHARGES

### 7.1 MONTHLY CHARGES

The District throughout the Term commencing on the Commission Date in accordance with this Article 7 will pay to FEI when due for the Thermal Energy that FEI delivers and meters to the Building according to the rates set out in the Energy System Rate Development Agreement plus all applicable taxes (including harmonized sales tax applicable thereon) and any imposed taxes levied after the Commission Date by a government or regulatory agency that are related to the Energy System (including, but not limited to capital taxes or royalties) and any other payments due and owing by the District under this Agreement.

### 7.2 MONTHLY STATEMENT

FEI will, within 15 days following the end of each month, deliver to the District a statement setting out the Monthly Charges including all applicable taxes payable for that month.

### 7.3 PAYMENT

The District will pay the full amount specified in each statement provided to it in accordance with Section 7.2 within 30 days of receipt of such statement. All amounts payable to FEI will be made by cheque mailed to FEI at its address for service specified in Section 20.5.

### 7.4 PAYMENT DUE

Subject to Section 14.1, the obligation of the District to pay the Monthly Charges continues whether or not the Energy System is being used to provide the Building with its energy needs for space and ventilation heating, cooling and domestic hot water use.

#### 7.5 ARREARS TO BEAR INTEREST

If any amount owing to FEI or the District is not paid on or before the date on which it is due, a late payment charge of 1.5% per month will be assessed each month on all outstanding balances not paid by the due date.

### **ARTICLE 8 - OWNERSHIP OF THE ENERGY SYSTEM**

Notwithstanding the payments made by the District to FEI under this Article 8, any provision of this Agreement, any degree of annexation or affixation, or rule of law or equity to the contrary the District will have no proprietary interest in the Energy System which is, and shall remain, the property of FEI and may be used by FEI in its business or removed in whole or in part as it may see fit, and for any of such purposes, and FEI may enter in, upon and under all the Lands for the purposes of the maintenance, renewals, repair, removal or operation of the Energy System or any part thereof; provided that FEI shall not leave any part of the Energy System in such a state as to constitute a nuisance or a danger to the public through neglect, non-use and want of repair, and provided further that nothing in this clause shall nullify or otherwise impact or invalidate in any way the District's rights under Article 15 to purchase the Energy System.

### **ARTICLE 9 - ENVIRONMENTAL ATTRIBUTES**

#### 9.1 ENVIRONMENTAL ATTRIBUTES

All right, title and interest now existing or which may exist at any time in the future in the potential or actual commercial value of any Environmental Attributes that arise or accrue by virtue of the construction and operation of the Energy System will belong to the District. At the request of the District, FEI will reasonably cooperate with the District in applying for and assigning any Environmental Attributes to the District.

#### 9.2 GRANTS

Any grants from any Governmental Authority, a Crown Corporation or non-governmental authority that may be derived from a reduction in energy consumption by the Building will belong to the District.

### **ARTICLE 10 - REPRESENTATIONS AND WARRANTIES**

#### 10.1 DISTRICT'S REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties contained in this Agreement, the District hereby represents and warrants to FEI as follows and acknowledges that FEI is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) the District has the full right, power and authority to enter into this Agreement;

- (b) all necessary action on the part of the District has been taken to authorize and approve the execution and delivery of this Agreement and the performance by the District of its obligations hereunder;
- (c) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to the District as of the date of this Agreement;
- (d) the District is not party to any action, suit or legal proceeding, actual or, to the knowledge of the District, threatened, and there are no circumstances, matters or things known to the District which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or, to the knowledge of the District, threatened against the District before or by any Governmental Authority, which could affect the District's ability to perform its obligations under this Agreement; and
- (e) no person, firm or corporation has or will have as of the Commission Date, any agreement, right, or option or right capable of becoming an agreement, right, or option for the purchase or acquisition of the Energy System.

## 10.2 FEI'S REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties contained in this Agreement, FEI hereby represents and warrants to the District as follows and acknowledges that the District is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) FEI has the full right, power and authority to enter into this Agreement;
- (b) all necessary corporate action on the part of FEI has been taken to authorize and approve the execution and delivery of this Agreement and the performance by FEI of its obligations hereunder;
- (c) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to FEI as of the date of this Agreement;
- (d) FEI is not party to any action, suit or legal proceeding, actual or threatened, and there are no circumstances, matters or things known to FEI which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or threatened against FEI before or by any Governmental Authority, which could affect FEI's ability to perform its obligations under this Agreement; and
- (e) FEI has or will have all permits, licenses, authorizations and other documentation required for the operation of the Energy System after the Commission Date; and
- (f) FEI has all the required expertise to fulfill its obligations under this Agreement.

### 10.3 DELEGATION AND SUBCONTRACTING

FEI may delegate and subcontract its obligations under this Agreement with respect to Design and Construction and Services to any contractor, consultant, agent or representative provided that FEI shall be fully responsible for the acts and omissions of such persons and those either directly or indirectly employed by them to the same extent as FEI for its own acts or omissions.

## ARTICLE 11 - BCUC ACCEPTANCE

### 11.1 REGULATORY REVIEW TERMINATION

Subject to Section 11.3, either Party may terminate this Agreement if within 90 days following the Effective Date, this Agreement and the Energy System Rate Development Agreement, including the Market Rate and the SD37 Rate Rider as defined in that Agreement have not been accepted for filing by the BCUC (such acceptance being herein called "BCUC Acceptance").

### 11.2 REGULATORY FILING

FEI, on behalf of itself and the District, and at its own cost, shall file the Agreement with the BCUC within a reasonable time after the Effective Date. FEI shall take all steps reasonably required to secure BCUC Acceptance, which shall consist of those procedural steps related to filing the Agreement and providing argument and witnesses in support of filing.

### 11.3 TERMINATION

A Party entitled to terminate under Section 11.1 must do so by giving notice to terminate to the other Party at any time after the right to terminate arises pursuant to Section 11.1, and prior to:

- (a) the date of issuance of the BCUC Acceptance; and
- (b) the date that is 90 days after the Effective Date.

### 11.4 EFFECT OF BCUC ACCEPTANCE

The Parties acknowledge that upon BCUC Acceptance, the Services will be subject to regulation by the BCUC under the UCA, and will form another class of service that FEI provides as a public utility. The Parties acknowledge that the terms of the UCA may supersede the terms and conditions of this Agreement.

## ARTICLE 12 - INDEMNITY

### 12.1 FEI'S INDEMNITY

Without limiting any other obligations of FEI provided herein, FEI will indemnify, defend, and save harmless the District and its trustees, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including the full amount of all legal fees and expenses on a

solicitor-client basis) which may be paid by, incurred by, or asserted against the District or its directors, officers, employees, agents, successors, or assigns, arising from or in connection with:

- (a) the breach or non-performance by FEI of any of its obligations or warranties hereunder; or
- (b) the negligence or wilful misconduct of FEI, its employees, contractors or agents in respect of the Energy System, and in the performance of the obligations of FEI pursuant to this Agreement,

excluding only such of the foregoing as arise from the fraud, negligence or wilful misconduct of the District or its trustees, officers, directors, members, employees, contractors or agents, or the breach or non-performance by the District of any of its obligations or warranties hereunder.

## 12.2 DISTRICT'S INDEMNITY

Without limiting any other obligations of the District provided herein, the District will indemnify, defend, and save harmless FEI, its Affiliates and their respective shareholders, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including the full amount of all legal fees and expenses on a solicitor-client basis) which may be paid by, incurred by, or asserted against FEI, its Affiliates or their respective shareholders, directors, officers, employees, agents, successors, or assigns, arising from or in connection with:

- (a) the breach or non-performance by the District of any of its obligations or warranties hereunder; or
- (b) the negligence or wilful misconduct of the District, its employees, contractors or agents in respect of the Energy System, and in the performance of the obligations of the District pursuant to this Agreement,

excluding only such of the foregoing as arise from the fraud, negligence or wilful misconduct of FEI or its Affiliates or any of their respective officers, directors, members, employees, contractors or agents, or the breach or non-performance by FEI of any of its obligations or warranties hereunder.

## 12.3 CONSEQUENTIAL LOSS

In no event will the District or FEI or any of their respective officers, directors, employees, contractors or agents be liable to the other Party for any indirect or consequential loss, cost or expense whatsoever, including any loss of profits, revenues or other economic loss, suffered by the other Party or its officers, directors, employees, contractors or agents.

## 12.4 SURVIVAL OF INDEMNITY

The indemnity of each of the District and FEI provided under this Article 12 will survive the Term of this Agreement.

## 12.5 ENVIRONMENTAL INDEMNITY BY THE DISTRICT

The District will indemnify and save harmless FEI, its Affiliates, directors, officers, shareholders, employees, agents, successors and permitted assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants (but not including Disclosed Contaminants) and remediation of the Lands and any affected adjacent property) (collectively, "FEI Losses") which may be paid by, incurred by or asserted against FEI, its Affiliates and their respective directors, officers, shareholders, employees, agents, successors or permitted assigns, arising from or in connection with any Contaminants (but not including Disclosed Contaminants) existing on the Lands prior to the Commission Date or brought onto the Lands or Released onto the Lands by the District or any person for whom it is in law responsible, except to the extent the FEI Losses suffered were caused or contributed to by any act or omission of FEI or any person for whom FEI is in law responsible after FEI had knowledge of the Contaminants.

## 12.6 ENVIRONMENTAL INDEMNITY BY FEI

FEI will indemnify and save harmless the District, its Affiliates and their respective trustees, directors, officers, employees, agents, successors and permitted assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the Lands and any affected adjacent property) (collectively, "District Losses") which may be paid by, incurred by or asserted against the District, its Affiliates, and their respective trustees, directors, officers, employees, agents, successors or permitted assigns, arising from or in connection with any Contaminants brought onto the Lands or any Disclosed Contaminants Released onto the Lands by FEI or any person for whom it is in law responsible, except to the extent the District Losses suffered were caused or contributed to by any act or omission of the District or any person for whom the District is in law responsible after the District had knowledge of the Contaminants.

# ARTICLE 13 - INSURANCE

## 13.1 FEI INSURANCE COVERAGE.

- (a) FEI will obtain and maintain at its own expense throughout the Term, Commercial General Liability Insurance for bodily injury, death and property damage in the minimum amount of five million (\$5,000,000) dollars per occurrence. The policy will contain a cross liability provision and will be maintained for a period ending no sooner than 12 months after the expiry or termination of this Agreement.
- (b) FEI will be responsible for the full amount of all premiums and deductibles required under this Section 13.1. All policies required herein must be effective at the Commission Date. Insurance will be purchased from insurers registered and licensed to underwrite

insurance in British Columbia. Policies will contain waivers of subrogation against the District and all its officers, directors, members, employees, contractors and agents.

### 13.2 DISTRICT INSURANCE COVERAGE

- (a) The District will obtain and maintain at its own expense throughout the Term Commercial General Liability Insurance for bodily injury, death and property damage in the minimum amount of five million (\$5,000,000) dollars per occurrence. The policy will contain a cross liability provision and will be maintained for a period ending no sooner than 12 months after the expiry or termination of this Agreement.
- (b) The District will be responsible for the full amount of all premiums and deductibles required under this Section 13.2. All policies required herein must be effective at the date of this Agreement. Insurance will be provided by the Provincial self-insured program. Policies will contain waivers of subrogation against FEI and all its officers, directors, employees, contractors and agents.

### 13.3 PRIORITY

FEI will ensure that the District is an additional insured under the insurance to be obtained and maintained pursuant to Section 13.1. The District will ensure that FEI is an additional insured under the insurance to be obtained and maintained pursuant to Section 13.2. In the event of a claim, the insurance carried by the Party responsible for actions which give rise to such claim will be the primary insurance with respect to such claim.

## ARTICLE 14 - DEFAULT

### 14.1 DEFAULT BY FEI

- (a) FEI will be in default under this Agreement if FEI is in breach of a material term, covenant, agreement, condition or obligation imposed on it under this Agreement and fails to cure such default within ten (10) days after receipt of written notice thereof from the District, or, if such default is not capable of being cured within such ten (10) day notice period, fails to commence in good faith the curing of such default upon receipt of such written notice of default from the District and to continue to diligently pursue the curing of such default thereafter until cured. For the purposes of this Section 14.1, Section 4.4 is hereby deemed to be a material term of this Agreement.
- (b) If FEI is in default of this Agreement, the District may at its option and without liability therefore or prejudice to any other right or remedy it, including under the UCA, may have suspend or refuse to make any payments due hereunder until the default has been fully remedied, and no such suspension or refusal will relieve FEI from any of its obligations under this Agreement.
- (c) In the event the default is not fully remedied within thirty (30) days of receipt by FEI of written notice thereof from the District, the District may, at its option, undertake the necessary steps to remedy FEI's default at FEI's sole expense, which reasonable costs

shall be deducted from the Monthly Charges, and such actions will not relieve FEI from any of its obligations under this Agreement or, at its option, and without any liability, terminate this Agreement without prejudice to any other right the District may have hereunder or at law or otherwise.

#### 14.2 DEFAULT BY THE DISTRICT

- (a) The District will be in default under this Agreement if the District fails or refuses to make any payment due to FEI by the District under this Agreement within thirty (30) days of receiving written notice from FEI after the date that payment is due or if the District is in breach of a material term, covenant, agreement, condition or obligation imposed on it under this Agreement and fails to cure such default within ten (10) days after receipt by the District of written notice thereof from FEI or, if such default is not capable of being cured within such ten (10) day notice period, fails to commence in good faith the curing of such default forthwith upon receipt of such written notice thereof from FEI and to continue to diligently pursue the curing of such default thereafter until cured.
- (b) If the District is in default of this Agreement, FEI may at its option and without liability therefore or prejudice to any other right or remedy it may have, including under the UCA, cease performing the Services and no such actions will relieve the District from any of its obligations under this Agreement.
- (c) In the event the default by the District is not fully remedied within thirty (30) days of receipt by the District of written notice from FEI, FEI may undertake the necessary steps to remedy the District's default at the District's sole expense and such action will not relieve the District from any of its obligations under this Agreement or, at its option, and without any liability, take whatever steps necessary to shut down the Energy System and terminate this Agreement without prejudice to any other right FEI may have hereunder or at law or otherwise.

#### 14.3 CROSS DEFAULT

- (a) If any Building experiences a Service Interruption at any time, the District may deliver a notice of such Service Interruption to FEI (a "Service Interruption Notice" to FEI);
- (b) If a Service Interruption continues for a period of 48 consecutive hours after the delivery of a Service Interruption Notice pursuant to Section 14.3(a), the District may deliver a notice of such continuing Service Interruption to FEI (a "Continuing Service Interruption Notice");
- (c) If a Service Interruption continues for a period of 120 consecutive hours after the delivery of a Continuing Service Interruption Notice, the District may at its option deliver a notice of such continuing Service Interruption to FEI (a "Service Failure Notice"); Within 60 days of either:
  - (i) the District's delivery of a Service Failure Notice pursuant to Section 14.3(c); or

- (ii) the District's delivery of a Continuing Service Interruption Notice pursuant to Section 14.3(b) that constitutes the fifth or greater Continuing Service Interruption Notice delivered in that calendar year;

the District may, at its option and without liability:

- (iii) terminate this Agreement without prejudice to any other right the District may have hereunder at law or otherwise; or
  - (iv) terminate the Energy System Rate Development Agreement and all Energy System Service Agreements (inclusive of this Agreement), without prejudice to any other right the District may have hereunder at law or otherwise.
- (d) For greater certainty, this Agreement shall be deemed to be terminated in the event that the District exercises its right to terminate all Energy System Service Agreement under another Energy System Service Agreement.

#### 14.4 SURVIVAL

Upon expiry or earlier termination of this Agreement for any reason, all claims, causes of action or other outstanding obligations remaining or being unfulfilled as of the expiry or termination of this Agreement and all of the provisions of this Agreement relating to the obligation or either the Parties to account to or indemnify the other and to pay to the other any amounts owing as at the date of expiry or termination in connection with this Agreement will survive such expiry or termination.

### **ARTICLE 15 – EXPIRY AND TERMINATION**

#### 15.1 EXPIRY

Upon expiry of the Term, unless otherwise agreed between the Parties and subject to agreement by the BCUC (if required pursuant to applicable Laws), the District may, at its option and by written notice to FEI within 30 days following the termination:

- (a) require FEI to remove the Energy System at FEI's cost in accordance with Section 15.5; or
- (b) acquire the Energy System from FEI at the Adjusted Energy System Purchase Price.

#### 15.2 TERMINATION OF THE ENERGY SYSTEM RATE DEVELOPMENT AGREEMENT

- (a) If the Energy System Rate Development Agreement is terminated as a result of the adoption, approval or implementation of a thermal energy rate tariff by the BCUC, this Agreement will automatically terminate effective as of the date of termination of the Energy System Rate Development Agreement;
- (b) If the Energy System Rate Development Agreement is terminated for cause by the District, this Agreement will be deemed to have been terminated pursuant to Section

14.1(c) as of the date of termination of the Energy System Rate Development Agreement, and Section 15.3 shall apply; and

- (c) If the Energy System Rate Development Agreement is terminated for cause by FEI, this Agreement will be deemed to have been concurrently terminated pursuant to Section 14.2(c) as of the date of termination of the Energy System Rate Development Agreement, and Section 15.4 shall apply.

### 15.3 TERMINATION BY THE DISTRICT FOR CAUSE

If the District terminates this Agreement pursuant to Sections 14.1(c) or 14.3, the District may, at its option and by written notice to FEI within 30 days following the termination:

- (a) require FEI to remove the Energy System, at its own cost, in accordance with Section 15.5; or
- (b) acquire the Energy System from FEI at the Adjusted Energy System Purchase Price.

### 15.4 TERMINATION BY FEI FOR CAUSE

If FEI terminates this Agreement pursuant to Section 14.2(c), FEI may, at its option and by written notice to the District:

- (a) remove the Energy System, at its own cost, in accordance with Section 15.5; or
- (b) require the District to purchase the Energy System from FEI at the Adjusted Energy System Purchase Price.

### 15.5 REMOVAL OF THE ENERGY SYSTEM

If FEI is required to remove the Energy System pursuant to Sections 15.1(a), 15.3(a) or 15.4(a) or otherwise upon expiry of this Agreement, FEI shall promptly remove those portions of the Energy System located within the Building and at surface level at FEI's cost, and FEI shall perform such removal activities using standards of performance that are equivalent to those that apply to the performance of the Services under this Agreement. Any portion of the Energy System not removed by FEI prior to the 30<sup>th</sup> day following the termination or expiry of the Agreement will, as of such day, be deemed to be automatically transferred to the District, and become the property of the District, all at no cost to the District.

### 15.6 ACQUISITION OF THE ENERGY SYSTEM

If the District elects to acquire the Energy System pursuant to Sections 15.1(b), 15.3(b) or 15.4(b):

- (a) the District shall pay the Adjusted Energy System Purchase Price to FEI within the later of 30 days of (i) the effective date of expiration or termination, and (ii) confirmation of the Adjusted Energy System Purchase Price; and

- (b) FEI will promptly execute and deliver any documents and records reasonably required by the District to effect and facilitate the transfer of the Energy System to the District, including bills of sale, operation and maintenance manuals and warranties, and will use reasonable commercial efforts to obtain any consents and approvals that may be required in relation to the transfer (including, without limitation, BCUC approval), provided that (i) FEI's obligations under this Section 15.6(b) shall arise only upon FEI's receipt of all amounts due and owing to FEI from the District under this Agreement, and (ii) during the period between the expiration or termination of the Agreement and FEI's receipt of amounts due and owing to FEI from the District under this Agreement, FEI shall continue to maintain, or shall permit the District to maintain, the Energy System in good working order.

Notwithstanding the foregoing, the Parties acknowledge and agree that FEI's ability to sell or otherwise transfer its interest in and to the Energy System to the District may be subject to BCUC approval under applicable Laws.

## **ARTICLE 16 - NON-COMPLIANCE AND ENVIRONMENTAL**

### **16.1 NOTIFICATION OF NON-COMPLIANCE**

FEI or the District (as applicable, the "Notifying Party") will promptly, upon becoming aware thereof, notify the other Party in writing of:

- (a) a Release of a Contaminant or any other occurrence or condition in the Energy System, the Lands or any adjacent property which could subject the other Party to any fines, penalties, orders or proceedings under applicable Laws;
- (b) any charge, order, investigation or notice of violation or non-compliance issued against the Notifying Party relating to the Energy System, or the operation of the Energy System, under any applicable Laws; and
- (c) any notice, claim, action or other proceeding by any third party against the Notifying Party in respect of the Design and Construction or the Services or concerning the Release or alleged Release of any Contaminants at or from the Energy System or the Lands.

### **16.2 NOTIFICATION BY FEI**

FEI will notify the appropriate Governmental Authorities of any Release of any Contaminants at or from the Energy System in accordance with applicable Laws. The District may, but is not obligated to, notify the appropriate Governmental Authorities of any Release of any Contaminants at or from the Energy System in accordance with applicable Laws.

### **16.3 OWNERSHIP OF CONTAMINANTS**

Notwithstanding any rule of law to the contrary, any Disclosed Contaminant Released from the Energy System, or any top soil, earth or other material containing a Contaminant for which FEI is responsible pursuant to Section 4.5 that is removed from the Lands by FEI or any person for

whom it is in law responsible, will be and remain the sole and exclusive property and responsibility of FEI and will not become the property of the District, notwithstanding the degree of its affixation to the Lands and notwithstanding the expiry or earlier termination of this Agreement.

#### 16.4 SURVIVAL OF OBLIGATIONS

The obligations of the Parties under this Article 16 will survive the expiry or termination of this Agreement.

### **ARTICLE 17 - FORCE MAJEURE**

#### 17.1 SUSPENSION

Subject to the other provisions of this Article 17, if either Party is unable or fails by reason of Force Majeure to perform in whole or in part any obligation or covenant set forth in this Agreement, with the exception of unpaid financial obligations, such inability or failure will be deemed not to be a breach of such obligation or covenant and the obligations of both Parties under this Agreement will be suspended to the extent necessary during the continuation of any inability or failure so caused by such Force Majeure.

#### 17.2 DEFINITION OF FORCE MAJEURE

For purposes of this Agreement, the term "Force Majeure" means any event or occurrence not within the control of the Party claiming Force Majeure and which by the exercise of reasonable diligence such Party is unable to prevent or overcome, including any acts of God, including lightning, earthquakes, storms, washouts, landslides, avalanches, fires, epidemics and floods; strikes, lockouts or other industrial disturbances; acts of the Queen's or public enemies, sabotage, wars, blockades, insurrections, riots or civil disturbances, fires, explosions, breakages of or accidents to machinery or lines of pipe; the laws, orders, rules, regulations, acts or restraints of any court or governmental or regulatory authority. For the purposes of this Article 17, a Party is deemed to have control over the actions or omissions of those persons to which it, its agents, contractors or employees, have delegated, assigned or subcontracted its obligations and responsibilities. For greater certainty, a Force Majeure shall not include any weather related events that do not exceed 25 year events as recorded by Environment Canada or as otherwise may be determined by the BCUC from time to time.

#### 17.3 EXCEPTIONS

Neither Party will be entitled to the benefit of Section 17.1 under any of the following circumstances:

- (a) the Energy System not being Commissioned;
- (b) to the extent that the inability or failure was caused by the negligence or contributory negligence of the Party claiming Force Majeure;

- (c) to the extent that the inability or failure was caused by the Party claiming Force Majeure having failed to diligently attempt to remedy the condition by taking all reasonable acts and to resume the performance of such covenants and obligations with reasonable dispatch;
- (d) if the inability or failure was caused by lack of funds or is in respect of any amount due hereunder; or
- (e) unless, as soon as possible after the happening of the occurrence relied upon or as soon as possible after determining that the occurrence was in the nature of Force Majeure and would affect the claiming Party's ability to observe or perform any of its covenants or obligations under this Agreement, the claiming Party will have given to the other Party notice to the effect that the claiming Party is unable by reason of Force Majeure (the nature whereof will be therein specified) to perform the particular covenants or obligations.

#### 17.4 RESUMPTION OF OBLIGATIONS

The Party claiming Force Majeure will give notice to the other Party, as soon as possible after the Force Majeure condition is remedied, to the effect that the same had been remedied and that such Party has resumed, or is then in a position to resume, the performance of its suspended covenants and obligations hereunder either in whole or in part.

#### 17.5 SETTLEMENT OF LABOUR DISPUTES

Notwithstanding any of the provisions of this Article 17, and subject to Section 17.3, the settlement of labour disputes or industrial disturbances is entirely within the discretion of the particular Party involved and the Party may make settlement of it at the time and on terms and conditions as it may deem to be advisable and no delay in making settlement will deprive the Party of the benefit of Section 17.1.

### **ARTICLE 18 - CONDITIONS PRECEDENT**

#### 18.1 CONDITIONS PRECEDENT OF FEI

The obligation of FEI to carry out the transactions contemplated by this Agreement is subject to fulfillment of the following conditions on or before such date as may be specified, which is for the sole benefit of FEI, and which may be waived by FEI in accordance with Section 18.2:

- (a) FEI obtaining the approval by its board of directors of the terms and conditions of this Agreement on or before the 30th day following the Effective Date, provided that if such approval cannot be obtained by this date due to the fact that the board of directors has not yet considered the transaction FEI reserves the right to extend the period of time to that date when the board next convenes.

## 18.2 FEI NOTICE OF WAIVER

If a condition set out in Section 18.1 has not been satisfied on or before the date as may be specified for its fulfillment, FEI may waive compliance with the condition in whole or in part, in its sole discretion, by written notice to the District, failing which delivery of written notice of satisfaction or waiver of such condition, this Agreement will, to the extent any further obligations of the Parties which remain unfulfilled, be null and void, without liability between the Parties hereto, and, neither Party will be under any further obligation to the other to complete the transactions or future transactions, as the case may be, contemplated by this Agreement.

## **ARTICLE 19 - DISPUTE RESOLUTION**

### 19.1 REFERENCE TO ARBITRATION

The Parties will attempt to resolve all disputes which may arise under, out of, in connection with or in relation to this Agreement by negotiation. They will provide full and timely disclosure to one another of all facts relevant to the disputes to facilitate those negotiations. If any such dispute remains unresolved, for any reason, fifteen (15) days after either Party requested the other Party to enter into negotiations to resolve it, or if the Parties agree to waive negotiations in respect of it, then either Party may submit that dispute for final resolution by arbitration administered by the British Columbia International Commercial Arbitration Centre (“BCICAC”) under its “Shorter Rules for Domestic Commercial Arbitration”. The seat of that arbitration will be Vancouver, British Columbia, Canada. The language of that arbitration will be English. Alternatively, the Parties may agree, within the 15 days referred to above, to submit that dispute for final resolution by arbitration in another manner.

### 19.2 BINDING DECISION

The decision of the arbitrator, regardless of what arbitration procedure is used, will, for all purposes of this Agreement, be final and binding on the Parties.

### 19.3 CONTINUATION OF SERVICES

Each of the Parties will perform all of its respective obligations under this Agreement notwithstanding the existence of any dispute that arises from time to time between the Parties in respect of any matter related to this Agreement or during the resolution of any dispute in accordance with this Article 19.

### 19.4 COSTS

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 case, the non-prevailing Party shall pay all costs and expenses of the arbitration, but not those of the prevailing Party.

## ARTICLE 20 - GENERAL

### 20.1 RESPONSIBILITY FOR COSTS

FEI's performance of any of its obligations under this Agreement, including without limitation the obligation to design, construct and install the Energy System as provided in Section 2.1, shall be at FEI's sole cost and expense, unless expressly provided otherwise in this Agreement;

### 20.2 EXERCISE OF DISCRETION

Where anything in this Agreement is identified as being in either Party's discretion, such Party will have the right to exercise such discretion in its own best interest without regard for the interest of the other Party.

### 20.3 COOPERATION

FEI and the District will at all times extend co-operation to each other to ensure the orderly management and operation of the Energy System.

### 20.4 SOLICITATION

Nothing in this Agreement precludes either Party from soliciting or entering into, other contracts with the other Party.

### 20.5 NOTICES

Any notice or other communication required or permitted to be given under this Agreement will be effective only if in writing and when it is actually delivered (which delivery may be by telecopy or other telecommunications device) to the Party for whom it is intended at the following address or such other address in British Columbia as such Party may designate to the other Party by notice in writing delivered in accordance with this Section 20.5:

(a) if to FEI:

FortisBC Energy Inc.  
10th Floor, 1111 West Georgia Street  
Vancouver, B.C.  
V6E 4M3

Attention: Gareth Jones  
Telephone: 250-380-5972  
Telecopy: 250-388-6876

(b) if to the District:

Board of Education of School District No. 37 (Delta)  
4585 Harvest Drive  
Delta, B.C.  
V4K 5B4

Attention: Frank Geyer  
Telephone: 604-952-5336  
Telecopy: 604-952-5375

Notwithstanding the foregoing, notices with respect to Force Majeure will be given in writing by telecopy, or orally in person or by telephone (to be confirmed by telecopy), to the person or persons designated from time to time by the Parties as the person or persons authorized to receive such notices.

## 20.6 CONFIDENTIALITY

The District and FEI will treat as confidential the terms of this Agreement and all Confidential Information (as defined below) and will at all times during the term of this Agreement and for a reasonable time thereafter hold the terms of this Agreement and all Confidential Information in confidence and neither Party will, without the prior written consent of the other Party, disclose or divulge the terms of this Agreement or any Confidential Information to any person, provided that nothing in this Section 20.6 will restrict or prevent either Party from making any disclosure of such terms or any Confidential Information:

- (a) which is reasonably necessary or desirable for such Party to carry out and give full effect to the terms, conditions and intent of this Agreement and the matters contemplated hereby;
- (b) which is required by any Law, including the Freedom of Information and Protection of Privacy Act (British Columbia);
- (c) to any Governmental Authority;
- (d) to the British Columbia Utilities Commission or other regulatory agency as part or in support of any regulatory application or submission;
- (e) to the directors, officers or employees of such Party or to an Affiliate of such Party or to the directors, officers or employees of an Affiliate of such Party;
- (f) to the professional advisors of such Party on the same terms of confidentiality;
- (g) which is already in the public domain; or
- (h) in connection with legal proceedings or steps being taken to remedy a breach or default under this Agreement by the other Party.

For the purposes of this Section 20.6, “Confidential Information” means proprietary information of either Party such as data, plans, drawings, manuals, or specifications which have been provided by such Party, its employees, contractors, agents, subcontractors, Affiliates to the other Party pursuant to this Agreement or proprietary information either Party conceived or developed by or for such Party concerning construction practices, operation and maintenance practices, agreements, marketing plans and strategies, profits, costs, pricing and systems of procedure (provided that “Confidential Information” does not include information which was disclosed to the receiving Party by a third Party (unless, to the knowledge of the receiving Party, the third Party is under an obligation of confidentiality to the other Party) or any information developed or conceived by the receiving Party without using the “Confidential Information” of the other Party).

#### 20.7 SEVERABILITY

If any provision of this Agreement is found or determined to be invalid, illegal or unenforceable it will be construed to be separate and severable from this Agreement and will not impair the validity, legality or enforceability of any other provisions of this Agreement, and the remainder of this Agreement will continue to be binding on the Parties as if such provision had been deleted.

#### 20.8 NO WAIVER

No waiver by either Party of any default by the other in the performance of any of the provisions of this Agreement will operate or be construed as a waiver of any other or future default or defaults hereunder, whether of a like or a different character. To be binding, any waiver of any provision of this Agreement must be clearly expressed in writing to be signed by the waiving Party.

#### 20.9 BURDEN AND BENEFIT

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

#### 20.10 GOVERNING LAW

This Agreement and all matters arising hereunder will be governed by the laws of British Columbia and the federal laws of Canada applicable in British Columbia.

#### 20.11 ENTIRE AGREEMENT

This Agreement contains the whole agreement between the Parties in respect of the subject matter hereof and there are no terms, conditions or collateral agreements express, implied or statutory other than as expressly set forth in this Agreement and this Agreement supersedes all of the terms of any written or oral agreement or understanding between the Parties.

#### 20.12 TIME OF ESSENCE

Time is of the essence of this Agreement.

#### 20.13 FURTHER ASSURANCES

Each Party will, at all times hereafter on demand by the other, execute and deliver or cause to be executed and delivered all such further documents and do all such further acts and things as may be reasonably requested by the other Party to evidence, carry out and give full effect to the intent and meaning of this Agreement and to assure the completion of the transactions contemplated hereby.

#### 20.14 AMENDMENTS TO BE IN WRITING

Except as set out in this Agreement, no amendment or variation of this Agreement will be effective or binding upon the Parties unless such amendment or variation is set out in writing and duly executed by the Parties.

#### 20.15 FACSIMILE

This Agreement may be executed by the Parties and transmitted by facsimile transmission and, if so executed, transmitted and received, this Agreement will for all purposes be effective as if the Parties had delivered and executed the original Agreement and each Party undertakes to provide the other Party with a copy of this Agreement bearing original signatures forthwith upon demand.

#### 20.16 SUBJECT TO LEGISLATION

Notwithstanding any other provision hereof, this Agreement and the rights and obligations of FEI and the District under this Agreement are subject to all present and future laws, rules, regulations and orders of any legislative body, governmental agency or duly constituted authority now or hereafter having jurisdiction over FEI or the District.

#### 20.17 EXPENSES

Each Party to this Agreement shall be responsible for the payment of all costs, expenses, legal fees and disbursements incurred or to be incurred by it in negotiating and preparing this Agreement and all documents required to be delivered under this Agreement and otherwise relating to the transactions contemplated by this Agreement.

#### 20.18 NO CONTRARY AGREEMENT

No Party shall enter into an agreement or other commitment with any person if such agreement or commitment has terms or provisions in conflict with or inconsistent with the terms of this Agreement or which could reasonably be expected to lead to actions or consequences that would result in the Party being in breach of the commitments and obligations of the Party pursuant to this Agreement unless such other agreement or commitment is expressly approved by the other Parties.

#### 20.19 NO PARTNERSHIP

Nothing herein shall be deemed or construed to create a joint venture, partnership, employment or agency relationship between the Parties for any purpose.

20.20 ASSIGNMENT

Neither Party may assign this Agreement or any of its rights or obligations under this Agreement, and FEI may not assign, transfer or sell all or any part of the Energy System, except:

- (a) with the consent of the other Party, such consent not to be unreasonably withheld, delayed or conditioned; or
- (b) in the case of FEI, to an Affiliate of FEI which is a "public utility" as defined in the *UCA* on notice to, but without the consent of, the District.

20.21 COUNTERPARTS

This Agreement may be executed in counterparts with the same effect as if the Parties had signed the same document. All counterparts will be construed together and will constitute one agreement.

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

**FORTISBC ENERGY INC.**

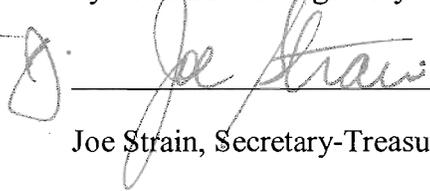
by its authorized signatory:

  
\_\_\_\_\_

Doug Stout,  
VP Energy Solutions & External Relations

**THE BOARD OF EDUCATION OF  
SCHOOL DISTRICT NO. 37 (DELTA)**

by its authorized signatory:

  
\_\_\_\_\_

Joe Strain, Secretary-Treasurer

# SAMPLE SCHEDULE “A”

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## Energy System Description

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### Mechanical Equipment Plans and Specifications

Equipment schedule:

- 1 ground source heat pumps water furnace 540NXW or equivalent. and associated pumps. The heat pump and related equipment will be installed in the boiler room at the old boilers location on the concrete pad.
- Each heat pump will have 1 pump on condenser side (5 Hp, 90gpm, 100 ft).
- Piping, control valves and other equipment and accessories connected to the above equipment.
- Connection of the heat pumps on the return of the boiler and installation of the 3 ways valves.
- 500 ft of piping 4 inches isolated between the field and the heat pump The pipes will be installed on the roof.
- Installation of geo-exchange field loop to match the designed performance of the system.
- Supply and do the injection of 400 usgals of propylene/glycol with a concentration of 25%.
- Control systems for the above mentioned equipment.
- BTU Meters

Prior to commencement of the Mechanical Equipment construction, FEI shall provide detailed drawings to the District for review and acceptance.

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## **SCHEDULE “B”**

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# **Delta School District Site Rules for Contractors**

## **Delta School District Site Rules for Contractors**

### **1.0 Safety**

- 1.1 For the purposes of this section, “Safety Regulations” means the rules, regulations, and practices required by WorkSafeBC.
- 1.2 The Contractor shall be solely responsible for site safety during the execution of all assigned construction and maintenance activities, including work performed by subcontractors and suppliers, and for compliance with the Safety Regulations, and shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the work.
- 1.3 If the District is of the reasonable opinion that the Contractor has not taken such precautions as are necessary to ensure compliance with the requirements of Clause 1.2, the District may take or order any remedial measures which it deems necessary, including stopping the performance of all or any portion of the work, and the District may use the employees of itself, the Contractor, any subcontractor or any other contractors to perform such remedial measures. The Contractor acknowledges and agrees that any failure by the Contractor to comply with the Safety Regulations shall constitute a default of the Contractor's contractual obligations and the District may issue a written notice instructing the Contractor to correct the default in the two (2) working days immediately following receipt of such notice.
- 1.4 The Contractor shall file any notices or any similar document (including, without limitation, a Notice of Project where applicable) required pursuant to the Safety Regulations. This duty of the Contractor will be considered to be included in the work and no separate payment therefore will be made to the Contractor.
- 1.5 The Contractor shall develop, maintain and supervise for the duration of the work a comprehensive safety program that will effectively incorporate and implement all required safety precautions. The program shall, as a minimum, respond fully to the Safety Regulations and general construction practices for the safety of persons or property, including without limitation the WorkSafeBC regulations that may be applicable (e.g. WHMIS, dust control, etc.).
- 1.6 The Contractor shall provide a copy of the safety program described in Clause 1.5 to the District prior to the commencement of the work and shall, at all times require, as far as it is reasonably practical to do so, that every employer and worker performing work in respect of the project complies with such program.
- 1.7 The Contractor shall arrange regular safety meetings at its expense, record the minutes of such meetings and maintain a complete file for review by the appropriate authorities.
- 1.8 The Contractor shall supply and maintain, at its own expense, at its office or other well-known place at the work site, safety equipment necessary to protect the workers and general public against accident or injury as prescribed by the governing authorities.
- 1.9 The Contractor shall supply and maintain all articles necessary for giving first-aid to any person who may be injured on the work site and shall establish an emergency procedure for the immediate removal of any injured person to a hospital or a doctor's care in accordance with the Safety Regulations.
- 1.10 The Contractor shall, as required under the Safety Regulations, promptly report all accidents of any sort arising out of or in connection with the performance of the work whether on or adjacent to the work site, giving full details and statements of witnesses. The District shall be copied on all accident reports and investigation reports.

## **2.0 Security and Access**

- 2.1 **Site and Building Access:** The District's Maintenance Services Department will issue gate and building keys, electronic access cards (complete with instructions as to how to arm/disarm the building intrusion alarm system and how to contact the alarm monitoring station) and identification badges for the Contractor to enter the site and building, disarm/arm the building intrusion alarm system, and access the portions of the site where the Contractor's work is taking place. The Contractor and all subcontractors must check in at the school office (if occupied by District staff) prior to entering other parts of the building. The access cards, keys and identification badges shall be promptly returned to the District at the end of the contract.
- 2.2 **Security:** The Contractor shall assume all responsibility for the security of the work site. The Contractor must ensure that all windows, doors and gates are secure and the building intrusion alarm system is armed (unless District staff are still in the building) at the end of the workday. The Contractor must also safeguard the rest of the building and/or site from access through possible open construction areas. Security doors shall at all times remain closed and shall not be propped open, even for a short time. The Contractor is responsible for any costs arising when the District's security runner services is called to attend a work site for security matters resulting from the Contractor's negligence.
- 2.3 **Normal School Hours:** Normal hours of operation for the District are 0730h-1600h Monday to Friday, excluding statutory holidays. For after-hours and weekend work, the Contractor must notify the District's Maintenance Services Department at least one business day in advance of the work.

## **3.0 Conduct**

- 3.1 **Noise Due to Construction or Maintenance Activities:** In accordance with the Delta Noise Bylaw 1906, "no person shall carry on or cause to be carried any construction work, reconstruction, alteration, repair or demolition of a building or structure, the operation of machinery, or works in connection with any excavation or highway before 07:00h or after 1900h and day of the week from Monday to Friday, inclusive, before 0900h or after 1700h on Saturdays, or at any time Sundays. The Contractor shall respect the classroom operations in the vicinity of the work site and as such will make every attempt to limit noisy work to times outside of classroom operation or to adequately dampen, silence and/or soundproof equipment that generates noise to mitigate disruption to the classrooms.
- 3.2 **Communication devices:** Radio and cell phone volume shall be at the minimum volume which is consistent with the ability to operate the device.
- 3.3 **Roadways:** All speed limits and other traffic rules must be obeyed and access to the roadways should not be impeded. Parking and secure storage of materials and equipment by the Contractor and subcontractors shall only be in designated areas only.
- 3.4 **Cleanliness:** The work site must be maintained for an orderly appearance on a daily basis. Trash and construction debris shall be contained at all times and removed from the work site weekly.
- 3.5 **Toilets:** All temporary toilets shall have their doors faced away from streets. In no cases shall a worker utilize any staff washroom or other staff facilities at the work site, except as otherwise agreed in writing by the District. Under no circumstances will workers be permitted to use student washrooms.
- 3.6 **Identification Badges:** All workers shall have a District-assigned identification badge that clearly indicates the company's name and the worker's name. It is to be worn whenever at the work site.

- 3.7 **Smoking:** Smoking is not permitted on District property.
- 3.8 **Alcohol/Drugs:** No alcoholic beverages or non-prescription drugs shall be brought or consumed at the work site.
- 3.9 **Animals:** No dogs or other animals, are permitted at the work site without the written consent of the District.
- 3.10 **Fitness for Work:** All workers must be fit for work at all times. The District retains the right to request individuals leave the work site if unfit for any reason including, without limitation, inebriation, taking drugs, injury, fatigue, rudeness or any other reason that may affect the quality of the work or represents a breach of these rules.
- 3.11 **Theft:** Workers who steal from occupants or the District shall be immediately ejected from the work site. The Contractor is responsible for all such thefts irrespective of whether the worker is an employee of the Contractor or a subcontractor.
- 3.12 **Discrimination and Harassment:** The District actively promotes a safe and secure school environment and as such does not tolerate violations of human rights legislation, including:
- (a) discriminatory acts against any person with respect to the work or school environment or any educational program or service provided to or by that person because of race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age of that person, or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person;
  - (b) all forms of actual, attempted or threatened physical harm directed at any person; or
  - (c) any form of sexual harassment such as unwelcome sexual advances with actual or implied work related consequences; unwelcome remarks, questions, jokes or innuendo of a sexual nature including sexist comments or sexual invitations; verbal abuse, intimidation or threats of a sexual nature; unwelcome leering, staring or making sexual gestures; whistling or catcalls; display of pornographic or other sexual materials; offensive pictures, graffiti, cartoons or sayings; unwanted physical contact such as touching, patting, pinching or hugging; and physical assault of a sexual nature
-

**ENERGY SYSTEM SERVICE AGREEMENT**

**NORTH DELTA SECONDARY SCHOOL**

**THIS AGREEMENT** dated for reference the 26<sup>th</sup> day of September, 2011.

**BETWEEN:**

**THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 37 (DELTA)**  
a corporation established under the School Act R.S.B.C. 1996, c. 412 having an  
office at 4585 Harvest Drive, Delta, British Columbia, V4K 5B4

(the "District")

OF THE FIRST PART

**AND:**

**FORTISBC ENERGY INC.**, a company duly incorporated under the laws of the  
Province of British Columbia, having its registered office at 10th Floor, 1111  
West Georgia Street, Vancouver, B.C. V6E 4M3

("FEI")

OF THE SECOND PART

**WHEREAS:**

- A. The District is the owner of North Delta Secondary School (the "Building") and lands located at 11447 82<sup>nd</sup> Avenue, Delta, British Columbia, which lands are legally described as:

PID: 024-095-478 Property No: 108762

THE EAST HALF OF THE NORTH HALF OF THE SOUTH WEST QUARTER OF  
SECTION 25 TOWNSHIP 4 EXCEPT FIRSTLY PLAN WITH BYLAW FILED 35637  
SECONDLY PART SUBDIVIDED BY PLAN 13541 THIRDLY PART SUBDIVIDED  
BY PLAN 16496 FOURTHLY PARCEL B PLAN 31809 NEW WESTMINSTER  
DISTRICT

(the "Lands")

- B. FEI wishes to supply to the Building, and the District wishes to purchase, Thermal Energy generated by an Energy System that FEI will construct on the Lands, and which FEI will own and operate, all pursuant to the terms of this Agreement.

- C. The Thermal Energy supplied by FEI to the Building pursuant to this Agreement will be priced at the rate set forth in the Energy System Rate Development Agreement between the Parties dated September 26<sup>th</sup>, 2011.

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT** in consideration of the premises and the covenants, agreements, representations, warranties and payments set out herein, the receipt and sufficiency of which is hereby acknowledged by each Party, the Parties covenant and agree as follows:

## ARTICLE 1 - INTERPRETATION

### 1.1 DEFINITIONS

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

- (a) “Adjusted Energy System Purchase Price” means, as of the date on which a purchase of the Energy System pursuant to Article 15 is effective, either:
  - (i) the Rate Base Value; or
  - (ii) such other purchase price for the Energy System as is determined by the BCUC; plus all applicable taxes;
- (b) “Affiliate” has the meaning set out in the *Business Corporation Act*, S.B.C. 2002, c.57 and includes FortisBC Inc.;
- (c) “Agreement” means this agreement, including the preamble hereto and any schedules attached hereto and the terms “this Agreement”, “hereof”, “herein”, “hereunder” and “hereinafter” and similar expressions refer to the Agreement and not to any particular Section or other portion thereof and includes any agreement supplementary or ancillary thereto;
- (d) “Acceptance Date” means the date of BCUC Acceptance;
- (e) “BCUC” means the British Columbia Utilities Commission, or any successor thereto;
- (f) “BCUC Acceptance” has the meaning assigned to that term in Section 11.1;
- (g) “Building” has the meaning assigned to that term on page one of this Agreement;
- (h) “Building System” means the space heating, cooling and ventilation, and domestic hot water distribution and control systems existing in the Building, to which the Energy System will be connected;
- (i) “Business Day” means any day except Saturday and Sunday or any day on which banks are generally not open for business in Vancouver, British Columbia;
- (j) “Capital Contribution” means \$ 0

- (k) “Commissioned” means once the Energy System is certified complete and operating in accordance with the Specifications by a professional engineer under seal;
- (l) “Commission Date” means the day on which the Energy System is Commissioned;
- (m) “Contaminants” means, collectively, any contaminant, toxic substance, dangerous good, or pollutant or any other substance which when released to the natural environment is likely to cause, at some immediate or future time, material harm or degradation to the natural environment or material risk to human health, and includes any radioactive materials, asbestos materials, urea formaldehyde, underground or aboveground tanks, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive or toxic substances, hazardous waste or waste of any kind, pesticides, defoliants, or any other solid, liquid, gas, vapour, odour or any other substance .the storage, manufacture, disposal, handling, treatment, generation, use, transport, remediation or Release into the Environment of which is now or hereafter prohibited, controlled or regulated under Environmental Laws;
- (n) “Continuing Service Interruption Notice” has the meaning assigned to that term in Section 14.3(b);
- (o) “Contractor” means a prime contractor hired by FEI to oversee and complete the construction and installation of the Energy System;
- (p) “Design and Construction” means the total construction and related services required to design, construct and commission the Energy System and connected components of the Building System;
- (q) “Design Thermal Energy” means the maximum amount of Thermal Energy that the Energy System is capable of delivering through the Thermal Energy Meter and is included in the Specifications;
- (r) “Disclosed Contaminants” means Contaminants:
  - (i) the existence of which are specifically identified in the reports provided by the District to FEI and listed in Schedule C;
  - (ii) that were or ought to have been discovered, foreseen or anticipated upon reasonable inspection by FEI prior to the Effective Date; and
  - (iii) that were caused by FEI or any person for whom FEI is responsible at law;
- (s) “District” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (t) “District Losses” has the meaning assigned to that term in Section 12.6;
- (u) “District Site Rules for Contractors” means the rules set forth in Schedule “B”;
- (v) “Effective Date” means the date set out on page one of this Agreement;

- (w) “Energy System” means the equipment that FEI constructs and owns which will provide the Building with its energy needs for space heating, cooling and ventilation, and domestic hot water use, all as set forth in this Agreement;
- (x) “Energy System Service Agreement” has the meaning assigned to that term in the Energy System Rate Development Agreement;
- (y) “Energy System Rate Development Agreement” means that energy system rate development agreement between the District and FEI dated as of September 26<sup>th</sup>, 2011;
- (z) “Environment” includes the air (including all layers of the atmosphere), land (including soil, sediment deposited on land, fill, lands submerged under water, buildings, and improvements), water (including oceans, lakes, rivers, streams, groundwater, and surface water), and all other external conditions and influences under which humans, animals, and plants live or are developed and “Environmental” will have a corresponding meaning;
- (aa) “Environmental Attributes” means:
  - (i) all attributes associated with, or that may be derived from the Energy System installed having decreased environmental impacts relative to the use of conventional heating and cooling and hot water heating systems including any existing or future credit, allowance, certificate, right, benefit or advantage or proprietary or contractual right whether or not tradable;
  - (ii) any existing or future instrument, including without limitation any environmental emission allowances and environmental emission reduction credits, reduction right, allowance, certificate or other unit of any kind whatsoever, whether or not tradable and any other proprietary or contractual right, whether or not tradable, and any resulting from, or otherwise related to the actual assumed reduction, displacement or offset of emissions associated with, or that may be derived from the Energy System installed; and
  - (iii) all revenues, entitlement, benefits and other proceeds arising from or related to the foregoing;
- (bb) “Environmental Laws” means any and all statutes, laws, regulations, orders, bylaws, standards, guidelines, protocols, permits, and other lawful requirements of any Governmental Authority having jurisdiction over the Lands or the Energy System now or hereafter in force with respect in any way to the Environment, environmental assessment, health, occupational health and safety, protection of any form of plant or animal life, or transportation of dangerous goods, including the principles of common law and equity;
- (cc) “Expiry Date” means the earlier of:
  - (i) June 30, 2031, or the expiry of any renewal term thereof; and
  - (ii) the closure of the Building, or the Building otherwise ceasing to operate as a school (as defined under the *School Act* (British Columbia));

- (dd) “FEI” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (ee) “FEI Losses” has the meaning assigned to that term in Section 12.5;
- (ff) “Force Majeure” has the meaning assigned to that term in Section 17.2;
- (gg) “Governmental Authority” means any federal, provincial, regional, municipal, local or other government, governmental or public department, court, tribunal, arbitral body, commission, board, bureau or agency and any subdivision, agent, commission, board or authority thereof;
- (hh) “Lands” has the meaning assigned to that term in Recital A and includes the Building located on the Lands;
- (ii) “Laws” means laws, statutes, regulations, bylaws, Permits and orders of any Governmental Authority having jurisdiction, including without limitation, Environmental Laws;
- (jj) “Maintain” means to operate, service and maintain in a safe and reliable condition and “maintaining” and “maintenance” have corresponding meanings;
- (kk) “Monthly Charges” means that amount to be paid by the District to FEI with respect to the delivery of Thermal Energy to the Building pursuant to the Energy System Rate Development Agreement and any other payments due and owing by the District under this Agreement;
- (ll) “Notifying Party” has the meaning assigned to that term in Section 16.1;
- (mm) “Party” means a signatory to this Agreement, and the “Parties” means all of such signatories;
- (nn) “Permits” means all permits, licences, certificates, approvals, authorizations, consents and the like issued by any Governmental Authority;
- (oo) “Rate Base Value” means the value of the Energy System that the BCUC accepts from time to time in accordance with the Energy System Rate Development Agreement;
- (pp) “Release” includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, migration, disposal, or dumping;
- (qq) “Right of Access and Licence” means the right and licence granted herein by the District to FEI pursuant to Section 4.1 of this Agreement;
- (rr) “Service Failure Notice” has the meaning assigned to that term in Section 14.3(c);
- (ss) “Service Interruption” means, in any hour:
  - (i) a failure of the Energy System in that hour to deliver Thermal Energy at the Thermal Energy Meter sufficient to meet the Thermal Energy demand of the

Building during that hour in accordance with the Specifications up to the Design Thermal Energy, and except where such failure is directly caused by:

- a. the careless or wilful damage to the Energy System by the District or its agents or other persons for whom the District is responsible;
  - b. damage caused to the Energy System as a result of the negligent acts or omissions of the District, its agents or those for whom in law the District is responsible;
  - c. an event of Force Majeure that triggers the suspension of FEI's obligations under the Agreement pursuant to Article 17; or
  - d. maintenance activities that FEI is performing on the Energy System that have been scheduled with the consent of the District (such consent not to be unreasonably withheld); and
- (ii) if the failure described in Section 1.1(rr)(i), FEI's failure in that hour to deliver to the Building through alternative means thermal energy sufficient to maintain an average temperature of 16 degrees Celsius in each room of the Building intended to be served by the Energy System (all as determined by the District, acting reasonably);
- (tt) "Service Interruption Notice" has the meaning assigned to that term in Section 14.3(a);
- (uu) "Services" means those services to be provided by FEI to supply Thermal Energy to a Building from an Energy System, and for greater certainty includes the services described in Articles 5 and 6, and excludes the Design and Construction;
- (vv) "Specifications" means the specifications for the Energy System prepared by FEI in consultation with the District in accordance with Section 2.3 and includes the Design Thermal Energy;
- (ww) "Term" has the meaning assigned to that term in Section 3.1;
- (xx) "Thermal Energy" means the amount of energy that FEI provides to the Building measured through a Thermal Energy Meter;
- (yy) "Thermal Energy Meter" means a device that complies with the International Organization of Legal Metrology recommendations for measuring thermal energy; and
- (zz) "UCA" means the *Utilities Commission Act*, R.S.B.C. 1996, c. 473 as may be amended from time to time.

## 1.2 SCHEDULES

The following Schedules, as may be amended from time to time, are incorporated by reference into this Agreement:

Schedule "A"	Energy System Description
Schedule "B"	Delta School District Site Rules for Contractors

Schedule "C" List of Environmental Reports

1.3 AMENDMENTS TO SCHEDULES

The District and FEI acknowledge that during the construction phase of the Energy System there may be additions and alterations to the Specifications for the Energy System which would result in more efficient use and operation of the Energy System. If these additions or alterations result in changes to any of the above Schedules, the Parties mutually agree to amend the Schedules by way of a written amendment prior to the Commission Date.

1.4 INTERPRETATION

Except where the context requires otherwise or except as otherwise expressly provided, in this Agreement:

- (a) all references to a designated Article or Section are to the designated Article or Section of this Agreement unless otherwise specifically stated;
- (b) the singular of any term includes the plural, and vice versa, and the use of any term is equally applicable to any gender and, where applicable, body corporate;
- (c) any reference to a corporate entity includes and is also a reference to any corporate entity that is a successor by merger, amalgamation, consolidation or otherwise to such entity;
- (d) the preamble and all schedules referred to and attached to this Agreement are incorporated by reference and will form a part of this Agreement;
- (e) all sums of money which are referred to in this Agreement are in lawful money of Canada;
- (f) the headings of the Articles and Sections set out in this Agreement are for convenience only and will not be considered in any interpretation of this Agreement;

**ARTICLE 2 - DESIGN AND CONSTRUCTION OF THE ENERGY SYSTEM**

2.1 CONSTRUCTION

FEI will perform the Design and Construction:

- (a) in accordance and in compliance with the Specifications;
- (b) in a good and workmanlike manner using qualified workers, and in accordance with sound and currently accepted industry standards and codes of practice normally employed, at the time and place of performance, in projects of a similar type and nature;
- (c) to ensure operational compatibility with the Building System;
- (d) in a safe and environmentally sound manner, and in accordance with all applicable Laws; and

(e) in accordance with the terms of this Agreement.

## 2.2 CAPITAL CONTRIBUTION

The District will pay to FEI within 30 days of the Commission Date the Capital Contribution for the purpose of reducing the capital investment and the associated carrying cost of capital by FEI for provision of Service to the Building.

## 2.3 SPECIFICATIONS

Subject to and in accordance with this Section 2.3, FEI shall prepare and complete the Specifications promptly following the Acceptance Date.

FEI confirms the Energy System, as described in the Specifications and as contemplated by the Energy System description set out in Schedule A, will be designed to meet the thermal energy requirements of the Building and operational compatibility of the Building System based in part on information supplied by the District as to historical usage, which information has not been independently verified by FEI. FEI shall have no liability to the District for the failure of the Energy System to satisfy the requirements of the Building where such failure is attributable to the information supplied by the District being incorrect, inaccurate or incomplete.

FEI will prepare the Specifications in consultation with the District in order to ensure the Energy System can be appropriately accommodated within the Building and interface with the Building Systems. FEI will submit material changes to the Specifications, both before and during construction, to the District for review and comment prior to such changes taking place. If the District does not comment on the Specifications or material changes to the Specifications or advise that it has no comment within five (5) Business Days of receipt, FEI will be entitled to proceed on the basis of the information provided to the District. FEI will revise the Specifications based on the comments from the District provided that doing so will not impact FEI's costs or adversely affect system performance.

Review of and comment on the Specifications by the District does not impose any obligation on the District to verify the suitability of the Energy System or be construed as confirmation by the District that the Energy System satisfactorily meets the Building's energy requirements.

## 2.4 WORK SCHEDULE

Within ten (10) Business Days following the Acceptance Date, FEI will submit to the District for review and comment a Gantt chart schedule for the Design and Construction listing activities to be undertaken during the Design and Construction stages, key milestones and approval dates and other pertinent dates. Any revisions to the schedule must be reviewed and commented by the District, which review and comment will not be unreasonably withheld, conditioned or delayed.

In order to ensure that the Building System remains operational during normal school hours (as defined in Schedule B), the cut-over from the existing heating/cooling plant to the Energy System shall be performed outside normal school hours.

## 2.5 REPORTING

FEI shall produce and submit a monthly progress report for the Design and Construction to the District until the Energy System is Commissioned.

## 2.6 TESTING AND COMMISSIONING

FEI shall coordinate and supervise the start-up and testing of the Energy System to ensure the Energy System and other components of the Building System affected by the Design and Construction are operating in accordance with the Specifications, upon which the Energy System will be Commissioned. The District shall be invited to participate in the start-up and testing exercise.

# ARTICLE 3 - TERM AND RENEWAL

## 3.1 TERM

The term of this Agreement commences on the Effective Date and continues until the Expiry Date unless it is terminated earlier as authorized under this Agreement ("Term").

## 3.2 RENEWAL

This Agreement will automatically renew for periods of ten (10) years unless either Party provides written notice to the other Party no less than six (6) months prior to the Expiry Date, provided that there shall be no automatic renewal in the event that the Expiry Date arises as a result of the closure of the Building, or the Building otherwise ceases to operate as a school (as defined under the *School Act* (British Columbia)).

# ARTICLE 4 - ACCESS AND PERMITS

## 4.1 ACCESS RIGHTS

The District hereby grants to FEI, during the Term from and following the Acceptance Date, for so long as FEI shall require it, but subject to Section 4.4, a full, free and uninterrupted licence and right of way on, over and under the Lands and Building, for FEI, its assigns, employees, contractors, agents, invitees and licensees at all times hereafter for the purposes set out in this Agreement, provided FEI will avoid to the extent reasonably possible, and otherwise minimize interference with and inconvenience to, the occupants of the Building and the access rights of FEI will be limited to the extent reasonably necessary to fulfil FEI's obligations hereunder.

Without limiting the generality of the foregoing, but subject to Section 4.4, such right of way and licence shall include the full power, right and liberty to excavate for, install, place, construct, renew, alter, repair, maintain, operate, use, abandon, remove or replace its infrastructure, in whole or in part, and to enter upon, along, across, over or under the Lands or Building and have continual access to the Energy System, with or without vehicles, supplies, machinery or equipment, for any of the purposes set out in this Agreement, and to clear such portion of the Lands and keep it cleared of obstructions which, in the opinion of FEI, acting reasonably, may

interfere with any of the rights granted to FEI herein. The District may direct, in its discretion, FEI to use alternate routing for any Environmental or other reasonable purpose.

FEI covenants and agrees with the District not to do or knowingly permit to be done anything which may, in the opinion of the District acting reasonably, damage or interfere with the Building or impair the operating efficiency thereof or create any hazard.

#### 4.2 CONDITION OF LAND

The District represents and warrants to FEI that as of the Effective Date:

- (a) to the best of the District's knowledge, the Lands are free of Contaminants other than those specifically identified in the reports provided by the District to FEI and listed in Schedule C; and
- (b) there are no actions, proceedings, investigations, claims (including remediation cost recovery claims) pending, or to the knowledge of the District, threatened, that would interfere with FEI's access rights pursuant to Section 4.1.

#### 4.3 PERMITS

FEI will obtain and maintain at its own expense all Permits necessary for the Design and Construction and the Services.

#### 4.4 SAFETY, SECURITY AND BUILDING ACCESS

Notwithstanding anything to the contrary in this Agreement, FEI will adhere, and will cause all persons for whom it is responsible under this Agreement (including, without limitation, the Contractor) to adhere to the District Site Rules for Contractors.

#### 4.5 REMEDIATION

FEI shall promptly remediate any Disclosed Contaminants on the Lands as required by applicable Law that result from, or are Released as a result of the Design and Construction or the Services, except to the extent caused or contributed to by the District's negligence. In the event that Contaminants on the Lands, other than Disclosed Contaminants, are discovered by FEI, FEI will promptly notify the District of such discovery and the Parties will review the impact of such discovery, if any, on the Design and Construction or the Services.

### **ARTICLE 5 - SERVICE PROVISION**

#### 5.1 PROVISION OF SERVICE

Subject to the terms and conditions of the Agreement, FEI will provide the Services to the District throughout the Term.

## 5.2 SERVICE MONITORING AND REVIEW

The Parties acknowledge that FEI may be required from time to time to prepare and submit reports to the BCUC concerning the operation and performance of the Energy System, and the District shall provide FEI with reasonable cooperation in relation to the preparation of such reports.

## 5.3 STANDARD OF PERFORMANCE

In performing the Services, FEI will:

- (a) use only qualified personnel and exercise the same degree of care, skill and supervision as would be exercised by a reasonable and prudent owner experienced in performing like services;
- (b) perform the Services in accordance with all applicable Laws;
- (c) perform the Services in accordance with ongoing industry standards and codes of practice; and
- (d) without limiting the effect of the foregoing, abide by any standards of performance in relation to the Services that the BCUC may set from time to time according to the provisions of the UCA.

## 5.4 INTERRUPTION

No interruption of any of the on-site and off-site services, utilities and amenities provided by FEI to the Building will, except to the extent, if any, caused by any wrongful or negligent act of FEI or any person for whom FEI is responsible at law, render FEI liable to the District or any person claiming through or under the District, or relieve the District from any of its obligations under this Agreement. Notwithstanding the foregoing, FEI will use all reasonable diligence to remedy any such interruption if it is within its power and obligation to do so.

# **ARTICLE 6 - ENERGY SYSTEM MAINTENANCE AND OPERATION**

## 6.1 MAINTENANCE AND REPAIR OF ENERGY SYSTEM

Subject to Section 6.2, FEI will perform the Services and otherwise maintain or cause to be maintained and repaired the Energy System throughout the Term:

- (a) in accordance with the Energy System design and operating specifications and requirements as established by the qualified engineers engaged by FEI in the design and construction of the Energy System, and the equipment manufacturers;
- (b) in a good and workman-like manner using qualified workers, and in accordance with sound and currently accepted industry standards and codes of practice normally employed, at the time and place of performance, in projects of a similar type and nature;
- (c) to ensure operational compatibility with the Building System;

- (d) in a safe and environmentally sound manner, and in accordance with all applicable Laws; and
- (e) in accordance with the terms of this Agreement.

FEI will not delay repair of the Energy System for any reason, including as a result of a dispute with the District in relation to the costs and expenses of repair pursuant to Section 6.2.

## 6.2 REPAIR DAMAGE

The District will be responsible for all costs and expenses incurred by FEI in respect of any damage to the Energy System caused by or resulting from:

- (a) the careless or wilful damage to the Energy System by the District or its agents or other persons for whom at law the District is responsible; or
- (b) damage caused to the Energy System as a result of the negligent acts or omissions of the District, its agents or those for whom in law the District is responsible.

## **ARTICLE 7 - CHARGES**

### 7.1 MONTHLY CHARGES

The District throughout the Term commencing on the Commission Date in accordance with this Article 7 will pay to FEI when due for the Thermal Energy that FEI delivers and meters to the Building according to the rates set out in the Energy System Rate Development Agreement plus all applicable taxes (including harmonized sales tax applicable thereon) and any imposed taxes levied after the Commission Date by a government or regulatory agency that are related to the Energy System (including, but not limited to capital taxes or royalties) and any other payments due and owing by the District under this Agreement.

### 7.2 MONTHLY STATEMENT

FEI will, within 15 days following the end of each month, deliver to the District a statement setting out the Monthly Charges including all applicable taxes payable for that month.

### 7.3 PAYMENT

The District will pay the full amount specified in each statement provided to it in accordance with Section 7.2 within 30 days of receipt of such statement. All amounts payable to FEI will be made by cheque mailed to FEI at its address for service specified in Section 20.5.

### 7.4 PAYMENT DUE

Subject to Section 14.1, the obligation of the District to pay the Monthly Charges continues whether or not the Energy System is being used to provide the Building with its energy needs for space and ventilation heating, cooling and domestic hot water use.

#### 7.5 ARREARS TO BEAR INTEREST

If any amount owing to FEI or the District is not paid on or before the date on which it is due, a late payment charge of 1.5% per month will be assessed each month on all outstanding balances not paid by the due date.

### **ARTICLE 8 - OWNERSHIP OF THE ENERGY SYSTEM**

Notwithstanding the payments made by the District to FEI under this Article 8, any provision of this Agreement, any degree of annexation or affixation, or rule of law or equity to the contrary the District will have no proprietary interest in the Energy System which is, and shall remain, the property of FEI and may be used by FEI in its business or removed in whole or in part as it may see fit, and for any of such purposes, and FEI may enter in, upon and under all the Lands for the purposes of the maintenance, renewals, repair, removal or operation of the Energy System or any part thereof; provided that FEI shall not leave any part of the Energy System in such a state as to constitute a nuisance or a danger to the public through neglect, non-use and want of repair, and provided further that nothing in this clause shall nullify or otherwise impact or invalidate in any way the District's rights under Article 15 to purchase the Energy System.

### **ARTICLE 9 - ENVIRONMENTAL ATTRIBUTES**

#### 9.1 ENVIRONMENTAL ATTRIBUTES

All right, title and interest now existing or which may exist at any time in the future in the potential or actual commercial value of any Environmental Attributes that arise or accrue by virtue of the construction and operation of the Energy System will belong to the District. At the request of the District, FEI will reasonably cooperate with the District in applying for and assigning any Environmental Attributes to the District.

#### 9.2 GRANTS

Any grants from any Governmental Authority, a Crown Corporation or non-governmental authority that may be derived from a reduction in energy consumption by the Building will belong to the District.

### **ARTICLE 10 - REPRESENTATIONS AND WARRANTIES**

#### 10.1 DISTRICT'S REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties contained in this Agreement, the District hereby represents and warrants to FEI as follows and acknowledges that FEI is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) the District has the full right, power and authority to enter into this Agreement;

- (b) all necessary action on the part of the District has been taken to authorize and approve the execution and delivery of this Agreement and the performance by the District of its obligations hereunder;
- (c) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to the District as of the date of this Agreement;
- (d) the District is not party to any action, suit or legal proceeding, actual or, to the knowledge of the District, threatened, and there are no circumstances, matters or things known to the District which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or, to the knowledge of the District, threatened against the District before or by any Governmental Authority, which could affect the District's ability to perform its obligations under this Agreement; and
- (e) no person, firm or corporation has or will have as of the Commission Date, any agreement, right, or option or right capable of becoming an agreement, right, or option for the purchase or acquisition of the Energy System.

## 10.2 FEI'S REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties contained in this Agreement, FEI hereby represents and warrants to the District as follows and acknowledges that the District is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) FEI has the full right, power and authority to enter into this Agreement;
- (b) all necessary corporate action on the part of FEI has been taken to authorize and approve the execution and delivery of this Agreement and the performance by FEI of its obligations hereunder;
- (c) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to FEI as of the date of this Agreement;
- (d) FEI is not party to any action, suit or legal proceeding, actual or threatened, and there are no circumstances, matters or things known to FEI which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or threatened against FEI before or by any Governmental Authority, which could affect FEI's ability to perform its obligations under this Agreement; and
- (e) FEI has or will have all permits, licenses, authorizations and other documentation required for the operation of the Energy System after the Commission Date; and
- (f) FEI has all the required expertise to fulfill its obligations under this Agreement.

### 10.3 DELEGATION AND SUBCONTRACTING

FEI may delegate and subcontract its obligations under this Agreement with respect to Design and Construction and Services to any contractor, consultant, agent or representative provided that FEI shall be fully responsible for the acts and omissions of such persons and those either directly or indirectly employed by them to the same extent as FEI for its own acts or omissions.

## **ARTICLE 11 - BCUC ACCEPTANCE**

### 11.1 REGULATORY REVIEW TERMINATION

Subject to Section 11.3, either Party may terminate this Agreement if within 90 days following the Effective Date, this Agreement and the Energy System Rate Development Agreement, including the Market Rate and the SD37 Rate Rider as defined in that Agreement have not been accepted for filing by the BCUC (such acceptance being herein called "BCUC Acceptance").

### 11.2 REGULATORY FILING

FEI, on behalf of itself and the District, and at its own cost, shall file the Agreement with the BCUC within a reasonable time after the Effective Date. FEI shall take all steps reasonably required to secure BCUC Acceptance, which shall consist of those procedural steps related to filing the Agreement and providing argument and witnesses in support of filing.

### 11.3 TERMINATION

A Party entitled to terminate under Section 11.1 must do so by giving notice to terminate to the other Party at any time after the right to terminate arises pursuant to Section 11.1, and prior to:

- (a) the date of issuance of the BCUC Acceptance; and
- (b) the date that is 90 days after the Effective Date.

### 11.4 EFFECT OF BCUC ACCEPTANCE

The Parties acknowledge that upon BCUC Acceptance, the Services will be subject to regulation by the BCUC under the UCA, and will form another class of service that FEI provides as a public utility. The Parties acknowledge that the terms of the UCA may supersede the terms and conditions of this Agreement.

## **ARTICLE 12 - INDEMNITY**

### 12.1 FEI'S INDEMNITY

Without limiting any other obligations of FEI provided herein, FEI will indemnify, defend, and save harmless the District and its trustees, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including the full amount of all legal fees and expenses on a

solicitor-client basis) which may be paid by, incurred by, or asserted against the District or its directors, officers, employees, agents, successors, or assigns, arising from or in connection with:

- (a) the breach or non-performance by FEI of any of its obligations or warranties hereunder; or
- (b) the negligence or wilful misconduct of FEI, its employees, contractors or agents in respect of the Energy System, and in the performance of the obligations of FEI pursuant to this Agreement,

excluding only such of the foregoing as arise from the fraud, negligence or wilful misconduct of the District or its trustees, officers, directors, members, employees, contractors or agents, or the breach or non-performance by the District of any of its obligations or warranties hereunder.

## 12.2 DISTRICT'S INDEMNITY

Without limiting any other obligations of the District provided herein, the District will indemnify, defend, and save harmless FEI, its Affiliates and their respective shareholders, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including the full amount of all legal fees and expenses on a solicitor-client basis) which may be paid by, incurred by, or asserted against FEI, its Affiliates or their respective shareholders, directors, officers, employees, agents, successors, or assigns, arising from or in connection with:

- (a) the breach or non-performance by the District of any of its obligations or warranties hereunder; or
- (b) the negligence or wilful misconduct of the District, its employees, contractors or agents in respect of the Energy System, and in the performance of the obligations of the District pursuant to this Agreement,

excluding only such of the foregoing as arise from the fraud, negligence or wilful misconduct of FEI or its Affiliates or any of their respective officers, directors, members, employees, contractors or agents, or the breach or non-performance by FEI of any of its obligations or warranties hereunder.

## 12.3 CONSEQUENTIAL LOSS

In no event will the District or FEI or any of their respective officers, directors, employees, contractors or agents be liable to the other Party for any indirect or consequential loss, cost or expense whatsoever, including any loss of profits, revenues or other economic loss, suffered by the other Party or its officers, directors, employees, contractors or agents.

## 12.4 SURVIVAL OF INDEMNITY

The indemnity of each of the District and FEI provided under this Article 12 will survive the Term of this Agreement.

## 12.5 ENVIRONMENTAL INDEMNITY BY THE DISTRICT

The District will indemnify and save harmless FEI, its Affiliates, directors, officers, shareholders, employees, agents, successors and permitted assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants (but not including Disclosed Contaminants) and remediation of the Lands and any affected adjacent property) (collectively, "FEI Losses") which may be paid by, incurred by or asserted against FEI, its Affiliates and their respective directors, officers, shareholders, employees, agents, successors or permitted assigns, arising from or in connection with any Contaminants (but not including Disclosed Contaminants) existing on the Lands prior to the Commission Date or brought onto the Lands or Released onto the Lands by the District or any person for whom it is in law responsible, except to the extent the FEI Losses suffered were caused or contributed to by any act or omission of FEI or any person for whom FEI is in law responsible after FEI had knowledge of the Contaminants.

## 12.6 ENVIRONMENTAL INDEMNITY BY FEI

FEI will indemnify and save harmless the District, its Affiliates and their respective trustees, directors, officers, employees, agents, successors and permitted assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the Lands and any affected adjacent property) (collectively, "District Losses") which may be paid by, incurred by or asserted against the District, its Affiliates, and their respective trustees, directors, officers, employees, agents, successors or permitted assigns, arising from or in connection with any Contaminants brought onto the Lands or any Disclosed Contaminants Released onto the Lands by FEI or any person for whom it is in law responsible, except to the extent the District Losses suffered were caused or contributed to by any act or omission of the District or any person for whom the District is in law responsible after the District had knowledge of the Contaminants.

# ARTICLE 13 - INSURANCE

## 13.1 FEI INSURANCE COVERAGE.

- (a) FEI will obtain and maintain at its own expense throughout the Term, Commercial General Liability Insurance for bodily injury, death and property damage in the minimum amount of five million (\$5,000,000) dollars per occurrence. The policy will contain a cross liability provision and will be maintained for a period ending no sooner than 12 months after the expiry or termination of this Agreement.
- (b) FEI will be responsible for the full amount of all premiums and deductibles required under this Section 13.1. All policies required herein must be effective at the Commission Date. Insurance will be purchased from insurers registered and licensed to underwrite

insurance in British Columbia. Policies will contain waivers of subrogation against the District and all its officers, directors, members, employees, contractors and agents.

### 13.2 DISTRICT INSURANCE COVERAGE

- (a) The District will obtain and maintain at its own expense throughout the Term Commercial General Liability Insurance for bodily injury, death and property damage in the minimum amount of five million (\$5,000,000) dollars per occurrence. The policy will contain a cross liability provision and will be maintained for a period ending no sooner than 12 months after the expiry or termination of this Agreement.
- (b) The District will be responsible for the full amount of all premiums and deductibles required under this Section 13.2. All policies required herein must be effective at the date of this Agreement. Insurance will be provided by the Provincial self-insured program. Policies will contain waivers of subrogation against FEI and all its officers, directors, employees, contractors and agents.

### 13.3 PRIORITY

FEI will ensure that the District is an additional insured under the insurance to be obtained and maintained pursuant to Section 13.1. The District will ensure that FEI is an additional insured under the insurance to be obtained and maintained pursuant to Section 13.2. In the event of a claim, the insurance carried by the Party responsible for actions which give rise to such claim will be the primary insurance with respect to such claim.

## **ARTICLE 14 - DEFAULT**

### 14.1 DEFAULT BY FEI

- (a) FEI will be in default under this Agreement if FEI is in breach of a material term, covenant, agreement, condition or obligation imposed on it under this Agreement and fails to cure such default within ten (10) days after receipt of written notice thereof from the District, or, if such default is not capable of being cured within such ten (10) day notice period, fails to commence in good faith the curing of such default upon receipt of such written notice of default from the District and to continue to diligently pursue the curing of such default thereafter until cured. For the purposes of this Section 14.1, Section 4.4 is hereby deemed to be a material term of this Agreement.
- (b) If FEI is in default of this Agreement, the District may at its option and without liability therefore or prejudice to any other right or remedy it, including under the UCA, may have suspend or refuse to make any payments due hereunder until the default has been fully remedied, and no such suspension or refusal will relieve FEI from any of its obligations under this Agreement.
- (c) In the event the default is not fully remedied within thirty (30) days of receipt by FEI of written notice thereof from the District, the District may, at its option, undertake the necessary steps to remedy FEI's default at FEI's sole expense, which reasonable costs

shall be deducted from the Monthly Charges, and such actions will not relieve FEI from any of its obligations under this Agreement or, at its option, and without any liability, terminate this Agreement without prejudice to any other right the District may have hereunder or at law or otherwise.

#### 14.2 DEFAULT BY THE DISTRICT

- (a) The District will be in default under this Agreement if the District fails or refuses to make any payment due to FEI by the District under this Agreement within thirty (30) days of receiving written notice from FEI after the date that payment is due or if the District is in breach of a material term, covenant, agreement, condition or obligation imposed on it under this Agreement and fails to cure such default within ten (10) days after receipt by the District of written notice thereof from FEI or, if such default is not capable of being cured within such ten (10) day notice period, fails to commence in good faith the curing of such default forthwith upon receipt of such written notice thereof from FEI and to continue to diligently pursue the curing of such default thereafter until cured.
- (b) If the District is in default of this Agreement, FEI may at its option and without liability therefore or prejudice to any other right or remedy it may have, including under the UCA, cease performing the Services and no such actions will relieve the District from any of its obligations under this Agreement.
- (c) In the event the default by the District is not fully remedied within thirty (30) days of receipt by the District of written notice from FEI, FEI may undertake the necessary steps to remedy the District's default at the District's sole expense and such action will not relieve the District from any of its obligations under this Agreement or, at its option, and without any liability, take whatever steps necessary to shut down the Energy System and terminate this Agreement without prejudice to any other right FEI may have hereunder or at law or otherwise.

#### 14.3 CROSS DEFAULT

- (a) If any Building experiences a Service Interruption at any time, the District may deliver a notice of such Service Interruption to FEI (a "Service Interruption Notice" to FEI);
- (b) If a Service Interruption continues for a period of 48 consecutive hours after the delivery of a Service Interruption Notice pursuant to Section 14.3(a), the District may deliver a notice of such continuing Service Interruption to FEI (a "Continuing Service Interruption Notice");
- (c) If a Service Interruption continues for a period of 120 consecutive hours after the delivery of a Continuing Service Interruption Notice, the District may at its option deliver a notice of such continuing Service Interruption to FEI (a "Service Failure Notice"); Within 60 days of either:
  - (i) the District's delivery of a Service Failure Notice pursuant to Section 14.3(c); or

- (ii) the District's delivery of a Continuing Service Interruption Notice pursuant to Section 14.3(b) that constitutes the fifth or greater Continuing Service Interruption Notice delivered in that calendar year;

the District may, at its option and without liability:

- (iii) terminate this Agreement without prejudice to any other right the District may have hereunder at law or otherwise; or
  - (iv) terminate the Energy System Rate Development Agreement and all Energy System Service Agreements (inclusive of this Agreement), without prejudice to any other right the District may have hereunder at law or otherwise.
- (d) For greater certainty, this Agreement shall be deemed to be terminated in the event that the District exercises its right to terminate all Energy System Service Agreement under another Energy System Service Agreement.

#### 14.4 SURVIVAL

Upon expiry or earlier termination of this Agreement for any reason, all claims, causes of action or other outstanding obligations remaining or being unfulfilled as of the expiry or termination of this Agreement and all of the provisions of this Agreement relating to the obligation or either the Parties to account to or indemnify the other and to pay to the other any amounts owing as at the date of expiry or termination in connection with this Agreement will survive such expiry or termination.

### **ARTICLE 15 – EXPIRY AND TERMINATION**

#### 15.1 EXPIRY

Upon expiry of the Term, unless otherwise agreed between the Parties and subject to agreement by the BCUC (if required pursuant to applicable Laws), the District may, at its option and by written notice to FEI within 30 days following the termination:

- (a) require FEI to remove the Energy System at FEI's cost in accordance with Section 15.5; or
- (b) acquire the Energy System from FEI at the Adjusted Energy System Purchase Price.

#### 15.2 TERMINATION OF THE ENERGY SYSTEM RATE DEVELOPMENT AGREEMENT

- (a) If the Energy System Rate Development Agreement is terminated as a result of the adoption, approval or implementation of a thermal energy rate tariff by the BCUC, this Agreement will automatically terminate effective as of the date of termination of the Energy System Rate Development Agreement;
- (b) If the Energy System Rate Development Agreement is terminated for cause by the District, this Agreement will be deemed to have been terminated pursuant to Section

14.1(c) as of the date of termination of the Energy System Rate Development Agreement, and Section 15.3 shall apply; and

- (c) If the Energy System Rate Development Agreement is terminated for cause by FEI, this Agreement will be deemed to have been concurrently terminated pursuant to Section 14.2(c) as of the date of termination of the Energy System Rate Development Agreement, and Section 15.4 shall apply.

### 15.3 TERMINATION BY THE DISTRICT FOR CAUSE

If the District terminates this Agreement pursuant to Sections 14.1(c) or 14.3, the District may, at its option and by written notice to FEI within 30 days following the termination:

- (a) require FEI to remove the Energy System, at its own cost, in accordance with Section 15.5; or
- (b) acquire the Energy System from FEI at the Adjusted Energy System Purchase Price.

### 15.4 TERMINATION BY FEI FOR CAUSE

If FEI terminates this Agreement pursuant to Section 14.2(c), FEI may, at its option and by written notice to the District:

- (a) remove the Energy System, at its own cost, in accordance with Section 15.5; or
- (b) require the District to purchase the Energy System from FEI at the Adjusted Energy System Purchase Price.

### 15.5 REMOVAL OF THE ENERGY SYSTEM

If FEI is required to remove the Energy System pursuant to Sections 15.1(a), 15.3(a) or 15.4(a) or otherwise upon expiry of this Agreement, FEI shall promptly remove those portions of the Energy System located within the Building and at surface level at FEI's cost, and FEI shall perform such removal activities using standards of performance that are equivalent to those that apply to the performance of the Services under this Agreement. Any portion of the Energy System not removed by FEI prior to the 30<sup>th</sup> day following the termination or expiry of the Agreement will, as of such day, be deemed to be automatically transferred to the District, and become the property of the District, all at no cost to the District.

### 15.6 ACQUISITION OF THE ENERGY SYSTEM

If the District elects to acquire the Energy System pursuant to Sections 15.1(b), 15.3(b) or 15.4(b):

- (a) the District shall pay the Adjusted Energy System Purchase Price to FEI within the later of 30 days of (i) the effective date of expiration or termination, and (ii) confirmation of the Adjusted Energy System Purchase Price; and

- (b) FEI will promptly execute and deliver any documents and records reasonably required by the District to effect and facilitate the transfer of the Energy System to the District, including bills of sale, operation and maintenance manuals and warranties, and will use reasonable commercial efforts to obtain any consents and approvals that may be required in relation to the transfer (including, without limitation, BCUC approval), provided that (i) FEI's obligations under this Section 15.6(b) shall arise only upon FEI's receipt of all amounts due and owing to FEI from the District under this Agreement, and (ii) during the period between the expiration or termination of the Agreement and FEI's receipt of amounts due and owing to FEI from the District under this Agreement, FEI shall continue to maintain, or shall permit the District to maintain, the Energy System in good working order.

Notwithstanding the foregoing, the Parties acknowledge and agree that FEI's ability to sell or otherwise transfer its interest in and to the Energy System to the District may be subject to BCUC approval under applicable Laws.

## **ARTICLE 16 - NON-COMPLIANCE AND ENVIRONMENTAL**

### 16.1 NOTIFICATION OF NON-COMPLIANCE

FEI or the District (as applicable, the "Notifying Party") will promptly, upon becoming aware thereof, notify the other Party in writing of:

- (a) a Release of a Contaminant or any other occurrence or condition in the Energy System, the Lands or any adjacent property which could subject the other Party to any fines, penalties, orders or proceedings under applicable Laws;
- (b) any charge, order, investigation or notice of violation or non-compliance issued against the Notifying Party relating to the Energy System, or the operation of the Energy System, under any applicable Laws; and
- (c) any notice, claim, action or other proceeding by any third party against the Notifying Party in respect of the Design and Construction or the Services or concerning the Release or alleged Release of any Contaminants at or from the Energy System or the Lands.

### 16.2 NOTIFICATION BY FEI

FEI will notify the appropriate Governmental Authorities of any Release of any Contaminants at or from the Energy System in accordance with applicable Laws. The District may, but is not obligated to, notify the appropriate Governmental Authorities of any Release of any Contaminants at or from the Energy System in accordance with applicable Laws.

### 16.3 OWNERSHIP OF CONTAMINANTS

Notwithstanding any rule of law to the contrary, any Disclosed Contaminant Released from the Energy System, or any top soil, earth or other material containing a Contaminant for which FEI is responsible pursuant to Section 4.5 that is removed from the Lands by FEI or any person for

whom it is in law responsible, will be and remain the sole and exclusive property and responsibility of FEI and will not become the property of the District, notwithstanding the degree of its affixation to the Lands and notwithstanding the expiry or earlier termination of this Agreement.

#### 16.4 SURVIVAL OF OBLIGATIONS

The obligations of the Parties under this Article 16 will survive the expiry or termination of this Agreement.

### **ARTICLE 17 - FORCE MAJEURE**

#### 17.1 SUSPENSION

Subject to the other provisions of this Article 17, if either Party is unable or fails by reason of Force Majeure to perform in whole or in part any obligation or covenant set forth in this Agreement, with the exception of unpaid financial obligations, such inability or failure will be deemed not to be a breach of such obligation or covenant and the obligations of both Parties under this Agreement will be suspended to the extent necessary during the continuation of any inability or failure so caused by such Force Majeure.

#### 17.2 DEFINITION OF FORCE MAJEURE

For purposes of this Agreement, the term "Force Majeure" means any event or occurrence not within the control of the Party claiming Force Majeure and which by the exercise of reasonable diligence such Party is unable to prevent or overcome, including any acts of God, including lightning, earthquakes, storms, washouts, landslides, avalanches, fires, epidemics and floods; strikes, lockouts or other industrial disturbances; acts of the Queen's or public enemies, sabotage, wars, blockades, insurrections, riots or civil disturbances, fires, explosions, breakages of or accidents to machinery or lines of pipe; the laws, orders, rules, regulations, acts or restraints of any court or governmental or regulatory authority. For the purposes of this Article 17, a Party is deemed to have control over the actions or omissions of those persons to which it, its agents, contractors or employees, have delegated, assigned or subcontracted its obligations and responsibilities. For greater certainty, a Force Majeure shall not include any weather related events that do not exceed 25 year events as recorded by Environment Canada or as otherwise may be determined by the BCUC from time to time.

#### 17.3 EXCEPTIONS

Neither Party will be entitled to the benefit of Section 17.1 under any of the following circumstances:

- (a) the Energy System not being Commissioned;
- (b) to the extent that the inability or failure was caused by the negligence or contributory negligence of the Party claiming Force Majeure;

- (c) to the extent that the inability or failure was caused by the Party claiming Force Majeure having failed to diligently attempt to remedy the condition by taking all reasonable acts and to resume the performance of such covenants and obligations with reasonable dispatch;
- (d) if the inability or failure was caused by lack of funds or is in respect of any amount due hereunder; or
- (e) unless, as soon as possible after the happening of the occurrence relied upon or as soon as possible after determining that the occurrence was in the nature of Force Majeure and would affect the claiming Party's ability to observe or perform any of its covenants or obligations under this Agreement, the claiming Party will have given to the other Party notice to the effect that the claiming Party is unable by reason of Force Majeure (the nature whereof will be therein specified) to perform the particular covenants or obligations.

#### 17.4 RESUMPTION OF OBLIGATIONS

The Party claiming Force Majeure will give notice to the other Party, as soon as possible after the Force Majeure condition is remedied, to the effect that the same had been remedied and that such Party has resumed, or is then in a position to resume, the performance of its suspended covenants and obligations hereunder either in whole or in part.

#### 17.5 SETTLEMENT OF LABOUR DISPUTES

Notwithstanding any of the provisions of this Article 17, and subject to Section 17.3, the settlement of labour disputes or industrial disturbances is entirely within the discretion of the particular Party involved and the Party may make settlement of it at the time and on terms and conditions as it may deem to be advisable and no delay in making settlement will deprive the Party of the benefit of Section 17.1.

### **ARTICLE 18 - CONDITIONS PRECEDENT**

#### 18.1 CONDITIONS PRECEDENT OF FEI

The obligation of FEI to carry out the transactions contemplated by this Agreement is subject to fulfillment of the following conditions on or before such date as may be specified, which is for the sole benefit of FEI, and which may be waived by FEI in accordance with Section 18.2:

- (a) FEI obtaining the approval by its board of directors of the terms and conditions of this Agreement on or before the 30th day following the Effective Date, provided that if such approval cannot be obtained by this date due to the fact that the board of directors has not yet considered the transaction FEI reserves the right to extend the period of time to that date when the board next convenes.

## 18.2 FEI NOTICE OF WAIVER

If a condition set out in Section 18.1 has not been satisfied on or before the date as may be specified for its fulfillment, FEI may waive compliance with the condition in whole or in part, in its sole discretion, by written notice to the District, failing which delivery of written notice of satisfaction or waiver of such condition, this Agreement will, to the extent any further obligations of the Parties which remain unfulfilled, be null and void, without liability between the Parties hereto, and, neither Party will be under any further obligation to the other to complete the transactions or future transactions, as the case may be, contemplated by this Agreement.

## **ARTICLE 19 - DISPUTE RESOLUTION**

### 19.1 REFERENCE TO ARBITRATION

The Parties will attempt to resolve all disputes which may arise under, out of, in connection with or in relation to this Agreement by negotiation. They will provide full and timely disclosure to one another of all facts relevant to the disputes to facilitate those negotiations. If any such dispute remains unresolved, for any reason, fifteen (15) days after either Party requested the other Party to enter into negotiations to resolve it, or if the Parties agree to waive negotiations in respect of it, then either Party may submit that dispute for final resolution by arbitration administered by the British Columbia International Commercial Arbitration Centre (“BCICAC”) under its “Shorter Rules for Domestic Commercial Arbitration”. The seat of that arbitration will be Vancouver, British Columbia, Canada. The language of that arbitration will be English. Alternatively, the Parties may agree, within the 15 days referred to above, to submit that dispute for final resolution by arbitration in another manner.

### 19.2 BINDING DECISION

The decision of the arbitrator, regardless of what arbitration procedure is used, will, for all purposes of this Agreement, be final and binding on the Parties.

### 19.3 CONTINUATION OF SERVICES

Each of the Parties will perform all of its respective obligations under this Agreement notwithstanding the existence of any dispute that arises from time to time between the Parties in respect of any matter related to this Agreement or during the resolution of any dispute in accordance with this Article 19.

### 19.4 COSTS

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 case, the non-prevailing Party shall pay all costs and expenses of the arbitration, but not those of the prevailing Party.

## ARTICLE 20 - GENERAL

### 20.1 RESPONSIBILITY FOR COSTS

FEI's performance of any of its obligations under this Agreement, including without limitation the obligation to design, construct and install the Energy System as provided in Section 2.1, shall be at FEI's sole cost and expense, unless expressly provided otherwise in this Agreement;

### 20.2 EXERCISE OF DISCRETION

Where anything in this Agreement is identified as being in either Party's discretion, such Party will have the right to exercise such discretion in its own best interest without regard for the interest of the other Party.

### 20.3 COOPERATION

FEI and the District will at all times extend co-operation to each other to ensure the orderly management and operation of the Energy System.

### 20.4 SOLICITATION

Nothing in this Agreement precludes either Party from soliciting or entering into, other contracts with the other Party.

### 20.5 NOTICES

Any notice or other communication required or permitted to be given under this Agreement will be effective only if in writing and when it is actually delivered (which delivery may be by telecopy or other telecommunications device) to the Party for whom it is intended at the following address or such other address in British Columbia as such Party may designate to the other Party by notice in writing delivered in accordance with this Section 20.5:

(a) if to FEI:

FortisBC Energy Inc.  
10th Floor, 1111 West Georgia Street  
Vancouver, B.C.  
V6E 4M3

Attention: Gareth Jones  
Telephone: 250-380-5972  
Telecopy: 250-388-6876

(b) if to the District:

Board of Education of School District No. 37 (Delta)  
4585 Harvest Drive  
Delta, B.C.  
V4K 5B4

Attention: Frank Geyer  
Telephone: 604-952-5336  
Telecopy: 604-952-5375

Notwithstanding the foregoing, notices with respect to Force Majeure will be given in writing by telecopy, or orally in person or by telephone (to be confirmed by telecopy), to the person or persons designated from time to time by the Parties as the person or persons authorized to receive such notices.

## 20.6 CONFIDENTIALITY

The District and FEI will treat as confidential the terms of this Agreement and all Confidential Information (as defined below) and will at all times during the term of this Agreement and for a reasonable time thereafter hold the terms of this Agreement and all Confidential Information in confidence and neither Party will, without the prior written consent of the other Party, disclose or divulge the terms of this Agreement or any Confidential Information to any person, provided that nothing in this Section 20.6 will restrict or prevent either Party from making any disclosure of such terms or any Confidential Information:

- (a) which is reasonably necessary or desirable for such Party to carry out and give full effect to the terms, conditions and intent of this Agreement and the matters contemplated hereby;
- (b) which is required by any Law, including the Freedom of Information and Protection of Privacy Act (British Columbia);
- (c) to any Governmental Authority;
- (d) to the British Columbia Utilities Commission or other regulatory agency as part or in support of any regulatory application or submission;
- (e) to the directors, officers or employees of such Party or to an Affiliate of such Party or to the directors, officers or employees of an Affiliate of such Party;
- (f) to the professional advisors of such Party on the same terms of confidentiality;
- (g) which is already in the public domain; or
- (h) in connection with legal proceedings or steps being taken to remedy a breach or default under this Agreement by the other Party.

For the purposes of this Section 20.6, “Confidential Information” means proprietary information of either Party such as data, plans, drawings, manuals, or specifications which have been provided by such Party, its employees, contractors, agents, subcontractors, Affiliates to the other Party pursuant to this Agreement or proprietary information either Party conceived or developed by or for such Party concerning construction practices, operation and maintenance practices, agreements, marketing plans and strategies, profits, costs, pricing and systems of procedure (provided that “Confidential Information” does not include information which was disclosed to the receiving Party by a third Party (unless, to the knowledge of the receiving Party, the third Party is under an obligation of confidentiality to the other Party) or any information developed or conceived by the receiving Party without using the “Confidential Information” of the other Party).

#### 20.7 SEVERABILITY

If any provision of this Agreement is found or determined to be invalid, illegal or unenforceable it will be construed to be separate and severable from this Agreement and will not impair the validity, legality or enforceability of any other provisions of this Agreement, and the remainder of this Agreement will continue to be binding on the Parties as if such provision had been deleted.

#### 20.8 NO WAIVER

No waiver by either Party of any default by the other in the performance of any of the provisions of this Agreement will operate or be construed as a waiver of any other or future default or defaults hereunder, whether of a like or a different character. To be binding, any waiver of any provision of this Agreement must be clearly expressed in writing to be signed by the waiving Party.

#### 20.9 BURDEN AND BENEFIT

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

#### 20.10 GOVERNING LAW

This Agreement and all matters arising hereunder will be governed by the laws of British Columbia and the federal laws of Canada applicable in British Columbia.

#### 20.11 ENTIRE AGREEMENT

This Agreement contains the whole agreement between the Parties in respect of the subject matter hereof and there are no terms, conditions or collateral agreements express, implied or statutory other than as expressly set forth in this Agreement and this Agreement supersedes all of the terms of any written or oral agreement or understanding between the Parties.

#### 20.12 TIME OF ESSENCE

Time is of the essence of this Agreement.

#### 20.13 FURTHER ASSURANCES

Each Party will, at all times hereafter on demand by the other, execute and deliver or cause to be executed and delivered all such further documents and do all such further acts and things as may be reasonably requested by the other Party to evidence, carry out and give full effect to the intent and meaning of this Agreement and to assure the completion of the transactions contemplated hereby.

#### 20.14 AMENDMENTS TO BE IN WRITING

Except as set out in this Agreement, no amendment or variation of this Agreement will be effective or binding upon the Parties unless such amendment or variation is set out in writing and duly executed by the Parties.

#### 20.15 FACSIMILE

This Agreement may be executed by the Parties and transmitted by facsimile transmission and, if so executed, transmitted and received, this Agreement will for all purposes be effective as if the Parties had delivered and executed the original Agreement and each Party undertakes to provide the other Party with a copy of this Agreement bearing original signatures forthwith upon demand.

#### 20.16 SUBJECT TO LEGISLATION

Notwithstanding any other provision hereof, this Agreement and the rights and obligations of FEI and the District under this Agreement are subject to all present and future laws, rules, regulations and orders of any legislative body, governmental agency or duly constituted authority now or hereafter having jurisdiction over FEI or the District.

#### 20.17 EXPENSES

Each Party to this Agreement shall be responsible for the payment of all costs, expenses, legal fees and disbursements incurred or to be incurred by it in negotiating and preparing this Agreement and all documents required to be delivered under this Agreement and otherwise relating to the transactions contemplated by this Agreement.

#### 20.18 NO CONTRARY AGREEMENT

No Party shall enter into an agreement or other commitment with any person if such agreement or commitment has terms or provisions in conflict with or inconsistent with the terms of this Agreement or which could reasonably be expected to lead to actions or consequences that would result in the Party being in breach of the commitments and obligations of the Party pursuant to this Agreement unless such other agreement or commitment is expressly approved by the other Parties.

#### 20.19 NO PARTNERSHIP

Nothing herein shall be deemed or construed to create a joint venture, partnership, employment or agency relationship between the Parties for any purpose.

20.20 ASSIGNMENT

Neither Party may assign this Agreement or any of its rights or obligations under this Agreement, and FEI may not assign, transfer or sell all or any part of the Energy System, except:

- (a) with the consent of the other Party, such consent not to be unreasonably withheld, delayed or conditioned; or
- (b) in the case of FEI, to an Affiliate of FEI which is a "public utility" as defined in the *UCA* on notice to, but without the consent of, the District.

20.21 COUNTERPARTS

This Agreement may be executed in counterparts with the same effect as if the Parties had signed the same document. All counterparts will be construed together and will constitute one agreement.

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

**FORTISBC ENERGY INC.**

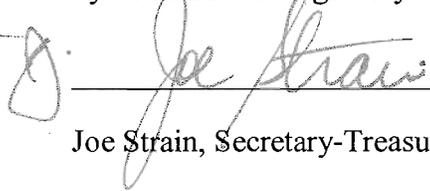
by its authorized signatory:

  
\_\_\_\_\_

Doug Stout,  
VP Energy Solutions & External Relations

**THE BOARD OF EDUCATION OF  
SCHOOL DISTRICT NO. 37 (DELTA)**

by its authorized signatory:

  
\_\_\_\_\_

Joe Strain, Secretary-Treasurer

# SAMPLE SCHEDULE “A”

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## Energy System Description

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### Mechanical Equipment Plans and Specifications

Equipment schedule:

- 3 ground source heat pumps water furnace 540NXW or equivalent and associated pumps. The heat pump and related equipment will be installed in the boiler room at the old boilers location on the concrete pad.
- Each heat pump will have 1 pump on condenser side (5 Hp, 90gpm, 100 ft).
- Piping, control valves and other equipment and accessories connected to the above equipment.
- Connection of the heat pumps on the return of the boiler and installation of the 3 ways valves.
- 700 ft of piping 6 inches isolated between the field and the heat pump The pipes will be installed on the roof.
- Installation of geo-exchange field loop to match the designed performance of the system.
- Supply and do the injection of 2400 usgals of propylene/glycol with a concentration of 25%.
- Control systems for the above mentioned equipment.
- BTU meters

Prior to commencement of the Mechanical Equipment construction, FEI shall provide detailed drawings to the District for review and acceptance.

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## **SCHEDULE “B”**

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# **Delta School District Site Rules for Contractors**

## **Delta School District Site Rules for Contractors**

### **1.0 Safety**

- 1.1 For the purposes of this section, “Safety Regulations” means the rules, regulations, and practices required by WorkSafeBC.
- 1.2 The Contractor shall be solely responsible for site safety during the execution of all assigned construction and maintenance activities, including work performed by subcontractors and suppliers, and for compliance with the Safety Regulations, and shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the work.
- 1.3 If the District is of the reasonable opinion that the Contractor has not taken such precautions as are necessary to ensure compliance with the requirements of Clause 1.2, the District may take or order any remedial measures which it deems necessary, including stopping the performance of all or any portion of the work, and the District may use the employees of itself, the Contractor, any subcontractor or any other contractors to perform such remedial measures. The Contractor acknowledges and agrees that any failure by the Contractor to comply with the Safety Regulations shall constitute a default of the Contractor's contractual obligations and the District may issue a written notice instructing the Contractor to correct the default in the two (2) working days immediately following receipt of such notice.
- 1.4 The Contractor shall file any notices or any similar document (including, without limitation, a Notice of Project where applicable) required pursuant to the Safety Regulations. This duty of the Contractor will be considered to be included in the work and no separate payment therefore will be made to the Contractor.
- 1.5 The Contractor shall develop, maintain and supervise for the duration of the work a comprehensive safety program that will effectively incorporate and implement all required safety precautions. The program shall, as a minimum, respond fully to the Safety Regulations and general construction practices for the safety of persons or property, including without limitation the WorkSafeBC regulations that may be applicable (e.g. WHMIS, dust control, etc.).
- 1.6 The Contractor shall provide a copy of the safety program described in Clause 1.5 to the District prior to the commencement of the work and shall, at all times require, as far as it is reasonably practical to do so, that every employer and worker performing work in respect of the project complies with such program.
- 1.7 The Contractor shall arrange regular safety meetings at its expense, record the minutes of such meetings and maintain a complete file for review by the appropriate authorities.
- 1.8 The Contractor shall supply and maintain, at its own expense, at its office or other well-known place at the work site, safety equipment necessary to protect the workers and general public against accident or injury as prescribed by the governing authorities.
- 1.9 The Contractor shall supply and maintain all articles necessary for giving first-aid to any person who may be injured on the work site and shall establish an emergency procedure for the immediate removal of any injured person to a hospital or a doctor's care in accordance with the Safety Regulations.
- 1.10 The Contractor shall, as required under the Safety Regulations, promptly report all accidents of any sort arising out of or in connection with the performance of the work whether on or adjacent to the work site, giving full details and statements of witnesses. The District shall be copied on all accident reports and investigation reports.

## **2.0 Security and Access**

- 2.1 **Site and Building Access:** The District's Maintenance Services Department will issue gate and building keys, electronic access cards (complete with instructions as to how to arm/disarm the building intrusion alarm system and how to contact the alarm monitoring station) and identification badges for the Contractor to enter the site and building, disarm/arm the building intrusion alarm system, and access the portions of the site where the Contractor's work is taking place. The Contractor and all subcontractors must check in at the school office (if occupied by District staff) prior to entering other parts of the building. The access cards, keys and identification badges shall be promptly returned to the District at the end of the contract.
- 2.2 **Security:** The Contractor shall assume all responsibility for the security of the work site. The Contractor must ensure that all windows, doors and gates are secure and the building intrusion alarm system is armed (unless District staff are still in the building) at the end of the workday. The Contractor must also safeguard the rest of the building and/or site from access through possible open construction areas. Security doors shall at all times remain closed and shall not be propped open, even for a short time. The Contractor is responsible for any costs arising when the District's security runner services is called to attend a work site for security matters resulting from the Contractor's negligence.
- 2.3 **Normal School Hours:** Normal hours of operation for the District are 0730h-1600h Monday to Friday, excluding statutory holidays. For after-hours and weekend work, the Contractor must notify the District's Maintenance Services Department at least one business day in advance of the work.

## **3.0 Conduct**

- 3.1 **Noise Due to Construction or Maintenance Activities:** In accordance with the Delta Noise Bylaw 1906, "no person shall carry on or cause to be carried any construction work, reconstruction, alteration, repair or demolition of a building or structure, the operation of machinery, or works in connection with any excavation or highway before 07:00h or after 1900h and day of the week from Monday to Friday, inclusive, before 0900h or after 1700h on Saturdays, or at any time Sundays. The Contractor shall respect the classroom operations in the vicinity of the work site and as such will make every attempt to limit noisy work to times outside of classroom operation or to adequately dampen, silence and/or soundproof equipment that generates noise to mitigate disruption to the classrooms.
- 3.2 **Communication devices:** Radio and cell phone volume shall be at the minimum volume which is consistent with the ability to operate the device.
- 3.3 **Roadways:** All speed limits and other traffic rules must be obeyed and access to the roadways should not be impeded. Parking and secure storage of materials and equipment by the Contractor and subcontractors shall only be in designated areas only.
- 3.4 **Cleanliness:** The work site must be maintained for an orderly appearance on a daily basis. Trash and construction debris shall be contained at all times and removed from the work site weekly.
- 3.5 **Toilets:** All temporary toilets shall have their doors faced away from streets. In no cases shall a worker utilize any staff washroom or other staff facilities at the work site, except as otherwise agreed in writing by the District. Under no circumstances will workers be permitted to use student washrooms.
- 3.6 **Identification Badges:** All workers shall have a District-assigned identification badge that clearly indicates the company's name and the worker's name. It is to be worn whenever at the work site.

- 3.7 **Smoking:** Smoking is not permitted on District property.
- 3.8 **Alcohol/Drugs:** No alcoholic beverages or non-prescription drugs shall be brought or consumed at the work site.
- 3.9 **Animals:** No dogs or other animals, are permitted at the work site without the written consent of the District.
- 3.10 **Fitness for Work:** All workers must be fit for work at all times. The District retains the right to request individuals leave the work site if unfit for any reason including, without limitation, inebriation, taking drugs, injury, fatigue, rudeness or any other reason that may affect the quality of the work or represents a breach of these rules.
- 3.11 **Theft:** Workers who steal from occupants or the District shall be immediately ejected from the work site. The Contractor is responsible for all such thefts irrespective of whether the worker is an employee of the Contractor or a subcontractor.
- 3.12 **Discrimination and Harassment:** The District actively promotes a safe and secure school environment and as such does not tolerate violations of human rights legislation, including:
- (a) discriminatory acts against any person with respect to the work or school environment or any educational program or service provided to or by that person because of race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age of that person, or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person;
  - (b) all forms of actual, attempted or threatened physical harm directed at any person; or
  - (c) any form of sexual harassment such as unwelcome sexual advances with actual or implied work related consequences; unwelcome remarks, questions, jokes or innuendo of a sexual nature including sexist comments or sexual invitations; verbal abuse, intimidation or threats of a sexual nature; unwelcome leering, staring or making sexual gestures; whistling or catcalls; display of pornographic or other sexual materials; offensive pictures, graffiti, cartoons or sayings; unwanted physical contact such as touching, patting, pinching or hugging; and physical assault of a sexual nature

## **SCHEDULE “C”**

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### **List of Environmental Reports**



**ASBESTOS MATERIALS SURVEY  
AND RISK ASSESSMENT**

**OF**

**NORTH DELTA SECONDARY SCHOOL  
11447 – 82<sup>nd</sup> Avenue  
Delta, BC**

**PREPARED FOR:**

**DELTA SCHOOL DISTRICT  
Maintenance Facility  
7186 Brown Street  
Delta, BC  
V4G 1G8**

**PREPARED BY:**

**ACM ENVIRONMENTAL CORPORATION  
#217 -2323 Quebec Street  
Vancouver, BC  
V5T 4S7  
604-873-8599**

**January 2006**

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## **EXECUTIVE SUMMARY**

A.C.M. Environmental Corporation (ACM) was retained by the Delta School District to perform an Asbestos Materials Survey and Risk Assessment for North Delta Secondary located at 11447 – 82<sup>nd</sup> Avenue, Delta, BC.

The assessment involved an inspection of all areas of the building. The objective of the assessment was to identify the types and extent of asbestos containing materials within the building and any risks associated with the materials and the regular usage of the building.

The assessment was conducted using both visual and physical assessment techniques. Samples of materials suspected of containing asbestos were collected and forwarded, using proper chain of custody protocols, to Prezant Associates, Inc. for asbestos analysis. Asbestos sample results are located in Appendix A of this report.

Previous asbestos sampling information for the building was reviewed prior to conducting the survey assessment. ACM previously conducted a survey and collected 24 bulk samples from the school in the month of March of 2002. The sampling identified several types of asbestos containing materials in various areas however the school has been extensively renovated since the survey was conducted. Many of the materials in these areas have been replaced with non-asbestos containing materials.

In summary, the findings from the assessment conclude that asbestos was found within the construction materials of the building, however, no mercury or PCB containing materials were found within the equipment of the building.

Four types of asbestos containing building materials were observed during the latest survey. These asbestos containing building materials include vinyl floor tiles, ducting mastics, ceiling tiles and drywall taping compound materials. Within the context of the report, areas have been detailed as to the locations of the asbestos containing materials, the content of asbestos where applicable, and the essential procedures to be followed for removal of these materials, as required.

The hazardous materials survey was conducted using non-destructive and some limited destructive testing methods. Areas within walls were not inspected as access was not possible without causing extensive damage to the walls. It should be noted that there is a possibility of asbestos containing materials existing within inaccessible wall and ceiling cavities, and under sub-floors. Possible asbestos-containing materials which may exist in these areas may

include but are not limited to: insulation materials (mechanical or construction), secondary layers of drywall or flooring, etc.

Roofing materials were not sampled at this time as the integrity of the waterproof membrane would be compromised, possibly voiding insurance coverage in the event of a water leak. If the roofing materials are to be disturbed during a renovation project, they must be sampled prior to the work taking place.

A random number of fluorescent lighting fixtures were opened up and inspected for possible PCB containing ballasts. PCB containing ballasts were not observed within the fluorescent lighting fixtures inspected however, not all fixtures were opened. No Mercury containing thermostat switches were observed within the building.

## **INTRODUCTION**

A.C.M. Environmental Corporation (ACM) was retained by the Delta School District to perform an Asbestos Materials Survey and Risk Assessment for the North Delta Secondary located at 11447 – 82<sup>nd</sup> Avenue, Delta, BC. All areas of the building were inspected and/or sampled during this survey and photographs of the site are included as Appendix B.

The objective of the assessment was to identify the types and extent of asbestos containing construction materials within the accessible areas of the building. The assessment at this time involved an inspection of all areas of the building not including the roofing materials.

The survey and assessment was conducted on January 10<sup>th</sup>, 2005 by Mr. James McArthur, AScT, Environmental Technician and Mr. Robert Foders, Technician, for ACM. Sixteen (16) representative bulk samples of materials suspected of containing asbestos were collected from the latest survey and are included as Appendix A of this report.

Previous asbestos sampling information for the building was reviewed prior to conducting the survey assessment. ACM previously collected 24 bulk samples from the school in March of 2002. The sampling identified some asbestos containing materials within the building such as drywall joint compounds and vinyl floor tiles. The latest survey identified that most of these materials have been abated and replaced with non-asbestos containing materials, however, some of the old materials still remain in the renovated areas.

## **METHODOLOGY**

The hazardous materials survey was conducted using non-destructive and some limited destructive testing methods. Areas within walls were not inspected as access was not possible without causing extensive damage to the walls. It should be noted that there is a possibility of asbestos containing materials existing within inaccessible wall and ceiling cavities, and under sub-floors. Possible asbestos-containing materials which may exist in these areas may include but are not limited to: insulation materials (mechanical or construction), secondary layers of drywall or flooring, etc.

The U.S. Environmental Protection Agency (USEPA) Guidance Document was selected for use in this study (1). The document identifies factors associated with the "condition" and the "potential for disturbance or erosion" of asbestos containing materials. These factors help to define the fibre release potential of the suspect asbestos containing materials and were used in a qualitative evaluation of materials found in the surveyed areas. Recommendations have been substantiated by additional information utilized from other documentation cited in the Reference Section of this report.

The bulk samples of suspect asbestos containing materials were forwarded, using proper chain of custody protocols, to Prezant Associates, Inc. for asbestos analysis. The samples were analyzed using polarized light microscopy (PLM) with dispersion staining in accordance with U.S. EPA method 600/R-93/116, "Method for Determination of Asbestos in Bulk Building Materials".

Other hazardous materials were visually inspected and are noted in this report.

The survey relied on the abilities and experience of the surveyor to gain access and identify possible asbestos containing materials. All areas of the building were accessed during the assessment excluding the roof.

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## **RESULTS & ASSOCIATED RISK LEVELS**

### **ASBESTOS**

Four types of asbestos containing materials were identified during the survey which could be affected by any potential renovation or demolition activities. These are drywall taping compound materials, vinyl floor tile materials, ducting mastic materials and ceiling tile materials. A breakdown for each type of material is as follows:

#### **Drywall Taping Compound Materials:**

Asbestos containing drywall taping compound materials were observed within some of the older sections of the building such as the cafeteria and auditorium sections. Drywall taping compound materials were sampled in this area and found to contain <1% Chrysotile asbestos. The asbestos containing drywall taping compound materials are presently in fair to poor condition. Although some areas within the older section of the school have been renovated, it must be assumed that all original drywall taping compound materials encountered within this section of the building is asbestos containing unless further sampling determines otherwise. The newer sections of the school built in 2002 have non-asbestos containing drywall materials. These sections include the northeast wing, main entrance wing gymnasium area and adjoining lower, first and second floor classroom areas.

WCB Regulations do not treat any materials with less than 1% asbestos as asbestos containing. Prior to any activities taking place which could disturb the asbestos containing drywall materials (<1%), workers should still use moderate risk procedures when exposed to the asbestos containing drywall materials, even in materials with less than 1% asbestos concentrations. The WCB states that workers must be properly protected from any potential exposure to airborne asbestos fibres. It is recommended that any work affecting the asbestos containing drywall materials be done using a minimum of moderate risk asbestos work procedures. Therefore as a minimum, MODERATE RISK asbestos work procedures will be required for the removal of the asbestos containing drywall materials (<1%). The drywall materials which are less than 1% do not have to be disposed of in accordance with applicable regulations as asbestos waste.

#### **Vinyl Floor Tile Materials:**

Asbestos containing vinyl floor tile materials were found within the older auditorium and auto shop section of the building, as well as in the newly renovated lower level fan room. These include the 12" light brown vinyl floor tiles

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with small brown streaks observed within the mechanics mezzanine classroom. These vinyl floor tile materials were found to contain 2% Chrysotile asbestos in the tiles. The materials are presently in good condition. The 12" beige vinyl floor tiles with red/brown streaks observed within the stage storage room - 1522 and the 9" Beige vinyl floor tile with red and white streaks in the newly renovated lower floor section of the building within the fan room (old HUB) were observed to be asbestos containing. These vinyl floor tile materials were found to contain <1% Chrysotile asbestos in the tiles. The materials are all presently in good condition.

Prior to any activities taking place which could disturb the asbestos containing vinyl floor tile materials (which contain more than 1% Chrysotile asbestos), it must first be removed and disposed of in accordance with applicable regulations. The removal of the asbestos containing vinyl floor tile materials will pose a moderate risk of asbestos exposure to the workers involved, therefore as a minimum, MODERATE RISK asbestos work procedures will be required for the removal of the asbestos containing duct mastic.

WCB Regulations do not treat any materials with less than 1% asbestos as asbestos containing. Workers should still use moderate risk procedures when exposed to the vinyl floor tile materials, even in materials with less than 1% asbestos concentrations. The WCB states that workers must be properly protected from any potential exposure to airborne asbestos fibres. It is recommended that any work affecting all the vinyl floor tile materials be done using a minimum of moderate risk asbestos work procedures. Therefore as a minimum, MODERATE RISK asbestos work procedures will be required for the removal of the asbestos containing vinyl floor tile materials. The vinyl floor tile materials which are less than 1% do not have to be disposed of in accordance with applicable regulations as asbestos waste.

#### Duct Mastics:

Asbestos containing duct mastic materials were observed within the Woodwork Shop – 1640 section of the school. The original square HVAC ducting was found to have silver painted duct mastic on the seams and corners. It should be noted that the original ducting was observed in other areas and classrooms of this wing despite the renovations conducted. The sample of asbestos containing duct mastic was found to contain 2% Chrysotile asbestos. The materials are presently in good condition. All original silver painted HVAC duct mastics observed within the building are to be treated as asbestos containing. Newer non-asbestos containing grey or white duct mastic was observed in several areas of the building and shop areas.

Prior to any activities taking place which could disturb the asbestos containing silver duct mastic materials, it must first be removed and disposed of in accordance with applicable regulations. The removal of the asbestos containing duct mastic will pose a moderate risk of asbestos exposure to the workers involved, therefore as a minimum, MODERATE RISK asbestos work procedures will be required for the removal of the asbestos containing duct mastic materials.

Ceiling Tile Materials:

Asbestos containing ceiling tile materials were observed in the cafeteria storage room – 1501 (Mechanical Room) adjacent to the teaching kitchen. The ceiling tiles were 2x4 sized and had small notches & pinholes. A sample of the ceiling tile material was collected and found to contain <1% Chrysotile asbestos on the backing. Any ceiling tiles observed which appear similar to the ceiling tiles observed in this room should be treated as asbestos containing until further sampling determines otherwise.

WCB Regulations do not treat any materials with less than 1% asbestos as asbestos containing. Workers should still use moderate risk procedures when exposed to the ceiling tile materials, even in materials with less than 1% asbestos concentrations. The WCB states that workers must be properly protected from any potential exposure to airborne asbestos fibres. It is recommended that any work affecting all the ceiling tile materials be done using a minimum of moderate risk asbestos work procedures. Therefore as a minimum, MODERATE RISK asbestos work procedures will be required for the removal of the asbestos containing ceiling tile materials. The ceiling tile materials which are less than 1% do not have to be disposed of in accordance with applicable regulations as asbestos waste.

**POLYCHLORINATED BIPHENYLS (PCBs)**

A random number of fluorescent light ballasts were visually inspected for possible PCB containing ballasts. No PCB containing ballasts were observed within the fluorescent lighting fixtures inspected, however, some PCB containing ballasts may exist in other areas, as not all fixtures were opened up.

PCB containing fluorescent light ballasts do not pose a risk to occupants of the building. If PCB containing ballasts are encountered during any renovations of the building, they must be separated from the fixtures and disposed of properly in accordance with applicable regulations.

**MERCURY THERMOSTATS**

No mercury containing thermostats switches were observed in the building. If any Mercury containing thermostat switches are encountered within the building during renovation or repair activities, they must be removed intact from the thermostats and disposed of properly in accordance with applicable regulations.

## **RECOMMENDATIONS**

Prior to beginning any work that may impinge upon the hazardous materials within the building, the following must be performed:

- 1.) All asbestos containing materials must be removed from the building, utilizing as a minimum, the risk levels and/or procedures discussed in the results section of this report.
- 2.) If any Mercury containing thermostat switches are encountered during any renovation or repair activities within the building, they must be removed and disposed of in accordance with applicable regulations.
- 3.) If any PCB containing ballasts are encountered during any renovation or repair activities within the building, they must be removed and disposed of in accordance with applicable regulations.
- 4.) If any suspect asbestos containing materials are encountered within inaccessible wall or ceiling cavities, or under floors, during renovation or demolition activities, the work in the immediate area must stop and the supervisor contacted for further direction.

**STATEMENT OF LIMITATIONS**

The ACM report is intended to direct the Client's attention to recognised environmental conditions and to potential sources of environmental contamination. The findings and conclusion regarding contamination of the property are based solely on the extent of observations and information gathered during the assessment. Nothing in the report is intended to express any legal opinion upon environmental liabilities relating to the site or whether operations legally conformed with relevant legislative requirements.

Furthermore, it must be understood that changing circumstances in the physical environment, the use of the property, as well in changes in any substances stored, used, handled at the property, could alter radically the conclusions and information contained in this report. Therefore, it is important that the property is periodically re-evaluated and the client kept informed as to developments, which may impact the property. This report is not intended to be used as contract specifications.

**A.C.M. ENVIRONMENTAL CORPORATION**

---

James McArthur, ASCT  
Environmental Technician

**REFERENCES**

- 1) USEPA. 1985. U.S. Environmental Protection Agency. "Guidance for Controlling Asbestos-Containing Materials in Buildings". Washington, DC: Office of Toxic Substances, USEPA.
- 2) Lory EE, Coin DC. 1981. "Management Procedure for Assessment of Friable Asbestos Insulating Material". Port Hueneme, CA: Civil Engineering Laboratory, Naval Construction Battalion Center.
- 3) Workers' Compensation Board of British Columbia, effective 15 April 1998, and all current amendments. Occupational Health and Safety Regulations.
- 4) 2002 Edition - Workers' Compensation Board of British Columbia. Safe Work Practices for Handling Asbestos.

**APPENDIX A**  
**Bulk Sample Results**



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

**ACM Environmental**  
2323 Quebec Street, Suite 211  
Vancouver, BC

Project Location: North Delta Secondary School

PAI Batch Number: **06-0103**  
Client Job Number: **3048-16**  
Number of Samples: **16**  
Turn Around Time: **10 day**

Batch Number: 06-0103  
Lab Sample Number: 06000636  
Client Sample Number: **3048-657**

**ACM Environmental**  
**3048-16**  
*North Delta Secondary School*

#### L-1 Silver metallic shiny paint

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
2% <b>Chrysotile</b>		95% Paint
		3% Mineral Fragments

**Comments:**

#### L-2 Green resinous sticky mastic

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Resin and Binder
		10% Mineral Fragments

**Comments:**

#### L-3 Brown and gray pliable rubbery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Rubber Particles
		10% Mineral Fragments

**Comments:**

This layer was ashed and no asbestos fiber bundles were detected.

Sampled By: S. 'Riley' Rickert  
Received By: John McCaslin 1/18/2006  
Reviewed By: George McCaslin 1/25/2006

Analyzed By: Deitrie Hanson 1/25/2006



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## Bulk Asbestos Fiber Analysis

Batch Number:	06-0103	<b>ACM Environmental</b>
Lab Sample Number:	06000637	<b>3048-16</b>
Client Sample Number:	<b>3048-658</b>	<i>North Delta Secondary School</i>

### L-1 Beige paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		100% Paint

Comments:

### L-2 Brown fibrous papery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
	99% Cellulose	1% Filler and Binder

Comments:

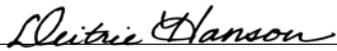
### L-3 White powdery fibrous material with brown flakes

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
	13% Glass Fiber	80% Talc Filler and Binder 4% Vermiculite 3% Mineral Fragments

Comments:

Batch Number:	06-0103	<b>ACM Environmental</b>
Lab Sample Number:	06000638	<b>3048-16</b>
Client Sample Number:	<b>3048-659</b>	<i>North Delta Secondary School</i>

Sampled By: S. 'Riley' Rickert  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

  
 Analyzed By: Deitrie Hanson 1/25/2006





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## Bulk Asbestos Fiber Analysis

### L-2 Pale taupe crystalline powdery material

<b>Asbestos Fibrous Components:</b> <1% Chrysotile	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 92% Calcite Filler and Binder 5% Vermiculite >2% Mineral Fragments
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**Comments:**  
 This layer contains <1% chrysotile asbestos.

### L-3 Pale golden beige fibrous tape-like papery material

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b> 97% Cellulose	<b>Non-Fibrous Components:</b> 3% Filler and Binder
---	--	--

**Comments:**

### L-4 Pale taupe crystalline powdery material

<b>Asbestos Fibrous Components:</b> <1% Chrysotile	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 92% Calcite Filler and Binder 5% Mineral Particles >2% Vermiculite
---	---	--

**Comments:**  
 This layer contains <1% chrysotile asbestos.

### L-5 Brown fibrous papery material

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b> 99% Cellulose	<b>Non-Fibrous Components:</b> 1% Filler and Binder
---	--	--

**Comments:**

### L-6 White powdery fibrous material

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b> 15% Cellulose	<b>Non-Fibrous Components:</b> 80% Talc Filler and Binder 5% Mineral Fragments
---	--	--

**Comments:**

Sampled By: S. 'Riley' Rickert  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

  
 Analyzed By: Deitrie Hanson 1/25/2006



NVLAP LAB CODE 200613-0



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### Bulk Asbestos Fiber Analysis

Batch Number:	06-0103	<b>ACM Environmental</b>
Lab Sample Number:	06000640	<b>3048-16</b>
Client Sample Number:	<b>3048-661</b>	<i>North Delta Secondary School</i>

#### Gray pliable opaque rubbery mastic

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Rubber Particles
		10% Calcite Filler and Binder

Comments:

Batch Number:	06-0103	<b>ACM Environmental</b>
Lab Sample Number:	06000641	<b>3048-16</b>
Client Sample Number:	<b>3048-662</b>	<i>North Delta Secondary School</i>

#### L-1 Beige hard tile material with red and white streaks

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>2% Chrysotile</b>		55% Calcite Filler and Binder
		40% Mineral Filler and Binder
		3% Vinyl Filler and Binder

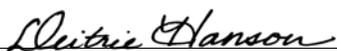
Comments:

#### L-2 Black mastic

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Asphalt Filler and Binder
		10% Mineral Particles

Comments:

Sampled By: S. 'Riley' Rickert  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

  
 Analyzed By: Deitrie Hanson 1/25/2006



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## Bulk Asbestos Fiber Analysis

Batch Number:	06-0103	<b>ACM Environmental</b>
Lab Sample Number:	06000642	<b>3048-16</b>
Client Sample Number:	<b>3048-663</b>	<i>North Delta Secondary School</i>

### White crystalline powdery flaky material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		80% Calcite Filler and Binder
		15% Perlite
		5% Mineral Particles

**Comments:**

Batch Number:	06-0103	<b>ACM Environmental</b>
Lab Sample Number:	06000643	<b>3048-16</b>
Client Sample Number:	<b>3048-664</b>	<i>North Delta Secondary School</i>

### L-1 White paint

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		100% Paint

**Comments:**

### L-2 Pale tan fibrous opaque material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	40% Mineral Wool	20% Perlite
	20% Cellulose	15% Mineral Particles
		5% Filler and Binder

**Comments:**

Sampled By: S. 'Riley' Rickert  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 1/25/2006



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### Bulk Asbestos Fiber Analysis

Batch Number:	06-0103	<b>ACM Environmental</b>
Lab Sample Number:	06000644	<b>3048-16</b>
Client Sample Number:	<b>3048-665</b>	<i>North Delta Secondary School</i>

#### White crystalline powdery flaky material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		80% Calcite Filler and Binder
		15% Perlite
		5% Mineral Particles

**Comments:**

Batch Number:	06-0103	<b>ACM Environmental</b>
Lab Sample Number:	06000645	<b>3048-16</b>
Client Sample Number:	<b>3048-666</b>	<i>North Delta Secondary School</i>

#### L-1 Dull beige hard thin tile material with red and brown streaks

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>&lt;1% Chrysotile</b>		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		>4% Miscellaneous Particles

**Comments:**

This tile contains <1% chrysotile asbestos.

Sampled By: S. 'Riley' Rickert  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

  
 Analyzed By: Deitrie Hanson 1/25/2006



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### Bulk Asbestos Fiber Analysis

**L-2 Black pliable mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Asphalt Filler and Binder
		6% Mineral Particles
		4% Filler and Binder

**Comments:**

Batch Number: 06-0103	<b>ACM Environmental</b>
Lab Sample Number: 06000646	<b>3048-16</b>
Client Sample Number: 3048-667	<i>North Delta Secondary School</i>

**L-1 Pink topped gray thick speckled vinyl tile material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		80% Rubber Particles
		10% Plastic Particles
		10% Mineral Fragments

**Comments:**

**L-2 Yellow resinous mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		97% Resin and Binder
		3% Mineral Particles

**Comments:**

Batch Number: 06-0103	<b>ACM Environmental</b>
Lab Sample Number: 06000647	<b>3048-16</b>
Client Sample Number: 3048-668	<i>North Delta Secondary School</i>

Sampled By: S. 'Riley' Rickert  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 1/25/2006



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### Bulk Asbestos Fiber Analysis

**L-1 Pale gray paint on white thick hard chalky powdery material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Clay Filler and Binder
		6% Paint
		4% Mineral Particles

**Comments:**

**L-2 White crystalline powdery material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		80% Calcite Filler and Binder
		15% Perlite
		5% Mineral Fragments

**Comments:**

**L-3 Transparent straight fiber bundles**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
	97% Cellulose	3% Filler and Binder

**Comments:**

**L-4 White crystalline powdery material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		80% Calcite Filler and Binder
		15% Perlite
		5% Mineral Particles

**Comments:**

Batch Number: 06-0103	<b>ACM Environmental</b>
Lab Sample Number: 06000648	<b>3048-16</b>
Client Sample Number: <b>3048-669</b>	<i>North Delta Secondary School</i>

Sampled By: S. 'Riley' Rickert  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 1/25/2006



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### Bulk Asbestos Fiber Analysis

**L-1 Pale beige paint**

**Asbestos Fibrous Components:** No Asbestos Detected  
**Non-Asbestos Fibrous Components:**  
**Non-Fibrous Components:** 100% Paint

**Comments:**

**L-2 White crystalline powdery material**

**Asbestos Fibrous Components:** No Asbestos Detected  
**Non-Asbestos Fibrous Components:**  
**Non-Fibrous Components:** 80% Calcite Filler and Binder  
15% Perlite  
5% Mineral Particles

**Comments:**

Batch Number: 06-0103 **ACM Environmental**  
Lab Sample Number: 06000649 **3048-16**  
Client Sample Number: **3048-670** *North Delta Secondary School*

**L-1 Pale beige paint**

**Asbestos Fibrous Components:** No Asbestos Detected  
**Non-Asbestos Fibrous Components:**  
**Non-Fibrous Components:** 100% Paint

**Comments:**

**L-2 White crystalline powdery material**

**Asbestos Fibrous Components:** No Asbestos Detected  
**Non-Asbestos Fibrous Components:**  
**Non-Fibrous Components:** 80% Calcite Filler and Binder  
15% Perlite  
5% Mineral Particles

**Comments:**

Sampled By: S. 'Riley' Rickert  
Received By: John McCaslin 1/18/2006  
Reviewed By: George McCaslin 1/25/2006

*Deitrie Hanson*  
Analyzed By: Deitrie Hanson 1/25/2006



NVLAP LAB CODE 200613-0



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### Bulk Asbestos Fiber Analysis

#### L-3 White fibrous papery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	97% Cellulose	3% Filler and Binder

Comments:

#### L-4 White crystalline powdery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		80% Talc Filler and Binder
		15% Perlite
		5% Mineral Particles

Comments:

Batch Number: 06-0103	<b>ACM Environmental</b>
Lab Sample Number: 06000650	<b>3048-16</b>
Client Sample Number: <b>3048-671</b>	<i>North Delta Secondary School</i>

#### L-1 White paint

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		100% Paint

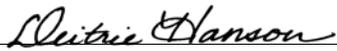
Comments:

#### L-2 Pale brown fibrous opaque material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	45% Cellulose	20% Perlite
	30% Mineral Wool	5% Mineral Filler and Binder

Comments:

Sampled By: S. 'Riley' Rickert  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

  
 Analyzed By: Deitrie Hanson 1/25/2006



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 OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

## Bulk Asbestos Fiber Analysis

**L-3 White chalky brittle thin material**

<b>Asbestos Fibrous Components:</b> <1% <b>Chrysotile</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 70% Mineral Particles 25% Talc Filler and Binder >4% Lizardite
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**Comments:**  
 There is a trace amount of chrysotile asbestos in this layer.

Batch Number: 06-0103	<b>ACM Environmental</b>
Lab Sample Number: 06000651	<b>3048-16</b>
Client Sample Number: <b>3048-672</b>	<i>North Delta Secondary School</i>

**L-1 Light brown hard thin vinyl tile material with red and brown streaks**

<b>Asbestos Fibrous Components:</b> 2% <b>Chrysotile</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 45% Calcite Filler and Binder 40% Mineral Filler and Binder 10% Vinyl Filler and Binder 3% Mineral Particles
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**Comments:**

**L-2 Black mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 90% Asphalt Filler and Binder 5% Mineral Particles 5% Filler and Binder
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**Comments:**

Sampled By: S. 'Riley' Rickert  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

*Deitrie Hanson*

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Analyzed By: Deitrie Hanson 1/25/2006

**APPENDIX B**  
**Photographs**



Asbestos containing ceiling tile materials with pinholes & notches



Asbestos containing 12" Light brown VFT with red/brown streaks

**ENERGY SYSTEM SERVICE AGREEMENT**

**PINEWOOD ELEMENTARY SCHOOL**

**THIS AGREEMENT** dated for reference the 26<sup>th</sup> day of September, 2011.

**BETWEEN:**

**THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 37 (DELTA)**  
a corporation established under the School Act R.S.B.C. 1996, c. 412 having an  
office at 4585 Harvest Drive, Delta, British Columbia, V4K 5B4

(the "District")

OF THE FIRST PART

**AND:**

**FORTISBC ENERGY INC.,** a company duly incorporated under the laws of the  
Province of British Columbia, having its registered office at 10th Floor, 1111  
West Georgia Street, Vancouver, B.C. V6E 4M3

("FEI")

OF THE SECOND PART

**WHEREAS:**

- A. The District is the owner of Pinewood Elementary School (the "Building") and lands located at 11777 Pinewood Drive, Delta, British Columbia, which lands are legally described as:

PID: 002-575-400 Property No: 100724

Legal: LOT 336 SECTION 12 TOWNSHIP 4 NEW WESTMINSTER DISTRICT  
PLAN 60686

(the "Lands")

- B. FEI wishes to supply to the Building, and the District wishes to purchase, Thermal Energy generated by an Energy System that FEI will construct on the Lands, and which FEI will own and operate, all pursuant to the terms of this Agreement.
- C. The Thermal Energy supplied by FEI to the Building pursuant to this Agreement will be priced at the rate set forth in the Energy System Rate Development Agreement between the Parties dated September 26<sup>th</sup>, 2011.

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT** in consideration of the premises and the covenants, agreements, representations, warranties and payments set out herein, the receipt and sufficiency of which is hereby acknowledged by each Party, the Parties covenant and agree as follows:

## **ARTICLE 1 - INTERPRETATION**

### 1.1 DEFINITIONS

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

- (a) “Adjusted Energy System Purchase Price” means, as of the date on which a purchase of the Energy System pursuant to Article 15 is effective, either:
  - (i) the Rate Base Value; or
  - (ii) such other purchase price for the Energy System as is determined by the BCUC; plus all applicable taxes;
- (b) “Affiliate” has the meaning set out in the *Business Corporation Act*, S.B.C. 2002, c.57 and includes FortisBC Inc.;
- (c) “Agreement” means this agreement, including the preamble hereto and any schedules attached hereto and the terms “this Agreement”, “hereof”, “herein”, “hereunder” and “hereinafter” and similar expressions refer to the Agreement and not to any particular Section or other portion thereof and includes any agreement supplementary or ancillary thereto;
- (d) “Acceptance Date” means the date of BCUC Acceptance;
- (e) “BCUC” means the British Columbia Utilities Commission, or any successor thereto;
- (f) “BCUC Acceptance” has the meaning assigned to that term in Section 11.1;
- (g) “Building” has the meaning assigned to that term on page one of this Agreement;
- (h) “Building System” means the space heating, cooling and ventilation, and domestic hot water distribution and control systems existing in the Building, to which the Energy System will be connected;
- (i) “Business Day” means any day except Saturday and Sunday or any day on which banks are generally not open for business in Vancouver, British Columbia;
- (j) “Capital Contribution” means \$ 126,000;
- (k) “Commissioned” means once the Energy System is certified complete and operating in accordance with the Specifications by a professional engineer under seal;

- (l) “Commission Date” means the day on which the Energy System is Commissioned;
- (m) “Contaminants” means, collectively, any contaminant, toxic substance, dangerous good, or pollutant or any other substance which when released to the natural environment is likely to cause, at some immediate or future time, material harm or degradation to the natural environment or material risk to human health, and includes any radioactive materials, asbestos materials, urea formaldehyde, underground or aboveground tanks, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive or toxic substances, hazardous waste or waste of any kind, pesticides, defoliant, or any other solid, liquid, gas, vapour, odour or any other substance .the storage, manufacture, disposal, handling, treatment, generation, use, transport, remediation or Release into the Environment of which is now or hereafter prohibited, controlled or regulated under Environmental Laws;
- (n) “Continuing Service Interruption Notice” has the meaning assigned to that term in Section 14.3(b);
- (o) “Contractor” means a prime contractor hired by FEI to oversee and complete the construction and installation of the Energy System;
- (p) “Design and Construction” means the total construction and related services required to design, construct and commission the Energy System and connected components of the Building System;
- (q) “Design Thermal Energy” means the maximum amount of Thermal Energy that the Energy System is capable of delivering through the Thermal Energy Meter and is included in the Specifications;
- (r) “Disclosed Contaminants” means Contaminants:
  - (i) the existence of which are specifically identified in the reports provided by the District to FEI and listed in Schedule C;
  - (ii) that were or ought to have been discovered, foreseen or anticipated upon reasonable inspection by FEI prior to the Effective Date; and
  - (iii) that were caused by FEI or any person for whom FEI is responsible at law;
- (s) “District” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (t) “District Losses” has the meaning assigned to that term in Section 12.6;
- (u) “District Site Rules for Contractors” means the rules set forth in Schedule “B”;
- (v) “Effective Date” means the date set out on page one of this Agreement;
- (w) “Energy System” means the equipment that FEI constructs and owns which will provide the Building with its energy needs for space heating, cooling and ventilation, and domestic hot water use, all as set forth in this Agreement;

- (x) “Energy System Service Agreement” has the meaning assigned to that term in the Energy System Rate Development Agreement;
- (y) “Energy System Rate Development Agreement” means that energy system rate development agreement between the District and FEI dated as of September 26<sup>th</sup>, 2011;
- (z) “Environment” includes the air (including all layers of the atmosphere), land (including soil, sediment deposited on land, fill, lands submerged under water, buildings, and improvements), water (including oceans, lakes, rivers, streams, groundwater, and surface water), and all other external conditions and influences under which humans, animals, and plants live or are developed and “Environmental” will have a corresponding meaning;
- (aa) “Environmental Attributes” means:
  - (i) all attributes associated with, or that may be derived from the Energy System installed having decreased environmental impacts relative to the use of conventional heating and cooling and hot water heating systems including any existing or future credit, allowance, certificate, right, benefit or advantage or proprietary or contractual right whether or not tradable;
  - (ii) any existing or future instrument, including without limitation any environmental emission allowances and environmental emission reduction credits, reduction right, allowance, certificate or other unit of any kind whatsoever, whether or not tradable and any other proprietary or contractual right, whether or not tradable, and any resulting from, or otherwise related to the actual assumed reduction, displacement or offset of emissions associated with, or that may be derived from the Energy System installed; and
  - (iii) all revenues, entitlement, benefits and other proceeds arising from or related to the foregoing;
- (bb) “Environmental Laws” means any and all statutes, laws, regulations, orders, bylaws, standards, guidelines, protocols, permits, and other lawful requirements of any Governmental Authority having jurisdiction over the Lands or the Energy System now or hereafter in force with respect in any way to the Environment, environmental assessment, health, occupational health and safety, protection of any form of plant or animal life, or transportation of dangerous goods, including the principles of common law and equity;
- (cc) “Expiry Date” means the earlier of:
  - (i) June 30, 2031, or the expiry of any renewal term thereof; and
  - (ii) the closure of the Building, or the Building otherwise ceasing to operate as a school (as defined under the *School Act* (British Columbia));
- (dd) “FEI” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (ee) “FEI Losses” has the meaning assigned to that term in Section 12.5;

- (ff) “Force Majeure” has the meaning assigned to that term in Section 17.2;
- (gg) “Governmental Authority” means any federal, provincial, regional, municipal, local or other government, governmental or public department, court, tribunal, arbitral body, commission, board, bureau or agency and any subdivision, agent, commission, board or authority thereof;
- (hh) “Lands” has the meaning assigned to that term in Recital A and includes the Building located on the Lands;
- (ii) “Laws” means laws, statutes, regulations, bylaws, Permits and orders of any Governmental Authority having jurisdiction, including without limitation, Environmental Laws;
- (jj) “Maintain” means to operate, service and maintain in a safe and reliable condition and “maintaining” and “maintenance” have corresponding meanings;
- (kk) “Monthly Charges” means that amount to be paid by the District to FEI with respect to the delivery of Thermal Energy to the Building pursuant to the Energy System Rate Development Agreement and any other payments due and owing by the District under this Agreement;
- (ll) “Notifying Party” has the meaning assigned to that term in Section 16.1;
- (mm) “Party” means a signatory to this Agreement, and the “Parties” means all of such signatories;
- (nn) “Permits” means all permits, licences, certificates, approvals, authorizations, consents and the like issued by any Governmental Authority;
- (oo) “Rate Base Value” means the value of the Energy System that the BCUC accepts from time to time in accordance with the Energy System Rate Development Agreement;
- (pp) “Release” includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, migration, disposal, or dumping;
- (qq) “Right of Access and Licence” means the right and licence granted herein by the District to FEI pursuant to Section 4.1 of this Agreement;
- (rr) “Service Failure Notice” has the meaning assigned to that term in Section 14.3(c);
- (ss) “Service Interruption” means, in any hour:
  - (i) a failure of the Energy System in that hour to deliver Thermal Energy at the Thermal Energy Meter sufficient to meet the Thermal Energy demand of the Building during that hour in accordance with the Specifications up to the Design Thermal Energy, and except where such failure is directly caused by:
    - a. the careless or wilful damage to the Energy System by the District or its agents or other persons for whom the District is responsible;

- b. damage caused to the Energy System as a result of the negligent acts or omissions of the District, its agents or those for whom in law the District is responsible;
  - c. an event of Force Majeure that triggers the suspension of FEI's obligations under the Agreement pursuant to Article 17; or
  - d. maintenance activities that FEI is performing on the Energy System that have been scheduled with the consent of the District (such consent not to be unreasonably withheld); and
- (ii) if the failure described in Section 1.1(rr)(i), FEI's failure in that hour to deliver to the Building through alternative means thermal energy sufficient to maintain an average temperature of 16 degrees Celsius in each room of the Building intended to be served by the Energy System (all as determined by the District, acting reasonably);
- (tt) "Service Interruption Notice" has the meaning assigned to that term in Section 14.3(a);
- (uu) "Services" means those services to be provided by FEI to supply Thermal Energy to a Building from an Energy System, and for greater certainty includes the services described in Articles 5 and 6, and excludes the Design and Construction;
- (vv) "Specifications" means the specifications for the Energy System prepared by FEI in consultation with the District in accordance with Section 2.3 and includes the Design Thermal Energy;
- (ww) "Term" has the meaning assigned to that term in Section 3.1;
- (xx) "Thermal Energy" means the amount of energy that FEI provides to the Building measured through a Thermal Energy Meter;
- (yy) "Thermal Energy Meter" means a device that complies with the International Organization of Legal Metrology recommendations for measuring thermal energy; and
- (zz) "UCA" means the *Utilities Commission Act*, R.S.B.C. 1996, c. 473 as may be amended from time to time.

## 1.2 SCHEDULES

The following Schedules, as may be amended from time to time, are incorporated by reference into this Agreement:

Schedule "A"	Energy System Description
Schedule "B"	Delta School District Site Rules for Contractors
Schedule "C"	List of Environmental Reports

### 1.3 AMENDMENTS TO SCHEDULES

The District and FEI acknowledge that during the construction phase of the Energy System there may be additions and alterations to the Specifications for the Energy System which would result in more efficient use and operation of the Energy System. If these additions or alterations result in changes to any of the above Schedules, the Parties mutually agree to amend the Schedules by way of a written amendment prior to the Commission Date.

### 1.4 INTERPRETATION

Except where the context requires otherwise or except as otherwise expressly provided, in this Agreement:

- (a) all references to a designated Article or Section are to the designated Article or Section of this Agreement unless otherwise specifically stated;
- (b) the singular of any term includes the plural, and vice versa, and the use of any term is equally applicable to any gender and, where applicable, body corporate;
- (c) any reference to a corporate entity includes and is also a reference to any corporate entity that is a successor by merger, amalgamation, consolidation or otherwise to such entity;
- (d) the preamble and all schedules referred to and attached to this Agreement are incorporated by reference and will form a part of this Agreement;
- (e) all sums of money which are referred to in this Agreement are in lawful money of Canada;
- (f) the headings of the Articles and Sections set out in this Agreement are for convenience only and will not be considered in any interpretation of this Agreement;

## **ARTICLE 2 - DESIGN AND CONSTRUCTION OF THE ENERGY SYSTEM**

### 2.1 CONSTRUCTION

FEI will perform the Design and Construction:

- (a) in accordance and in compliance with the Specifications;
- (b) in a good and workmanlike manner using qualified workers, and in accordance with sound and currently accepted industry standards and codes of practice normally employed, at the time and place of performance, in projects of a similar type and nature;
- (c) to ensure operational compatibility with the Building System;
- (d) in a safe and environmentally sound manner, and in accordance with all applicable Laws; and
- (e) in accordance with the terms of this Agreement.

## 2.2 CAPITAL CONTRIBUTION

The District will pay to FEI within 30 days of the Commission Date the Capital Contribution for the purpose of reducing the capital investment and the associated carrying cost of capital by FEI for provision of Service to the Building.

## 2.3 SPECIFICATIONS

Subject to and in accordance with this Section 2.3, FEI shall prepare and complete the Specifications promptly following the Acceptance Date.

FEI confirms the Energy System, as described in the Specifications and as contemplated by the Energy System description set out in Schedule A, will be designed to meet the thermal energy requirements of the Building and operational compatibility of the Building System based in part on information supplied by the District as to historical usage, which information has not been independently verified by FEI. FEI shall have no liability to the District for the failure of the Energy System to satisfy the requirements of the Building where such failure is attributable to the information supplied by the District being incorrect, inaccurate or incomplete.

FEI will prepare the Specifications in consultation with the District in order to ensure the Energy System can be appropriately accommodated within the Building and interface with the Building Systems. FEI will submit material changes to the Specifications, both before and during construction, to the District for review and comment prior to such changes taking place. If the District does not comment on the Specifications or material changes to the Specifications or advise that it has no comment within five (5) Business Days of receipt, FEI will be entitled to proceed on the basis of the information provided to the District. FEI will revise the Specifications based on the comments from the District provided that doing so will not impact FEI's costs or adversely affect system performance.

Review of and comment on the Specifications by the District does not impose any obligation on the District to verify the suitability of the Energy System or be construed as confirmation by the District that the Energy System satisfactorily meets the Building's energy requirements.

## 2.4 WORK SCHEDULE

Within ten (10) Business Days following the Acceptance Date, FEI will submit to the District for review and comment a Gantt chart schedule for the Design and Construction listing activities to be undertaken during the Design and Construction stages, key milestones and approval dates and other pertinent dates. Any revisions to the schedule must be reviewed and commented by the District, which review and comment will not be unreasonably withheld, conditioned or delayed.

In order to ensure that the Building System remains operational during normal school hours (as defined in Schedule B), the cut-over from the existing heating/cooling plant to the Energy System shall be performed outside normal school hours.

## 2.5 REPORTING

FEI shall produce and submit a monthly progress report for the Design and Construction to the District until the Energy System is Commissioned.

## 2.6 TESTING AND COMMISSIONING

FEI shall coordinate and supervise the start-up and testing of the Energy System to ensure the Energy System and other components of the Building System affected by the Design and Construction are operating in accordance with the Specifications, upon which the Energy System will be Commissioned. The District shall be invited to participate in the start-up and testing exercise.

# ARTICLE 3 - TERM AND RENEWAL

## 3.1 TERM

The term of this Agreement commences on the Effective Date and continues until the Expiry Date unless it is terminated earlier as authorized under this Agreement ("Term").

## 3.2 RENEWAL

This Agreement will automatically renew for periods of ten (10) years unless either Party provides written notice to the other Party no less than six (6) months prior to the Expiry Date, provided that there shall be no automatic renewal in the event that the Expiry Date arises as a result of the closure of the Building, or the Building otherwise ceases to operate as a school (as defined under the *School Act* (British Columbia)).

# ARTICLE 4 - ACCESS AND PERMITS

## 4.1 ACCESS RIGHTS

The District hereby grants to FEI, during the Term from and following the Acceptance Date, for so long as FEI shall require it, but subject to Section 4.4, a full, free and uninterrupted licence and right of way on, over and under the Lands and Building, for FEI, its assigns, employees, contractors, agents, invitees and licensees at all times hereafter for the purposes set out in this Agreement, provided FEI will avoid to the extent reasonably possible, and otherwise minimize interference with and inconvenience to, the occupants of the Building and the access rights of FEI will be limited to the extent reasonably necessary to fulfil FEI's obligations hereunder.

Without limiting the generality of the foregoing, but subject to Section 4.4, such right of way and licence shall include the full power, right and liberty to excavate for, install, place, construct, renew, alter, repair, maintain, operate, use, abandon, remove or replace its infrastructure, in whole or in part, and to enter upon, along, across, over or under the Lands or Building and have continual access to the Energy System, with or without vehicles, supplies, machinery or equipment, for any of the purposes set out in this Agreement, and to clear such portion of the Lands and keep it cleared of obstructions which, in the opinion of FEI, acting reasonably, may

interfere with any of the rights granted to FEI herein. The District may direct, in its discretion, FEI to use alternate routing for any Environmental or other reasonable purpose.

FEI covenants and agrees with the District not to do or knowingly permit to be done anything which may, in the opinion of the District acting reasonably, damage or interfere with the Building or impair the operating efficiency thereof or create any hazard.

#### 4.2 CONDITION OF LAND

The District represents and warrants to FEI that as of the Effective Date:

- (a) to the best of the District's knowledge, the Lands are free of Contaminants other than those specifically identified in the reports provided by the District to FEI and listed in Schedule C; and
- (b) there are no actions, proceedings, investigations, claims (including remediation cost recovery claims) pending, or to the knowledge of the District, threatened, that would interfere with FEI's access rights pursuant to Section 4.1.

#### 4.3 PERMITS

FEI will obtain and maintain at its own expense all Permits necessary for the Design and Construction and the Services.

#### 4.4 SAFETY, SECURITY AND BUILDING ACCESS

Notwithstanding anything to the contrary in this Agreement, FEI will adhere, and will cause all persons for whom it is responsible under this Agreement (including, without limitation, the Contractor) to adhere to the District Site Rules for Contractors.

#### 4.5 REMEDIATION

FEI shall promptly remediate any Disclosed Contaminants on the Lands as required by applicable Law that result from, or are Released as a result of the Design and Construction or the Services, except to the extent caused or contributed to by the District's negligence. In the event that Contaminants on the Lands, other than Disclosed Contaminants, are discovered by FEI, FEI will promptly notify the District of such discovery and the Parties will review the impact of such discovery, if any, on the Design and Construction or the Services.

### **ARTICLE 5 - SERVICE PROVISION**

#### 5.1 PROVISION OF SERVICE

Subject to the terms and conditions of the Agreement, FEI will provide the Services to the District throughout the Term.

## 5.2 SERVICE MONITORING AND REVIEW

The Parties acknowledge that FEI may be required from time to time to prepare and submit reports to the BCUC concerning the operation and performance of the Energy System, and the District shall provide FEI with reasonable cooperation in relation to the preparation of such reports.

## 5.3 STANDARD OF PERFORMANCE

In performing the Services, FEI will:

- (a) use only qualified personnel and exercise the same degree of care, skill and supervision as would be exercised by a reasonable and prudent owner experienced in performing like services;
- (b) perform the Services in accordance with all applicable Laws;
- (c) perform the Services in accordance with ongoing industry standards and codes of practice; and
- (d) without limiting the effect of the foregoing, abide by any standards of performance in relation to the Services that the BCUC may set from time to time according to the provisions of the UCA.

## 5.4 INTERRUPTION

No interruption of any of the on-site and off-site services, utilities and amenities provided by FEI to the Building will, except to the extent, if any, caused by any wrongful or negligent act of FEI or any person for whom FEI is responsible at law, render FEI liable to the District or any person claiming through or under the District, or relieve the District from any of its obligations under this Agreement. Notwithstanding the foregoing, FEI will use all reasonable diligence to remedy any such interruption if it is within its power and obligation to do so.

# **ARTICLE 6 - ENERGY SYSTEM MAINTENANCE AND OPERATION**

## 6.1 MAINTENANCE AND REPAIR OF ENERGY SYSTEM

Subject to Section 6.2, FEI will perform the Services and otherwise maintain or cause to be maintained and repaired the Energy System throughout the Term:

- (a) in accordance with the Energy System design and operating specifications and requirements as established by the qualified engineers engaged by FEI in the design and construction of the Energy System, and the equipment manufacturers;
- (b) in a good and workman-like manner using qualified workers, and in accordance with sound and currently accepted industry standards and codes of practice normally employed, at the time and place of performance, in projects of a similar type and nature;
- (c) to ensure operational compatibility with the Building System;

- (d) in a safe and environmentally sound manner, and in accordance with all applicable Laws; and
- (e) in accordance with the terms of this Agreement.

FEI will not delay repair of the Energy System for any reason, including as a result of a dispute with the District in relation to the costs and expenses of repair pursuant to Section 6.2.

## 6.2 REPAIR DAMAGE

The District will be responsible for all costs and expenses incurred by FEI in respect of any damage to the Energy System caused by or resulting from:

- (a) the careless or wilful damage to the Energy System by the District or its agents or other persons for whom at law the District is responsible; or
- (b) damage caused to the Energy System as a result of the negligent acts or omissions of the District, its agents or those for whom in law the District is responsible.

## **ARTICLE 7 - CHARGES**

### 7.1 MONTHLY CHARGES

The District throughout the Term commencing on the Commission Date in accordance with this Article 7 will pay to FEI when due for the Thermal Energy that FEI delivers and meters to the Building according to the rates set out in the Energy System Rate Development Agreement plus all applicable taxes (including harmonized sales tax applicable thereon) and any imposed taxes levied after the Commission Date by a government or regulatory agency that are related to the Energy System (including, but not limited to capital taxes or royalties) and any other payments due and owing by the District under this Agreement.

### 7.2 MONTHLY STATEMENT

FEI will, within 15 days following the end of each month, deliver to the District a statement setting out the Monthly Charges including all applicable taxes payable for that month.

### 7.3 PAYMENT

The District will pay the full amount specified in each statement provided to it in accordance with Section 7.2 within 30 days of receipt of such statement. All amounts payable to FEI will be made by cheque mailed to FEI at its address for service specified in Section 20.5.

### 7.4 PAYMENT DUE

Subject to Section 14.1, the obligation of the District to pay the Monthly Charges continues whether or not the Energy System is being used to provide the Building with its energy needs for space and ventilation heating, cooling and domestic hot water use.

#### 7.5 ARREARS TO BEAR INTEREST

If any amount owing to FEI or the District is not paid on or before the date on which it is due, a late payment charge of 1.5% per month will be assessed each month on all outstanding balances not paid by the due date.

### **ARTICLE 8 - OWNERSHIP OF THE ENERGY SYSTEM**

Notwithstanding the payments made by the District to FEI under this Article 8, any provision of this Agreement, any degree of annexation or affixation, or rule of law or equity to the contrary the District will have no proprietary interest in the Energy System which is, and shall remain, the property of FEI and may be used by FEI in its business or removed in whole or in part as it may see fit, and for any of such purposes, and FEI may enter in, upon and under all the Lands for the purposes of the maintenance, renewals, repair, removal or operation of the Energy System or any part thereof; provided that FEI shall not leave any part of the Energy System in such a state as to constitute a nuisance or a danger to the public through neglect, non-use and want of repair, and provided further that nothing in this clause shall nullify or otherwise impact or invalidate in any way the District's rights under Article 15 to purchase the Energy System.

### **ARTICLE 9 - ENVIRONMENTAL ATTRIBUTES**

#### 9.1 ENVIRONMENTAL ATTRIBUTES

All right, title and interest now existing or which may exist at any time in the future in the potential or actual commercial value of any Environmental Attributes that arise or accrue by virtue of the construction and operation of the Energy System will belong to the District. At the request of the District, FEI will reasonably cooperate with the District in applying for and assigning any Environmental Attributes to the District.

#### 9.2 GRANTS

Any grants from any Governmental Authority, a Crown Corporation or non-governmental authority that may be derived from a reduction in energy consumption by the Building will belong to the District.

### **ARTICLE 10 - REPRESENTATIONS AND WARRANTIES**

#### 10.1 DISTRICT'S REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties contained in this Agreement, the District hereby represents and warrants to FEI as follows and acknowledges that FEI is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) the District has the full right, power and authority to enter into this Agreement;

- (b) all necessary action on the part of the District has been taken to authorize and approve the execution and delivery of this Agreement and the performance by the District of its obligations hereunder;
- (c) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to the District as of the date of this Agreement;
- (d) the District is not party to any action, suit or legal proceeding, actual or, to the knowledge of the District, threatened, and there are no circumstances, matters or things known to the District which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or, to the knowledge of the District, threatened against the District before or by any Governmental Authority, which could affect the District's ability to perform its obligations under this Agreement; and
- (e) no person, firm or corporation has or will have as of the Commission Date, any agreement, right, or option or right capable of becoming an agreement, right, or option for the purchase or acquisition of the Energy System.

## 10.2 FEI'S REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties contained in this Agreement, FEI hereby represents and warrants to the District as follows and acknowledges that the District is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) FEI has the full right, power and authority to enter into this Agreement;
- (b) all necessary corporate action on the part of FEI has been taken to authorize and approve the execution and delivery of this Agreement and the performance by FEI of its obligations hereunder;
- (c) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to FEI as of the date of this Agreement;
- (d) FEI is not party to any action, suit or legal proceeding, actual or threatened, and there are no circumstances, matters or things known to FEI which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or threatened against FEI before or by any Governmental Authority, which could affect FEI's ability to perform its obligations under this Agreement; and
- (e) FEI has or will have all permits, licenses, authorizations and other documentation required for the operation of the Energy System after the Commission Date; and
- (f) FEI has all the required expertise to fulfill its obligations under this Agreement.

### 10.3 DELEGATION AND SUBCONTRACTING

FEI may delegate and subcontract its obligations under this Agreement with respect to Design and Construction and Services to any contractor, consultant, agent or representative provided that FEI shall be fully responsible for the acts and omissions of such persons and those either directly or indirectly employed by them to the same extent as FEI for its own acts or omissions.

## **ARTICLE 11 - BCUC ACCEPTANCE**

### 11.1 REGULATORY REVIEW TERMINATION

Subject to Section 11.3, either Party may terminate this Agreement if within 90 days following the Effective Date, this Agreement and the Energy System Rate Development Agreement, including the Market Rate and the SD37 Rate Rider as defined in that Agreement have not been accepted for filing by the BCUC (such acceptance being herein called "BCUC Acceptance").

### 11.2 REGULATORY FILING

FEI, on behalf of itself and the District, and at its own cost, shall file the Agreement with the BCUC within a reasonable time after the Effective Date. FEI shall take all steps reasonably required to secure BCUC Acceptance, which shall consist of those procedural steps related to filing the Agreement and providing argument and witnesses in support of filing.

### 11.3 TERMINATION

A Party entitled to terminate under Section 11.1 must do so by giving notice to terminate to the other Party at any time after the right to terminate arises pursuant to Section 11.1, and prior to:

- (a) the date of issuance of the BCUC Acceptance; and
- (b) the date that is 90 days after the Effective Date.

### 11.4 EFFECT OF BCUC ACCEPTANCE

The Parties acknowledge that upon BCUC Acceptance, the Services will be subject to regulation by the BCUC under the UCA, and will form another class of service that FEI provides as a public utility. The Parties acknowledge that the terms of the UCA may supersede the terms and conditions of this Agreement.

## **ARTICLE 12 - INDEMNITY**

### 12.1 FEI'S INDEMNITY

Without limiting any other obligations of FEI provided herein, FEI will indemnify, defend, and save harmless the District and its trustees, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including the full amount of all legal fees and expenses on a

solicitor-client basis) which may be paid by, incurred by, or asserted against the District or its directors, officers, employees, agents, successors, or assigns, arising from or in connection with:

- (a) the breach or non-performance by FEI of any of its obligations or warranties hereunder; or
- (b) the negligence or wilful misconduct of FEI, its employees, contractors or agents in respect of the Energy System, and in the performance of the obligations of FEI pursuant to this Agreement,

excluding only such of the foregoing as arise from the fraud, negligence or wilful misconduct of the District or its trustees, officers, directors, members, employees, contractors or agents, or the breach or non-performance by the District of any of its obligations or warranties hereunder.

## 12.2 DISTRICT'S INDEMNITY

Without limiting any other obligations of the District provided herein, the District will indemnify, defend, and save harmless FEI, its Affiliates and their respective shareholders, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including the full amount of all legal fees and expenses on a solicitor-client basis) which may be paid by, incurred by, or asserted against FEI, its Affiliates or their respective shareholders, directors, officers, employees, agents, successors, or assigns, arising from or in connection with:

- (a) the breach or non-performance by the District of any of its obligations or warranties hereunder; or
- (b) the negligence or wilful misconduct of the District, its employees, contractors or agents in respect of the Energy System, and in the performance of the obligations of the District pursuant to this Agreement,

excluding only such of the foregoing as arise from the fraud, negligence or wilful misconduct of FEI or its Affiliates or any of their respective officers, directors, members, employees, contractors or agents, or the breach or non-performance by FEI of any of its obligations or warranties hereunder.

## 12.3 CONSEQUENTIAL LOSS

In no event will the District or FEI or any of their respective officers, directors, employees, contractors or agents be liable to the other Party for any indirect or consequential loss, cost or expense whatsoever, including any loss of profits, revenues or other economic loss, suffered by the other Party or its officers, directors, employees, contractors or agents.

## 12.4 SURVIVAL OF INDEMNITY

The indemnity of each of the District and FEI provided under this Article 12 will survive the Term of this Agreement.

## 12.5 ENVIRONMENTAL INDEMNITY BY THE DISTRICT

The District will indemnify and save harmless FEI, its Affiliates, directors, officers, shareholders, employees, agents, successors and permitted assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants (but not including Disclosed Contaminants) and remediation of the Lands and any affected adjacent property) (collectively, "FEI Losses") which may be paid by, incurred by or asserted against FEI, its Affiliates and their respective directors, officers, shareholders, employees, agents, successors or permitted assigns, arising from or in connection with any Contaminants (but not including Disclosed Contaminants) existing on the Lands prior to the Commission Date or brought onto the Lands or Released onto the Lands by the District or any person for whom it is in law responsible, except to the extent the FEI Losses suffered were caused or contributed to by any act or omission of FEI or any person for whom FEI is in law responsible after FEI had knowledge of the Contaminants.

## 12.6 ENVIRONMENTAL INDEMNITY BY FEI

FEI will indemnify and save harmless the District, its Affiliates and their respective trustees, directors, officers, employees, agents, successors and permitted assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the Lands and any affected adjacent property) (collectively, "District Losses") which may be paid by, incurred by or asserted against the District, its Affiliates, and their respective trustees, directors, officers, employees, agents, successors or permitted assigns, arising from or in connection with any Contaminants brought onto the Lands or any Disclosed Contaminants Released onto the Lands by FEI or any person for whom it is in law responsible, except to the extent the District Losses suffered were caused or contributed to by any act or omission of the District or any person for whom the District is in law responsible after the District had knowledge of the Contaminants.

# ARTICLE 13 - INSURANCE

## 13.1 FEI INSURANCE COVERAGE.

- (a) FEI will obtain and maintain at its own expense throughout the Term, Commercial General Liability Insurance for bodily injury, death and property damage in the minimum amount of five million (\$5,000,000) dollars per occurrence. The policy will contain a cross liability provision and will be maintained for a period ending no sooner than 12 months after the expiry or termination of this Agreement.
- (b) FEI will be responsible for the full amount of all premiums and deductibles required under this Section 13.1. All policies required herein must be effective at the Commission Date. Insurance will be purchased from insurers registered and licensed to underwrite

insurance in British Columbia. Policies will contain waivers of subrogation against the District and all its officers, directors, members, employees, contractors and agents.

### 13.2 DISTRICT INSURANCE COVERAGE

- (a) The District will obtain and maintain at its own expense throughout the Term Commercial General Liability Insurance for bodily injury, death and property damage in the minimum amount of five million (\$5,000,000) dollars per occurrence. The policy will contain a cross liability provision and will be maintained for a period ending no sooner than 12 months after the expiry or termination of this Agreement.
- (b) The District will be responsible for the full amount of all premiums and deductibles required under this Section 13.2. All policies required herein must be effective at the date of this Agreement. Insurance will be provided by the Provincial self-insured program. Policies will contain waivers of subrogation against FEI and all its officers, directors, employees, contractors and agents.

### 13.3 PRIORITY

FEI will ensure that the District is an additional insured under the insurance to be obtained and maintained pursuant to Section 13.1. The District will ensure that FEI is an additional insured under the insurance to be obtained and maintained pursuant to Section 13.2. In the event of a claim, the insurance carried by the Party responsible for actions which give rise to such claim will be the primary insurance with respect to such claim.

## **ARTICLE 14 - DEFAULT**

### 14.1 DEFAULT BY FEI

- (a) FEI will be in default under this Agreement if FEI is in breach of a material term, covenant, agreement, condition or obligation imposed on it under this Agreement and fails to cure such default within ten (10) days after receipt of written notice thereof from the District, or, if such default is not capable of being cured within such ten (10) day notice period, fails to commence in good faith the curing of such default upon receipt of such written notice of default from the District and to continue to diligently pursue the curing of such default thereafter until cured. For the purposes of this Section 14.1, Section 4.4 is hereby deemed to be a material term of this Agreement.
- (b) If FEI is in default of this Agreement, the District may at its option and without liability therefore or prejudice to any other right or remedy it, including under the UCA, may have suspend or refuse to make any payments due hereunder until the default has been fully remedied, and no such suspension or refusal will relieve FEI from any of its obligations under this Agreement.
- (c) In the event the default is not fully remedied within thirty (30) days of receipt by FEI of written notice thereof from the District, the District may, at its option, undertake the necessary steps to remedy FEI's default at FEI's sole expense, which reasonable costs

shall be deducted from the Monthly Charges, and such actions will not relieve FEI from any of its obligations under this Agreement or, at its option, and without any liability, terminate this Agreement without prejudice to any other right the District may have hereunder or at law or otherwise.

#### 14.2 DEFAULT BY THE DISTRICT

- (a) The District will be in default under this Agreement if the District fails or refuses to make any payment due to FEI by the District under this Agreement within thirty (30) days of receiving written notice from FEI after the date that payment is due or if the District is in breach of a material term, covenant, agreement, condition or obligation imposed on it under this Agreement and fails to cure such default within ten (10) days after receipt by the District of written notice thereof from FEI or, if such default is not capable of being cured within such ten (10) day notice period, fails to commence in good faith the curing of such default forthwith upon receipt of such written notice thereof from FEI and to continue to diligently pursue the curing of such default thereafter until cured.
- (b) If the District is in default of this Agreement, FEI may at its option and without liability therefore or prejudice to any other right or remedy it may have, including under the UCA, cease performing the Services and no such actions will relieve the District from any of its obligations under this Agreement.
- (c) In the event the default by the District is not fully remedied within thirty (30) days of receipt by the District of written notice from FEI, FEI may undertake the necessary steps to remedy the District's default at the District's sole expense and such action will not relieve the District from any of its obligations under this Agreement or, at its option, and without any liability, take whatever steps necessary to shut down the Energy System and terminate this Agreement without prejudice to any other right FEI may have hereunder or at law or otherwise.

#### 14.3 CROSS DEFAULT

- (a) If any Building experiences a Service Interruption at any time, the District may deliver a notice of such Service Interruption to FEI (a "Service Interruption Notice" to FEI);
- (b) If a Service Interruption continues for a period of 48 consecutive hours after the delivery of a Service Interruption Notice pursuant to Section 14.3(a), the District may deliver a notice of such continuing Service Interruption to FEI (a "Continuing Service Interruption Notice");
- (c) If a Service Interruption continues for a period of 120 consecutive hours after the delivery of a Continuing Service Interruption Notice, the District may at its option deliver a notice of such continuing Service Interruption to FEI (a "Service Failure Notice"); Within 60 days of either:
  - (i) the District's delivery of a Service Failure Notice pursuant to Section 14.3(c); or

- (ii) the District's delivery of a Continuing Service Interruption Notice pursuant to Section 14.3(b) that constitutes the fifth or greater Continuing Service Interruption Notice delivered in that calendar year;

the District may, at its option and without liability:

- (iii) terminate this Agreement without prejudice to any other right the District may have hereunder at law or otherwise; or
  - (iv) terminate the Energy System Rate Development Agreement and all Energy System Service Agreements (inclusive of this Agreement), without prejudice to any other right the District may have hereunder at law or otherwise.
- (d) For greater certainty, this Agreement shall be deemed to be terminated in the event that the District exercises its right to terminate all Energy System Service Agreement under another Energy System Service Agreement.

#### 14.4 SURVIVAL

Upon expiry or earlier termination of this Agreement for any reason, all claims, causes of action or other outstanding obligations remaining or being unfulfilled as of the expiry or termination of this Agreement and all of the provisions of this Agreement relating to the obligation or either the Parties to account to or indemnify the other and to pay to the other any amounts owing as at the date of expiry or termination in connection with this Agreement will survive such expiry or termination.

### **ARTICLE 15 – EXPIRY AND TERMINATION**

#### 15.1 EXPIRY

Upon expiry of the Term, unless otherwise agreed between the Parties and subject to agreement by the BCUC (if required pursuant to applicable Laws), the District may, at its option and by written notice to FEI within 30 days following the termination:

- (a) require FEI to remove the Energy System at FEI's cost in accordance with Section 15.5; or
- (b) acquire the Energy System from FEI at the Adjusted Energy System Purchase Price.

#### 15.2 TERMINATION OF THE ENERGY SYSTEM RATE DEVELOPMENT AGREEMENT

- (a) If the Energy System Rate Development Agreement is terminated as a result of the adoption, approval or implementation of a thermal energy rate tariff by the BCUC, this Agreement will automatically terminate effective as of the date of termination of the Energy System Rate Development Agreement;
- (b) If the Energy System Rate Development Agreement is terminated for cause by the District, this Agreement will be deemed to have been terminated pursuant to Section

14.1(c) as of the date of termination of the Energy System Rate Development Agreement, and Section 15.3 shall apply; and

- (c) If the Energy System Rate Development Agreement is terminated for cause by FEI, this Agreement will be deemed to have been concurrently terminated pursuant to Section 14.2(c) as of the date of termination of the Energy System Rate Development Agreement, and Section 15.4 shall apply.

### 15.3 TERMINATION BY THE DISTRICT FOR CAUSE

If the District terminates this Agreement pursuant to Sections 14.1(c) or 14.3, the District may, at its option and by written notice to FEI within 30 days following the termination:

- (a) require FEI to remove the Energy System, at its own cost, in accordance with Section 15.5; or
- (b) acquire the Energy System from FEI at the Adjusted Energy System Purchase Price.

### 15.4 TERMINATION BY FEI FOR CAUSE

If FEI terminates this Agreement pursuant to Section 14.2(c), FEI may, at its option and by written notice to the District:

- (a) remove the Energy System, at its own cost, in accordance with Section 15.5; or
- (b) require the District to purchase the Energy System from FEI at the Adjusted Energy System Purchase Price.

### 15.5 REMOVAL OF THE ENERGY SYSTEM

If FEI is required to remove the Energy System pursuant to Sections 15.1(a), 15.3(a) or 15.4(a) or otherwise upon expiry of this Agreement, FEI shall promptly remove those portions of the Energy System located within the Building and at surface level at FEI's cost, and FEI shall perform such removal activities using standards of performance that are equivalent to those that apply to the performance of the Services under this Agreement. Any portion of the Energy System not removed by FEI prior to the 30<sup>th</sup> day following the termination or expiry of the Agreement will, as of such day, be deemed to be automatically transferred to the District, and become the property of the District, all at no cost to the District.

### 15.6 ACQUISITION OF THE ENERGY SYSTEM

If the District elects to acquire the Energy System pursuant to Sections 15.1(b), 15.3(b) or 15.4(b):

- (a) the District shall pay the Adjusted Energy System Purchase Price to FEI within the later of 30 days of (i) the effective date of expiration or termination, and (ii) confirmation of the Adjusted Energy System Purchase Price; and

- (b) FEI will promptly execute and deliver any documents and records reasonably required by the District to effect and facilitate the transfer of the Energy System to the District, including bills of sale, operation and maintenance manuals and warranties, and will use reasonable commercial efforts to obtain any consents and approvals that may be required in relation to the transfer (including, without limitation, BCUC approval), provided that (i) FEI's obligations under this Section 15.6(b) shall arise only upon FEI's receipt of all amounts due and owing to FEI from the District under this Agreement, and (ii) during the period between the expiration or termination of the Agreement and FEI's receipt of amounts due and owing to FEI from the District under this Agreement, FEI shall continue to maintain, or shall permit the District to maintain, the Energy System in good working order.

Notwithstanding the foregoing, the Parties acknowledge and agree that FEI's ability to sell or otherwise transfer its interest in and to the Energy System to the District may be subject to BCUC approval under applicable Laws.

## **ARTICLE 16 - NON-COMPLIANCE AND ENVIRONMENTAL**

### 16.1 NOTIFICATION OF NON-COMPLIANCE

FEI or the District (as applicable, the "Notifying Party") will promptly, upon becoming aware thereof, notify the other Party in writing of:

- (a) a Release of a Contaminant or any other occurrence or condition in the Energy System, the Lands or any adjacent property which could subject the other Party to any fines, penalties, orders or proceedings under applicable Laws;
- (b) any charge, order, investigation or notice of violation or non-compliance issued against the Notifying Party relating to the Energy System, or the operation of the Energy System, under any applicable Laws; and
- (c) any notice, claim, action or other proceeding by any third party against the Notifying Party in respect of the Design and Construction or the Services or concerning the Release or alleged Release of any Contaminants at or from the Energy System or the Lands.

### 16.2 NOTIFICATION BY FEI

FEI will notify the appropriate Governmental Authorities of any Release of any Contaminants at or from the Energy System in accordance with applicable Laws. The District may, but is not obligated to, notify the appropriate Governmental Authorities of any Release of any Contaminants at or from the Energy System in accordance with applicable Laws.

### 16.3 OWNERSHIP OF CONTAMINANTS

Notwithstanding any rule of law to the contrary, any Disclosed Contaminant Released from the Energy System, or any top soil, earth or other material containing a Contaminant for which FEI is responsible pursuant to Section 4.5 that is removed from the Lands by FEI or any person for

whom it is in law responsible, will be and remain the sole and exclusive property and responsibility of FEI and will not become the property of the District, notwithstanding the degree of its affixation to the Lands and notwithstanding the expiry or earlier termination of this Agreement.

#### 16.4 SURVIVAL OF OBLIGATIONS

The obligations of the Parties under this Article 16 will survive the expiry or termination of this Agreement.

### **ARTICLE 17 - FORCE MAJEURE**

#### 17.1 SUSPENSION

Subject to the other provisions of this Article 17, if either Party is unable or fails by reason of Force Majeure to perform in whole or in part any obligation or covenant set forth in this Agreement, with the exception of unpaid financial obligations, such inability or failure will be deemed not to be a breach of such obligation or covenant and the obligations of both Parties under this Agreement will be suspended to the extent necessary during the continuation of any inability or failure so caused by such Force Majeure.

#### 17.2 DEFINITION OF FORCE MAJEURE

For purposes of this Agreement, the term "Force Majeure" means any event or occurrence not within the control of the Party claiming Force Majeure and which by the exercise of reasonable diligence such Party is unable to prevent or overcome, including any acts of God, including lightning, earthquakes, storms, washouts, landslides, avalanches, fires, epidemics and floods; strikes, lockouts or other industrial disturbances; acts of the Queen's or public enemies, sabotage, wars, blockades, insurrections, riots or civil disturbances, fires, explosions, breakages of or accidents to machinery or lines of pipe; the laws, orders, rules, regulations, acts or restraints of any court or governmental or regulatory authority. For the purposes of this Article 17, a Party is deemed to have control over the actions or omissions of those persons to which it, its agents, contractors or employees, have delegated, assigned or subcontracted its obligations and responsibilities. For greater certainty, a Force Majeure shall not include any weather related events that do not exceed 25 year events as recorded by Environment Canada or as otherwise may be determined by the BCUC from time to time.

#### 17.3 EXCEPTIONS

Neither Party will be entitled to the benefit of Section 17.1 under any of the following circumstances:

- (a) the Energy System not being Commissioned;
- (b) to the extent that the inability or failure was caused by the negligence or contributory negligence of the Party claiming Force Majeure;

- (c) to the extent that the inability or failure was caused by the Party claiming Force Majeure having failed to diligently attempt to remedy the condition by taking all reasonable acts and to resume the performance of such covenants and obligations with reasonable dispatch;
- (d) if the inability or failure was caused by lack of funds or is in respect of any amount due hereunder; or
- (e) unless, as soon as possible after the happening of the occurrence relied upon or as soon as possible after determining that the occurrence was in the nature of Force Majeure and would affect the claiming Party's ability to observe or perform any of its covenants or obligations under this Agreement, the claiming Party will have given to the other Party notice to the effect that the claiming Party is unable by reason of Force Majeure (the nature whereof will be therein specified) to perform the particular covenants or obligations.

#### 17.4 RESUMPTION OF OBLIGATIONS

The Party claiming Force Majeure will give notice to the other Party, as soon as possible after the Force Majeure condition is remedied, to the effect that the same had been remedied and that such Party has resumed, or is then in a position to resume, the performance of its suspended covenants and obligations hereunder either in whole or in part.

#### 17.5 SETTLEMENT OF LABOUR DISPUTES

Notwithstanding any of the provisions of this Article 17, and subject to Section 17.3, the settlement of labour disputes or industrial disturbances is entirely within the discretion of the particular Party involved and the Party may make settlement of it at the time and on terms and conditions as it may deem to be advisable and no delay in making settlement will deprive the Party of the benefit of Section 17.1.

### **ARTICLE 18 - CONDITIONS PRECEDENT**

#### 18.1 CONDITIONS PRECEDENT OF FEI

The obligation of FEI to carry out the transactions contemplated by this Agreement is subject to fulfillment of the following conditions on or before such date as may be specified, which is for the sole benefit of FEI, and which may be waived by FEI in accordance with Section 18.2:

- (a) FEI obtaining the approval by its board of directors of the terms and conditions of this Agreement on or before the 30th day following the Effective Date, provided that if such approval cannot be obtained by this date due to the fact that the board of directors has not yet considered the transaction FEI reserves the right to extend the period of time to that date when the board next convenes.

## 18.2 FEI NOTICE OF WAIVER

If a condition set out in Section 18.1 has not been satisfied on or before the date as may be specified for its fulfillment, FEI may waive compliance with the condition in whole or in part, in its sole discretion, by written notice to the District, failing which delivery of written notice of satisfaction or waiver of such condition, this Agreement will, to the extent any further obligations of the Parties which remain unfulfilled, be null and void, without liability between the Parties hereto, and, neither Party will be under any further obligation to the other to complete the transactions or future transactions, as the case may be, contemplated by this Agreement.

## **ARTICLE 19 - DISPUTE RESOLUTION**

### 19.1 REFERENCE TO ARBITRATION

The Parties will attempt to resolve all disputes which may arise under, out of, in connection with or in relation to this Agreement by negotiation. They will provide full and timely disclosure to one another of all facts relevant to the disputes to facilitate those negotiations. If any such dispute remains unresolved, for any reason, fifteen (15) days after either Party requested the other Party to enter into negotiations to resolve it, or if the Parties agree to waive negotiations in respect of it, then either Party may submit that dispute for final resolution by arbitration administered by the British Columbia International Commercial Arbitration Centre (“BCICAC”) under its “Shorter Rules for Domestic Commercial Arbitration”. The seat of that arbitration will be Vancouver, British Columbia, Canada. The language of that arbitration will be English. Alternatively, the Parties may agree, within the 15 days referred to above, to submit that dispute for final resolution by arbitration in another manner.

### 19.2 BINDING DECISION

The decision of the arbitrator, regardless of what arbitration procedure is used, will, for all purposes of this Agreement, be final and binding on the Parties.

### 19.3 CONTINUATION OF SERVICES

Each of the Parties will perform all of its respective obligations under this Agreement notwithstanding the existence of any dispute that arises from time to time between the Parties in respect of any matter related to this Agreement or during the resolution of any dispute in accordance with this Article 19.

### 19.4 COSTS

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 case, the non-prevailing Party shall pay all costs and expenses of the arbitration, but not those of the prevailing Party.

## ARTICLE 20 - GENERAL

### 20.1 RESPONSIBILITY FOR COSTS

FEI's performance of any of its obligations under this Agreement, including without limitation the obligation to design, construct and install the Energy System as provided in Section 2.1, shall be at FEI's sole cost and expense, unless expressly provided otherwise in this Agreement;

### 20.2 EXERCISE OF DISCRETION

Where anything in this Agreement is identified as being in either Party's discretion, such Party will have the right to exercise such discretion in its own best interest without regard for the interest of the other Party.

### 20.3 COOPERATION

FEI and the District will at all times extend co-operation to each other to ensure the orderly management and operation of the Energy System.

### 20.4 SOLICITATION

Nothing in this Agreement precludes either Party from soliciting or entering into, other contracts with the other Party.

### 20.5 NOTICES

Any notice or other communication required or permitted to be given under this Agreement will be effective only if in writing and when it is actually delivered (which delivery may be by telecopy or other telecommunications device) to the Party for whom it is intended at the following address or such other address in British Columbia as such Party may designate to the other Party by notice in writing delivered in accordance with this Section 20.5:

(a) if to FEI:

FortisBC Energy Inc.  
10th Floor, 1111 West Georgia Street  
Vancouver, B.C.  
V6E 4M3

Attention: Gareth Jones  
Telephone: 250-380-5972  
Telecopy: 250-388-6876

(b) if to the District:

Board of Education of School District No. 37 (Delta)  
4585 Harvest Drive  
Delta, B.C.  
V4K 5B4

Attention: Frank Geyer  
Telephone: 604-952-5336  
Telecopy: 604-952-5375

Notwithstanding the foregoing, notices with respect to Force Majeure will be given in writing by telecopy, or orally in person or by telephone (to be confirmed by telecopy), to the person or persons designated from time to time by the Parties as the person or persons authorized to receive such notices.

## 20.6 CONFIDENTIALITY

The District and FEI will treat as confidential the terms of this Agreement and all Confidential Information (as defined below) and will at all times during the term of this Agreement and for a reasonable time thereafter hold the terms of this Agreement and all Confidential Information in confidence and neither Party will, without the prior written consent of the other Party, disclose or divulge the terms of this Agreement or any Confidential Information to any person, provided that nothing in this Section 20.6 will restrict or prevent either Party from making any disclosure of such terms or any Confidential Information:

- (a) which is reasonably necessary or desirable for such Party to carry out and give full effect to the terms, conditions and intent of this Agreement and the matters contemplated hereby;
- (b) which is required by any Law, including the Freedom of Information and Protection of Privacy Act (British Columbia);
- (c) to any Governmental Authority;
- (d) to the British Columbia Utilities Commission or other regulatory agency as part or in support of any regulatory application or submission;
- (e) to the directors, officers or employees of such Party or to an Affiliate of such Party or to the directors, officers or employees of an Affiliate of such Party;
- (f) to the professional advisors of such Party on the same terms of confidentiality;
- (g) which is already in the public domain; or
- (h) in connection with legal proceedings or steps being taken to remedy a breach or default under this Agreement by the other Party.

For the purposes of this Section 20.6, “Confidential Information” means proprietary information of either Party such as data, plans, drawings, manuals, or specifications which have been provided by such Party, its employees, contractors, agents, subcontractors, Affiliates to the other Party pursuant to this Agreement or proprietary information either Party conceived or developed by or for such Party concerning construction practices, operation and maintenance practices, agreements, marketing plans and strategies, profits, costs, pricing and systems of procedure (provided that “Confidential Information” does not include information which was disclosed to the receiving Party by a third Party (unless, to the knowledge of the receiving Party, the third Party is under an obligation of confidentiality to the other Party) or any information developed or conceived by the receiving Party without using the “Confidential Information” of the other Party).

#### 20.7 SEVERABILITY

If any provision of this Agreement is found or determined to be invalid, illegal or unenforceable it will be construed to be separate and severable from this Agreement and will not impair the validity, legality or enforceability of any other provisions of this Agreement, and the remainder of this Agreement will continue to be binding on the Parties as if such provision had been deleted.

#### 20.8 NO WAIVER

No waiver by either Party of any default by the other in the performance of any of the provisions of this Agreement will operate or be construed as a waiver of any other or future default or defaults hereunder, whether of a like or a different character. To be binding, any waiver of any provision of this Agreement must be clearly expressed in writing to be signed by the waiving Party.

#### 20.9 BURDEN AND BENEFIT

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

#### 20.10 GOVERNING LAW

This Agreement and all matters arising hereunder will be governed by the laws of British Columbia and the federal laws of Canada applicable in British Columbia.

#### 20.11 ENTIRE AGREEMENT

This Agreement contains the whole agreement between the Parties in respect of the subject matter hereof and there are no terms, conditions or collateral agreements express, implied or statutory other than as expressly set forth in this Agreement and this Agreement supersedes all of the terms of any written or oral agreement or understanding between the Parties.

#### 20.12 TIME OF ESSENCE

Time is of the essence of this Agreement.

#### 20.13 FURTHER ASSURANCES

Each Party will, at all times hereafter on demand by the other, execute and deliver or cause to be executed and delivered all such further documents and do all such further acts and things as may be reasonably requested by the other Party to evidence, carry out and give full effect to the intent and meaning of this Agreement and to assure the completion of the transactions contemplated hereby.

#### 20.14 AMENDMENTS TO BE IN WRITING

Except as set out in this Agreement, no amendment or variation of this Agreement will be effective or binding upon the Parties unless such amendment or variation is set out in writing and duly executed by the Parties.

#### 20.15 FACSIMILE

This Agreement may be executed by the Parties and transmitted by facsimile transmission and, if so executed, transmitted and received, this Agreement will for all purposes be effective as if the Parties had delivered and executed the original Agreement and each Party undertakes to provide the other Party with a copy of this Agreement bearing original signatures forthwith upon demand.

#### 20.16 SUBJECT TO LEGISLATION

Notwithstanding any other provision hereof, this Agreement and the rights and obligations of FEI and the District under this Agreement are subject to all present and future laws, rules, regulations and orders of any legislative body, governmental agency or duly constituted authority now or hereafter having jurisdiction over FEI or the District.

#### 20.17 EXPENSES

Each Party to this Agreement shall be responsible for the payment of all costs, expenses, legal fees and disbursements incurred or to be incurred by it in negotiating and preparing this Agreement and all documents required to be delivered under this Agreement and otherwise relating to the transactions contemplated by this Agreement.

#### 20.18 NO CONTRARY AGREEMENT

No Party shall enter into an agreement or other commitment with any person if such agreement or commitment has terms or provisions in conflict with or inconsistent with the terms of this Agreement or which could reasonably be expected to lead to actions or consequences that would result in the Party being in breach of the commitments and obligations of the Party pursuant to this Agreement unless such other agreement or commitment is expressly approved by the other Parties.

#### 20.19 NO PARTNERSHIP

Nothing herein shall be deemed or construed to create a joint venture, partnership, employment or agency relationship between the Parties for any purpose.

20.20 ASSIGNMENT

Neither Party may assign this Agreement or any of its rights or obligations under this Agreement, and FEI may not assign, transfer or sell all or any part of the Energy System, except:

- (a) with the consent of the other Party, such consent not to be unreasonably withheld, delayed or conditioned; or
- (b) in the case of FEI, to an Affiliate of FEI which is a "public utility" as defined in the *UCA* on notice to, but without the consent of, the District.

20.21 COUNTERPARTS

This Agreement may be executed in counterparts with the same effect as if the Parties had signed the same document. All counterparts will be construed together and will constitute one agreement.

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

**FORTISBC ENERGY INC.**

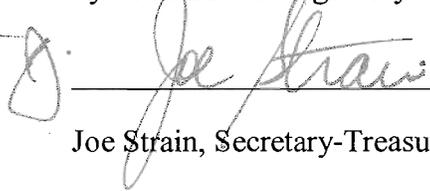
by its authorized signatory:

  
\_\_\_\_\_

Doug Stout,  
VP Energy Solutions & External Relations

**THE BOARD OF EDUCATION OF  
SCHOOL DISTRICT NO. 37 (DELTA)**

by its authorized signatory:

  
\_\_\_\_\_

Joe Strain, Secretary-Treasurer

# SAMPLE SCHEDULE “A”

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## Energy System Description

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### Mechanical Equipment Plans and Specifications

Equipment schedule:

- 1 ground source heat pumps water furnace 540NXW or equivalent and associated pumps. The heat pump and related equipment will be installed in the boiler room at the old boilers location on the concrete pad.
- Each heat pump will have 1 pump on condenser side (5 Hp, 90gpm, 100 ft).
- Piping, control valves and other equipment and accessories connected to the above equipment.
- Connection of the heat pumps on the return of the boiler and installation of the 3 way valves.
- 500 ft of piping 4 inches isolated between the field and the heat pump The pipes will be installed on the roof.
- Installation of geo-exchange field loop to match the designed performance of the system.
- Supply and do the injection of 800 usgals of propylene/glycol with a concentration of 25%.
- Control systems for the above mentioned equipment.
- BTU meters

Prior to commencement of the Mechanical Equipment construction, FEI shall provide detailed drawings to the District for review and acceptance.

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## **SCHEDULE “B”**

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# **Delta School District Site Rules for Contractors**

## **Delta School District Site Rules for Contractors**

### **1.0 Safety**

- 1.1 For the purposes of this section, “Safety Regulations” means the rules, regulations, and practices required by WorkSafeBC.
- 1.2 The Contractor shall be solely responsible for site safety during the execution of all assigned construction and maintenance activities, including work performed by subcontractors and suppliers, and for compliance with the Safety Regulations, and shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the work.
- 1.3 If the District is of the reasonable opinion that the Contractor has not taken such precautions as are necessary to ensure compliance with the requirements of Clause 1.2, the District may take or order any remedial measures which it deems necessary, including stopping the performance of all or any portion of the work, and the District may use the employees of itself, the Contractor, any subcontractor or any other contractors to perform such remedial measures. The Contractor acknowledges and agrees that any failure by the Contractor to comply with the Safety Regulations shall constitute a default of the Contractor's contractual obligations and the District may issue a written notice instructing the Contractor to correct the default in the two (2) working days immediately following receipt of such notice.
- 1.4 The Contractor shall file any notices or any similar document (including, without limitation, a Notice of Project where applicable) required pursuant to the Safety Regulations. This duty of the Contractor will be considered to be included in the work and no separate payment therefore will be made to the Contractor.
- 1.5 The Contractor shall develop, maintain and supervise for the duration of the work a comprehensive safety program that will effectively incorporate and implement all required safety precautions. The program shall, as a minimum, respond fully to the Safety Regulations and general construction practices for the safety of persons or property, including without limitation the WorkSafeBC regulations that may be applicable (e.g. WHMIS, dust control, etc.).
- 1.6 The Contractor shall provide a copy of the safety program described in Clause 1.5 to the District prior to the commencement of the work and shall, at all times require, as far as it is reasonably practical to do so, that every employer and worker performing work in respect of the project complies with such program.
- 1.7 The Contractor shall arrange regular safety meetings at its expense, record the minutes of such meetings and maintain a complete file for review by the appropriate authorities.
- 1.8 The Contractor shall supply and maintain, at its own expense, at its office or other well-known place at the work site, safety equipment necessary to protect the workers and general public against accident or injury as prescribed by the governing authorities.
- 1.9 The Contractor shall supply and maintain all articles necessary for giving first-aid to any person who may be injured on the work site and shall establish an emergency procedure for the immediate removal of any injured person to a hospital or a doctor's care in accordance with the Safety Regulations.
- 1.10 The Contractor shall, as required under the Safety Regulations, promptly report all accidents of any sort arising out of or in connection with the performance of the work whether on or adjacent to the work site, giving full details and statements of witnesses. The District shall be copied on all accident reports and investigation reports.

## **2.0 Security and Access**

- 2.1 **Site and Building Access:** The District's Maintenance Services Department will issue gate and building keys, electronic access cards (complete with instructions as to how to arm/disarm the building intrusion alarm system and how to contact the alarm monitoring station) and identification badges for the Contractor to enter the site and building, disarm/arm the building intrusion alarm system, and access the portions of the site where the Contractor's work is taking place. The Contractor and all subcontractors must check in at the school office (if occupied by District staff) prior to entering other parts of the building. The access cards, keys and identification badges shall be promptly returned to the District at the end of the contract.
- 2.2 **Security:** The Contractor shall assume all responsibility for the security of the work site. The Contractor must ensure that all windows, doors and gates are secure and the building intrusion alarm system is armed (unless District staff are still in the building) at the end of the workday. The Contractor must also safeguard the rest of the building and/or site from access through possible open construction areas. Security doors shall at all times remain closed and shall not be propped open, even for a short time. The Contractor is responsible for any costs arising when the District's security runner services is called to attend a work site for security matters resulting from the Contractor's negligence.
- 2.3 **Normal School Hours:** Normal hours of operation for the District are 0730h-1600h Monday to Friday, excluding statutory holidays. For after-hours and weekend work, the Contractor must notify the District's Maintenance Services Department at least one business day in advance of the work.

## **3.0 Conduct**

- 3.1 **Noise Due to Construction or Maintenance Activities:** In accordance with the Delta Noise Bylaw 1906, "no person shall carry on or cause to be carried any construction work, reconstruction, alteration, repair or demolition of a building or structure, the operation of machinery, or works in connection with any excavation or highway before 07:00h or after 1900h and day of the week from Monday to Friday, inclusive, before 0900h or after 1700h on Saturdays, or at any time Sundays. The Contractor shall respect the classroom operations in the vicinity of the work site and as such will make every attempt to limit noisy work to times outside of classroom operation or to adequately dampen, silence and/or soundproof equipment that generates noise to mitigate disruption to the classrooms.
- 3.2 **Communication devices:** Radio and cell phone volume shall be at the minimum volume which is consistent with the ability to operate the device.
- 3.3 **Roadways:** All speed limits and other traffic rules must be obeyed and access to the roadways should not be impeded. Parking and secure storage of materials and equipment by the Contractor and subcontractors shall only be in designated areas only.
- 3.4 **Cleanliness:** The work site must be maintained for an orderly appearance on a daily basis. Trash and construction debris shall be contained at all times and removed from the work site weekly.
- 3.5 **Toilets:** All temporary toilets shall have their doors faced away from streets. In no cases shall a worker utilize any staff washroom or other staff facilities at the work site, except as otherwise agreed in writing by the District. Under no circumstances will workers be permitted to use student washrooms.
- 3.6 **Identification Badges:** All workers shall have a District-assigned identification badge that clearly indicates the company's name and the worker's name. It is to be worn whenever at the work site.

- 3.7 **Smoking:** Smoking is not permitted on District property.
- 3.8 **Alcohol/Drugs:** No alcoholic beverages or non-prescription drugs shall be brought or consumed at the work site.
- 3.9 **Animals:** No dogs or other animals, are permitted at the work site without the written consent of the District.
- 3.10 **Fitness for Work:** All workers must be fit for work at all times. The District retains the right to request individuals leave the work site if unfit for any reason including, without limitation, inebriation, taking drugs, injury, fatigue, rudeness or any other reason that may affect the quality of the work or represents a breach of these rules.
- 3.11 **Theft:** Workers who steal from occupants or the District shall be immediately ejected from the work site. The Contractor is responsible for all such thefts irrespective of whether the worker is an employee of the Contractor or a subcontractor.
- 3.12 **Discrimination and Harassment:** The District actively promotes a safe and secure school environment and as such does not tolerate violations of human rights legislation, including:
- (a) discriminatory acts against any person with respect to the work or school environment or any educational program or service provided to or by that person because of race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age of that person, or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person;
  - (b) all forms of actual, attempted or threatened physical harm directed at any person; or
  - (c) any form of sexual harassment such as unwelcome sexual advances with actual or implied work related consequences; unwelcome remarks, questions, jokes or innuendo of a sexual nature including sexist comments or sexual invitations; verbal abuse, intimidation or threats of a sexual nature; unwelcome leering, staring or making sexual gestures; whistling or catcalls; display of pornographic or other sexual materials; offensive pictures, graffiti, cartoons or sayings; unwanted physical contact such as touching, patting, pinching or hugging; and physical assault of a sexual nature

## **SCHEDULE “C”**

---

### **List of Environmental Reports**



**ASBESTOS MATERIALS SURVEY  
AND RISK ASSESSMENT**

**OF**

**PINEWOOD ELEMENTARY SCHOOL  
11777 Pinewood Drive  
Delta, BC**

**PREPARED FOR:**

**DELTA SCHOOL DISTRICT  
Maintenance Facility  
7186 Brown Street  
Delta, BC  
V4G 1G8**

**PREPARED BY:**

**ACM ENVIRONMENTAL CORPORATION  
#217 -2323 Quebec Street  
Vancouver, BC  
V5T 4S7  
604-873-8599**

**December 2005**

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<b>RESULTS &amp; ASSOCIATED RISK LEVELS</b>	<b>Page 7</b>
<b>RECOMMENDATIONS</b>	<b>Page 9</b>
<b>STATEMENT OF LIMITATIONS</b>	<b>Page 10</b>
<b>REFERENCES</b>	<b>Page 11</b>
<b>Bulk Sample Results</b>	<b>Appendix A</b>
<b>Photographs</b>	<b>Appendix B</b>

## **EXECUTIVE SUMMARY**

A.C.M. Environmental Corporation (ACM) was retained by the Delta School District to perform an Asbestos Materials Survey and Risk Assessment for Pinewood Elementary located at 11777 Pinewood Drive, Delta, BC.

The assessment involved an inspection of all areas of the building. The objective of the assessment was to identify the types and extent of asbestos containing materials within the building and any risks associated with the materials and the regular usage of the building.

The assessment was conducted using both visual and physical assessment techniques. Samples of materials suspected of containing asbestos were collected and forwarded, using proper chain of custody protocols, to Prezant Associates, Inc. for asbestos analysis. Asbestos sample results are located in Appendix A of this report.

In summary, the findings from the assessment conclude that asbestos was found within the construction materials of the building, however, no PCB or Mercury containing materials were found within the equipment of the building.

One type of asbestos containing material was observed which includes vinyl floor tile materials. Within the context of the report, areas have been detailed as to the locations of the asbestos containing materials, the content of asbestos where applicable, and the required procedures to be followed for removal of these materials, as required.

The hazardous materials survey was conducted using non-destructive and some limited destructive testing methods. Areas within walls were not inspected as access was not possible without causing extensive damage to the walls. It should be noted that there is a possibility of asbestos containing materials existing within inaccessible wall and ceiling cavities, and under sub-floors. Possible asbestos-containing materials which may exist in these areas may include but are not limited to: insulation materials (mechanical or construction), secondary layers of drywall or flooring, etc.

Roofing materials were not sampled at this time as the integrity of the waterproof membrane would be compromised, possibly voiding insurance coverage in the event of a water leak. If the roofing materials are to be disturbed during a renovation project, they must be sampled prior to the work taking place.

A random number of fluorescent lighting fixtures were opened up and inspected for possible PCB containing ballasts. No PCB containing ballasts were observed

within the fluorescent lighting fixtures inspected, although some may exist, as not all fixtures were opened. No Mercury containing thermostat switches were observed within the building.

## **INTRODUCTION**

A.C.M. Environmental Corporation (ACM) was retained by the Delta School District to perform an Asbestos Materials Survey and Risk Assessment for Pinewood Elementary located at 11777 Pinewood Drive, Delta, BC. All areas of the building were inspected and/or sampled during this survey.

The objective of the assessment was to identify the types and extent of asbestos containing construction materials within the accessible areas of the building. The assessment at this time involved an inspection of all areas of the building not including the roofing materials.

The survey and assessment was conducted on December 5<sup>th</sup>, 2005 by Mr. Robert Foders, Field Technician, for ACM. Seven (7) representative bulk samples of materials suspected of containing asbestos were collected for analysis and are included as Appendix A of this report.

## **METHODOLOGY**

The hazardous materials survey was conducted using non-destructive and some limited destructive testing methods. Areas within walls were not inspected as access was not possible without causing extensive damage to the walls. It should be noted that there is a possibility of asbestos containing materials existing within inaccessible wall and ceiling cavities, and under sub-floors. Possible asbestos-containing materials which may exist in these areas may include but are not limited to: insulation materials (mechanical or construction), secondary layers of drywall or flooring, etc.

The U.S. Environmental Protection Agency (USEPA) Guidance Document was selected for use in this study (1). The document identifies factors associated with the "condition" and the "potential for disturbance or erosion" of asbestos containing materials. These factors help to define the fibre release potential of the suspect asbestos containing materials and were used in a qualitative evaluation of materials found in the surveyed areas. Recommendations have been substantiated by additional information utilized from other documentation cited in the Reference Section of this report.

The bulk samples of suspect asbestos containing materials were forwarded, using proper chain of custody protocols, to Prezant Associates, Inc. for asbestos analysis. The samples were analyzed using polarized light microscopy (PLM) with dispersion staining in accordance with U.S. EPA method 600/R-93/116, "Method for Determination of Asbestos in Bulk Building Materials".

Other hazardous materials were visually inspected and are noted in this report.

The survey relied on the abilities and experience of the surveyor to gain access and identify possible asbestos containing materials. All areas of the building were accessed during the assessment excluding the roof.

## **RESULTS & ASSOCIATED RISK LEVELS**

### **ASBESTOS**

One type of asbestos containing material was identified during this survey which will or could be affected by any potential renovation or demolition activities: vinyl floor tiles. A breakdown for each type of material is as follows:

#### **Vinyl Floor Tile Materials:**

Asbestos containing vinyl floor tile materials were observed within several areas of the building. These include the 12" Beige vinyl floor tiles with faded white streaks observed in the medical room -136, vestibule – 128, copy and prep rooms 118 & 118A, staff kitchen -116A, Comm. Corridor – 138 and the Kindergarten room – 114, 114A & B areas. The asbestos containing 12" light brown vinyl floor tiles with red/brown & white streaks were observed in the HUB – 158, Art storage room -136, and the 149 & 150 storage rooms. A bulk sample of the beige vinyl floor tile materials was found to contain <1% Chrysotile asbestos in the tiles. The light brown vinyl floor tiles with red/brown & white streaks typically contain <1% Chrysotile asbestos. The materials are presently in fair to good condition.

WCB Regulations do not treat any materials with less than 1% asbestos as asbestos containing. Workers should still use moderate risk procedures when exposed to the vinyl floor tile materials, even in materials with less than 1% asbestos concentrations. The WCB states that workers must be properly protected from any potential exposure to airborne asbestos fibres. It is recommended that any work affecting the materials be done using a minimum of moderate risk asbestos work procedures. The vinyl floor tile materials do not have to be disposed in accordance with applicable regulations as asbestos waste.

### **POLYCHLORINATED BIPHENYLS (PCBs)**

A random number of fluorescent light ballasts were visually inspected for possible PCB containing ballasts. No PCB containing ballasts were observed within the fluorescent lighting fixtures inspected in both buildings, although some may exist, as not all fixtures were opened up.

PCB containing fluorescent light ballasts do not pose a risk to occupants of the building. If any PCB containing ballasts are encountered during any renovations of the building, they must be separated from the fixtures and disposed of properly in accordance with applicable regulations.

**MERCURY THERMOSTATS**

No thermostats observed within the building were found to have Mercury containing switches within them. If any Mercury containing thermostat switches are encountered within the building during renovation or repair activities, they must be removed intact from the thermostats and disposed of properly in accordance with applicable regulations.

## **RECOMMENDATIONS**

Prior to beginning any work that may impinge upon the hazardous materials within the building, the following must be performed:

- 1.) All asbestos containing materials must be removed from the building, utilizing as a minimum, the risk levels and/or procedures discussed in the results section of this report.
- 2.) If any Mercury containing thermostat switches are encountered during any renovation or repair activities within the building, they must be removed and disposed of in accordance with applicable regulations.
- 3.) If any PCB containing ballasts are encountered during any renovation or repair activities within the building, they must be removed and disposed of in accordance with applicable regulations.
- 4.) If any suspect asbestos containing materials are encountered within inaccessible wall or ceiling cavities, or under floors, during renovation or demolition activities, the work in the immediate area must stop and the supervisor contacted for further direction.

### **STATEMENT OF LIMITATIONS**

The ACM report is intended to direct the Client's attention to recognised environmental conditions and to potential sources of environmental contamination. The findings and conclusion regarding contamination of the property are based solely on the extent of observations and information gathered during the assessment. Nothing in the report is intended to express any legal opinion upon environmental liabilities relating to the site or whether operations legally conformed with relevant legislative requirements.

Furthermore, it must be understood that changing circumstances in the physical environment, the use of the property, as well in changes in any substances stored, used, handled at the property, could alter radically the conclusions and information contained in this report. Therefore, it is important that the property is periodically re-evaluated and the client kept informed as to developments, which may impact the property. This report is not intended to be used as contract specifications.

### **A.C.M. ENVIRONMENTAL CORPORATION**

---

James McArthur, ASCT  
Environmental Technician

**REFERENCES**

- 1) USEPA. 1985. U.S. Environmental Protection Agency. "Guidance for Controlling Asbestos-Containing Materials in Buildings". Washington, DC: Office of Toxic Substances, USEPA.
- 2) Lory EE, Coin DC. 1981. "Management Procedure for Assessment of Friable Asbestos Insulating Material". Port Hueneme, CA: Civil Engineering Laboratory, Naval Construction Battalion Center.
- 3) Workers' Compensation Board of British Columbia, effective 15 April 1998, and all current amendments. Occupational Health and Safety Regulations.
- 4) 2002 Edition - Workers' Compensation Board of British Columbia. Safe Work Practices for Handling Asbestos.

**APPENDIX A**  
**Bulk Sample Results**



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

**ACM Environmental**  
2323 Quebec Street, Suite 211  
Vancouver, BC

Project Location: Pinewood Elementary School

PAI Batch Number: **05-3019**  
Client Job Number: **3048-41**  
Number of Samples: **7**  
Turn Around Time: **5 day**

Batch Number:	05-3019	<b>ACM Environmental</b>
Lab Sample Number:	05016617	<b>3048-41</b>
Client Sample Number:	<b>3048-546</b>	<i>Pinewood Elementary School</i>

#### L-1 White paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		100% Paint

Comments:

#### L-2 Pale tan fibrous opaque material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
	55% Cellulose 30% Mineral Wool	10% Perlite 5% Mineral Particles

Comments:

#### L-3 Pink opaque brittle material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
	30% Wollastonite	65% Resin and Binder 5% Mineral Particles

Comments:

Batch Number:	05-3019	<b>ACM Environmental</b>
Lab Sample Number:	05016618	<b>3048-41</b>
Client Sample Number:	<b>3048-547</b>	<i>Pinewood Elementary School</i>

Sampled By: Client  
Received By: John McCaslin 12/12/2005  
Reviewed By: George McCaslin 12/16/2005

*Deitrie Hanson*  
Analyzed By: Deitrie Hanson 12/16/2005



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
 OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

## Bulk Asbestos Fiber Analysis

**L-1 Pink, red, beige, white, and black speckled sheet vinyl tile material**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Rubber Particles
		10% Vinyl Filler and Binder

**Comments:**

**L-2 Transparent material on white opaque textured pliable material**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
	10% Glass Fiber	90% Rubber Particles

**Comments:**

Batch Number: 05-3019	<b>ACM Environmental</b>
Lab Sample Number: 05016619	<b>3048-41</b>
Client Sample Number: 3048-548	<i>Pinewood Elementary School</i>

**L-1 White paint**

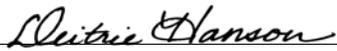
<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		100% Paint

**Comments:**

**L-2 Pale grayish brown fibrous opaque material**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
	55% Cellulose	10% Perlite
	30% Mineral Wool	5% Mineral Particles

**Comments:**

Sampled By: Client		
Received By: John McCaslin	12/12/2005	Analyzed By: Deitrie Hanson
Reviewed By: George McCaslin	12/16/2005	12/16/2005



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

**L-3 Pink hard brittle opaque material**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	15% Wollastonite	80% Resin and Binder
		5% Mineral Particles

**Comments:**

Batch Number: 05-3019	<b>ACM Environmental</b>
Lab Sample Number: 05016620	<b>3048-41</b>
Client Sample Number: <b>3048-549</b>	<i>Pinewood Elementary School</i>

**L-1 Pale pinkish beige paint**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		100% Paint

**Comments:**

**L-2 White crystalline powdery material**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		92% Calcite Filler and Binder
		5% Perlite
		3% Vermiculite

**Comments:**

**L-3 Pale yellowish white fibrous tape-like papery material**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	97% Cellulose	3% Filler and Binder

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 12/12/2005  
 Reviewed By: George McCaslin 12/16/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 12/16/2005



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

## Bulk Asbestos Fiber Analysis

### L-4 White crystalline powdery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Calcite Filler and Binder
		5% Vermiculite
		3% Miscellaneous Particles
		2% Filler and Binder

**Comments:**

### L-5 Brown fibrous papery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
	99% Cellulose	1% Filler and Binder

**Comments:**

### L-6 White powdery fibrous material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
	15% Cellulose	80% Talc Filler and Binder
		5% Mineral Particles

**Comments:**

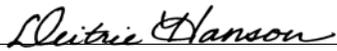
Batch Number: 05-3019	<b>ACM Environmental</b>
Lab Sample Number: 05016621	<b>3048-41</b>
Client Sample Number: <b>3048-550</b>	<i>Pinewood Elementary School</i>

### L-1 White paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		100% Paint

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 12/12/2005  
 Reviewed By: George McCaslin 12/16/2005

  
 Analyzed By: Deitrie Hanson 12/16/2005



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
 OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

## Bulk Asbestos Fiber Analysis

**L-2 Pale tan fibrous opaque material**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b> 50% Cellulose 30% Mineral Wool	<b>Non-Fibrous Components:</b> 15% Perlite 5% Filler and Binder
---	--	---

**Comments:**

**L-3 Dull pink opaque brittle material**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b> 5% Wollastonite	<b>Non-Fibrous Components:</b> 90% Resin and Binder 5% Mineral Particles
---	--	--

**Comments:**

Batch Number: 05-3019	<b>ACM Environmental</b>
Lab Sample Number: 05016622	<b>3048-41</b>
Client Sample Number: 3048-551	<i>Pinewood Elementary School</i>

**L-1 Pale beige paint**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 100% Paint
---	---	--

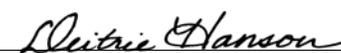
**Comments:**

**L-2 White crystalline powdery material**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 90% Calcite Filler and Binder 5% Vermiculite 3% Miscellaneous Particles 2% Filler and Binder
---	---	---

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 12/12/2005  
 Reviewed By: George McCaslin 12/16/2005

  
 Analyzed By: Deitrie Hanson 12/16/2005



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
 OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

## Bulk Asbestos Fiber Analysis

**L-3 Pale yellowish white fibrous tape-like papery material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components: 97% Cellulose	Non-Fibrous Components: 3% Filler and Binder
--	---	---

**Comments:**

**L-4 White crystalline powdery material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 90% Calcite Filler and Binder 5% Vermiculite 3% Miscellaneous Particles 2% Filler and Binder
--	----------------------------------	--

**Comments:**

**L-5 White and pale green fibrous papery material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components: 97% Cellulose	Non-Fibrous Components: 3% Filler and Binder
--	---	---

**Comments:**

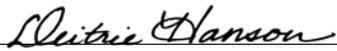
Batch Number: 05-3019	<b>ACM Environmental</b>
Lab Sample Number: 05016623	<b>3048-41</b>
Client Sample Number: <b>3048-552</b>	<i>Pinewood Elementary School</i>

**L-1 Tan hard tile material**

<b>Asbestos Fibrous Components:</b> <b>&lt;1% Chrysotile</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 55% Calcite Filler and Binder 30% Mineral Filler and Binder 10% Vinyl Filler and Binder >4% Non-Fibrous Tremolite
---	----------------------------------	---

**Comments:**

This tan VFT contains <1% chrysotile asbestos.

Sampled By: Client		
Received By: John McCaslin	12/12/2005	Analyzed By: Deitrie Hanson
Reviewed By: George McCaslin	12/16/2005	12/16/2005



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

## Bulk Asbestos Fiber Analysis

L-2      **Black mastic**

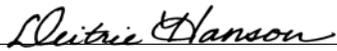
**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
90%      Asphalt Filler and Binder  
5%      Mineral Particles  
5%      Filler and Binder

**Comments:**

Sampled By: Client  
Received By: John McCaslin      12/12/2005  
Reviewed By: George McCaslin      12/16/2005

  
Analyzed By: Deitrie Hanson      12/16/2005

**APPENDIX B**  
**Photographs**



Asbestos containing 12" Light brown VTF with red/brown & white streaks



Asbestos containing 12" Beige vinyl floor tiles with faded white streaks

**ENERGY SYSTEM SERVICE AGREEMENT**

**RICHARDSON ELEMENTARY SCHOOL**

**THIS AGREEMENT** dated for reference the 26<sup>th</sup> day of September, 2011.

**BETWEEN:**

**THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 37 (DELTA)**  
a corporation established under the School Act R.S.B.C. 1996, c. 412 having an  
office at 4585 Harvest Drive, Delta, British Columbia, V4K 5B4

(the "District")

OF THE FIRST PART

**AND:**

**FORTISBC ENERGY INC.**, a company duly incorporated under the laws of the  
Province of British Columbia, having its registered office at 10th Floor, 1111  
West Georgia Street, Vancouver, B.C. V6E 4M3

("FEI")

OF THE SECOND PART

**WHEREAS:**

- A. The District is the owner of Richardson Elementary School (the "Building") and lands located at 11339, 83<sup>rd</sup> Avenue, Delta, British Columbia, which lands are legally described as:

PID: 013-237-314 Property No: 108568

PARCEL 2 (REFERENCE PLAN 11605) WEST HALF OF THE NORTH HALF OF THE SOUTH WEST QUARTER SECTION 25 TOWNSHIP 4 NEW WESTMINSTER DISTRICT EXCEPT PART DEDICATED ROAD ON PLAN LMP39092

(the "Lands")

- B. FEI wishes to supply to the Building, and the District wishes to purchase, Thermal Energy generated by an Energy System that FEI will construct on the Lands, and which FEI will own and operate, all pursuant to the terms of this Agreement.
- C. The Thermal Energy supplied by FEI to the Building pursuant to this Agreement will be priced at the rate set forth in the Energy System Rate Development Agreement between the Parties dated September 26<sup>th</sup>, 2011.

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT** in consideration of the premises and the covenants, agreements, representations, warranties and payments set out herein, the receipt and sufficiency of which is hereby acknowledged by each Party, the Parties covenant and agree as follows:

## **ARTICLE 1 - INTERPRETATION**

### 1.1 DEFINITIONS

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

- (a) “Adjusted Energy System Purchase Price” means, as of the date on which a purchase of the Energy System pursuant to Article 15 is effective, either:
  - (i) the Rate Base Value; or
  - (ii) such other purchase price for the Energy System as is determined by the BCUC; plus all applicable taxes;
- (b) “Affiliate” has the meaning set out in the *Business Corporation Act*, S.B.C. 2002, c.57 and includes FortisBC Inc.;
- (c) “Agreement” means this agreement, including the preamble hereto and any schedules attached hereto and the terms “this Agreement”, “hereof”, “herein”, “hereunder” and “hereinafter” and similar expressions refer to the Agreement and not to any particular Section or other portion thereof and includes any agreement supplementary or ancillary thereto;
- (d) “Acceptance Date” means the date of BCUC Acceptance;
- (e) “BCUC” means the British Columbia Utilities Commission, or any successor thereto;
- (f) “BCUC Acceptance” has the meaning assigned to that term in Section 11.1;
- (g) “Building” has the meaning assigned to that term on page one of this Agreement;
- (h) “Building System” means the space heating, cooling and ventilation, and domestic hot water distribution and control systems existing in the Building, to which the Energy System will be connected;
- (i) “Business Day” means any day except Saturday and Sunday or any day on which banks are generally not open for business in Vancouver, British Columbia;
- (j) “Capital Contribution” means \$ 0;
- (k) “Commissioned” means once the Energy System is certified complete and operating in accordance with the Specifications by a professional engineer under seal;

- (l) “Commission Date” means the day on which the Energy System is Commissioned;
- (m) “Contaminants” means, collectively, any contaminant, toxic substance, dangerous good, or pollutant or any other substance which when released to the natural environment is likely to cause, at some immediate or future time, material harm or degradation to the natural environment or material risk to human health, and includes any radioactive materials, asbestos materials, urea formaldehyde, underground or aboveground tanks, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive or toxic substances, hazardous waste or waste of any kind, pesticides, defoliants, or any other solid, liquid, gas, vapour, odour or any other substance .the storage, manufacture, disposal, handling, treatment, generation, use, transport, remediation or Release into the Environment of which is now or hereafter prohibited, controlled or regulated under Environmental Laws;
- (n) “Continuing Service Interruption Notice” has the meaning assigned to that term in Section 14.3(b);
- (o) “Contractor” means a prime contractor hired by FEI to oversee and complete the construction and installation of the Energy System;
- (p) “Design and Construction” means the total construction and related services required to design, construct and commission the Energy System and connected components of the Building System;
- (q) “Design Thermal Energy” means the maximum amount of Thermal Energy that the Energy System is capable of delivering through the Thermal Energy Meter and is included in the Specifications;
- (r) “Disclosed Contaminants” means Contaminants:
  - (i) the existence of which are specifically identified in the reports provided by the District to FEI and listed in Schedule C;
  - (ii) that were or ought to have been discovered, foreseen or anticipated upon reasonable inspection by FEI prior to the Effective Date; and
  - (iii) that were caused by FEI or any person for whom FEI is responsible at law;
- (s) “District” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (t) “District Losses” has the meaning assigned to that term in Section 12.6;
- (u) “District Site Rules for Contractors” means the rules set forth in Schedule “B”;
- (v) “Effective Date” means the date set out on page one of this Agreement;
- (w) “Energy System” means the equipment that FEI constructs and owns which will provide the Building with its energy needs for space heating, cooling and ventilation, and domestic hot water use, all as set forth in this Agreement;

- (x) “Energy System Service Agreement” has the meaning assigned to that term in the Energy System Rate Development Agreement;
- (y) “Energy System Rate Development Agreement” means that energy system rate development agreement between the District and FEI dated as of September 26<sup>th</sup>, 2011;
- (z) “Environment” includes the air (including all layers of the atmosphere), land (including soil, sediment deposited on land, fill, lands submerged under water, buildings, and improvements), water (including oceans, lakes, rivers, streams, groundwater, and surface water), and all other external conditions and influences under which humans, animals, and plants live or are developed and “Environmental” will have a corresponding meaning;
- (aa) “Environmental Attributes” means:
  - (i) all attributes associated with, or that may be derived from the Energy System installed having decreased environmental impacts relative to the use of conventional heating and cooling and hot water heating systems including any existing or future credit, allowance, certificate, right, benefit or advantage or proprietary or contractual right whether or not tradable;
  - (ii) any existing or future instrument, including without limitation any environmental emission allowances and environmental emission reduction credits, reduction right, allowance, certificate or other unit of any kind whatsoever, whether or not tradable and any other proprietary or contractual right, whether or not tradable, and any resulting from, or otherwise related to the actual assumed reduction, displacement or offset of emissions associated with, or that may be derived from the Energy System installed; and
  - (iii) all revenues, entitlement, benefits and other proceeds arising from or related to the foregoing;
- (bb) “Environmental Laws” means any and all statutes, laws, regulations, orders, bylaws, standards, guidelines, protocols, permits, and other lawful requirements of any Governmental Authority having jurisdiction over the Lands or the Energy System now or hereafter in force with respect in any way to the Environment, environmental assessment, health, occupational health and safety, protection of any form of plant or animal life, or transportation of dangerous goods, including the principles of common law and equity;
- (cc) “Expiry Date” means the earlier of:
  - (i) June 30, 2031, or the expiry of any renewal term thereof; and
  - (ii) the closure of the Building, or the Building otherwise ceasing to operate as a school (as defined under the *School Act* (British Columbia));
- (dd) “FEI” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (ee) “FEI Losses” has the meaning assigned to that term in Section 12.5;

- (ff) “Force Majeure” has the meaning assigned to that term in Section 17.2;
- (gg) “Governmental Authority” means any federal, provincial, regional, municipal, local or other government, governmental or public department, court, tribunal, arbitral body, commission, board, bureau or agency and any subdivision, agent, commission, board or authority thereof;
- (hh) “Lands” has the meaning assigned to that term in Recital A and includes the Building located on the Lands;
- (ii) “Laws” means laws, statutes, regulations, bylaws, Permits and orders of any Governmental Authority having jurisdiction, including without limitation, Environmental Laws;
- (jj) “Maintain” means to operate, service and maintain in a safe and reliable condition and “maintaining” and “maintenance” have corresponding meanings;
- (kk) “Monthly Charges” means that amount to be paid by the District to FEI with respect to the delivery of Thermal Energy to the Building pursuant to the Energy System Rate Development Agreement and any other payments due and owing by the District under this Agreement;
- (ll) “Notifying Party” has the meaning assigned to that term in Section 16.1;
- (mm) “Party” means a signatory to this Agreement, and the “Parties” means all of such signatories;
- (nn) “Permits” means all permits, licences, certificates, approvals, authorizations, consents and the like issued by any Governmental Authority;
- (oo) “Rate Base Value” means the value of the Energy System that the BCUC accepts from time to time in accordance with the Energy System Rate Development Agreement;
- (pp) “Release” includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, migration, disposal, or dumping;
- (qq) “Right of Access and Licence” means the right and licence granted herein by the District to FEI pursuant to Section 4.1 of this Agreement;
- (rr) “Service Failure Notice” has the meaning assigned to that term in Section 14.3(c);
- (ss) “Service Interruption” means, in any hour:
  - (i) a failure of the Energy System in that hour to deliver Thermal Energy at the Thermal Energy Meter sufficient to meet the Thermal Energy demand of the Building during that hour in accordance with the Specifications up to the Design Thermal Energy, and except where such failure is directly caused by:
    - a. the careless or wilful damage to the Energy System by the District or its agents or other persons for whom the District is responsible;

- b. damage caused to the Energy System as a result of the negligent acts or omissions of the District, its agents or those for whom in law the District is responsible;
  - c. an event of Force Majeure that triggers the suspension of FEI's obligations under the Agreement pursuant to Article 17; or
  - d. maintenance activities that FEI is performing on the Energy System that have been scheduled with the consent of the District (such consent not to be unreasonably withheld); and
- (ii) if the failure described in Section 1.1(rr)(i), FEI's failure in that hour to deliver to the Building through alternative means thermal energy sufficient to maintain an average temperature of 16 degrees Celsius in each room of the Building intended to be served by the Energy System (all as determined by the District, acting reasonably);
- (tt) "Service Interruption Notice" has the meaning assigned to that term in Section 14.3(a);
- (uu) "Services" means those services to be provided by FEI to supply Thermal Energy to a Building from an Energy System, and for greater certainty includes the services described in Articles 5 and 6, and excludes the Design and Construction;
- (vv) "Specifications" means the specifications for the Energy System prepared by FEI in consultation with the District in accordance with Section 2.3 and includes the Design Thermal Energy;
- (ww) "Term" has the meaning assigned to that term in Section 3.1;
- (xx) "Thermal Energy" means the amount of energy that FEI provides to the Building measured through a Thermal Energy Meter;
- (yy) "Thermal Energy Meter" means a device that complies with the International Organization of Legal Metrology recommendations for measuring thermal energy; and
- (zz) "UCA" means the *Utilities Commission Act*, R.S.B.C. 1996, c. 473 as may be amended from time to time.

## 1.2 SCHEDULES

The following Schedules, as may be amended from time to time, are incorporated by reference into this Agreement:

Schedule "A"	Energy System Description
Schedule "B"	Delta School District Site Rules for Contractors
Schedule "C"	List of Environmental Reports

### 1.3 AMENDMENTS TO SCHEDULES

The District and FEI acknowledge that during the construction phase of the Energy System there may be additions and alterations to the Specifications for the Energy System which would result in more efficient use and operation of the Energy System. If these additions or alterations result in changes to any of the above Schedules, the Parties mutually agree to amend the Schedules by way of a written amendment prior to the Commission Date.

### 1.4 INTERPRETATION

Except where the context requires otherwise or except as otherwise expressly provided, in this Agreement:

- (a) all references to a designated Article or Section are to the designated Article or Section of this Agreement unless otherwise specifically stated;
- (b) the singular of any term includes the plural, and vice versa, and the use of any term is equally applicable to any gender and, where applicable, body corporate;
- (c) any reference to a corporate entity includes and is also a reference to any corporate entity that is a successor by merger, amalgamation, consolidation or otherwise to such entity;
- (d) the preamble and all schedules referred to and attached to this Agreement are incorporated by reference and will form a part of this Agreement;
- (e) all sums of money which are referred to in this Agreement are in lawful money of Canada;
- (f) the headings of the Articles and Sections set out in this Agreement are for convenience only and will not be considered in any interpretation of this Agreement;

## **ARTICLE 2 - DESIGN AND CONSTRUCTION OF THE ENERGY SYSTEM**

### 2.1 CONSTRUCTION

FEI will perform the Design and Construction:

- (a) in accordance and in compliance with the Specifications;
- (b) in a good and workmanlike manner using qualified workers, and in accordance with sound and currently accepted industry standards and codes of practice normally employed, at the time and place of performance, in projects of a similar type and nature;
- (c) to ensure operational compatibility with the Building System;
- (d) in a safe and environmentally sound manner, and in accordance with all applicable Laws; and
- (e) in accordance with the terms of this Agreement.

## 2.2 CAPITAL CONTRIBUTION

The District will pay to FEI within 30 days of the Commission Date the Capital Contribution for the purpose of reducing the capital investment and the associated carrying cost of capital by FEI for provision of Service to the Building.

## 2.3 SPECIFICATIONS

Subject to and in accordance with this Section 2.3, FEI shall prepare and complete the Specifications promptly following the Acceptance Date.

FEI confirms the Energy System, as described in the Specifications and as contemplated by the Energy System description set out in Schedule A, will be designed to meet the thermal energy requirements of the Building and operational compatibility of the Building System based in part on information supplied by the District as to historical usage, which information has not been independently verified by FEI. FEI shall have no liability to the District for the failure of the Energy System to satisfy the requirements of the Building where such failure is attributable to the information supplied by the District being incorrect, inaccurate or incomplete.

FEI will prepare the Specifications in consultation with the District in order to ensure the Energy System can be appropriately accommodated within the Building and interface with the Building Systems. FEI will submit material changes to the Specifications, both before and during construction, to the District for review and comment prior to such changes taking place. If the District does not comment on the Specifications or material changes to the Specifications or advise that it has no comment within five (5) Business Days of receipt, FEI will be entitled to proceed on the basis of the information provided to the District. FEI will revise the Specifications based on the comments from the District provided that doing so will not impact FEI's costs or adversely affect system performance.

Review of and comment on the Specifications by the District does not impose any obligation on the District to verify the suitability of the Energy System or be construed as confirmation by the District that the Energy System satisfactorily meets the Building's energy requirements.

## 2.4 WORK SCHEDULE

Within ten (10) Business Days following the Acceptance Date, FEI will submit to the District for review and comment a Gantt chart schedule for the Design and Construction listing activities to be undertaken during the Design and Construction stages, key milestones and approval dates and other pertinent dates. Any revisions to the schedule must be reviewed and commented by the District, which review and comment will not be unreasonably withheld, conditioned or delayed.

In order to ensure that the Building System remains operational during normal school hours (as defined in Schedule B), the cut-over from the existing heating/cooling plant to the Energy System shall be performed outside normal school hours.

## 2.5 REPORTING

FEI shall produce and submit a monthly progress report for the Design and Construction to the District until the Energy System is Commissioned.

## 2.6 TESTING AND COMMISSIONING

FEI shall coordinate and supervise the start-up and testing of the Energy System to ensure the Energy System and other components of the Building System affected by the Design and Construction are operating in accordance with the Specifications, upon which the Energy System will be Commissioned. The District shall be invited to participate in the start-up and testing exercise.

# ARTICLE 3 - TERM AND RENEWAL

## 3.1 TERM

The term of this Agreement commences on the Effective Date and continues until the Expiry Date unless it is terminated earlier as authorized under this Agreement ("Term").

## 3.2 RENEWAL

This Agreement will automatically renew for periods of ten (10) years unless either Party provides written notice to the other Party no less than six (6) months prior to the Expiry Date, provided that there shall be no automatic renewal in the event that the Expiry Date arises as a result of the closure of the Building, or the Building otherwise ceases to operate as a school (as defined under the *School Act* (British Columbia)).

# ARTICLE 4 - ACCESS AND PERMITS

## 4.1 ACCESS RIGHTS

The District hereby grants to FEI, during the Term from and following the Acceptance Date, for so long as FEI shall require it, but subject to Section 4.4, a full, free and uninterrupted licence and right of way on, over and under the Lands and Building, for FEI, its assigns, employees, contractors, agents, invitees and licensees at all times hereafter for the purposes set out in this Agreement, provided FEI will avoid to the extent reasonably possible, and otherwise minimize interference with and inconvenience to, the occupants of the Building and the access rights of FEI will be limited to the extent reasonably necessary to fulfil FEI's obligations hereunder.

Without limiting the generality of the foregoing, but subject to Section 4.4, such right of way and licence shall include the full power, right and liberty to excavate for, install, place, construct, renew, alter, repair, maintain, operate, use, abandon, remove or replace its infrastructure, in whole or in part, and to enter upon, along, across, over or under the Lands or Building and have continual access to the Energy System, with or without vehicles, supplies, machinery or equipment, for any of the purposes set out in this Agreement, and to clear such portion of the Lands and keep it cleared of obstructions which, in the opinion of FEI, acting reasonably, may

interfere with any of the rights granted to FEI herein. The District may direct, in its discretion, FEI to use alternate routing for any Environmental or other reasonable purpose.

FEI covenants and agrees with the District not to do or knowingly permit to be done anything which may, in the opinion of the District acting reasonably, damage or interfere with the Building or impair the operating efficiency thereof or create any hazard.

#### 4.2 CONDITION OF LAND

The District represents and warrants to FEI that as of the Effective Date:

- (a) to the best of the District's knowledge, the Lands are free of Contaminants other than those specifically identified in the reports provided by the District to FEI and listed in Schedule C; and
- (b) there are no actions, proceedings, investigations, claims (including remediation cost recovery claims) pending, or to the knowledge of the District, threatened, that would interfere with FEI's access rights pursuant to Section 4.1.

#### 4.3 PERMITS

FEI will obtain and maintain at its own expense all Permits necessary for the Design and Construction and the Services.

#### 4.4 SAFETY, SECURITY AND BUILDING ACCESS

Notwithstanding anything to the contrary in this Agreement, FEI will adhere, and will cause all persons for whom it is responsible under this Agreement (including, without limitation, the Contractor) to adhere to the District Site Rules for Contractors.

#### 4.5 REMEDIATION

FEI shall promptly remediate any Disclosed Contaminants on the Lands as required by applicable Law that result from, or are Released as a result of the Design and Construction or the Services, except to the extent caused or contributed to by the District's negligence. In the event that Contaminants on the Lands, other than Disclosed Contaminants, are discovered by FEI, FEI will promptly notify the District of such discovery and the Parties will review the impact of such discovery, if any, on the Design and Construction or the Services.

### **ARTICLE 5 - SERVICE PROVISION**

#### 5.1 PROVISION OF SERVICE

Subject to the terms and conditions of the Agreement, FEI will provide the Services to the District throughout the Term.

## 5.2 SERVICE MONITORING AND REVIEW

The Parties acknowledge that FEI may be required from time to time to prepare and submit reports to the BCUC concerning the operation and performance of the Energy System, and the District shall provide FEI with reasonable cooperation in relation to the preparation of such reports.

## 5.3 STANDARD OF PERFORMANCE

In performing the Services, FEI will:

- (a) use only qualified personnel and exercise the same degree of care, skill and supervision as would be exercised by a reasonable and prudent owner experienced in performing like services;
- (b) perform the Services in accordance with all applicable Laws;
- (c) perform the Services in accordance with ongoing industry standards and codes of practice; and
- (d) without limiting the effect of the foregoing, abide by any standards of performance in relation to the Services that the BCUC may set from time to time according to the provisions of the UCA.

## 5.4 INTERRUPTION

No interruption of any of the on-site and off-site services, utilities and amenities provided by FEI to the Building will, except to the extent, if any, caused by any wrongful or negligent act of FEI or any person for whom FEI is responsible at law, render FEI liable to the District or any person claiming through or under the District, or relieve the District from any of its obligations under this Agreement. Notwithstanding the foregoing, FEI will use all reasonable diligence to remedy any such interruption if it is within its power and obligation to do so.

# **ARTICLE 6 - ENERGY SYSTEM MAINTENANCE AND OPERATION**

## 6.1 MAINTENANCE AND REPAIR OF ENERGY SYSTEM

Subject to Section 6.2, FEI will perform the Services and otherwise maintain or cause to be maintained and repaired the Energy System throughout the Term:

- (a) in accordance with the Energy System design and operating specifications and requirements as established by the qualified engineers engaged by FEI in the design and construction of the Energy System, and the equipment manufacturers;
- (b) in a good and workman-like manner using qualified workers, and in accordance with sound and currently accepted industry standards and codes of practice normally employed, at the time and place of performance, in projects of a similar type and nature;
- (c) to ensure operational compatibility with the Building System;

- (d) in a safe and environmentally sound manner, and in accordance with all applicable Laws; and
- (e) in accordance with the terms of this Agreement.

FEI will not delay repair of the Energy System for any reason, including as a result of a dispute with the District in relation to the costs and expenses of repair pursuant to Section 6.2.

## 6.2 REPAIR DAMAGE

The District will be responsible for all costs and expenses incurred by FEI in respect of any damage to the Energy System caused by or resulting from:

- (a) the careless or wilful damage to the Energy System by the District or its agents or other persons for whom at law the District is responsible; or
- (b) damage caused to the Energy System as a result of the negligent acts or omissions of the District, its agents or those for whom in law the District is responsible.

## **ARTICLE 7 - CHARGES**

### 7.1 MONTHLY CHARGES

The District throughout the Term commencing on the Commission Date in accordance with this Article 7 will pay to FEI when due for the Thermal Energy that FEI delivers and meters to the Building according to the rates set out in the Energy System Rate Development Agreement plus all applicable taxes (including harmonized sales tax applicable thereon) and any imposed taxes levied after the Commission Date by a government or regulatory agency that are related to the Energy System (including, but not limited to capital taxes or royalties) and any other payments due and owing by the District under this Agreement.

### 7.2 MONTHLY STATEMENT

FEI will, within 15 days following the end of each month, deliver to the District a statement setting out the Monthly Charges including all applicable taxes payable for that month.

### 7.3 PAYMENT

The District will pay the full amount specified in each statement provided to it in accordance with Section 7.2 within 30 days of receipt of such statement. All amounts payable to FEI will be made by cheque mailed to FEI at its address for service specified in Section 20.5.

### 7.4 PAYMENT DUE

Subject to Section 14.1, the obligation of the District to pay the Monthly Charges continues whether or not the Energy System is being used to provide the Building with its energy needs for space and ventilation heating, cooling and domestic hot water use.

#### 7.5 ARREARS TO BEAR INTEREST

If any amount owing to FEI or the District is not paid on or before the date on which it is due, a late payment charge of 1.5% per month will be assessed each month on all outstanding balances not paid by the due date.

### **ARTICLE 8 - OWNERSHIP OF THE ENERGY SYSTEM**

Notwithstanding the payments made by the District to FEI under this Article 8, any provision of this Agreement, any degree of annexation or affixation, or rule of law or equity to the contrary the District will have no proprietary interest in the Energy System which is, and shall remain, the property of FEI and may be used by FEI in its business or removed in whole or in part as it may see fit, and for any of such purposes, and FEI may enter in, upon and under all the Lands for the purposes of the maintenance, renewals, repair, removal or operation of the Energy System or any part thereof; provided that FEI shall not leave any part of the Energy System in such a state as to constitute a nuisance or a danger to the public through neglect, non-use and want of repair, and provided further that nothing in this clause shall nullify or otherwise impact or invalidate in any way the District's rights under Article 15 to purchase the Energy System.

### **ARTICLE 9 - ENVIRONMENTAL ATTRIBUTES**

#### 9.1 ENVIRONMENTAL ATTRIBUTES

All right, title and interest now existing or which may exist at any time in the future in the potential or actual commercial value of any Environmental Attributes that arise or accrue by virtue of the construction and operation of the Energy System will belong to the District. At the request of the District, FEI will reasonably cooperate with the District in applying for and assigning any Environmental Attributes to the District.

#### 9.2 GRANTS

Any grants from any Governmental Authority, a Crown Corporation or non-governmental authority that may be derived from a reduction in energy consumption by the Building will belong to the District.

### **ARTICLE 10 - REPRESENTATIONS AND WARRANTIES**

#### 10.1 DISTRICT'S REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties contained in this Agreement, the District hereby represents and warrants to FEI as follows and acknowledges that FEI is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) the District has the full right, power and authority to enter into this Agreement;

- (b) all necessary action on the part of the District has been taken to authorize and approve the execution and delivery of this Agreement and the performance by the District of its obligations hereunder;
- (c) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to the District as of the date of this Agreement;
- (d) the District is not party to any action, suit or legal proceeding, actual or, to the knowledge of the District, threatened, and there are no circumstances, matters or things known to the District which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or, to the knowledge of the District, threatened against the District before or by any Governmental Authority, which could affect the District's ability to perform its obligations under this Agreement; and
- (e) no person, firm or corporation has or will have as of the Commission Date, any agreement, right, or option or right capable of becoming an agreement, right, or option for the purchase or acquisition of the Energy System.

## 10.2 FEI'S REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties contained in this Agreement, FEI hereby represents and warrants to the District as follows and acknowledges that the District is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) FEI has the full right, power and authority to enter into this Agreement;
- (b) all necessary corporate action on the part of FEI has been taken to authorize and approve the execution and delivery of this Agreement and the performance by FEI of its obligations hereunder;
- (c) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to FEI as of the date of this Agreement;
- (d) FEI is not party to any action, suit or legal proceeding, actual or threatened, and there are no circumstances, matters or things known to FEI which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or threatened against FEI before or by any Governmental Authority, which could affect FEI's ability to perform its obligations under this Agreement; and
- (e) FEI has or will have all permits, licenses, authorizations and other documentation required for the operation of the Energy System after the Commission Date; and
- (f) FEI has all the required expertise to fulfill its obligations under this Agreement.

### 10.3 DELEGATION AND SUBCONTRACTING

FEI may delegate and subcontract its obligations under this Agreement with respect to Design and Construction and Services to any contractor, consultant, agent or representative provided that FEI shall be fully responsible for the acts and omissions of such persons and those either directly or indirectly employed by them to the same extent as FEI for its own acts or omissions.

## **ARTICLE 11 - BCUC ACCEPTANCE**

### 11.1 REGULATORY REVIEW TERMINATION

Subject to Section 11.3, either Party may terminate this Agreement if within 90 days following the Effective Date, this Agreement and the Energy System Rate Development Agreement, including the Market Rate and the SD37 Rate Rider as defined in that Agreement have not been accepted for filing by the BCUC (such acceptance being herein called "BCUC Acceptance").

### 11.2 REGULATORY FILING

FEI, on behalf of itself and the District, and at its own cost, shall file the Agreement with the BCUC within a reasonable time after the Effective Date. FEI shall take all steps reasonably required to secure BCUC Acceptance, which shall consist of those procedural steps related to filing the Agreement and providing argument and witnesses in support of filing.

### 11.3 TERMINATION

A Party entitled to terminate under Section 11.1 must do so by giving notice to terminate to the other Party at any time after the right to terminate arises pursuant to Section 11.1, and prior to:

- (a) the date of issuance of the BCUC Acceptance; and
- (b) the date that is 90 days after the Effective Date.

### 11.4 EFFECT OF BCUC ACCEPTANCE

The Parties acknowledge that upon BCUC Acceptance, the Services will be subject to regulation by the BCUC under the UCA, and will form another class of service that FEI provides as a public utility. The Parties acknowledge that the terms of the UCA may supersede the terms and conditions of this Agreement.

## **ARTICLE 12 - INDEMNITY**

### 12.1 FEI'S INDEMNITY

Without limiting any other obligations of FEI provided herein, FEI will indemnify, defend, and save harmless the District and its trustees, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including the full amount of all legal fees and expenses on a

solicitor-client basis) which may be paid by, incurred by, or asserted against the District or its directors, officers, employees, agents, successors, or assigns, arising from or in connection with:

- (a) the breach or non-performance by FEI of any of its obligations or warranties hereunder; or
- (b) the negligence or wilful misconduct of FEI, its employees, contractors or agents in respect of the Energy System, and in the performance of the obligations of FEI pursuant to this Agreement,

excluding only such of the foregoing as arise from the fraud, negligence or wilful misconduct of the District or its trustees, officers, directors, members, employees, contractors or agents, or the breach or non-performance by the District of any of its obligations or warranties hereunder.

## 12.2 DISTRICT'S INDEMNITY

Without limiting any other obligations of the District provided herein, the District will indemnify, defend, and save harmless FEI, its Affiliates and their respective shareholders, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including the full amount of all legal fees and expenses on a solicitor-client basis) which may be paid by, incurred by, or asserted against FEI, its Affiliates or their respective shareholders, directors, officers, employees, agents, successors, or assigns, arising from or in connection with:

- (a) the breach or non-performance by the District of any of its obligations or warranties hereunder; or
- (b) the negligence or wilful misconduct of the District, its employees, contractors or agents in respect of the Energy System, and in the performance of the obligations of the District pursuant to this Agreement,

excluding only such of the foregoing as arise from the fraud, negligence or wilful misconduct of FEI or its Affiliates or any of their respective officers, directors, members, employees, contractors or agents, or the breach or non-performance by FEI of any of its obligations or warranties hereunder.

## 12.3 CONSEQUENTIAL LOSS

In no event will the District or FEI or any of their respective officers, directors, employees, contractors or agents be liable to the other Party for any indirect or consequential loss, cost or expense whatsoever, including any loss of profits, revenues or other economic loss, suffered by the other Party or its officers, directors, employees, contractors or agents.

## 12.4 SURVIVAL OF INDEMNITY

The indemnity of each of the District and FEI provided under this Article 12 will survive the Term of this Agreement.

## 12.5 ENVIRONMENTAL INDEMNITY BY THE DISTRICT

The District will indemnify and save harmless FEI, its Affiliates, directors, officers, shareholders, employees, agents, successors and permitted assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants (but not including Disclosed Contaminants) and remediation of the Lands and any affected adjacent property) (collectively, "FEI Losses") which may be paid by, incurred by or asserted against FEI, its Affiliates and their respective directors, officers, shareholders, employees, agents, successors or permitted assigns, arising from or in connection with any Contaminants (but not including Disclosed Contaminants) existing on the Lands prior to the Commission Date or brought onto the Lands or Released onto the Lands by the District or any person for whom it is in law responsible, except to the extent the FEI Losses suffered were caused or contributed to by any act or omission of FEI or any person for whom FEI is in law responsible after FEI had knowledge of the Contaminants.

## 12.6 ENVIRONMENTAL INDEMNITY BY FEI

FEI will indemnify and save harmless the District, its Affiliates and their respective trustees, directors, officers, employees, agents, successors and permitted assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the Lands and any affected adjacent property) (collectively, "District Losses") which may be paid by, incurred by or asserted against the District, its Affiliates, and their respective trustees, directors, officers, employees, agents, successors or permitted assigns, arising from or in connection with any Contaminants brought onto the Lands or any Disclosed Contaminants Released onto the Lands by FEI or any person for whom it is in law responsible, except to the extent the District Losses suffered were caused or contributed to by any act or omission of the District or any person for whom the District is in law responsible after the District had knowledge of the Contaminants.

# ARTICLE 13 - INSURANCE

## 13.1 FEI INSURANCE COVERAGE.

- (a) FEI will obtain and maintain at its own expense throughout the Term, Commercial General Liability Insurance for bodily injury, death and property damage in the minimum amount of five million (\$5,000,000) dollars per occurrence. The policy will contain a cross liability provision and will be maintained for a period ending no sooner than 12 months after the expiry or termination of this Agreement.
- (b) FEI will be responsible for the full amount of all premiums and deductibles required under this Section 13.1. All policies required herein must be effective at the Commission Date. Insurance will be purchased from insurers registered and licensed to underwrite

insurance in British Columbia. Policies will contain waivers of subrogation against the District and all its officers, directors, members, employees, contractors and agents.

### 13.2 DISTRICT INSURANCE COVERAGE

- (a) The District will obtain and maintain at its own expense throughout the Term Commercial General Liability Insurance for bodily injury, death and property damage in the minimum amount of five million (\$5,000,000) dollars per occurrence. The policy will contain a cross liability provision and will be maintained for a period ending no sooner than 12 months after the expiry or termination of this Agreement.
- (b) The District will be responsible for the full amount of all premiums and deductibles required under this Section 13.2. All policies required herein must be effective at the date of this Agreement. Insurance will be provided by the Provincial self-insured program. Policies will contain waivers of subrogation against FEI and all its officers, directors, employees, contractors and agents.

### 13.3 PRIORITY

FEI will ensure that the District is an additional insured under the insurance to be obtained and maintained pursuant to Section 13.1. The District will ensure that FEI is an additional insured under the insurance to be obtained and maintained pursuant to Section 13.2. In the event of a claim, the insurance carried by the Party responsible for actions which give rise to such claim will be the primary insurance with respect to such claim.

## **ARTICLE 14 - DEFAULT**

### 14.1 DEFAULT BY FEI

- (a) FEI will be in default under this Agreement if FEI is in breach of a material term, covenant, agreement, condition or obligation imposed on it under this Agreement and fails to cure such default within ten (10) days after receipt of written notice thereof from the District, or, if such default is not capable of being cured within such ten (10) day notice period, fails to commence in good faith the curing of such default upon receipt of such written notice of default from the District and to continue to diligently pursue the curing of such default thereafter until cured. For the purposes of this Section 14.1, Section 4.4 is hereby deemed to be a material term of this Agreement.
- (b) If FEI is in default of this Agreement, the District may at its option and without liability therefore or prejudice to any other right or remedy it, including under the UCA, may have suspend or refuse to make any payments due hereunder until the default has been fully remedied, and no such suspension or refusal will relieve FEI from any of its obligations under this Agreement.
- (c) In the event the default is not fully remedied within thirty (30) days of receipt by FEI of written notice thereof from the District, the District may, at its option, undertake the necessary steps to remedy FEI's default at FEI's sole expense, which reasonable costs

shall be deducted from the Monthly Charges, and such actions will not relieve FEI from any of its obligations under this Agreement or, at its option, and without any liability, terminate this Agreement without prejudice to any other right the District may have hereunder or at law or otherwise.

#### 14.2 DEFAULT BY THE DISTRICT

- (a) The District will be in default under this Agreement if the District fails or refuses to make any payment due to FEI by the District under this Agreement within thirty (30) days of receiving written notice from FEI after the date that payment is due or if the District is in breach of a material term, covenant, agreement, condition or obligation imposed on it under this Agreement and fails to cure such default within ten (10) days after receipt by the District of written notice thereof from FEI or, if such default is not capable of being cured within such ten (10) day notice period, fails to commence in good faith the curing of such default forthwith upon receipt of such written notice thereof from FEI and to continue to diligently pursue the curing of such default thereafter until cured.
- (b) If the District is in default of this Agreement, FEI may at its option and without liability therefore or prejudice to any other right or remedy it may have, including under the UCA, cease performing the Services and no such actions will relieve the District from any of its obligations under this Agreement.
- (c) In the event the default by the District is not fully remedied within thirty (30) days of receipt by the District of written notice from FEI, FEI may undertake the necessary steps to remedy the District's default at the District's sole expense and such action will not relieve the District from any of its obligations under this Agreement or, at its option, and without any liability, take whatever steps necessary to shut down the Energy System and terminate this Agreement without prejudice to any other right FEI may have hereunder or at law or otherwise.

#### 14.3 CROSS DEFAULT

- (a) If any Building experiences a Service Interruption at any time, the District may deliver a notice of such Service Interruption to FEI (a "Service Interruption Notice" to FEI);
- (b) If a Service Interruption continues for a period of 48 consecutive hours after the delivery of a Service Interruption Notice pursuant to Section 14.3(a), the District may deliver a notice of such continuing Service Interruption to FEI (a "Continuing Service Interruption Notice");
- (c) If a Service Interruption continues for a period of 120 consecutive hours after the delivery of a Continuing Service Interruption Notice, the District may at its option deliver a notice of such continuing Service Interruption to FEI (a "Service Failure Notice"); Within 60 days of either:
  - (i) the District's delivery of a Service Failure Notice pursuant to Section 14.3(c); or

- (ii) the District's delivery of a Continuing Service Interruption Notice pursuant to Section 14.3(b) that constitutes the fifth or greater Continuing Service Interruption Notice delivered in that calendar year;

the District may, at its option and without liability:

- (iii) terminate this Agreement without prejudice to any other right the District may have hereunder at law or otherwise; or
  - (iv) terminate the Energy System Rate Development Agreement and all Energy System Service Agreements (inclusive of this Agreement), without prejudice to any other right the District may have hereunder at law or otherwise.
- (d) For greater certainty, this Agreement shall be deemed to be terminated in the event that the District exercises its right to terminate all Energy System Service Agreement under another Energy System Service Agreement.

#### 14.4 SURVIVAL

Upon expiry or earlier termination of this Agreement for any reason, all claims, causes of action or other outstanding obligations remaining or being unfulfilled as of the expiry or termination of this Agreement and all of the provisions of this Agreement relating to the obligation or either the Parties to account to or indemnify the other and to pay to the other any amounts owing as at the date of expiry or termination in connection with this Agreement will survive such expiry or termination.

### **ARTICLE 15 – EXPIRY AND TERMINATION**

#### 15.1 EXPIRY

Upon expiry of the Term, unless otherwise agreed between the Parties and subject to agreement by the BCUC (if required pursuant to applicable Laws), the District may, at its option and by written notice to FEI within 30 days following the termination:

- (a) require FEI to remove the Energy System at FEI's cost in accordance with Section 15.5; or
- (b) acquire the Energy System from FEI at the Adjusted Energy System Purchase Price.

#### 15.2 TERMINATION OF THE ENERGY SYSTEM RATE DEVELOPMENT AGREEMENT

- (a) If the Energy System Rate Development Agreement is terminated as a result of the adoption, approval or implementation of a thermal energy rate tariff by the BCUC, this Agreement will automatically terminate effective as of the date of termination of the Energy System Rate Development Agreement;
- (b) If the Energy System Rate Development Agreement is terminated for cause by the District, this Agreement will be deemed to have been terminated pursuant to Section

14.1(c) as of the date of termination of the Energy System Rate Development Agreement, and Section 15.3 shall apply; and

- (c) If the Energy System Rate Development Agreement is terminated for cause by FEI, this Agreement will be deemed to have been concurrently terminated pursuant to Section 14.2(c) as of the date of termination of the Energy System Rate Development Agreement, and Section 15.4 shall apply.

### 15.3 TERMINATION BY THE DISTRICT FOR CAUSE

If the District terminates this Agreement pursuant to Sections 14.1(c) or 14.3, the District may, at its option and by written notice to FEI within 30 days following the termination:

- (a) require FEI to remove the Energy System, at its own cost, in accordance with Section 15.5; or
- (b) acquire the Energy System from FEI at the Adjusted Energy System Purchase Price.

### 15.4 TERMINATION BY FEI FOR CAUSE

If FEI terminates this Agreement pursuant to Section 14.2(c), FEI may, at its option and by written notice to the District:

- (a) remove the Energy System, at its own cost, in accordance with Section 15.5; or
- (b) require the District to purchase the Energy System from FEI at the Adjusted Energy System Purchase Price.

### 15.5 REMOVAL OF THE ENERGY SYSTEM

If FEI is required to remove the Energy System pursuant to Sections 15.1(a), 15.3(a) or 15.4(a) or otherwise upon expiry of this Agreement, FEI shall promptly remove those portions of the Energy System located within the Building and at surface level at FEI's cost, and FEI shall perform such removal activities using standards of performance that are equivalent to those that apply to the performance of the Services under this Agreement. Any portion of the Energy System not removed by FEI prior to the 30<sup>th</sup> day following the termination or expiry of the Agreement will, as of such day, be deemed to be automatically transferred to the District, and become the property of the District, all at no cost to the District.

### 15.6 ACQUISITION OF THE ENERGY SYSTEM

If the District elects to acquire the Energy System pursuant to Sections 15.1(b), 15.3(b) or 15.4(b):

- (a) the District shall pay the Adjusted Energy System Purchase Price to FEI within the later of 30 days of (i) the effective date of expiration or termination, and (ii) confirmation of the Adjusted Energy System Purchase Price; and

- (b) FEI will promptly execute and deliver any documents and records reasonably required by the District to effect and facilitate the transfer of the Energy System to the District, including bills of sale, operation and maintenance manuals and warranties, and will use reasonable commercial efforts to obtain any consents and approvals that may be required in relation to the transfer (including, without limitation, BCUC approval), provided that (i) FEI's obligations under this Section 15.6(b) shall arise only upon FEI's receipt of all amounts due and owing to FEI from the District under this Agreement, and (ii) during the period between the expiration or termination of the Agreement and FEI's receipt of amounts due and owing to FEI from the District under this Agreement, FEI shall continue to maintain, or shall permit the District to maintain, the Energy System in good working order.

Notwithstanding the foregoing, the Parties acknowledge and agree that FEI's ability to sell or otherwise transfer its interest in and to the Energy System to the District may be subject to BCUC approval under applicable Laws.

## **ARTICLE 16 - NON-COMPLIANCE AND ENVIRONMENTAL**

### 16.1 NOTIFICATION OF NON-COMPLIANCE

FEI or the District (as applicable, the "Notifying Party") will promptly, upon becoming aware thereof, notify the other Party in writing of:

- (a) a Release of a Contaminant or any other occurrence or condition in the Energy System, the Lands or any adjacent property which could subject the other Party to any fines, penalties, orders or proceedings under applicable Laws;
- (b) any charge, order, investigation or notice of violation or non-compliance issued against the Notifying Party relating to the Energy System, or the operation of the Energy System, under any applicable Laws; and
- (c) any notice, claim, action or other proceeding by any third party against the Notifying Party in respect of the Design and Construction or the Services or concerning the Release or alleged Release of any Contaminants at or from the Energy System or the Lands.

### 16.2 NOTIFICATION BY FEI

FEI will notify the appropriate Governmental Authorities of any Release of any Contaminants at or from the Energy System in accordance with applicable Laws. The District may, but is not obligated to, notify the appropriate Governmental Authorities of any Release of any Contaminants at or from the Energy System in accordance with applicable Laws.

### 16.3 OWNERSHIP OF CONTAMINANTS

Notwithstanding any rule of law to the contrary, any Disclosed Contaminant Released from the Energy System, or any top soil, earth or other material containing a Contaminant for which FEI is responsible pursuant to Section 4.5 that is removed from the Lands by FEI or any person for

whom it is in law responsible, will be and remain the sole and exclusive property and responsibility of FEI and will not become the property of the District, notwithstanding the degree of its affixation to the Lands and notwithstanding the expiry or earlier termination of this Agreement.

#### 16.4 SURVIVAL OF OBLIGATIONS

The obligations of the Parties under this Article 16 will survive the expiry or termination of this Agreement.

### **ARTICLE 17 - FORCE MAJEURE**

#### 17.1 SUSPENSION

Subject to the other provisions of this Article 17, if either Party is unable or fails by reason of Force Majeure to perform in whole or in part any obligation or covenant set forth in this Agreement, with the exception of unpaid financial obligations, such inability or failure will be deemed not to be a breach of such obligation or covenant and the obligations of both Parties under this Agreement will be suspended to the extent necessary during the continuation of any inability or failure so caused by such Force Majeure.

#### 17.2 DEFINITION OF FORCE MAJEURE

For purposes of this Agreement, the term "Force Majeure" means any event or occurrence not within the control of the Party claiming Force Majeure and which by the exercise of reasonable diligence such Party is unable to prevent or overcome, including any acts of God, including lightning, earthquakes, storms, washouts, landslides, avalanches, fires, epidemics and floods; strikes, lockouts or other industrial disturbances; acts of the Queen's or public enemies, sabotage, wars, blockades, insurrections, riots or civil disturbances, fires, explosions, breakages of or accidents to machinery or lines of pipe; the laws, orders, rules, regulations, acts or restraints of any court or governmental or regulatory authority. For the purposes of this Article 17, a Party is deemed to have control over the actions or omissions of those persons to which it, its agents, contractors or employees, have delegated, assigned or subcontracted its obligations and responsibilities. For greater certainty, a Force Majeure shall not include any weather related events that do not exceed 25 year events as recorded by Environment Canada or as otherwise may be determined by the BCUC from time to time.

#### 17.3 EXCEPTIONS

Neither Party will be entitled to the benefit of Section 17.1 under any of the following circumstances:

- (a) the Energy System not being Commissioned;
- (b) to the extent that the inability or failure was caused by the negligence or contributory negligence of the Party claiming Force Majeure;

- (c) to the extent that the inability or failure was caused by the Party claiming Force Majeure having failed to diligently attempt to remedy the condition by taking all reasonable acts and to resume the performance of such covenants and obligations with reasonable dispatch;
- (d) if the inability or failure was caused by lack of funds or is in respect of any amount due hereunder; or
- (e) unless, as soon as possible after the happening of the occurrence relied upon or as soon as possible after determining that the occurrence was in the nature of Force Majeure and would affect the claiming Party's ability to observe or perform any of its covenants or obligations under this Agreement, the claiming Party will have given to the other Party notice to the effect that the claiming Party is unable by reason of Force Majeure (the nature whereof will be therein specified) to perform the particular covenants or obligations.

#### 17.4 RESUMPTION OF OBLIGATIONS

The Party claiming Force Majeure will give notice to the other Party, as soon as possible after the Force Majeure condition is remedied, to the effect that the same had been remedied and that such Party has resumed, or is then in a position to resume, the performance of its suspended covenants and obligations hereunder either in whole or in part.

#### 17.5 SETTLEMENT OF LABOUR DISPUTES

Notwithstanding any of the provisions of this Article 17, and subject to Section 17.3, the settlement of labour disputes or industrial disturbances is entirely within the discretion of the particular Party involved and the Party may make settlement of it at the time and on terms and conditions as it may deem to be advisable and no delay in making settlement will deprive the Party of the benefit of Section 17.1.

### **ARTICLE 18 - CONDITIONS PRECEDENT**

#### 18.1 CONDITIONS PRECEDENT OF FEI

The obligation of FEI to carry out the transactions contemplated by this Agreement is subject to fulfillment of the following conditions on or before such date as may be specified, which is for the sole benefit of FEI, and which may be waived by FEI in accordance with Section 18.2:

- (a) FEI obtaining the approval by its board of directors of the terms and conditions of this Agreement on or before the 30th day following the Effective Date, provided that if such approval cannot be obtained by this date due to the fact that the board of directors has not yet considered the transaction FEI reserves the right to extend the period of time to that date when the board next convenes.

## 18.2 FEI NOTICE OF WAIVER

If a condition set out in Section 18.1 has not been satisfied on or before the date as may be specified for its fulfillment, FEI may waive compliance with the condition in whole or in part, in its sole discretion, by written notice to the District, failing which delivery of written notice of satisfaction or waiver of such condition, this Agreement will, to the extent any further obligations of the Parties which remain unfulfilled, be null and void, without liability between the Parties hereto, and, neither Party will be under any further obligation to the other to complete the transactions or future transactions, as the case may be, contemplated by this Agreement.

## **ARTICLE 19 - DISPUTE RESOLUTION**

### 19.1 REFERENCE TO ARBITRATION

The Parties will attempt to resolve all disputes which may arise under, out of, in connection with or in relation to this Agreement by negotiation. They will provide full and timely disclosure to one another of all facts relevant to the disputes to facilitate those negotiations. If any such dispute remains unresolved, for any reason, fifteen (15) days after either Party requested the other Party to enter into negotiations to resolve it, or if the Parties agree to waive negotiations in respect of it, then either Party may submit that dispute for final resolution by arbitration administered by the British Columbia International Commercial Arbitration Centre (“BCICAC”) under its “Shorter Rules for Domestic Commercial Arbitration”. The seat of that arbitration will be Vancouver, British Columbia, Canada. The language of that arbitration will be English. Alternatively, the Parties may agree, within the 15 days referred to above, to submit that dispute for final resolution by arbitration in another manner.

### 19.2 BINDING DECISION

The decision of the arbitrator, regardless of what arbitration procedure is used, will, for all purposes of this Agreement, be final and binding on the Parties.

### 19.3 CONTINUATION OF SERVICES

Each of the Parties will perform all of its respective obligations under this Agreement notwithstanding the existence of any dispute that arises from time to time between the Parties in respect of any matter related to this Agreement or during the resolution of any dispute in accordance with this Article 19.

### 19.4 COSTS

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 case, the non-prevailing Party shall pay all costs and expenses of the arbitration, but not those of the prevailing Party.

## ARTICLE 20 - GENERAL

### 20.1 RESPONSIBILITY FOR COSTS

FEI's performance of any of its obligations under this Agreement, including without limitation the obligation to design, construct and install the Energy System as provided in Section 2.1, shall be at FEI's sole cost and expense, unless expressly provided otherwise in this Agreement;

### 20.2 EXERCISE OF DISCRETION

Where anything in this Agreement is identified as being in either Party's discretion, such Party will have the right to exercise such discretion in its own best interest without regard for the interest of the other Party.

### 20.3 COOPERATION

FEI and the District will at all times extend co-operation to each other to ensure the orderly management and operation of the Energy System.

### 20.4 SOLICITATION

Nothing in this Agreement precludes either Party from soliciting or entering into, other contracts with the other Party.

### 20.5 NOTICES

Any notice or other communication required or permitted to be given under this Agreement will be effective only if in writing and when it is actually delivered (which delivery may be by telecopy or other telecommunications device) to the Party for whom it is intended at the following address or such other address in British Columbia as such Party may designate to the other Party by notice in writing delivered in accordance with this Section 20.5:

(a) if to FEI:

FortisBC Energy Inc.  
10th Floor, 1111 West Georgia Street  
Vancouver, B.C.  
V6E 4M3

Attention: Gareth Jones  
Telephone: 250-380-5972  
Telecopy: 250-388-6876

(b) if to the District:

Board of Education of School District No. 37 (Delta)  
4585 Harvest Drive  
Delta, B.C.  
V4K 5B4

Attention: Frank Geyer  
Telephone: 604-952-5336  
Telecopy: 604-952-5375

Notwithstanding the foregoing, notices with respect to Force Majeure will be given in writing by telecopy, or orally in person or by telephone (to be confirmed by telecopy), to the person or persons designated from time to time by the Parties as the person or persons authorized to receive such notices.

## 20.6 CONFIDENTIALITY

The District and FEI will treat as confidential the terms of this Agreement and all Confidential Information (as defined below) and will at all times during the term of this Agreement and for a reasonable time thereafter hold the terms of this Agreement and all Confidential Information in confidence and neither Party will, without the prior written consent of the other Party, disclose or divulge the terms of this Agreement or any Confidential Information to any person, provided that nothing in this Section 20.6 will restrict or prevent either Party from making any disclosure of such terms or any Confidential Information:

- (a) which is reasonably necessary or desirable for such Party to carry out and give full effect to the terms, conditions and intent of this Agreement and the matters contemplated hereby;
- (b) which is required by any Law, including the Freedom of Information and Protection of Privacy Act (British Columbia);
- (c) to any Governmental Authority;
- (d) to the British Columbia Utilities Commission or other regulatory agency as part or in support of any regulatory application or submission;
- (e) to the directors, officers or employees of such Party or to an Affiliate of such Party or to the directors, officers or employees of an Affiliate of such Party;
- (f) to the professional advisors of such Party on the same terms of confidentiality;
- (g) which is already in the public domain; or
- (h) in connection with legal proceedings or steps being taken to remedy a breach or default under this Agreement by the other Party.

For the purposes of this Section 20.6, “Confidential Information” means proprietary information of either Party such as data, plans, drawings, manuals, or specifications which have been provided by such Party, its employees, contractors, agents, subcontractors, Affiliates to the other Party pursuant to this Agreement or proprietary information either Party conceived or developed by or for such Party concerning construction practices, operation and maintenance practices, agreements, marketing plans and strategies, profits, costs, pricing and systems of procedure (provided that “Confidential Information” does not include information which was disclosed to the receiving Party by a third Party (unless, to the knowledge of the receiving Party, the third Party is under an obligation of confidentiality to the other Party) or any information developed or conceived by the receiving Party without using the “Confidential Information” of the other Party).

#### 20.7 SEVERABILITY

If any provision of this Agreement is found or determined to be invalid, illegal or unenforceable it will be construed to be separate and severable from this Agreement and will not impair the validity, legality or enforceability of any other provisions of this Agreement, and the remainder of this Agreement will continue to be binding on the Parties as if such provision had been deleted.

#### 20.8 NO WAIVER

No waiver by either Party of any default by the other in the performance of any of the provisions of this Agreement will operate or be construed as a waiver of any other or future default or defaults hereunder, whether of a like or a different character. To be binding, any waiver of any provision of this Agreement must be clearly expressed in writing to be signed by the waiving Party.

#### 20.9 BURDEN AND BENEFIT

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

#### 20.10 GOVERNING LAW

This Agreement and all matters arising hereunder will be governed by the laws of British Columbia and the federal laws of Canada applicable in British Columbia.

#### 20.11 ENTIRE AGREEMENT

This Agreement contains the whole agreement between the Parties in respect of the subject matter hereof and there are no terms, conditions or collateral agreements express, implied or statutory other than as expressly set forth in this Agreement and this Agreement supersedes all of the terms of any written or oral agreement or understanding between the Parties.

#### 20.12 TIME OF ESSENCE

Time is of the essence of this Agreement.

#### 20.13 FURTHER ASSURANCES

Each Party will, at all times hereafter on demand by the other, execute and deliver or cause to be executed and delivered all such further documents and do all such further acts and things as may be reasonably requested by the other Party to evidence, carry out and give full effect to the intent and meaning of this Agreement and to assure the completion of the transactions contemplated hereby.

#### 20.14 AMENDMENTS TO BE IN WRITING

Except as set out in this Agreement, no amendment or variation of this Agreement will be effective or binding upon the Parties unless such amendment or variation is set out in writing and duly executed by the Parties.

#### 20.15 FACSIMILE

This Agreement may be executed by the Parties and transmitted by facsimile transmission and, if so executed, transmitted and received, this Agreement will for all purposes be effective as if the Parties had delivered and executed the original Agreement and each Party undertakes to provide the other Party with a copy of this Agreement bearing original signatures forthwith upon demand.

#### 20.16 SUBJECT TO LEGISLATION

Notwithstanding any other provision hereof, this Agreement and the rights and obligations of FEI and the District under this Agreement are subject to all present and future laws, rules, regulations and orders of any legislative body, governmental agency or duly constituted authority now or hereafter having jurisdiction over FEI or the District.

#### 20.17 EXPENSES

Each Party to this Agreement shall be responsible for the payment of all costs, expenses, legal fees and disbursements incurred or to be incurred by it in negotiating and preparing this Agreement and all documents required to be delivered under this Agreement and otherwise relating to the transactions contemplated by this Agreement.

#### 20.18 NO CONTRARY AGREEMENT

No Party shall enter into an agreement or other commitment with any person if such agreement or commitment has terms or provisions in conflict with or inconsistent with the terms of this Agreement or which could reasonably be expected to lead to actions or consequences that would result in the Party being in breach of the commitments and obligations of the Party pursuant to this Agreement unless such other agreement or commitment is expressly approved by the other Parties.

#### 20.19 NO PARTNERSHIP

Nothing herein shall be deemed or construed to create a joint venture, partnership, employment or agency relationship between the Parties for any purpose.

20.20 ASSIGNMENT

Neither Party may assign this Agreement or any of its rights or obligations under this Agreement, and FEI may not assign, transfer or sell all or any part of the Energy System, except:

- (a) with the consent of the other Party, such consent not to be unreasonably withheld, delayed or conditioned; or
- (b) in the case of FEI, to an Affiliate of FEI which is a "public utility" as defined in the *UCA* on notice to, but without the consent of, the District.

20.21 COUNTERPARTS

This Agreement may be executed in counterparts with the same effect as if the Parties had signed the same document. All counterparts will be construed together and will constitute one agreement.

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

**FORTISBC ENERGY INC.**

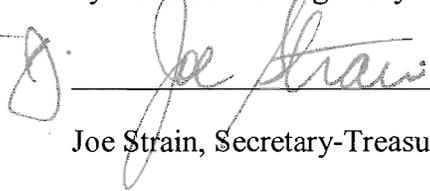
by its authorized signatory:

  
\_\_\_\_\_

Doug Stout,  
VP Energy Solutions & External Relations

**THE BOARD OF EDUCATION OF  
SCHOOL DISTRICT NO. 37 (DELTA)**

by its authorized signatory:

  
\_\_\_\_\_

Joe Strain, Secretary-Treasurer

# SAMPLE SCHEDULE “A”

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## Energy System Description

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### Mechanical Equipment Plans and Specifications

Equipment schedule:

- 1 ground source heat pumps water furnace 540NXW or equivalent and associated pumps. The heat pump and related equipment will be installed in the boiler room at the old boilers location on the concrete pad.
- Each heat pump will have 1 pump on condenser side (5 Hp, 90gpm, 100 ft).
- Piping, control valves and other equipment and accessories connected to the above equipment.
- Connection of the heat pumps on the return of the boiler and installation of the 3 way valves.
- 500 ft of piping 4 inches isolated between the field and the heat pump The pipes will be installed on the roof.
- Installation of geo-exchange field loop to match the designed performance of the system.
- Supply and do the injection of 800 usgals of propylene/glycol with a concentration of 25%.
- Control systems for the above mentioned equipment.
- BTU meters

Prior to commencement of the Mechanical Equipment construction, FEI shall provide detailed drawings to the District for review and acceptance.

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## **SCHEDULE “B”**

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# **Delta School District Site Rules for Contractors**

## **Delta School District Site Rules for Contractors**

### **1.0 Safety**

- 1.1 For the purposes of this section, “Safety Regulations” means the rules, regulations, and practices required by WorkSafeBC.
- 1.2 The Contractor shall be solely responsible for site safety during the execution of all assigned construction and maintenance activities, including work performed by subcontractors and suppliers, and for compliance with the Safety Regulations, and shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the work.
- 1.3 If the District is of the reasonable opinion that the Contractor has not taken such precautions as are necessary to ensure compliance with the requirements of Clause 1.2, the District may take or order any remedial measures which it deems necessary, including stopping the performance of all or any portion of the work, and the District may use the employees of itself, the Contractor, any subcontractor or any other contractors to perform such remedial measures. The Contractor acknowledges and agrees that any failure by the Contractor to comply with the Safety Regulations shall constitute a default of the Contractor's contractual obligations and the District may issue a written notice instructing the Contractor to correct the default in the two (2) working days immediately following receipt of such notice.
- 1.4 The Contractor shall file any notices or any similar document (including, without limitation, a Notice of Project where applicable) required pursuant to the Safety Regulations. This duty of the Contractor will be considered to be included in the work and no separate payment therefore will be made to the Contractor.
- 1.5 The Contractor shall develop, maintain and supervise for the duration of the work a comprehensive safety program that will effectively incorporate and implement all required safety precautions. The program shall, as a minimum, respond fully to the Safety Regulations and general construction practices for the safety of persons or property, including without limitation the WorkSafeBC regulations that may be applicable (e.g. WHMIS, dust control, etc.).
- 1.6 The Contractor shall provide a copy of the safety program described in Clause 1.5 to the District prior to the commencement of the work and shall, at all times require, as far as it is reasonably practical to do so, that every employer and worker performing work in respect of the project complies with such program.
- 1.7 The Contractor shall arrange regular safety meetings at its expense, record the minutes of such meetings and maintain a complete file for review by the appropriate authorities.
- 1.8 The Contractor shall supply and maintain, at its own expense, at its office or other well-known place at the work site, safety equipment necessary to protect the workers and general public against accident or injury as prescribed by the governing authorities.
- 1.9 The Contractor shall supply and maintain all articles necessary for giving first-aid to any person who may be injured on the work site and shall establish an emergency procedure for the immediate removal of any injured person to a hospital or a doctor's care in accordance with the Safety Regulations.
- 1.10 The Contractor shall, as required under the Safety Regulations, promptly report all accidents of any sort arising out of or in connection with the performance of the work whether on or adjacent to the work site, giving full details and statements of witnesses. The District shall be copied on all accident reports and investigation reports.

## **2.0 Security and Access**

- 2.1 **Site and Building Access:** The District's Maintenance Services Department will issue gate and building keys, electronic access cards (complete with instructions as to how to arm/disarm the building intrusion alarm system and how to contact the alarm monitoring station) and identification badges for the Contractor to enter the site and building, disarm/arm the building intrusion alarm system, and access the portions of the site where the Contractor's work is taking place. The Contractor and all subcontractors must check in at the school office (if occupied by District staff) prior to entering other parts of the building. The access cards, keys and identification badges shall be promptly returned to the District at the end of the contract.
- 2.2 **Security:** The Contractor shall assume all responsibility for the security of the work site. The Contractor must ensure that all windows, doors and gates are secure and the building intrusion alarm system is armed (unless District staff are still in the building) at the end of the workday. The Contractor must also safeguard the rest of the building and/or site from access through possible open construction areas. Security doors shall at all times remain closed and shall not be propped open, even for a short time. The Contractor is responsible for any costs arising when the District's security runner services is called to attend a work site for security matters resulting from the Contractor's negligence.
- 2.3 **Normal School Hours:** Normal hours of operation for the District are 0730h-1600h Monday to Friday, excluding statutory holidays. For after-hours and weekend work, the Contractor must notify the District's Maintenance Services Department at least one business day in advance of the work.

## **3.0 Conduct**

- 3.1 **Noise Due to Construction or Maintenance Activities:** In accordance with the Delta Noise Bylaw 1906, "no person shall carry on or cause to be carried any construction work, reconstruction, alteration, repair or demolition of a building or structure, the operation of machinery, or works in connection with any excavation or highway before 07:00h or after 1900h and day of the week from Monday to Friday, inclusive, before 0900h or after 1700h on Saturdays, or at any time Sundays. The Contractor shall respect the classroom operations in the vicinity of the work site and as such will make every attempt to limit noisy work to times outside of classroom operation or to adequately dampen, silence and/or soundproof equipment that generates noise to mitigate disruption to the classrooms.
- 3.2 **Communication devices:** Radio and cell phone volume shall be at the minimum volume which is consistent with the ability to operate the device.
- 3.3 **Roadways:** All speed limits and other traffic rules must be obeyed and access to the roadways should not be impeded. Parking and secure storage of materials and equipment by the Contractor and subcontractors shall only be in designated areas only.
- 3.4 **Cleanliness:** The work site must be maintained for an orderly appearance on a daily basis. Trash and construction debris shall be contained at all times and removed from the work site weekly.
- 3.5 **Toilets:** All temporary toilets shall have their doors faced away from streets. In no cases shall a worker utilize any staff washroom or other staff facilities at the work site, except as otherwise agreed in writing by the District. Under no circumstances will workers be permitted to use student washrooms.
- 3.6 **Identification Badges:** All workers shall have a District-assigned identification badge that clearly indicates the company's name and the worker's name. It is to be worn whenever at the work site.

- 3.7 **Smoking:** Smoking is not permitted on District property.
- 3.8 **Alcohol/Drugs:** No alcoholic beverages or non-prescription drugs shall be brought or consumed at the work site.
- 3.9 **Animals:** No dogs or other animals, are permitted at the work site without the written consent of the District.
- 3.10 **Fitness for Work:** All workers must be fit for work at all times. The District retains the right to request individuals leave the work site if unfit for any reason including, without limitation, inebriation, taking drugs, injury, fatigue, rudeness or any other reason that may affect the quality of the work or represents a breach of these rules.
- 3.11 **Theft:** Workers who steal from occupants or the District shall be immediately ejected from the work site. The Contractor is responsible for all such thefts irrespective of whether the worker is an employee of the Contractor or a subcontractor.
- 3.12 **Discrimination and Harassment:** The District actively promotes a safe and secure school environment and as such does not tolerate violations of human rights legislation, including:
- (a) discriminatory acts against any person with respect to the work or school environment or any educational program or service provided to or by that person because of race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age of that person, or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person;
  - (b) all forms of actual, attempted or threatened physical harm directed at any person; or
  - (c) any form of sexual harassment such as unwelcome sexual advances with actual or implied work related consequences; unwelcome remarks, questions, jokes or innuendo of a sexual nature including sexist comments or sexual invitations; verbal abuse, intimidation or threats of a sexual nature; unwelcome leering, staring or making sexual gestures; whistling or catcalls; display of pornographic or other sexual materials; offensive pictures, graffiti, cartoons or sayings; unwanted physical contact such as touching, patting, pinching or hugging; and physical assault of a sexual nature

## **SCHEDULE “C”**

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### **List of Environmental Reports**



**ASBESTOS MATERIALS SURVEY  
AND RISK ASSESSMENT**

**OF**

**RICHARDSON ELEMENTARY  
11339 – 83<sup>rd</sup> Avenue  
Delta, BC**

**PREPARED FOR:**

**DELTA SCHOOL DISTRICT  
Maintenance Facility  
7186 Brown Street  
Delta, BC  
V4G 1G8**

**PREPARED BY:**

**ACM ENVIRONMENTAL CORPORATION  
#217 - 2323 Quebec Street  
Vancouver, BC  
V5T 4S7  
604-873-8599**

**December 2005**

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## **EXECUTIVE SUMMARY**

A.C.M. Environmental Corporation (ACM) was retained by the Delta School District to perform an Asbestos Materials Survey and Risk Assessment for Richardson Elementary located at 11339 – 83<sup>rd</sup> Avenue, Delta, BC

The assessment involved an inspection of all areas of the building. The objective of the assessment was to identify the types and extent of asbestos containing materials within the building and any risks associated with the materials and the regular usage of the building.

The assessment was conducted using both visual and physical assessment techniques. Samples of materials suspected of containing asbestos were collected and forwarded, using proper chain of custody protocols, to Prezant Associates, Inc. for asbestos analysis. Asbestos sample results are located in Appendix A of this report.

In summary, the findings from the assessment conclude that asbestos was found within the construction materials of the building, however, no PCB or Mercury containing materials were found within the equipment of the building.

One type of asbestos containing materials was observed as vinyl floor tile materials. Within the context of the report, areas have been detailed as to the locations of the asbestos containing materials, the content of asbestos where applicable, and the required procedures to be followed for removal of these materials, as required.

The hazardous materials survey was conducted using non-destructive and some limited destructive testing methods. Areas within walls were not inspected as access was not possible without causing extensive damage to the walls. It should be noted that there is a possibility of asbestos containing materials existing within inaccessible wall and ceiling cavities, and under sub-floors. Possible asbestos-containing materials which may exist in these areas may include but are not limited to: insulation materials (mechanical or construction), secondary layers of drywall or flooring, etc.

Roofing materials were not sampled at this time as the integrity of the waterproof membrane would be compromised, possibly voiding insurance coverage in the event of a water leak. If the roofing materials are to be disturbed during a renovation project, they must be sampled prior to the work taking place.

A random number of fluorescent lighting fixtures were opened up and inspected for possible PCB containing ballasts. No PCB containing ballasts were observed

within the fluorescent lighting fixtures inspected, although some may exist, as not all fixtures were opened. No Mercury containing thermostat switches were observed within the building.

## **INTRODUCTION**

A.C.M. Environmental Corporation (ACM) was retained by the Delta School District to perform an Asbestos Materials Survey and Risk Assessment for Richardson Elementary located at 11339 – 83<sup>rd</sup> Avenue, Delta, BC. The building may undergo renovations in the near future and all areas of the building were inspected and/or sampled during this survey.

The objective of the assessment was to identify the types and extent of asbestos containing construction materials within the accessible areas of the building. The assessment at this time involved an inspection of all areas of the building not including the roofing materials.

The survey and assessment was conducted on November 24<sup>th</sup>, 2005 by Mr. James McArthur, AScT, Environmental Technician, for ACM. Eight (8) representative bulk samples of materials suspected of containing asbestos were collected for analysis and are included as Appendix A of this report.

## **METHODOLOGY**

The hazardous materials survey was conducted using non-destructive and some limited destructive testing methods. Areas within walls were not inspected as access was not possible without causing extensive damage to the walls. It should be noted that there is a possibility of asbestos containing materials existing within inaccessible wall and ceiling cavities, and under sub-floors. Possible asbestos-containing materials which may exist in these areas may include but are not limited to: insulation materials (mechanical or construction), secondary layers of drywall or flooring, etc.

The U.S. Environmental Protection Agency (USEPA) Guidance Document was selected for use in this study (1). The document identifies factors associated with the "condition" and the "potential for disturbance or erosion" of asbestos containing materials. These factors help to define the fibre release potential of the suspect asbestos containing materials and were used in a qualitative evaluation of materials found in the surveyed areas. Recommendations have been substantiated by additional information utilized from other documentation cited in the Reference Section of this report.

The bulk samples of suspect asbestos containing materials were forwarded, using proper chain of custody protocols, to Prezant Associates, Inc. for asbestos analysis. The samples were analyzed using polarized light microscopy (PLM) with dispersion staining in accordance with U.S. EPA method 600/R-93/116, "Method for Determination of Asbestos in Bulk Building Materials".

Other hazardous materials were visually inspected and are noted in this report.

The survey relied on the abilities and experience of the surveyor to gain access and identify possible asbestos containing materials. All areas of the building were accessed during the assessment excluding the roof.

## **RESULTS & ASSOCIATED RISK LEVELS**

### **ASBESTOS**

One type of asbestos containing material was identified during this survey which could be affected by any potential renovation or demolition activities: vinyl floor tiles. A breakdown for the type of material is as follows:

#### **Vinyl Floor Tile Materials:**

Asbestos containing vinyl floor tile materials were observed in only one location of the school which was the photocopy room (Room 133). These were older 12" vinyl floor tiles which were beige in color with dark and white streaks. The bulk sample of this vinyl floor tile material was found to contain <1% Chrysotile asbestos in the tiles. The materials are presently in good condition. The 12" pink vinyl floor tiles also found in the copy room are non-asbestos containing. The cream coloured 12" vinyl floor tiles observed throughout the Main floor hallway and classrooms are non-asbestos containing.

WCB Regulations do not treat any materials with less than 1% asbestos as asbestos containing. Workers should still use moderate risk procedures when exposed to the vinyl floor tile materials, even in materials with less than 1% asbestos concentrations. The WCB states that workers must be properly protected from any potential exposure to airborne asbestos fibres. It is recommended that any work affecting the materials be done using a minimum of moderate risk asbestos work procedures. The vinyl floor tile materials do not have to be disposed in accordance with applicable regulations as asbestos waste.

### **POLYCHLORINATED BIPHENYLS (PCBs)**

A random number of fluorescent light ballasts were visually inspected for possible PCB containing ballasts. No PCB containing ballasts were observed within the fluorescent lighting fixtures inspected in both buildings, although some may exist, as not all fixtures were opened up.

PCB containing fluorescent light ballasts do not pose a risk to occupants of the building. If any PCB containing ballasts are encountered during any renovations of the building, they must be separated from the fixtures and disposed of properly in accordance with applicable regulations.

**MERCURY THERMOSTATS**

No thermostats observed within the building were found to have Mercury containing switches within them. If any Mercury containing thermostat switches are encountered within the building during renovation or repair activities, they must be removed intact from the thermostats and disposed of properly in accordance with applicable regulations.

### **RECOMMENDATIONS**

Prior to beginning any work that may impinge upon the hazardous materials within the building, the following must be performed:

- 1.) Any affected asbestos containing vinyl floor tile materials in the building must be removed and disposed of in accordance with applicable regulations. The removal of the asbestos containing vinyl floor tile materials will require MODERATE RISK asbestos work procedures to be followed.
- 2.) If any Mercury containing thermostat switches are encountered during any renovation or repair activities within the building, they must be removed and disposed of in accordance with applicable regulations.
- 3.) If any PCB containing ballasts are encountered during any renovation or repair activities within the building, they must be removed and disposed of in accordance with applicable regulations.
- 4.) If any suspect asbestos containing materials are encountered within inaccessible wall or ceiling cavities, or under floors, during renovation or demolition activities, the work in the immediate area must stop and the supervisor contacted for further direction.

### **STATEMENT OF LIMITATIONS**

The ACM report is intended to direct the Client's attention to recognised environmental conditions and to potential sources of environmental contamination. The findings and conclusion regarding contamination of the property are based solely on the extent of observations and information gathered during the assessment. Nothing in the report is intended to express any legal opinion upon environmental liabilities relating to the site or whether operations legally conformed with relevant legislative requirements.

Furthermore, it must be understood that changing circumstances in the physical environment, the use of the property, as well in changes in any substances stored, used, handled at the property, could alter radically the conclusions and information contained in this report. Therefore, it is important that the property is periodically re-evaluated and the client kept informed as to developments, which may impact the property. This report is not intended to be used as contract specifications.

### **A.C.M. ENVIRONMENTAL CORPORATION**

---

James McArthur, ASCT  
Environmental Technician

**REFERENCES**

- 1) USEPA. 1985. U.S. Environmental Protection Agency. "Guidance for Controlling Asbestos-Containing Materials in Buildings". Washington, DC: Office of Toxic Substances, USEPA.
- 2) Lory EE, Coin DC. 1981. "Management Procedure for Assessment of Friable Asbestos Insulating Material". Port Hueneme, CA: Civil Engineering Laboratory, Naval Construction Battalion Center.
- 3) Workers' Compensation Board of British Columbia, effective 15 April 1998, and all current amendments. Occupational Health and Safety Regulations.
- 4) 2002 Edition - Workers' Compensation Board of British Columbia. Safe Work Practices for Handling Asbestos.

## **APPENDIX A**

### **Bulk Sample Results**



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

**ACM Environmental**  
2323 Quebec Street, Suite 211  
Vancouver, BC

Project Location: Richardson Elementary School

PAI Batch Number: **05-3018**  
Client Job Number: **3048-43**  
Number of Samples: **8**  
Turn Around Time: **5 day**

Batch Number:	05-3018	<b>ACM Environmental</b>
Lab Sample Number:	05016609	<b>3048-43</b>
Client Sample Number:	<b>3048-530</b>	<i>Richardson Elementary School</i>

#### L-1 White hard tile material with black faint streaks

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
55% Calcite Filler and Binder  
40% Mineral Filler and Binder  
5% Vinyl Filler and Binder

Comments:

#### L-2 Black resinous mastic

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
90% Asphalt Filler and Binder  
5% Mineral Particles  
5% Filler and Binder

Comments:

Batch Number:	05-3018	<b>ACM Environmental</b>
Lab Sample Number:	05016610	<b>3048-43</b>
Client Sample Number:	<b>3048-531</b>	<i>Richardson Elementary School</i>

Sampled By: Client  
Received By: John McCaslin 12/12/2005  
Reviewed By: George McCaslin 12/14/2005

Analyzed By: Deitrie Hanson 12/14/2005



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

**L-1 Pale grayish white paint**

**Asbestos Fibrous Components:** No Asbestos Detected  
**Non-Asbestos Fibrous Components:**  
**Non-Fibrous Components:** 100% Paint

**Comments:**

**L-2 Pale yellowish white tape-like fibrous papery material**

**Asbestos Fibrous Components:** No Asbestos Detected  
**Non-Asbestos Fibrous Components:** 97% Cellulose  
**Non-Fibrous Components:** 3% Filler and Binder

**Comments:**

**L-3 White crystalline powdery material**

**Asbestos Fibrous Components:** No Asbestos Detected  
**Non-Asbestos Fibrous Components:**  
**Non-Fibrous Components:** 87% Calcite Filler and Binder  
10% Perlite  
3% Mineral Particles

**Comments:**

Batch Number:	05-3018	<b>ACM Environmental</b>
Lab Sample Number:	05016611	<b>3048-43</b>
Client Sample Number:	<b>3048-532</b>	<i>Richardson Elementary School</i>

**L-1 White paint**

**Asbestos Fibrous Components:** No Asbestos Detected  
**Non-Asbestos Fibrous Components:**  
**Non-Fibrous Components:** 100% Paint

**Comments:**

Sampled By: Client  
Received By: John McCaslin 12/12/2005  
Reviewed By: George McCaslin 12/14/2005

Analyzed By: Deitrie Hanson 12/14/2005



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
 OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

## Bulk Asbestos Fiber Analysis

**L-2 Pale brown fibrous opaque material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b> 45% Cellulose 30% Mineral Wool	<b>Non-Fibrous Components:</b> 15% Miscellaneous Particles 8% Mineral Particles 2% Filler and Binder
--	--	---

**Comments:**

Batch Number: 05-3018	<b>ACM Environmental</b>
Lab Sample Number: 05016612	<b>3048-43</b>
Client Sample Number: <b>3048-533</b>	<i>Richardson Elementary School</i>

**L-1 White paint**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 100% Paint
--	---	--

**Comments:**

**L-2 White crystalline powdery material**

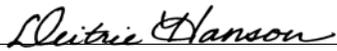
<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 70% Calcite Filler and Binder 25% Perlite 5% Mineral Particles
--	---	--

**Comments:**

**L-3 Pale tan fibrous tape-like papery material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b> 97% Cellulose	<b>Non-Fibrous Components:</b> 3% Filler and Binder
--	--	--

**Comments:**

Sampled By: Client			
Received By: John McCaslin	12/12/2005	Analyzed By: Deitrie Hanson	12/14/2005
Reviewed By: George McCaslin	12/14/2005		



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
 OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

## Bulk Asbestos Fiber Analysis

### L-4 White crystalline powdery material

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 70% Calcite Filler and Binder 25% Perlite 5% Filler and Binder
---	---	--

**Comments:**

Batch Number:	05-3018	<b>ACM Environmental</b>
Lab Sample Number:	05016613	<b>3048-43</b>
Client Sample Number:	<b>3048-534</b>	<i>Richardson Elementary School</i>

### L-1 Pale greenish beige hard tile material with dark and white streaks

<b>Asbestos Fibrous Components:</b> <1% Chrysotile	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 55% Calcite Filler and Binder 40% Mineral Filler and Binder >4% Vinyl Filler and Binder
---	---	---

**Comments:**

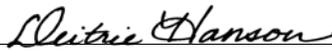
This layer contains <1% chrysotile asbestos.

### L-2 Black resinous mastic

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 92% Asphalt Filler and Binder 5% Mineral Particles 3% Filler and Binder
---	---	---

**Comments:**

Batch Number:	05-3018	<b>ACM Environmental</b>
Lab Sample Number:	05016614	<b>3048-43</b>
Client Sample Number:	<b>3048-535</b>	<i>Richardson Elementary School</i>

Sampled By: Client			
Received By: John McCaslin	12/12/2005	Analyzed By: Deitrie Hanson	12/14/2005
Reviewed By: George McCaslin	12/14/2005		



NVLAP LAB CODE 200613-0



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## Bulk Asbestos Fiber Analysis

### L-1 White crystalline powdery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		85% Calcite Filler and Binder
		13% Perlite
		2% Mineral Particles

Comments:

### L-2 Pale tan fibrous tape-like papery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	97% Cellulose	3% Filler and Binder

Comments:

### L-3 White crystalline powdery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		85% Calcite Filler and Binder
		13% Perlite
		2% Mineral Particles

Comments:

### L-4 Brown fibrous papery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	99% Cellulose	1% Filler and Binder

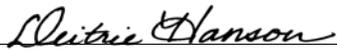
Comments:

### L-5 White powdery fibrous material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	15% Glass Fiber	80% Talc Filler and Binder
	5% Cellulose	

Comments:

Sampled By: Client  
 Received By: John McCaslin 12/12/2005  
 Reviewed By: George McCaslin 12/14/2005

  
 Analyzed By: Deitrie Hanson 12/14/2005



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OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

Batch Number:	05-3018	<b>ACM Environmental</b>
Lab Sample Number:	05016615	<b>3048-43</b>
Client Sample Number:	<b>3048-536</b>	<i>Richardson Elementary School</i>

#### L-1 Pale pink hard tile material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		80% Calcite Filler and Binder
		15% Mineral Filler and Binder
		5% Vinyl Filler and Binder

Comments:

#### L-2 Dark golden brown and black thick mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Resin and Binder
		10% Mineral Particles

Comments:

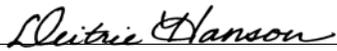
Batch Number:	05-3018	<b>ACM Environmental</b>
Lab Sample Number:	05016616	<b>3048-43</b>
Client Sample Number:	<b>3048-537</b>	<i>Richardson Elementary School</i>

#### Dark reddish brown thick pliable mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		65% Resin and Binder
		30% Calcite Filler and Binder
		5% Miscellaneous Particles

Comments:

Sampled By: Client  
 Received By: John McCaslin 12/12/2005  
 Reviewed By: George McCaslin 12/14/2005

  
 Analyzed By: Deitrie Hanson 12/14/2005

## **APPENDIX B**

### **Photographs**



Typical asbestos containing 12" beige floor tiles with dark & white streaks observed within Room 133 (Photocopy Room)

**ENERGY SYSTEM SERVICE AGREEMENT**

**SCHOOL BOARD OFFICE**

**THIS AGREEMENT** dated for reference the 26<sup>th</sup> day of September, 2011.

**BETWEEN:**

**THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 37 (DELTA)**  
a corporation established under the School Act R.S.B.C. 1996, c. 412 having an  
office at 4585 Harvest Drive, Delta, British Columbia, V4K 5B4

(the "District")

OF THE FIRST PART

**AND:**

**FORTISBC ENERGY INC.**, a company duly incorporated under the laws of the  
Province of British Columbia, having its registered office at 10th Floor, 1111  
West Georgia Street, Vancouver, B.C. V6E 4M3

("FEI")

OF THE SECOND PART

**WHEREAS:**

- A. The District is the owner of the School Board Office (the "Building") and lands located at 4585 Harvest Drive, Delta, British Columbia, which lands are legally described as:

PID: 017-733-693 Property No: 118654

LOT 1 SECTION 35 TOWNSHIP 5 NEW WESTMINSTER DISTRICT PLAN  
LMP2096

(the "Lands")

- B. FEI wishes to supply to the Building, and the District wishes to purchase, Thermal Energy generated by an Energy System that FEI will construct on the Lands, and which FEI will own and operate, all pursuant to the terms of this Agreement.
- C. The Thermal Energy supplied by FEI to the Building pursuant to this Agreement will be priced at the rate set forth in the Energy System Rate Development Agreement between the Parties dated September 26<sup>th</sup>, 2011.

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT** in consideration of the premises and the covenants, agreements, representations, warranties and payments set out herein, the receipt and sufficiency of which is hereby acknowledged by each Party, the Parties covenant and agree as follows:

## **ARTICLE 1 - INTERPRETATION**

### 1.1 DEFINITIONS

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

- (a) “Adjusted Energy System Purchase Price” means, as of the date on which a purchase of the Energy System pursuant to Article 15 is effective, either:
  - (i) the Rate Base Value; or
  - (ii) such other purchase price for the Energy System as is determined by the BCUC; plus all applicable taxes;
- (b) “Affiliate” has the meaning set out in the *Business Corporation Act*, S.B.C. 2002, c.57 and includes FortisBC Inc.;
- (c) “Agreement” means this agreement, including the preamble hereto and any schedules attached hereto and the terms “this Agreement”, “hereof”, “herein”, “hereunder” and “hereinafter” and similar expressions refer to the Agreement and not to any particular Section or other portion thereof and includes any agreement supplementary or ancillary thereto;
- (d) “Acceptance Date” means the date of BCUC Acceptance;
- (e) “BCUC” means the British Columbia Utilities Commission, or any successor thereto;
- (f) “BCUC Acceptance” has the meaning assigned to that term in Section 11.1;
- (g) “Building” has the meaning assigned to that term on page one of this Agreement;
- (h) “Building System” means the space heating, cooling and ventilation, and domestic hot water distribution and control systems existing in the Building, to which the Energy System will be connected;
- (i) “Business Day” means any day except Saturday and Sunday or any day on which banks are generally not open for business in Vancouver, British Columbia;
- (j) “Capital Contribution” means \$ 19,000;
- (k) “Commissioned” means once the Energy System is certified complete and operating in accordance with the Specifications by a professional engineer under seal;

- (l) “Commission Date” means the day on which the Energy System is Commissioned;
- (m) “Contaminants” means, collectively, any contaminant, toxic substance, dangerous good, or pollutant or any other substance which when released to the natural environment is likely to cause, at some immediate or future time, material harm or degradation to the natural environment or material risk to human health, and includes any radioactive materials, asbestos materials, urea formaldehyde, underground or aboveground tanks, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive or toxic substances, hazardous waste or waste of any kind, pesticides, defoliants, or any other solid, liquid, gas, vapour, odour or any other substance .the storage, manufacture, disposal, handling, treatment, generation, use, transport, remediation or Release into the Environment of which is now or hereafter prohibited, controlled or regulated under Environmental Laws;
- (n) “Continuing Service Interruption Notice” has the meaning assigned to that term in Section 14.3(b);
- (o) “Contractor” means a prime contractor hired by FEI to oversee and complete the construction and installation of the Energy System;
- (p) “Design and Construction” means the total construction and related services required to design, construct and commission the Energy System and connected components of the Building System;
- (q) “Design Thermal Energy” means the maximum amount of Thermal Energy that the Energy System is capable of delivering through the Thermal Energy Meter and is included in the Specifications;
- (r) “Disclosed Contaminants” means Contaminants:
  - (i) the existence of which are specifically identified in the reports provided by the District to FEI and listed in Schedule C;
  - (ii) that were or ought to have been discovered, foreseen or anticipated upon reasonable inspection by FEI prior to the Effective Date; and
  - (iii) that were caused by FEI or any person for whom FEI is responsible at law;
- (s) “District” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (t) “District Losses” has the meaning assigned to that term in Section 12.6;
- (u) “District Site Rules for Contractors” means the rules set forth in Schedule “B”;
- (v) “Effective Date” means the date set out on page one of this Agreement;
- (w) “Energy System” means the equipment that FEI constructs and owns which will provide the Building with its energy needs for space heating, cooling and ventilation, and domestic hot water use, all as set forth in this Agreement;

- (x) “Energy System Service Agreement” has the meaning assigned to that term in the Energy System Rate Development Agreement;
- (y) “Energy System Rate Development Agreement” means that energy system rate development agreement between the District and FEI dated as of September 26<sup>th</sup>, 2011;
- (z) “Environment” includes the air (including all layers of the atmosphere), land (including soil, sediment deposited on land, fill, lands submerged under water, buildings, and improvements), water (including oceans, lakes, rivers, streams, groundwater, and surface water), and all other external conditions and influences under which humans, animals, and plants live or are developed and “Environmental” will have a corresponding meaning;
- (aa) “Environmental Attributes” means:
  - (i) all attributes associated with, or that may be derived from the Energy System installed having decreased environmental impacts relative to the use of conventional heating and cooling and hot water heating systems including any existing or future credit, allowance, certificate, right, benefit or advantage or proprietary or contractual right whether or not tradable;
  - (ii) any existing or future instrument, including without limitation any environmental emission allowances and environmental emission reduction credits, reduction right, allowance, certificate or other unit of any kind whatsoever, whether or not tradable and any other proprietary or contractual right, whether or not tradable, and any resulting from, or otherwise related to the actual assumed reduction, displacement or offset of emissions associated with, or that may be derived from the Energy System installed; and
  - (iii) all revenues, entitlement, benefits and other proceeds arising from or related to the foregoing;
- (bb) “Environmental Laws” means any and all statutes, laws, regulations, orders, bylaws, standards, guidelines, protocols, permits, and other lawful requirements of any Governmental Authority having jurisdiction over the Lands or the Energy System now or hereafter in force with respect in any way to the Environment, environmental assessment, health, occupational health and safety, protection of any form of plant or animal life, or transportation of dangerous goods, including the principles of common law and equity;
- (cc) “Expiry Date” means the earlier of:
  - (i) June 30, 2031, or the expiry of any renewal term thereof; and
  - (ii) the closure of the Building, or the Building otherwise ceasing to operate as a school (as defined under the *School Act* (British Columbia));
- (dd) “FEI” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (ee) “FEI Losses” has the meaning assigned to that term in Section 12.5;

- (ff) “Force Majeure” has the meaning assigned to that term in Section 17.2;
- (gg) “Governmental Authority” means any federal, provincial, regional, municipal, local or other government, governmental or public department, court, tribunal, arbitral body, commission, board, bureau or agency and any subdivision, agent, commission, board or authority thereof;
- (hh) “Lands” has the meaning assigned to that term in Recital A and includes the Building located on the Lands;
- (ii) “Laws” means laws, statutes, regulations, bylaws, Permits and orders of any Governmental Authority having jurisdiction, including without limitation, Environmental Laws;
- (jj) “Maintain” means to operate, service and maintain in a safe and reliable condition and “maintaining” and “maintenance” have corresponding meanings;
- (kk) “Monthly Charges” means that amount to be paid by the District to FEI with respect to the delivery of Thermal Energy to the Building pursuant to the Energy System Rate Development Agreement and any other payments due and owing by the District under this Agreement;
- (ll) “Notifying Party” has the meaning assigned to that term in Section 16.1;
- (mm) “Party” means a signatory to this Agreement, and the “Parties” means all of such signatories;
- (nn) “Permits” means all permits, licences, certificates, approvals, authorizations, consents and the like issued by any Governmental Authority;
- (oo) “Rate Base Value” means the value of the Energy System that the BCUC accepts from time to time in accordance with the Energy System Rate Development Agreement;
- (pp) “Release” includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, migration, disposal, or dumping;
- (qq) “Right of Access and Licence” means the right and licence granted herein by the District to FEI pursuant to Section 4.1 of this Agreement;
- (rr) “Service Failure Notice” has the meaning assigned to that term in Section 14.3(c);
- (ss) “Service Interruption” means, in any hour:
  - (i) a failure of the Energy System in that hour to deliver Thermal Energy at the Thermal Energy Meter sufficient to meet the Thermal Energy demand of the Building during that hour in accordance with the Specifications up to the Design Thermal Energy, and except where such failure is directly caused by:
    - a. the careless or wilful damage to the Energy System by the District or its agents or other persons for whom the District is responsible;

- b. damage caused to the Energy System as a result of the negligent acts or omissions of the District, its agents or those for whom in law the District is responsible;
  - c. an event of Force Majeure that triggers the suspension of FEI's obligations under the Agreement pursuant to Article 17; or
  - d. maintenance activities that FEI is performing on the Energy System that have been scheduled with the consent of the District (such consent not to be unreasonably withheld); and
- (ii) if the failure described in Section 1.1(rr)(i), FEI's failure in that hour to deliver to the Building through alternative means thermal energy sufficient to maintain an average temperature of 16 degrees Celsius in each room of the Building intended to be served by the Energy System (all as determined by the District, acting reasonably);
- (tt) "Service Interruption Notice" has the meaning assigned to that term in Section 14.3(a);
- (uu) "Services" means those services to be provided by FEI to supply Thermal Energy to a Building from an Energy System, and for greater certainty includes the services described in Articles 5 and 6, and excludes the Design and Construction;
- (vv) "Specifications" means the specifications for the Energy System prepared by FEI in consultation with the District in accordance with Section 2.3 and includes the Design Thermal Energy;
- (ww) "Term" has the meaning assigned to that term in Section 3.1;
- (xx) "Thermal Energy" means the amount of energy that FEI provides to the Building measured through a Thermal Energy Meter;
- (yy) "Thermal Energy Meter" means a device that complies with the International Organization of Legal Metrology recommendations for measuring thermal energy; and
- (zz) "UCA" means the *Utilities Commission Act*, R.S.B.C. 1996, c. 473 as may be amended from time to time.

## 1.2 SCHEDULES

The following Schedules, as may be amended from time to time, are incorporated by reference into this Agreement:

Schedule "A"	Energy System Description
Schedule "B"	Delta School District Site Rules for Contractors
Schedule "C"	List of Environmental Reports

### 1.3 AMENDMENTS TO SCHEDULES

The District and FEI acknowledge that during the construction phase of the Energy System there may be additions and alterations to the Specifications for the Energy System which would result in more efficient use and operation of the Energy System. If these additions or alterations result in changes to any of the above Schedules, the Parties mutually agree to amend the Schedules by way of a written amendment prior to the Commission Date.

### 1.4 INTERPRETATION

Except where the context requires otherwise or except as otherwise expressly provided, in this Agreement:

- (a) all references to a designated Article or Section are to the designated Article or Section of this Agreement unless otherwise specifically stated;
- (b) the singular of any term includes the plural, and vice versa, and the use of any term is equally applicable to any gender and, where applicable, body corporate;
- (c) any reference to a corporate entity includes and is also a reference to any corporate entity that is a successor by merger, amalgamation, consolidation or otherwise to such entity;
- (d) the preamble and all schedules referred to and attached to this Agreement are incorporated by reference and will form a part of this Agreement;
- (e) all sums of money which are referred to in this Agreement are in lawful money of Canada;
- (f) the headings of the Articles and Sections set out in this Agreement are for convenience only and will not be considered in any interpretation of this Agreement;

## **ARTICLE 2 - DESIGN AND CONSTRUCTION OF THE ENERGY SYSTEM**

### 2.1 CONSTRUCTION

FEI will perform the Design and Construction:

- (a) in accordance and in compliance with the Specifications;
- (b) in a good and workmanlike manner using qualified workers, and in accordance with sound and currently accepted industry standards and codes of practice normally employed, at the time and place of performance, in projects of a similar type and nature;
- (c) to ensure operational compatibility with the Building System;
- (d) in a safe and environmentally sound manner, and in accordance with all applicable Laws; and
- (e) in accordance with the terms of this Agreement.

## 2.2 CAPITAL CONTRIBUTION

The District will pay to FEI within 30 days of the Commission Date the Capital Contribution for the purpose of reducing the capital investment and the associated carrying cost of capital by FEI for provision of Service to the Building.

## 2.3 SPECIFICATIONS

Subject to and in accordance with this Section 2.3, FEI shall prepare and complete the Specifications promptly following the Acceptance Date.

FEI confirms the Energy System, as described in the Specifications and as contemplated by the Energy System description set out in Schedule A, will be designed to meet the thermal energy requirements of the Building and operational compatibility of the Building System based in part on information supplied by the District as to historical usage, which information has not been independently verified by FEI. FEI shall have no liability to the District for the failure of the Energy System to satisfy the requirements of the Building where such failure is attributable to the information supplied by the District being incorrect, inaccurate or incomplete.

FEI will prepare the Specifications in consultation with the District in order to ensure the Energy System can be appropriately accommodated within the Building and interface with the Building Systems. FEI will submit material changes to the Specifications, both before and during construction, to the District for review and comment prior to such changes taking place. If the District does not comment on the Specifications or material changes to the Specifications or advise that it has no comment within five (5) Business Days of receipt, FEI will be entitled to proceed on the basis of the information provided to the District. FEI will revise the Specifications based on the comments from the District provided that doing so will not impact FEI's costs or adversely affect system performance.

Review of and comment on the Specifications by the District does not impose any obligation on the District to verify the suitability of the Energy System or be construed as confirmation by the District that the Energy System satisfactorily meets the Building's energy requirements.

## 2.4 WORK SCHEDULE

Within ten (10) Business Days following the Acceptance Date, FEI will submit to the District for review and comment a Gantt chart schedule for the Design and Construction listing activities to be undertaken during the Design and Construction stages, key milestones and approval dates and other pertinent dates. Any revisions to the schedule must be reviewed and commented by the District, which review and comment will not be unreasonably withheld, conditioned or delayed.

In order to ensure that the Building System remains operational during normal school hours (as defined in Schedule B), the cut-over from the existing heating/cooling plant to the Energy System shall be performed outside normal school hours.

## 2.5 REPORTING

FEI shall produce and submit a monthly progress report for the Design and Construction to the District until the Energy System is Commissioned.

## 2.6 TESTING AND COMMISSIONING

FEI shall coordinate and supervise the start-up and testing of the Energy System to ensure the Energy System and other components of the Building System affected by the Design and Construction are operating in accordance with the Specifications, upon which the Energy System will be Commissioned. The District shall be invited to participate in the start-up and testing exercise.

# ARTICLE 3 - TERM AND RENEWAL

## 3.1 TERM

The term of this Agreement commences on the Effective Date and continues until the Expiry Date unless it is terminated earlier as authorized under this Agreement ("Term").

## 3.2 RENEWAL

This Agreement will automatically renew for periods of ten (10) years unless either Party provides written notice to the other Party no less than six (6) months prior to the Expiry Date, provided that there shall be no automatic renewal in the event that the Expiry Date arises as a result of the closure of the Building, or the Building otherwise ceases to operate as a school (as defined under the *School Act* (British Columbia)).

# ARTICLE 4 - ACCESS AND PERMITS

## 4.1 ACCESS RIGHTS

The District hereby grants to FEI, during the Term from and following the Acceptance Date, for so long as FEI shall require it, but subject to Section 4.4, a full, free and uninterrupted licence and right of way on, over and under the Lands and Building, for FEI, its assigns, employees, contractors, agents, invitees and licensees at all times hereafter for the purposes set out in this Agreement, provided FEI will avoid to the extent reasonably possible, and otherwise minimize interference with and inconvenience to, the occupants of the Building and the access rights of FEI will be limited to the extent reasonably necessary to fulfil FEI's obligations hereunder.

Without limiting the generality of the foregoing, but subject to Section 4.4, such right of way and licence shall include the full power, right and liberty to excavate for, install, place, construct, renew, alter, repair, maintain, operate, use, abandon, remove or replace its infrastructure, in whole or in part, and to enter upon, along, across, over or under the Lands or Building and have continual access to the Energy System, with or without vehicles, supplies, machinery or equipment, for any of the purposes set out in this Agreement, and to clear such portion of the Lands and keep it cleared of obstructions which, in the opinion of FEI, acting reasonably, may

interfere with any of the rights granted to FEI herein. The District may direct, in its discretion, FEI to use alternate routing for any Environmental or other reasonable purpose.

FEI covenants and agrees with the District not to do or knowingly permit to be done anything which may, in the opinion of the District acting reasonably, damage or interfere with the Building or impair the operating efficiency thereof or create any hazard.

#### 4.2 CONDITION OF LAND

The District represents and warrants to FEI that as of the Effective Date:

- (a) to the best of the District's knowledge, the Lands are free of Contaminants other than those specifically identified in the reports provided by the District to FEI and listed in Schedule C; and
- (b) there are no actions, proceedings, investigations, claims (including remediation cost recovery claims) pending, or to the knowledge of the District, threatened, that would interfere with FEI's access rights pursuant to Section 4.1.

#### 4.3 PERMITS

FEI will obtain and maintain at its own expense all Permits necessary for the Design and Construction and the Services.

#### 4.4 SAFETY, SECURITY AND BUILDING ACCESS

Notwithstanding anything to the contrary in this Agreement, FEI will adhere, and will cause all persons for whom it is responsible under this Agreement (including, without limitation, the Contractor) to adhere to the District Site Rules for Contractors.

#### 4.5 REMEDIATION

FEI shall promptly remediate any Disclosed Contaminants on the Lands as required by applicable Law that result from, or are Released as a result of the Design and Construction or the Services, except to the extent caused or contributed to by the District's negligence. In the event that Contaminants on the Lands, other than Disclosed Contaminants, are discovered by FEI, FEI will promptly notify the District of such discovery and the Parties will review the impact of such discovery, if any, on the Design and Construction or the Services.

### **ARTICLE 5 - SERVICE PROVISION**

#### 5.1 PROVISION OF SERVICE

Subject to the terms and conditions of the Agreement, FEI will provide the Services to the District throughout the Term.

## 5.2 SERVICE MONITORING AND REVIEW

The Parties acknowledge that FEI may be required from time to time to prepare and submit reports to the BCUC concerning the operation and performance of the Energy System, and the District shall provide FEI with reasonable cooperation in relation to the preparation of such reports.

## 5.3 STANDARD OF PERFORMANCE

In performing the Services, FEI will:

- (a) use only qualified personnel and exercise the same degree of care, skill and supervision as would be exercised by a reasonable and prudent owner experienced in performing like services;
- (b) perform the Services in accordance with all applicable Laws;
- (c) perform the Services in accordance with ongoing industry standards and codes of practice; and
- (d) without limiting the effect of the foregoing, abide by any standards of performance in relation to the Services that the BCUC may set from time to time according to the provisions of the UCA.

## 5.4 INTERRUPTION

No interruption of any of the on-site and off-site services, utilities and amenities provided by FEI to the Building will, except to the extent, if any, caused by any wrongful or negligent act of FEI or any person for whom FEI is responsible at law, render FEI liable to the District or any person claiming through or under the District, or relieve the District from any of its obligations under this Agreement. Notwithstanding the foregoing, FEI will use all reasonable diligence to remedy any such interruption if it is within its power and obligation to do so.

# **ARTICLE 6 - ENERGY SYSTEM MAINTENANCE AND OPERATION**

## 6.1 MAINTENANCE AND REPAIR OF ENERGY SYSTEM

Subject to Section 6.2, FEI will perform the Services and otherwise maintain or cause to be maintained and repaired the Energy System throughout the Term:

- (a) in accordance with the Energy System design and operating specifications and requirements as established by the qualified engineers engaged by FEI in the design and construction of the Energy System, and the equipment manufacturers;
- (b) in a good and workman-like manner using qualified workers, and in accordance with sound and currently accepted industry standards and codes of practice normally employed, at the time and place of performance, in projects of a similar type and nature;
- (c) to ensure operational compatibility with the Building System;

- (d) in a safe and environmentally sound manner, and in accordance with all applicable Laws; and
- (e) in accordance with the terms of this Agreement.

FEI will not delay repair of the Energy System for any reason, including as a result of a dispute with the District in relation to the costs and expenses of repair pursuant to Section 6.2.

## 6.2 REPAIR DAMAGE

The District will be responsible for all costs and expenses incurred by FEI in respect of any damage to the Energy System caused by or resulting from:

- (a) the careless or wilful damage to the Energy System by the District or its agents or other persons for whom at law the District is responsible; or
- (b) damage caused to the Energy System as a result of the negligent acts or omissions of the District, its agents or those for whom in law the District is responsible.

## **ARTICLE 7 - CHARGES**

### 7.1 MONTHLY CHARGES

The District throughout the Term commencing on the Commission Date in accordance with this Article 7 will pay to FEI when due for the Thermal Energy that FEI delivers and meters to the Building according to the rates set out in the Energy System Rate Development Agreement plus all applicable taxes (including harmonized sales tax applicable thereon) and any imposed taxes levied after the Commission Date by a government or regulatory agency that are related to the Energy System (including, but not limited to capital taxes or royalties) and any other payments due and owing by the District under this Agreement.

### 7.2 MONTHLY STATEMENT

FEI will, within 15 days following the end of each month, deliver to the District a statement setting out the Monthly Charges including all applicable taxes payable for that month.

### 7.3 PAYMENT

The District will pay the full amount specified in each statement provided to it in accordance with Section 7.2 within 30 days of receipt of such statement. All amounts payable to FEI will be made by cheque mailed to FEI at its address for service specified in Section 20.5.

### 7.4 PAYMENT DUE

Subject to Section 14.1, the obligation of the District to pay the Monthly Charges continues whether or not the Energy System is being used to provide the Building with its energy needs for space and ventilation heating, cooling and domestic hot water use.

#### 7.5 ARREARS TO BEAR INTEREST

If any amount owing to FEI or the District is not paid on or before the date on which it is due, a late payment charge of 1.5% per month will be assessed each month on all outstanding balances not paid by the due date.

### **ARTICLE 8 - OWNERSHIP OF THE ENERGY SYSTEM**

Notwithstanding the payments made by the District to FEI under this Article 8, any provision of this Agreement, any degree of annexation or affixation, or rule of law or equity to the contrary the District will have no proprietary interest in the Energy System which is, and shall remain, the property of FEI and may be used by FEI in its business or removed in whole or in part as it may see fit, and for any of such purposes, and FEI may enter in, upon and under all the Lands for the purposes of the maintenance, renewals, repair, removal or operation of the Energy System or any part thereof; provided that FEI shall not leave any part of the Energy System in such a state as to constitute a nuisance or a danger to the public through neglect, non-use and want of repair, and provided further that nothing in this clause shall nullify or otherwise impact or invalidate in any way the District's rights under Article 15 to purchase the Energy System.

### **ARTICLE 9 - ENVIRONMENTAL ATTRIBUTES**

#### 9.1 ENVIRONMENTAL ATTRIBUTES

All right, title and interest now existing or which may exist at any time in the future in the potential or actual commercial value of any Environmental Attributes that arise or accrue by virtue of the construction and operation of the Energy System will belong to the District. At the request of the District, FEI will reasonably cooperate with the District in applying for and assigning any Environmental Attributes to the District.

#### 9.2 GRANTS

Any grants from any Governmental Authority, a Crown Corporation or non-governmental authority that may be derived from a reduction in energy consumption by the Building will belong to the District.

### **ARTICLE 10 - REPRESENTATIONS AND WARRANTIES**

#### 10.1 DISTRICT'S REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties contained in this Agreement, the District hereby represents and warrants to FEI as follows and acknowledges that FEI is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) the District has the full right, power and authority to enter into this Agreement;

- (b) all necessary action on the part of the District has been taken to authorize and approve the execution and delivery of this Agreement and the performance by the District of its obligations hereunder;
- (c) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to the District as of the date of this Agreement;
- (d) the District is not party to any action, suit or legal proceeding, actual or, to the knowledge of the District, threatened, and there are no circumstances, matters or things known to the District which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or, to the knowledge of the District, threatened against the District before or by any Governmental Authority, which could affect the District's ability to perform its obligations under this Agreement; and
- (e) no person, firm or corporation has or will have as of the Commission Date, any agreement, right, or option or right capable of becoming an agreement, right, or option for the purchase or acquisition of the Energy System.

## 10.2 FEI'S REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties contained in this Agreement, FEI hereby represents and warrants to the District as follows and acknowledges that the District is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) FEI has the full right, power and authority to enter into this Agreement;
- (b) all necessary corporate action on the part of FEI has been taken to authorize and approve the execution and delivery of this Agreement and the performance by FEI of its obligations hereunder;
- (c) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to FEI as of the date of this Agreement;
- (d) FEI is not party to any action, suit or legal proceeding, actual or threatened, and there are no circumstances, matters or things known to FEI which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or threatened against FEI before or by any Governmental Authority, which could affect FEI's ability to perform its obligations under this Agreement; and
- (e) FEI has or will have all permits, licenses, authorizations and other documentation required for the operation of the Energy System after the Commission Date; and
- (f) FEI has all the required expertise to fulfill its obligations under this Agreement.

### 10.3 DELEGATION AND SUBCONTRACTING

FEI may delegate and subcontract its obligations under this Agreement with respect to Design and Construction and Services to any contractor, consultant, agent or representative provided that FEI shall be fully responsible for the acts and omissions of such persons and those either directly or indirectly employed by them to the same extent as FEI for its own acts or omissions.

## **ARTICLE 11 - BCUC ACCEPTANCE**

### 11.1 REGULATORY REVIEW TERMINATION

Subject to Section 11.3, either Party may terminate this Agreement if within 90 days following the Effective Date, this Agreement and the Energy System Rate Development Agreement, including the Market Rate and the SD37 Rate Rider as defined in that Agreement have not been accepted for filing by the BCUC (such acceptance being herein called "BCUC Acceptance").

### 11.2 REGULATORY FILING

FEI, on behalf of itself and the District, and at its own cost, shall file the Agreement with the BCUC within a reasonable time after the Effective Date. FEI shall take all steps reasonably required to secure BCUC Acceptance, which shall consist of those procedural steps related to filing the Agreement and providing argument and witnesses in support of filing.

### 11.3 TERMINATION

A Party entitled to terminate under Section 11.1 must do so by giving notice to terminate to the other Party at any time after the right to terminate arises pursuant to Section 11.1, and prior to:

- (a) the date of issuance of the BCUC Acceptance; and
- (b) the date that is 90 days after the Effective Date.

### 11.4 EFFECT OF BCUC ACCEPTANCE

The Parties acknowledge that upon BCUC Acceptance, the Services will be subject to regulation by the BCUC under the UCA, and will form another class of service that FEI provides as a public utility. The Parties acknowledge that the terms of the UCA may supersede the terms and conditions of this Agreement.

## **ARTICLE 12 - INDEMNITY**

### 12.1 FEI'S INDEMNITY

Without limiting any other obligations of FEI provided herein, FEI will indemnify, defend, and save harmless the District and its trustees, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including the full amount of all legal fees and expenses on a

solicitor-client basis) which may be paid by, incurred by, or asserted against the District or its directors, officers, employees, agents, successors, or assigns, arising from or in connection with:

- (a) the breach or non-performance by FEI of any of its obligations or warranties hereunder; or
- (b) the negligence or wilful misconduct of FEI, its employees, contractors or agents in respect of the Energy System, and in the performance of the obligations of FEI pursuant to this Agreement,

excluding only such of the foregoing as arise from the fraud, negligence or wilful misconduct of the District or its trustees, officers, directors, members, employees, contractors or agents, or the breach or non-performance by the District of any of its obligations or warranties hereunder.

## 12.2 DISTRICT'S INDEMNITY

Without limiting any other obligations of the District provided herein, the District will indemnify, defend, and save harmless FEI, its Affiliates and their respective shareholders, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including the full amount of all legal fees and expenses on a solicitor-client basis) which may be paid by, incurred by, or asserted against FEI, its Affiliates or their respective shareholders, directors, officers, employees, agents, successors, or assigns, arising from or in connection with:

- (a) the breach or non-performance by the District of any of its obligations or warranties hereunder; or
- (b) the negligence or wilful misconduct of the District, its employees, contractors or agents in respect of the Energy System, and in the performance of the obligations of the District pursuant to this Agreement,

excluding only such of the foregoing as arise from the fraud, negligence or wilful misconduct of FEI or its Affiliates or any of their respective officers, directors, members, employees, contractors or agents, or the breach or non-performance by FEI of any of its obligations or warranties hereunder.

## 12.3 CONSEQUENTIAL LOSS

In no event will the District or FEI or any of their respective officers, directors, employees, contractors or agents be liable to the other Party for any indirect or consequential loss, cost or expense whatsoever, including any loss of profits, revenues or other economic loss, suffered by the other Party or its officers, directors, employees, contractors or agents.

## 12.4 SURVIVAL OF INDEMNITY

The indemnity of each of the District and FEI provided under this Article 12 will survive the Term of this Agreement.

## 12.5 ENVIRONMENTAL INDEMNITY BY THE DISTRICT

The District will indemnify and save harmless FEI, its Affiliates, directors, officers, shareholders, employees, agents, successors and permitted assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants (but not including Disclosed Contaminants) and remediation of the Lands and any affected adjacent property) (collectively, "FEI Losses") which may be paid by, incurred by or asserted against FEI, its Affiliates and their respective directors, officers, shareholders, employees, agents, successors or permitted assigns, arising from or in connection with any Contaminants (but not including Disclosed Contaminants) existing on the Lands prior to the Commission Date or brought onto the Lands or Released onto the Lands by the District or any person for whom it is in law responsible, except to the extent the FEI Losses suffered were caused or contributed to by any act or omission of FEI or any person for whom FEI is in law responsible after FEI had knowledge of the Contaminants.

## 12.6 ENVIRONMENTAL INDEMNITY BY FEI

FEI will indemnify and save harmless the District, its Affiliates and their respective trustees, directors, officers, employees, agents, successors and permitted assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the Lands and any affected adjacent property) (collectively, "District Losses") which may be paid by, incurred by or asserted against the District, its Affiliates, and their respective trustees, directors, officers, employees, agents, successors or permitted assigns, arising from or in connection with any Contaminants brought onto the Lands or any Disclosed Contaminants Released onto the Lands by FEI or any person for whom it is in law responsible, except to the extent the District Losses suffered were caused or contributed to by any act or omission of the District or any person for whom the District is in law responsible after the District had knowledge of the Contaminants.

# ARTICLE 13 - INSURANCE

## 13.1 FEI INSURANCE COVERAGE.

- (a) FEI will obtain and maintain at its own expense throughout the Term, Commercial General Liability Insurance for bodily injury, death and property damage in the minimum amount of five million (\$5,000,000) dollars per occurrence. The policy will contain a cross liability provision and will be maintained for a period ending no sooner than 12 months after the expiry or termination of this Agreement.
- (b) FEI will be responsible for the full amount of all premiums and deductibles required under this Section 13.1. All policies required herein must be effective at the Commission Date. Insurance will be purchased from insurers registered and licensed to underwrite

insurance in British Columbia. Policies will contain waivers of subrogation against the District and all its officers, directors, members, employees, contractors and agents.

### 13.2 DISTRICT INSURANCE COVERAGE

- (a) The District will obtain and maintain at its own expense throughout the Term Commercial General Liability Insurance for bodily injury, death and property damage in the minimum amount of five million (\$5,000,000) dollars per occurrence. The policy will contain a cross liability provision and will be maintained for a period ending no sooner than 12 months after the expiry or termination of this Agreement.
- (b) The District will be responsible for the full amount of all premiums and deductibles required under this Section 13.2. All policies required herein must be effective at the date of this Agreement. Insurance will be provided by the Provincial self-insured program. Policies will contain waivers of subrogation against FEI and all its officers, directors, employees, contractors and agents.

### 13.3 PRIORITY

FEI will ensure that the District is an additional insured under the insurance to be obtained and maintained pursuant to Section 13.1. The District will ensure that FEI is an additional insured under the insurance to be obtained and maintained pursuant to Section 13.2. In the event of a claim, the insurance carried by the Party responsible for actions which give rise to such claim will be the primary insurance with respect to such claim.

## **ARTICLE 14 - DEFAULT**

### 14.1 DEFAULT BY FEI

- (a) FEI will be in default under this Agreement if FEI is in breach of a material term, covenant, agreement, condition or obligation imposed on it under this Agreement and fails to cure such default within ten (10) days after receipt of written notice thereof from the District, or, if such default is not capable of being cured within such ten (10) day notice period, fails to commence in good faith the curing of such default upon receipt of such written notice of default from the District and to continue to diligently pursue the curing of such default thereafter until cured. For the purposes of this Section 14.1, Section 4.4 is hereby deemed to be a material term of this Agreement.
- (b) If FEI is in default of this Agreement, the District may at its option and without liability therefore or prejudice to any other right or remedy it, including under the UCA, may have suspend or refuse to make any payments due hereunder until the default has been fully remedied, and no such suspension or refusal will relieve FEI from any of its obligations under this Agreement.
- (c) In the event the default is not fully remedied within thirty (30) days of receipt by FEI of written notice thereof from the District, the District may, at its option, undertake the necessary steps to remedy FEI's default at FEI's sole expense, which reasonable costs

shall be deducted from the Monthly Charges, and such actions will not relieve FEI from any of its obligations under this Agreement or, at its option, and without any liability, terminate this Agreement without prejudice to any other right the District may have hereunder or at law or otherwise.

#### 14.2 DEFAULT BY THE DISTRICT

- (a) The District will be in default under this Agreement if the District fails or refuses to make any payment due to FEI by the District under this Agreement within thirty (30) days of receiving written notice from FEI after the date that payment is due or if the District is in breach of a material term, covenant, agreement, condition or obligation imposed on it under this Agreement and fails to cure such default within ten (10) days after receipt by the District of written notice thereof from FEI or, if such default is not capable of being cured within such ten (10) day notice period, fails to commence in good faith the curing of such default forthwith upon receipt of such written notice thereof from FEI and to continue to diligently pursue the curing of such default thereafter until cured.
- (b) If the District is in default of this Agreement, FEI may at its option and without liability therefore or prejudice to any other right or remedy it may have, including under the UCA, cease performing the Services and no such actions will relieve the District from any of its obligations under this Agreement.
- (c) In the event the default by the District is not fully remedied within thirty (30) days of receipt by the District of written notice from FEI, FEI may undertake the necessary steps to remedy the District's default at the District's sole expense and such action will not relieve the District from any of its obligations under this Agreement or, at its option, and without any liability, take whatever steps necessary to shut down the Energy System and terminate this Agreement without prejudice to any other right FEI may have hereunder or at law or otherwise.

#### 14.3 CROSS DEFAULT

- (a) If any Building experiences a Service Interruption at any time, the District may deliver a notice of such Service Interruption to FEI (a "Service Interruption Notice" to FEI);
- (b) If a Service Interruption continues for a period of 48 consecutive hours after the delivery of a Service Interruption Notice pursuant to Section 14.3(a), the District may deliver a notice of such continuing Service Interruption to FEI (a "Continuing Service Interruption Notice");
- (c) If a Service Interruption continues for a period of 120 consecutive hours after the delivery of a Continuing Service Interruption Notice, the District may at its option deliver a notice of such continuing Service Interruption to FEI (a "Service Failure Notice"); Within 60 days of either:
  - (i) the District's delivery of a Service Failure Notice pursuant to Section 14.3(c); or

- (ii) the District's delivery of a Continuing Service Interruption Notice pursuant to Section 14.3(b) that constitutes the fifth or greater Continuing Service Interruption Notice delivered in that calendar year;

the District may, at its option and without liability:

- (iii) terminate this Agreement without prejudice to any other right the District may have hereunder at law or otherwise; or
  - (iv) terminate the Energy System Rate Development Agreement and all Energy System Service Agreements (inclusive of this Agreement), without prejudice to any other right the District may have hereunder at law or otherwise.
- (d) For greater certainty, this Agreement shall be deemed to be terminated in the event that the District exercises its right to terminate all Energy System Service Agreement under another Energy System Service Agreement.

#### 14.4 SURVIVAL

Upon expiry or earlier termination of this Agreement for any reason, all claims, causes of action or other outstanding obligations remaining or being unfulfilled as of the expiry or termination of this Agreement and all of the provisions of this Agreement relating to the obligation or either the Parties to account to or indemnify the other and to pay to the other any amounts owing as at the date of expiry or termination in connection with this Agreement will survive such expiry or termination.

### **ARTICLE 15 – EXPIRY AND TERMINATION**

#### 15.1 EXPIRY

Upon expiry of the Term, unless otherwise agreed between the Parties and subject to agreement by the BCUC (if required pursuant to applicable Laws), the District may, at its option and by written notice to FEI within 30 days following the termination:

- (a) require FEI to remove the Energy System at FEI's cost in accordance with Section 15.5; or
- (b) acquire the Energy System from FEI at the Adjusted Energy System Purchase Price.

#### 15.2 TERMINATION OF THE ENERGY SYSTEM RATE DEVELOPMENT AGREEMENT

- (a) If the Energy System Rate Development Agreement is terminated as a result of the adoption, approval or implementation of a thermal energy rate tariff by the BCUC, this Agreement will automatically terminate effective as of the date of termination of the Energy System Rate Development Agreement;
- (b) If the Energy System Rate Development Agreement is terminated for cause by the District, this Agreement will be deemed to have been terminated pursuant to Section

14.1(c) as of the date of termination of the Energy System Rate Development Agreement, and Section 15.3 shall apply; and

- (c) If the Energy System Rate Development Agreement is terminated for cause by FEI, this Agreement will be deemed to have been concurrently terminated pursuant to Section 14.2(c) as of the date of termination of the Energy System Rate Development Agreement, and Section 15.4 shall apply.

### 15.3 TERMINATION BY THE DISTRICT FOR CAUSE

If the District terminates this Agreement pursuant to Sections 14.1(c) or 14.3, the District may, at its option and by written notice to FEI within 30 days following the termination:

- (a) require FEI to remove the Energy System, at its own cost, in accordance with Section 15.5; or
- (b) acquire the Energy System from FEI at the Adjusted Energy System Purchase Price.

### 15.4 TERMINATION BY FEI FOR CAUSE

If FEI terminates this Agreement pursuant to Section 14.2(c), FEI may, at its option and by written notice to the District:

- (a) remove the Energy System, at its own cost, in accordance with Section 15.5; or
- (b) require the District to purchase the Energy System from FEI at the Adjusted Energy System Purchase Price.

### 15.5 REMOVAL OF THE ENERGY SYSTEM

If FEI is required to remove the Energy System pursuant to Sections 15.1(a), 15.3(a) or 15.4(a) or otherwise upon expiry of this Agreement, FEI shall promptly remove those portions of the Energy System located within the Building and at surface level at FEI's cost, and FEI shall perform such removal activities using standards of performance that are equivalent to those that apply to the performance of the Services under this Agreement. Any portion of the Energy System not removed by FEI prior to the 30<sup>th</sup> day following the termination or expiry of the Agreement will, as of such day, be deemed to be automatically transferred to the District, and become the property of the District, all at no cost to the District.

### 15.6 ACQUISITION OF THE ENERGY SYSTEM

If the District elects to acquire the Energy System pursuant to Sections 15.1(b), 15.3(b) or 15.4(b):

- (a) the District shall pay the Adjusted Energy System Purchase Price to FEI within the later of 30 days of (i) the effective date of expiration or termination, and (ii) confirmation of the Adjusted Energy System Purchase Price; and

- (b) FEI will promptly execute and deliver any documents and records reasonably required by the District to effect and facilitate the transfer of the Energy System to the District, including bills of sale, operation and maintenance manuals and warranties, and will use reasonable commercial efforts to obtain any consents and approvals that may be required in relation to the transfer (including, without limitation, BCUC approval), provided that (i) FEI's obligations under this Section 15.6(b) shall arise only upon FEI's receipt of all amounts due and owing to FEI from the District under this Agreement, and (ii) during the period between the expiration or termination of the Agreement and FEI's receipt of amounts due and owing to FEI from the District under this Agreement, FEI shall continue to maintain, or shall permit the District to maintain, the Energy System in good working order.

Notwithstanding the foregoing, the Parties acknowledge and agree that FEI's ability to sell or otherwise transfer its interest in and to the Energy System to the District may be subject to BCUC approval under applicable Laws.

## **ARTICLE 16 - NON-COMPLIANCE AND ENVIRONMENTAL**

### 16.1 NOTIFICATION OF NON-COMPLIANCE

FEI or the District (as applicable, the "Notifying Party") will promptly, upon becoming aware thereof, notify the other Party in writing of:

- (a) a Release of a Contaminant or any other occurrence or condition in the Energy System, the Lands or any adjacent property which could subject the other Party to any fines, penalties, orders or proceedings under applicable Laws;
- (b) any charge, order, investigation or notice of violation or non-compliance issued against the Notifying Party relating to the Energy System, or the operation of the Energy System, under any applicable Laws; and
- (c) any notice, claim, action or other proceeding by any third party against the Notifying Party in respect of the Design and Construction or the Services or concerning the Release or alleged Release of any Contaminants at or from the Energy System or the Lands.

### 16.2 NOTIFICATION BY FEI

FEI will notify the appropriate Governmental Authorities of any Release of any Contaminants at or from the Energy System in accordance with applicable Laws. The District may, but is not obligated to, notify the appropriate Governmental Authorities of any Release of any Contaminants at or from the Energy System in accordance with applicable Laws.

### 16.3 OWNERSHIP OF CONTAMINANTS

Notwithstanding any rule of law to the contrary, any Disclosed Contaminant Released from the Energy System, or any top soil, earth or other material containing a Contaminant for which FEI is responsible pursuant to Section 4.5 that is removed from the Lands by FEI or any person for

whom it is in law responsible, will be and remain the sole and exclusive property and responsibility of FEI and will not become the property of the District, notwithstanding the degree of its affixation to the Lands and notwithstanding the expiry or earlier termination of this Agreement.

#### 16.4 SURVIVAL OF OBLIGATIONS

The obligations of the Parties under this Article 16 will survive the expiry or termination of this Agreement.

### **ARTICLE 17 - FORCE MAJEURE**

#### 17.1 SUSPENSION

Subject to the other provisions of this Article 17, if either Party is unable or fails by reason of Force Majeure to perform in whole or in part any obligation or covenant set forth in this Agreement, with the exception of unpaid financial obligations, such inability or failure will be deemed not to be a breach of such obligation or covenant and the obligations of both Parties under this Agreement will be suspended to the extent necessary during the continuation of any inability or failure so caused by such Force Majeure.

#### 17.2 DEFINITION OF FORCE MAJEURE

For purposes of this Agreement, the term "Force Majeure" means any event or occurrence not within the control of the Party claiming Force Majeure and which by the exercise of reasonable diligence such Party is unable to prevent or overcome, including any acts of God, including lightning, earthquakes, storms, washouts, landslides, avalanches, fires, epidemics and floods; strikes, lockouts or other industrial disturbances; acts of the Queen's or public enemies, sabotage, wars, blockades, insurrections, riots or civil disturbances, fires, explosions, breakages of or accidents to machinery or lines of pipe; the laws, orders, rules, regulations, acts or restraints of any court or governmental or regulatory authority. For the purposes of this Article 17, a Party is deemed to have control over the actions or omissions of those persons to which it, its agents, contractors or employees, have delegated, assigned or subcontracted its obligations and responsibilities. For greater certainty, a Force Majeure shall not include any weather related events that do not exceed 25 year events as recorded by Environment Canada or as otherwise may be determined by the BCUC from time to time.

#### 17.3 EXCEPTIONS

Neither Party will be entitled to the benefit of Section 17.1 under any of the following circumstances:

- (a) the Energy System not being Commissioned;
- (b) to the extent that the inability or failure was caused by the negligence or contributory negligence of the Party claiming Force Majeure;

- (c) to the extent that the inability or failure was caused by the Party claiming Force Majeure having failed to diligently attempt to remedy the condition by taking all reasonable acts and to resume the performance of such covenants and obligations with reasonable dispatch;
- (d) if the inability or failure was caused by lack of funds or is in respect of any amount due hereunder; or
- (e) unless, as soon as possible after the happening of the occurrence relied upon or as soon as possible after determining that the occurrence was in the nature of Force Majeure and would affect the claiming Party's ability to observe or perform any of its covenants or obligations under this Agreement, the claiming Party will have given to the other Party notice to the effect that the claiming Party is unable by reason of Force Majeure (the nature whereof will be therein specified) to perform the particular covenants or obligations.

#### 17.4 RESUMPTION OF OBLIGATIONS

The Party claiming Force Majeure will give notice to the other Party, as soon as possible after the Force Majeure condition is remedied, to the effect that the same had been remedied and that such Party has resumed, or is then in a position to resume, the performance of its suspended covenants and obligations hereunder either in whole or in part.

#### 17.5 SETTLEMENT OF LABOUR DISPUTES

Notwithstanding any of the provisions of this Article 17, and subject to Section 17.3, the settlement of labour disputes or industrial disturbances is entirely within the discretion of the particular Party involved and the Party may make settlement of it at the time and on terms and conditions as it may deem to be advisable and no delay in making settlement will deprive the Party of the benefit of Section 17.1.

### **ARTICLE 18 - CONDITIONS PRECEDENT**

#### 18.1 CONDITIONS PRECEDENT OF FEI

The obligation of FEI to carry out the transactions contemplated by this Agreement is subject to fulfillment of the following conditions on or before such date as may be specified, which is for the sole benefit of FEI, and which may be waived by FEI in accordance with Section 18.2:

- (a) FEI obtaining the approval by its board of directors of the terms and conditions of this Agreement on or before the 30th day following the Effective Date, provided that if such approval cannot be obtained by this date due to the fact that the board of directors has not yet considered the transaction FEI reserves the right to extend the period of time to that date when the board next convenes.

## 18.2 FEI NOTICE OF WAIVER

If a condition set out in Section 18.1 has not been satisfied on or before the date as may be specified for its fulfillment, FEI may waive compliance with the condition in whole or in part, in its sole discretion, by written notice to the District, failing which delivery of written notice of satisfaction or waiver of such condition, this Agreement will, to the extent any further obligations of the Parties which remain unfulfilled, be null and void, without liability between the Parties hereto, and, neither Party will be under any further obligation to the other to complete the transactions or future transactions, as the case may be, contemplated by this Agreement.

## **ARTICLE 19 - DISPUTE RESOLUTION**

### 19.1 REFERENCE TO ARBITRATION

The Parties will attempt to resolve all disputes which may arise under, out of, in connection with or in relation to this Agreement by negotiation. They will provide full and timely disclosure to one another of all facts relevant to the disputes to facilitate those negotiations. If any such dispute remains unresolved, for any reason, fifteen (15) days after either Party requested the other Party to enter into negotiations to resolve it, or if the Parties agree to waive negotiations in respect of it, then either Party may submit that dispute for final resolution by arbitration administered by the British Columbia International Commercial Arbitration Centre (“BCICAC”) under its “Shorter Rules for Domestic Commercial Arbitration”. The seat of that arbitration will be Vancouver, British Columbia, Canada. The language of that arbitration will be English. Alternatively, the Parties may agree, within the 15 days referred to above, to submit that dispute for final resolution by arbitration in another manner.

### 19.2 BINDING DECISION

The decision of the arbitrator, regardless of what arbitration procedure is used, will, for all purposes of this Agreement, be final and binding on the Parties.

### 19.3 CONTINUATION OF SERVICES

Each of the Parties will perform all of its respective obligations under this Agreement notwithstanding the existence of any dispute that arises from time to time between the Parties in respect of any matter related to this Agreement or during the resolution of any dispute in accordance with this Article 19.

### 19.4 COSTS

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 case, the non-prevailing Party shall pay all costs and expenses of the arbitration, but not those of the prevailing Party.

## ARTICLE 20 - GENERAL

### 20.1 RESPONSIBILITY FOR COSTS

FEI's performance of any of its obligations under this Agreement, including without limitation the obligation to design, construct and install the Energy System as provided in Section 2.1, shall be at FEI's sole cost and expense, unless expressly provided otherwise in this Agreement;

### 20.2 EXERCISE OF DISCRETION

Where anything in this Agreement is identified as being in either Party's discretion, such Party will have the right to exercise such discretion in its own best interest without regard for the interest of the other Party.

### 20.3 COOPERATION

FEI and the District will at all times extend co-operation to each other to ensure the orderly management and operation of the Energy System.

### 20.4 SOLICITATION

Nothing in this Agreement precludes either Party from soliciting or entering into, other contracts with the other Party.

### 20.5 NOTICES

Any notice or other communication required or permitted to be given under this Agreement will be effective only if in writing and when it is actually delivered (which delivery may be by telecopy or other telecommunications device) to the Party for whom it is intended at the following address or such other address in British Columbia as such Party may designate to the other Party by notice in writing delivered in accordance with this Section 20.5:

(a) if to FEI:

FortisBC Energy Inc.  
10th Floor, 1111 West Georgia Street  
Vancouver, B.C.  
V6E 4M3

Attention: Gareth Jones  
Telephone: 250-380-5972  
Telecopy: 250-388-6876

(b) if to the District:

Board of Education of School District No. 37 (Delta)  
4585 Harvest Drive  
Delta, B.C.  
V4K 5B4

Attention: Frank Geyer  
Telephone: 604-952-5336  
Telecopy: 604-952-5375

Notwithstanding the foregoing, notices with respect to Force Majeure will be given in writing by telecopy, or orally in person or by telephone (to be confirmed by telecopy), to the person or persons designated from time to time by the Parties as the person or persons authorized to receive such notices.

## 20.6 CONFIDENTIALITY

The District and FEI will treat as confidential the terms of this Agreement and all Confidential Information (as defined below) and will at all times during the term of this Agreement and for a reasonable time thereafter hold the terms of this Agreement and all Confidential Information in confidence and neither Party will, without the prior written consent of the other Party, disclose or divulge the terms of this Agreement or any Confidential Information to any person, provided that nothing in this Section 20.6 will restrict or prevent either Party from making any disclosure of such terms or any Confidential Information:

- (a) which is reasonably necessary or desirable for such Party to carry out and give full effect to the terms, conditions and intent of this Agreement and the matters contemplated hereby;
- (b) which is required by any Law, including the Freedom of Information and Protection of Privacy Act (British Columbia);
- (c) to any Governmental Authority;
- (d) to the British Columbia Utilities Commission or other regulatory agency as part or in support of any regulatory application or submission;
- (e) to the directors, officers or employees of such Party or to an Affiliate of such Party or to the directors, officers or employees of an Affiliate of such Party;
- (f) to the professional advisors of such Party on the same terms of confidentiality;
- (g) which is already in the public domain; or
- (h) in connection with legal proceedings or steps being taken to remedy a breach or default under this Agreement by the other Party.

For the purposes of this Section 20.6, “Confidential Information” means proprietary information of either Party such as data, plans, drawings, manuals, or specifications which have been provided by such Party, its employees, contractors, agents, subcontractors, Affiliates to the other Party pursuant to this Agreement or proprietary information either Party conceived or developed by or for such Party concerning construction practices, operation and maintenance practices, agreements, marketing plans and strategies, profits, costs, pricing and systems of procedure (provided that “Confidential Information” does not include information which was disclosed to the receiving Party by a third Party (unless, to the knowledge of the receiving Party, the third Party is under an obligation of confidentiality to the other Party) or any information developed or conceived by the receiving Party without using the “Confidential Information” of the other Party).

#### 20.7 SEVERABILITY

If any provision of this Agreement is found or determined to be invalid, illegal or unenforceable it will be construed to be separate and severable from this Agreement and will not impair the validity, legality or enforceability of any other provisions of this Agreement, and the remainder of this Agreement will continue to be binding on the Parties as if such provision had been deleted.

#### 20.8 NO WAIVER

No waiver by either Party of any default by the other in the performance of any of the provisions of this Agreement will operate or be construed as a waiver of any other or future default or defaults hereunder, whether of a like or a different character. To be binding, any waiver of any provision of this Agreement must be clearly expressed in writing to be signed by the waiving Party.

#### 20.9 BURDEN AND BENEFIT

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

#### 20.10 GOVERNING LAW

This Agreement and all matters arising hereunder will be governed by the laws of British Columbia and the federal laws of Canada applicable in British Columbia.

#### 20.11 ENTIRE AGREEMENT

This Agreement contains the whole agreement between the Parties in respect of the subject matter hereof and there are no terms, conditions or collateral agreements express, implied or statutory other than as expressly set forth in this Agreement and this Agreement supersedes all of the terms of any written or oral agreement or understanding between the Parties.

#### 20.12 TIME OF ESSENCE

Time is of the essence of this Agreement.

#### 20.13 FURTHER ASSURANCES

Each Party will, at all times hereafter on demand by the other, execute and deliver or cause to be executed and delivered all such further documents and do all such further acts and things as may be reasonably requested by the other Party to evidence, carry out and give full effect to the intent and meaning of this Agreement and to assure the completion of the transactions contemplated hereby.

#### 20.14 AMENDMENTS TO BE IN WRITING

Except as set out in this Agreement, no amendment or variation of this Agreement will be effective or binding upon the Parties unless such amendment or variation is set out in writing and duly executed by the Parties.

#### 20.15 FACSIMILE

This Agreement may be executed by the Parties and transmitted by facsimile transmission and, if so executed, transmitted and received, this Agreement will for all purposes be effective as if the Parties had delivered and executed the original Agreement and each Party undertakes to provide the other Party with a copy of this Agreement bearing original signatures forthwith upon demand.

#### 20.16 SUBJECT TO LEGISLATION

Notwithstanding any other provision hereof, this Agreement and the rights and obligations of FEI and the District under this Agreement are subject to all present and future laws, rules, regulations and orders of any legislative body, governmental agency or duly constituted authority now or hereafter having jurisdiction over FEI or the District.

#### 20.17 EXPENSES

Each Party to this Agreement shall be responsible for the payment of all costs, expenses, legal fees and disbursements incurred or to be incurred by it in negotiating and preparing this Agreement and all documents required to be delivered under this Agreement and otherwise relating to the transactions contemplated by this Agreement.

#### 20.18 NO CONTRARY AGREEMENT

No Party shall enter into an agreement or other commitment with any person if such agreement or commitment has terms or provisions in conflict with or inconsistent with the terms of this Agreement or which could reasonably be expected to lead to actions or consequences that would result in the Party being in breach of the commitments and obligations of the Party pursuant to this Agreement unless such other agreement or commitment is expressly approved by the other Parties.

#### 20.19 NO PARTNERSHIP

Nothing herein shall be deemed or construed to create a joint venture, partnership, employment or agency relationship between the Parties for any purpose.

20.20 ASSIGNMENT

Neither Party may assign this Agreement or any of its rights or obligations under this Agreement, and FEI may not assign, transfer or sell all or any part of the Energy System, except:

- (a) with the consent of the other Party, such consent not to be unreasonably withheld, delayed or conditioned; or
- (b) in the case of FEI, to an Affiliate of FEI which is a "public utility" as defined in the *UCA* on notice to, but without the consent of, the District.

20.21 COUNTERPARTS

This Agreement may be executed in counterparts with the same effect as if the Parties had signed the same document. All counterparts will be construed together and will constitute one agreement.

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

**FORTISBC ENERGY INC.**

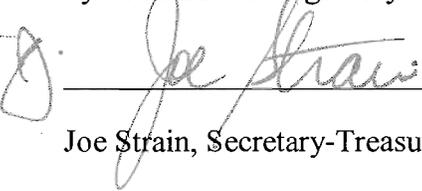
by its authorized signatory:

  
\_\_\_\_\_

Doug Stout,  
VP Energy Solutions & External Relations

**THE BOARD OF EDUCATION OF  
SCHOOL DISTRICT NO. 37 (DELTA)**

by its authorized signatory:

  
\_\_\_\_\_

Joe Strain, Secretary-Treasurer

# SAMPLE SCHEDULE “A”

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## Energy System Description

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### Mechanical Equipment Plans and Specifications

Equipment schedule:

- 1 ground source heat pumps water furnace 540NXW or equivalent. and associated pumps. The heat pump and related equipment will be installed in the boiler room at the old boilers location on the concrete pad.
- Each heat pump will have 1 pump on condenser side (5 Hp, 90gpm, 100 ft).
- Piping, control valves and other equipment and accessories connected to the above equipment.
- Connection of the heat pumps on the return of the boiler and installation of the 3 way valves.
- 500 ft of piping 4 inches isolated between the field and the heat pump The pipes will be installed on the roof.
- Installation of geo-exchange field loop to match the designed performance of the system.
- Supply and do the injection of 800 usgals of propylene/glycol with a concentration of 25%.
- Control systems for the above mentioned equipment.
- BTU meters

Prior to commencement of the Mechanical Equipment construction, FEI shall provide detailed drawings to the District for review and acceptance.

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## **SCHEDULE “B”**

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# **Delta School District Site Rules for Contractors**

## **Delta School District Site Rules for Contractors**

### **1.0 Safety**

- 1.1 For the purposes of this section, “Safety Regulations” means the rules, regulations, and practices required by WorkSafeBC.
- 1.2 The Contractor shall be solely responsible for site safety during the execution of all assigned construction and maintenance activities, including work performed by subcontractors and suppliers, and for compliance with the Safety Regulations, and shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the work.
- 1.3 If the District is of the reasonable opinion that the Contractor has not taken such precautions as are necessary to ensure compliance with the requirements of Clause 1.2, the District may take or order any remedial measures which it deems necessary, including stopping the performance of all or any portion of the work, and the District may use the employees of itself, the Contractor, any subcontractor or any other contractors to perform such remedial measures. The Contractor acknowledges and agrees that any failure by the Contractor to comply with the Safety Regulations shall constitute a default of the Contractor's contractual obligations and the District may issue a written notice instructing the Contractor to correct the default in the two (2) working days immediately following receipt of such notice.
- 1.4 The Contractor shall file any notices or any similar document (including, without limitation, a Notice of Project where applicable) required pursuant to the Safety Regulations. This duty of the Contractor will be considered to be included in the work and no separate payment therefore will be made to the Contractor.
- 1.5 The Contractor shall develop, maintain and supervise for the duration of the work a comprehensive safety program that will effectively incorporate and implement all required safety precautions. The program shall, as a minimum, respond fully to the Safety Regulations and general construction practices for the safety of persons or property, including without limitation the WorkSafeBC regulations that may be applicable (e.g. WHMIS, dust control, etc.).
- 1.6 The Contractor shall provide a copy of the safety program described in Clause 1.5 to the District prior to the commencement of the work and shall, at all times require, as far as it is reasonably practical to do so, that every employer and worker performing work in respect of the project complies with such program.
- 1.7 The Contractor shall arrange regular safety meetings at its expense, record the minutes of such meetings and maintain a complete file for review by the appropriate authorities.
- 1.8 The Contractor shall supply and maintain, at its own expense, at its office or other well-known place at the work site, safety equipment necessary to protect the workers and general public against accident or injury as prescribed by the governing authorities.
- 1.9 The Contractor shall supply and maintain all articles necessary for giving first-aid to any person who may be injured on the work site and shall establish an emergency procedure for the immediate removal of any injured person to a hospital or a doctor's care in accordance with the Safety Regulations.
- 1.10 The Contractor shall, as required under the Safety Regulations, promptly report all accidents of any sort arising out of or in connection with the performance of the work whether on or adjacent to the work site, giving full details and statements of witnesses. The District shall be copied on all accident reports and investigation reports.

## **2.0 Security and Access**

- 2.1 **Site and Building Access:** The District's Maintenance Services Department will issue gate and building keys, electronic access cards (complete with instructions as to how to arm/disarm the building intrusion alarm system and how to contact the alarm monitoring station) and identification badges for the Contractor to enter the site and building, disarm/arm the building intrusion alarm system, and access the portions of the site where the Contractor's work is taking place. The Contractor and all subcontractors must check in at the school office (if occupied by District staff) prior to entering other parts of the building. The access cards, keys and identification badges shall be promptly returned to the District at the end of the contract.
- 2.2 **Security:** The Contractor shall assume all responsibility for the security of the work site. The Contractor must ensure that all windows, doors and gates are secure and the building intrusion alarm system is armed (unless District staff are still in the building) at the end of the workday. The Contractor must also safeguard the rest of the building and/or site from access through possible open construction areas. Security doors shall at all times remain closed and shall not be propped open, even for a short time. The Contractor is responsible for any costs arising when the District's security runner services is called to attend a work site for security matters resulting from the Contractor's negligence.
- 2.3 **Normal School Hours:** Normal hours of operation for the District are 0730h-1600h Monday to Friday, excluding statutory holidays. For after-hours and weekend work, the Contractor must notify the District's Maintenance Services Department at least one business day in advance of the work.

## **3.0 Conduct**

- 3.1 **Noise Due to Construction or Maintenance Activities:** In accordance with the Delta Noise Bylaw 1906, "no person shall carry on or cause to be carried any construction work, reconstruction, alteration, repair or demolition of a building or structure, the operation of machinery, or works in connection with any excavation or highway before 07:00h or after 1900h and day of the week from Monday to Friday, inclusive, before 0900h or after 1700h on Saturdays, or at any time Sundays. The Contractor shall respect the classroom operations in the vicinity of the work site and as such will make every attempt to limit noisy work to times outside of classroom operation or to adequately dampen, silence and/or soundproof equipment that generates noise to mitigate disruption to the classrooms.
- 3.2 **Communication devices:** Radio and cell phone volume shall be at the minimum volume which is consistent with the ability to operate the device.
- 3.3 **Roadways:** All speed limits and other traffic rules must be obeyed and access to the roadways should not be impeded. Parking and secure storage of materials and equipment by the Contractor and subcontractors shall only be in designated areas only.
- 3.4 **Cleanliness:** The work site must be maintained for an orderly appearance on a daily basis. Trash and construction debris shall be contained at all times and removed from the work site weekly.
- 3.5 **Toilets:** All temporary toilets shall have their doors faced away from streets. In no cases shall a worker utilize any staff washroom or other staff facilities at the work site, except as otherwise agreed in writing by the District. Under no circumstances will workers be permitted to use student washrooms.
- 3.6 **Identification Badges:** All workers shall have a District-assigned identification badge that clearly indicates the company's name and the worker's name. It is to be worn whenever at the work site.

- 3.7 **Smoking:** Smoking is not permitted on District property.
- 3.8 **Alcohol/Drugs:** No alcoholic beverages or non-prescription drugs shall be brought or consumed at the work site.
- 3.9 **Animals:** No dogs or other animals, are permitted at the work site without the written consent of the District.
- 3.10 **Fitness for Work:** All workers must be fit for work at all times. The District retains the right to request individuals leave the work site if unfit for any reason including, without limitation, inebriation, taking drugs, injury, fatigue, rudeness or any other reason that may affect the quality of the work or represents a breach of these rules.
- 3.11 **Theft:** Workers who steal from occupants or the District shall be immediately ejected from the work site. The Contractor is responsible for all such thefts irrespective of whether the worker is an employee of the Contractor or a subcontractor.
- 3.12 **Discrimination and Harassment:** The District actively promotes a safe and secure school environment and as such does not tolerate violations of human rights legislation, including:
- (a) discriminatory acts against any person with respect to the work or school environment or any educational program or service provided to or by that person because of race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age of that person, or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person;
  - (b) all forms of actual, attempted or threatened physical harm directed at any person; or
  - (c) any form of sexual harassment such as unwelcome sexual advances with actual or implied work related consequences; unwelcome remarks, questions, jokes or innuendo of a sexual nature including sexist comments or sexual invitations; verbal abuse, intimidation or threats of a sexual nature; unwelcome leering, staring or making sexual gestures; whistling or catcalls; display of pornographic or other sexual materials; offensive pictures, graffiti, cartoons or sayings; unwanted physical contact such as touching, patting, pinching or hugging; and physical assault of a sexual nature

## **SCHEDULE “C”**

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### **List of Environmental Reports**

**ASBESTOS MATERIALS SURVEY  
AND RISK ASSESSMENT**

**OF**

**DELTA SCHOOL BOARD NON-SCHOOL  
FACILITY BUILDINGS  
Delta, BC**

**PREPARED FOR:**

**DELTA SCHOOL DISTRICT  
Maintenance Facility  
7186 Brown Street  
Delta, BC  
V4G 1G8**

**PREPARED BY:**

**ACM ENVIRONMENTAL CORPORATION  
#217 - 2323 Quebec Street  
Vancouver, BC  
V5T 4S7  
604-873-8599**

**January 2006**

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## **EXECUTIVE SUMMARY**

A.C.M. Environmental Corporation (ACM) was retained by the Delta School District to perform an Asbestos Materials Survey and Risk Assessment for six (6) various non-school facilities owned by the Delta School Board located within the district.

The assessment involved an inspection of all areas of the buildings excluding the roofs. The objective of the assessment was to identify the types and extent of asbestos containing materials within the buildings and any risks associated with the materials and the regular usage of these buildings.

The assessment was conducted using both visual and physical assessment techniques. Samples of materials suspected of containing asbestos were collected and forwarded, using proper chain of custody protocols, to Prezant Associates, Inc. for asbestos analysis. Asbestos sample results are located in Appendix A of this report.

In summary, the findings from the assessment conclude that asbestos was found within the construction materials within some of the buildings, however, no PCB or Mercury containing materials were found within any of the equipment of the buildings inspected.

Two types of asbestos containing materials were observed within three (3) of the six buildings inspected. The materials are linoleum/vinyl sheet flooring underlay felts and vinyl floor tile mastic materials. Within the context of the report, buildings have been detailed as to the locations of the asbestos containing materials, the content of asbestos where applicable, and the required procedures to be followed for removal of these materials, as required.

The hazardous materials survey was conducted using non-destructive and some limited destructive testing methods. Areas within walls were not inspected as access was not possible without causing extensive damage to the walls. It should be noted that there is a possibility of asbestos containing materials existing within inaccessible wall and ceiling cavities, and under sub-floors. Possible asbestos-containing materials which may exist in these areas may include but are not limited to: insulation materials (mechanical or construction), secondary layers of drywall or flooring, etc.

Roofing materials were not sampled at this time as the integrity of the waterproof membrane would be compromised, possibly voiding insurance coverage in the event of a water leak. If the roofing materials are to be disturbed during a renovation project, they must be sampled prior to the work taking place.

A random number of fluorescent lighting fixtures were opened up and inspected for possible PCB containing ballasts. No PCB containing ballasts were observed within the fluorescent lighting fixtures inspected, although some may exist, as not all fixtures were opened. No Mercury containing thermostat switches were observed within the buildings inspected.

## **INTRODUCTION**

A.C.M. Environmental Corporation (ACM) was retained by the Delta School District to perform an Asbestos Materials Survey and Risk Assessment for the six various non-school facilities owned by the Delta School Board located within the district. All areas within the buildings and any adjacent storage buildings were inspected and/or sampled during this survey.

The objective of the assessment was to identify the types and extent of asbestos containing construction materials within the accessible areas of the buildings. The assessment at this time involved an inspection of all areas of the buildings not including the roofing materials.

The surveys and assessments were conducted on January 9<sup>th</sup> and 10<sup>th</sup>, 2006 by Mr. James McArthur, ASCT, Environmental Technician, and Mr. Barry O'Regan, BST, ISO14001, EMS, IA, Project Manager for ACM. Forty-six (46) representative bulk samples of materials suspected of containing asbestos were collected from all 6 facilities inspected for analysis and are included as Appendix A of this report.

## **METHODOLOGY**

The hazardous materials survey was conducted using non-destructive and some limited destructive testing methods. Areas within walls were not inspected as access was not possible without causing extensive damage to the walls. It should be noted that there is a possibility of asbestos containing materials existing within inaccessible wall and ceiling cavities, and under sub-floors. Possible asbestos-containing materials which may exist in these areas may include but are not limited to: insulation materials (mechanical or construction), secondary layers of drywall or flooring, etc.

The U.S. Environmental Protection Agency (USEPA) Guidance Document was selected for use in this study (1). The document identifies factors associated with the "condition" and the "potential for disturbance or erosion" of asbestos containing materials. These factors help to define the fibre release potential of the suspect asbestos containing materials and were used in a qualitative evaluation of materials found in the surveyed areas. Recommendations have been substantiated by additional information utilized from other documentation cited in the Reference Section of this report.

The bulk samples of suspect asbestos containing materials were forwarded, using proper chain of custody protocols, to Prezant Associates, Inc. for asbestos analysis. The samples were analyzed using polarized light microscopy (PLM) with dispersion staining in accordance with U.S. EPA method 600/R-93/116, "Method for Determination of Asbestos in Bulk Building Materials".

Other hazardous materials were visually inspected and are noted in this report.

The survey relied on the abilities and experience of the surveyor to gain access and identify possible asbestos containing materials. All areas of the building were accessed during the assessment excluding the roof.

## **RESULTS & ASSOCIATED RISK LEVELS**

### **ASBESTOS**

#### **Tilbury Maintenance Building**

One type of asbestos containing material was identified during this building inspection survey which will or could be affected by any potential renovation or demolition activities: vinyl floor tile materials. A breakdown for the type of material is as follows:

##### **Vinyl Floor Tile Materials:**

Asbestos containing vinyl floor tile materials were observed on vestibule - 117 adjacent to the main entrance of the building on the 1<sup>st</sup> floor. The asbestos was observed in the backing mastic of the 12" vinyl floor tile materials which were grey in color with dark and white brushes. The 12" vinyl floor tiles which were blue in color and adjacent to the asbestos mastic tiles were found to have no asbestos in the mastic. The bulk sample of the asbestos containing vinyl floor tile was found to contain 3% Chrysotile asbestos in the mastic. The floor tile materials are presently in fair to good condition.

Prior to any activities taking place which could disturb the asbestos containing vinyl floor tile mastic materials, they must first be removed and disposed of in accordance with applicable regulations. The removal of the vinyl floor tile & mastic materials will pose a moderate risk of asbestos exposure to the workers involved, therefore as a minimum, MODERATE RISK asbestos work procedures will be required for the removal of the asbestos containing floor tile mastic materials.

#### **Resource Centre Building**

One type of asbestos containing material was identified during this building inspection survey which will or could be affected by any potential renovation or demolition activities: linoleum flooring materials. A breakdown for the type of material is as follows:

##### **Linoleum Flooring Materials:**

Asbestos containing linoleum flooring materials were observed within the Men's and Woman's Washrooms of the building. The asbestos was found within the backing felt of the green colored linoleum flooring materials. The bulk sample of the asbestos containing linoleum flooring materials was found to contain 30%

Chrysotile asbestos in the backing felt. The materials are presently in fair to good condition.

Prior to any activities taking place which could disturb the asbestos containing linoleum materials, they must first be removed and disposed of in accordance with applicable regulations. The removal of the linoleum flooring materials will pose a modified moderate to high risk of asbestos exposure to the workers involved, therefore as a minimum, MODIFIED MODERATE RISK asbestos work procedures will be required for the removal of the asbestos containing linoleum flooring materials.

### **Delview Adult Learning Centre**

One type of asbestos containing material was identified during this building inspection survey which will or could be affected by any potential renovation or demolition activities: vinyl sheet flooring backing felt. A breakdown for the type of material is as follows:

#### Linoleum Flooring Materials:

Asbestos containing Linoleum flooring materials were observed within the Men's and Woman's Washrooms of the building. The asbestos was found within the backing felt of the yellow colored linoleum flooring materials. The bulk sample of the asbestos containing linoleum flooring materials was found to contain 35% Chrysotile asbestos in the backing felt. The materials are presently in fair to good condition.

Prior to any activities taking place which could disturb the asbestos containing linoleum materials, they must first be removed and disposed of in accordance with applicable regulations. The removal of the linoleum flooring materials will pose a modified moderate to high risk of asbestos exposure to the workers involved, therefore as a minimum, MODIFIED MODERATE RISK asbestos work procedures will be required for the removal of the asbestos containing linoleum flooring materials.

### **District Administration Building**

No asbestos containing materials were observed within the building. Sample results and locations are listed in Appendix A.

### **Provincial Outreach & Adult Education Building**

No asbestos containing materials were observed within the building. Sample results and locations are listed in Appendix A.

### **Job Club Building**

No asbestos containing materials were observed within the building. Sample results and locations are listed in Appendix A.

### **POLYCHLORINATED BIPHENYLS (PCBs)**

A random number of fluorescent light ballasts were visually inspected for possible PCB containing ballasts. No PCB containing ballasts were observed within the fluorescent lighting fixtures inspected in the buildings, although some may exist, as not all fixtures were opened up.

PCB containing fluorescent light ballasts do not pose a risk to occupants of the buildings. If any PCB containing ballasts are encountered during any renovations of the buildings, they must be separated from the fixtures and disposed of properly in accordance with applicable regulations.

### **MERCURY THERMOSTATS**

No thermostats observed within the buildings were found to have Mercury containing switches within them. If any Mercury containing thermostat switches are encountered within the buildings during renovation or repair activities, they must be removed intact from the thermostats and disposed of properly in accordance with applicable regulations.

## **RECOMMENDATIONS**

Prior to beginning any work that may impinge upon the hazardous materials within the building, the following must be performed:

- 1.) All asbestos containing materials must be removed from the building, utilizing as a minimum, the risk levels and/or procedures discussed in the results section of this report.
- 2.) If any Mercury containing thermostat switches are encountered during any renovation or repair activities within the building, they must be removed and disposed of in accordance with applicable regulations.
- 3.) If any PCB containing ballasts are encountered during any renovation or repair activities within the building, they must be removed and disposed of in accordance with applicable regulations.
- 4.) If any suspect asbestos containing materials are encountered within inaccessible wall or ceiling cavities, or under floors, during renovation or demolition activities, the work in the immediate area must stop and the supervisor contacted for further direction.

### **STATEMENT OF LIMITATIONS**

The ACM report is intended to direct the Client's attention to recognised environmental conditions and to potential sources of environmental contamination. The findings and conclusion regarding contamination of the property are based solely on the extent of observations and information gathered during the assessment. Nothing in the report is intended to express any legal opinion upon environmental liabilities relating to the site or whether operations legally conformed with relevant legislative requirements.

Furthermore, it must be understood that changing circumstances in the physical environment, the use of the property, as well in changes in any substances stored, used, handled at the property, could alter radically the conclusions and information contained in this report. Therefore, it is important that the property is periodically re-evaluated and the client kept informed as to developments, which may impact the property. This report is not intended to be used as contract specifications.

### **A.C.M. ENVIRONMENTAL CORPORATION**

---

James McArthur, ASCT  
Environmental Technician

**REFERENCES**

- 1) USEPA. 1985. U.S. Environmental Protection Agency. "Guidance for Controlling Asbestos-Containing Materials in Buildings". Washington, DC: Office of Toxic Substances, USEPA.
- 2) Lory EE, Coin DC. 1981. "Management Procedure for Assessment of Friable Asbestos Insulating Material". Port Hueneme, CA: Civil Engineering Laboratory, Naval Construction Battalion Center.
- 3) Workers' Compensation Board of British Columbia, effective 15 April 1998, and all current amendments. Occupational Health and Safety Regulations.
- 4) 2002 Edition - Workers' Compensation Board of British Columbia. Safe Work Practices for Handling Asbestos.

**APPENDIX A**  
**Bulk Sample Results**



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

**ACM Environmental**  
2323 Quebec Street, Suite 211  
Vancouver, BC

Project Location: Delview Adult Learning Center

PAI Batch Number: **06-0102**  
Client Job Number: **3048-46**  
Number of Samples: **6**  
Turn Around Time: **10 day**

Batch Number:	06-0102	<b>ACM Environmental</b>
Lab Sample Number:	06000630	<b>3048-46</b>
Client Sample Number:	<b>3048-651</b>	<i>Delview Adult Learning Center</i>

#### Black pliable rubbery putty-like material

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
60% Rubber Particles  
35% Resin and Binder  
5% Mineral Fragments

**Comments:**

Batch Number:	06-0102	<b>ACM Environmental</b>
Lab Sample Number:	06000631	<b>3048-46</b>
Client Sample Number:	<b>3048-652</b>	<i>Delview Adult Learning Center</i>

#### L-1 Pale tan paint

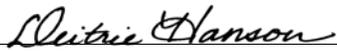
**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
100% Paint

**Comments:**

Sampled By: Client  
Received By: John McCaslin 1/18/2006  
Reviewed By: George McCaslin 1/25/2006

  
Analyzed By: Deitrie Hanson 1/25/2006



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

**L-2 White crystalline powdery material**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Calcite Filler and Binder
		8% Perlite
		2% Mineral Fragments

**Comments:**

**L-3 Off-white fibrous papery material**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	97% Cellulose	3% Filler and Binder

**Comments:**

**L-4 White crystalline powdery material**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Calcite Filler and Binder
		6% Perlite
		4% Mineral Fragments

**Comments:**

Batch Number:	06-0102	<b>ACM Environmental</b>
Lab Sample Number:	06000632	<b>3048-46</b>
Client Sample Number:	<b>3048-653</b>	<i>Delview Adult Learning Center</i>

**Dull black thin strip of pliable rubbery material**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		85% Rubber Particles
		12% Calcite Filler and Binder
		3% Mineral Particles

**Comments:**

Sampled By: Client				
Received By: John McCaslin	1/18/2006		Analyzed By: Deitrie Hanson	1/25/2006
Reviewed By: George McCaslin	1/25/2006			



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
 OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

## Bulk Asbestos Fiber Analysis

Batch Number:	06-0102	<b>ACM Environmental</b>
Lab Sample Number:	06000633	<b>3048-46</b>
Client Sample Number:	<b>3048-654</b>	<i>Delview Adult Learning Center</i>

### L-1 Black pliable rubbery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 90% Rubber Particles 10% Calcite Filler and Binder
--	---	---

**Comments:**

### L-2 White opaque pliable mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 80% Resin and Binder 15% Calcite Filler and Binder 5% Mineral Fragments
--	---	---

**Comments:**

### L-3 Off-white paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 100% Paint
--	---	--

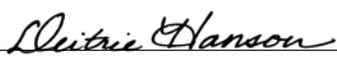
**Comments:**

### L-4 White crystalline powdery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 85% Calcite Filler and Binder 12% Perlite 3% Mineral Fragments
--	---	--

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

  
 Analyzed By: Deitrie Hanson 1/25/2006



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

## Bulk Asbestos Fiber Analysis

### L-5 White fibrous papery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	97% Cellulose	3% Filler and Binder

**Comments:**

Batch Number: 06-0102	<b>ACM Environmental</b>
Lab Sample Number: 06000634	<b>3048-46</b>
Client Sample Number: 3048-655	<i>Delview Adult Learning Center</i>

### L-1 Pale beige paint on white pliable vinyl material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Vinyl Filler and Binder
		10% Paint

**Comments:**

### L-2 Tan and brown fibrous papery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	95% Cellulose	3% Filler and Binder
		2% Mineral Fragments

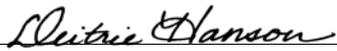
**Comments:**

### L-3 White powdery fibrous material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	15% Cellulose	80% Talc Filler and Binder
		5% Mineral Fragments

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

  
 Analyzed By: Deitrie Hanson 1/25/2006



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
 OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

**Bulk Asbestos Fiber Analysis**

Batch Number:	06-0102	<b>ACM Environmental</b>
Lab Sample Number:	06000635	<b>3048-46</b>
Client Sample Number:	<b>3048-656</b>	<i>Delview Adult Learning Center</i>

**L-1 Off-white, pale brown, and tan checkered opaque sheet vinyl tile material**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Plastic Particles
		10% Vinyl Filler and Binder

**Comments:**

**L-2 Pale beige fibrous papery backing**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>35% Chrysotile</b>	45% Cellulose	15% Talc Filler and Binder
		5% Filler and Binder

**Comments:**

**L-3 Golden tan mastic**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Resin and Binder
		10% Mineral Particles

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 1/25/2006



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

**ACM Environmental**  
2323 Quebec Street, Suite 211  
Vancouver, BC

Project Location: DSB Administration Building  
(Non School Facilities)

PAI Batch Number: **06-0098**  
Client Job Number: **3048-46**  
Number of Samples: **5**  
Turn Around Time: **10 day**

Batch Number:	06-0098	<b>ACM Environmental</b>
Lab Sample Number:	06000597	<b>3048-46</b>
Client Sample Number:	<b>3048-618</b>	<i>DSB Administration Building (Non School Facilities)</i>

#### L-1 White hard tile material with black streaks

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
55% Calcite Filler and Binder  
40% Mineral Filler and Binder  
5% Vinyl Filler and Binder

Comments:

#### L-2 Yellow resinous mastic

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
95% Resin and Binder  
3% Mineral Particles  
2% Filler and Binder

Comments:

Batch Number:	06-0098	<b>ACM Environmental</b>
Lab Sample Number:	06000598	<b>3048-46</b>
Client Sample Number:	<b>3048-619</b>	<i>DSB Administration Building (Non School Facilities)</i>

Sampled By: Client  
Received By: John McCaslin 1/18/2006  
Reviewed By: George McCaslin 1/23/2006

Analyzed By: Deitrie Hanson 1/23/2006



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### Bulk Asbestos Fiber Analysis

**L-1 White paint**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 100% Paint

**Comments:**

**L-2 Pale tan fibrous opaque material**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 40% Mineral Wool 20% Perlite  
16% Cellulose 20% Mineral Filler and Binder  
4% Filler and Binder

**Comments:**

Batch Number:	06-0098	<b>ACM Environmental</b>
Lab Sample Number:	06000599	<b>3048-46</b>
Client Sample Number:	<b>3048-620</b>	<i>DSB Administration Building (Non School Facilities)</i>

**L-1 Silver pliable metallic sheeting material**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 100% Foil

**Comments:**

**L-2 Dull orange and brown granular fibrous flaky material**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 10% Wollastonite 55% Calcite Filler and Binder  
5% Cellulose 30% Vermiculite

**Comments:**

Sampled By: Client  
Received By: John McCaslin 1/18/2006  
Reviewed By: George McCaslin 1/23/2006

Analyzed By: Deitrie Hanson 1/23/2006



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### Bulk Asbestos Fiber Analysis

Batch Number:	06-0098	<b>ACM Environmental</b>
Lab Sample Number:	06000600	<b>3048-46</b>
Client Sample Number:	<b>3048-621</b>	<i>DSB Administration Building (Non School Facilities)</i>

#### L-1 White hard chalky powdery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		95% Calcite Filler and Binder
		3% Mineral Fragments
		2% Filler and Binder

Comments:

#### L-2 Pale brown and brown fibrous papery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
	99% Cellulose	1% Filler and Binder

Comments:

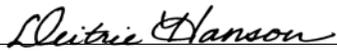
#### L-3 White powdery fibrous material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
	15% Cellulose	80% Talc Filler and Binder
		5% Mineral Fragments

Comments:

Batch Number:	06-0098	<b>ACM Environmental</b>
Lab Sample Number:	06000601	<b>3048-46</b>
Client Sample Number:	<b>3048-622</b>	<i>DSB Administration Building (Non School Facilities)</i>

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/23/2006

  
 Analyzed By: Deitrie Hanson 1/23/2006



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## Bulk Asbestos Fiber Analysis

**L-1 Pale grayish white hard tile material with gray streaks**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 45% Calcite Filler and Binder 40% Mineral Filler and Binder 10% Vinyl Filler and Binder 5% Miscellaneous Particles
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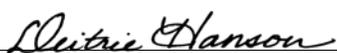
**Comments:**

**L-2 Black resinous mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 80% Asphalt Filler and Binder 15% Resin and Binder 5% Mineral Fragments
--	----------------------------------	--

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/23/2006

  
 \_\_\_\_\_  
 Analyzed By: Deitrie Hanson 1/23/2006



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OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

**ACM Environmental**  
2323 Quebec Street, Suite 211  
Vancouver, BC

Project Location: Provincial Outreach & Adult  
Education

PAI Batch Number: **06-0099**  
Client Job Number: **3048-46**  
Number of Samples: **8**  
Turn Around Time: **10 day**

Batch Number:	06-0099	<b>ACM Environmental</b>
Lab Sample Number:	06000602	<b>3048-46</b>
Client Sample Number:	<b>3048-623</b>	<i>Provincial Outreach &amp; Adult Education</i>

#### L-1 Dark gray granular material with debris

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
80% Mineral Particles  
15% Insect Parts  
5% Miscellaneous Particles

**Comments:**

#### L-2 Green powdery material

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
100% Plant Debris

**Comments:**

#### L-3 Off-white thick pliable rubbery mastic

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
92% Rubber Particles  
8% Paint

**Comments:**

This layer was ashed by lighter flame and no asbestos fibers were detected.

Sampled By: Client  
Received By: John McCaslin 1/18/2006  
Reviewed By: George McCaslin 1/24/2006

Analyzed By: Deitrie Hanson 1/24/2006



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### Bulk Asbestos Fiber Analysis

Batch Number:	06-0099	<b>ACM Environmental</b>
Lab Sample Number:	06000603	<b>3048-46</b>
Client Sample Number:	<b>3048-624</b>	<i>Provincial Outreach &amp; Adult Education</i>

**L-1 Dark pink, pale pink, black, white, and brown speckled opaque pliable sheet vinyl tile material**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	20% Glass Fiber	70% Plastic Particles
		7% Vinyl Filler and Binder
		3% Filler and Binder

**Comments:**

**L-2 Pale yellow resinous mastic**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		95% Resin and Binder
		5% Sand

**Comments:**

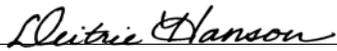
**L-3 Gray fine granular material**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		100% Sand

**Comments:**

Batch Number:	06-0099	<b>ACM Environmental</b>
Lab Sample Number:	06000604	<b>3048-46</b>
Client Sample Number:	<b>3048-625</b>	<i>Provincial Outreach &amp; Adult Education</i>

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/24/2006

  
 Analyzed By: Deitrie Hanson 1/24/2006



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### Bulk Asbestos Fiber Analysis

**L-1 White paint**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 100% Paint

**Comments:**

**L-2 Gray pliable rubbery material**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 90% Rubber Particles  
10% Calcite Filler and Binder

**Comments:**

Batch Number: 06-0099 **ACM Environmental**  
Lab Sample Number: 06000605 **3048-46**  
Client Sample Number: **3048-626** *Provincial Outreach & Adult Education*

**L-1 Pale gray, beige, and white opaque pliable sheet vinyl tile material**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 90% Plastic Particles  
10% Vinyl Filler and Binder

**Comments:**

**L-2 Pale tan fibrous papery backing**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 95% Cellulose 5% Filler and Binder

**Comments:**

Sampled By: Client  
Received By: John McCaslin 1/18/2006  
Reviewed By: George McCaslin 1/24/2006

*Deitrie Hanson*  
Analyzed By: Deitrie Hanson 1/24/2006



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## Bulk Asbestos Fiber Analysis

### L-3 Golden tan opaque brittle mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 90% Resin and Binder 10% Mineral Fragments
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**Comments:**

Batch Number: 06-0099	<b>ACM Environmental</b>
Lab Sample Number: 06000606	<b>3048-46</b>
Client Sample Number: 3048-627	<i>Provincial Outreach &amp; Adult Education</i>

### L-1 Pale taupe paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 100% Paint
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**Comments:**

### L-2 Pale beige opaque pliable rubbery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 85% Resin and Binder 12% Mineral Particles 3% Filler and Binder
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**Comments:**

### L-3 Pale brown fibrous papery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b> 97% Cellulose	<b>Non-Fibrous Components:</b> 3% Filler and Binder
--	--	--

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/24/2006

*Deitrie Hanson*

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Analyzed By: Deitrie Hanson 1/24/2006



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### Bulk Asbestos Fiber Analysis

Batch Number:	06-0099	<b>ACM Environmental</b>
Lab Sample Number:	06000607	<b>3048-46</b>
Client Sample Number:	<b>3048-628</b>	<i>Provincial Outreach &amp; Adult Education</i>

#### L-1 White paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		100% Paint

Comments:

#### L-2 Dark orange fibrous opaque material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
	96% Cellulose	2% Filler and Binder 2% Mineral Fragments

Comments:

Batch Number:	06-0099	<b>ACM Environmental</b>
Lab Sample Number:	06000608	<b>3048-46</b>
Client Sample Number:	<b>3048-629</b>	<i>Provincial Outreach &amp; Adult Education</i>

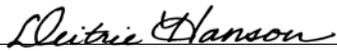
#### Dull black pliable rubbery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		90% Rubber Particles 10% Filler and Binder

Comments:

Batch Number:	06-0099	<b>ACM Environmental</b>
Lab Sample Number:	06000609	<b>3048-46</b>
Client Sample Number:	<b>3048-630</b>	<i>Provincial Outreach &amp; Adult Education</i>

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/24/2006

  
 Analyzed By: Deitrie Hanson 1/24/2006



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 OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

## Bulk Asbestos Fiber Analysis

### L-1 Pale pink and golden tan opaque pliable sheet vinyl tile material

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 90% Plastic Particles 10% Vinyl Filler and Binder
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Comments:

### L-2 Golden tan woven twisted fiber bundles

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 95% Straw 5% Mineral Fragments
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Comments:

### L-3 Golden tan mastic

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 95% Resin and Binder 5% Mineral Fragments
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Comments:

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/24/2006

*Deitrie Hanson*

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Analyzed By: Deitrie Hanson 1/24/2006



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### Bulk Asbestos Fiber Analysis

**ACM Environmental**  
2323 Quebec Street, Suite 211  
Vancouver, BC  
Project Location: Job Club

PAI Batch Number: **06-0100**  
Client Job Number: **3048-46**  
Number of Samples: **8**  
Turn Around Time: **10 day**

Batch Number:	06-0100	<b>ACM Environmental</b>
Lab Sample Number:	06000610	<b>3048-46</b>
Client Sample Number:	<b>3048-631</b>	<i>Job Club</i>

#### L-1 Pale beige paint on off-white paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 100% Paint
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Comments:

#### L-2 White hard chalky powdery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 65% Calcite Filler and Binder 30% Talc Filler and Binder 5% Mineral Fragments
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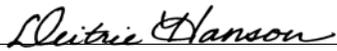
Comments:

#### L-3 Pale gray and white hard granular powdery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 92% Sand 5% Plant Debris 3% Filler and Binder
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Comments:

Sampled By: Client  
Received By: John McCaslin 1/18/2006  
Reviewed By: George McCaslin 1/25/2006

  
Analyzed By: Deitrie Hanson 1/25/2006



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 OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

## Bulk Asbestos Fiber Analysis

Batch Number:	06-0100	<b>ACM Environmental</b>
Lab Sample Number:	06000611	<b>3048-46</b>
Client Sample Number:	<b>3048-632</b>	<i>Job Club</i>

### L-1 Teal paint on black pliable rubbery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		90% Rubber Particles
		10% Calcite Filler and Binder

Comments:

### L-2 White opaque pliable mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		80% Resin and Binder
		15% Calcite Filler and Binder
		5% Mineral Fragments

Comments:

Batch Number:	06-0100	<b>ACM Environmental</b>
Lab Sample Number:	06000612	<b>3048-46</b>
Client Sample Number:	<b>3048-633</b>	<i>Job Club</i>

### L-1 Tan shiny paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		100% Paint

Comments:

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 1/25/2006



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## Bulk Asbestos Fiber Analysis

### L-2 White pliable opaque rubbery thin material

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Rubber Particles
		10% Calcite Filler and Binder

Comments:

### L-3 White woven twisted fiber bundles

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
	95% Cotton	3% Filler and Binder
		2% Mineral Fragments

Comments:

### L-4 White crystalline powdery material

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		80% Calcite Filler and Binder
		12% Perlite
		6% Vermiculite
		2% Mineral Filler and Binder

Comments:

### L-5 Yellow mastic

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Resin and Binder
		10% Mineral Fragments

Comments:

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

*Deitrie Hanson*

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Analyzed By: Deitrie Hanson 1/25/2006



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## Bulk Asbestos Fiber Analysis

### L-6 Dark orange wooden splinter material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	92% Cellulose	5% Resin and Binder
		3% Mineral Fragments

**Comments:**

Batch Number:	06-0100	<b>ACM Environmental</b>
Lab Sample Number:	06000613	<b>3048-46</b>
Client Sample Number:	<b>3048-634</b>	<i>Job Club</i>

### L-1 White paint

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		100% Paint

**Comments:**

### L-2 White pliable crystalline powdery putty-like material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		92% Calcite Filler and Binder
		5% Mineral Fragments
		3% Filler and Binder

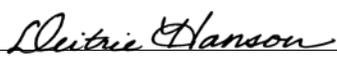
**Comments:**

### L-3 Black dull pliable rubbery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		98% Rubber Particles
		2% Mineral Fragments

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

  
 Analyzed By: Deitrie Hanson 1/25/2006



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

Batch Number:	06-0100	<b>ACM Environmental</b>
Lab Sample Number:	06000614	<b>3048-46</b>
Client Sample Number:	<b>3048-635</b>	<i>Job Club</i>

#### L-1 White paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		100% Paint

Comments:

#### L-2 Pale grayish white opaque fibrous material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
	40% Mineral Wool	20% Perlite
	30% Cellulose	6% Mineral Filler and Binder
		4% Filler and Binder

Comments:

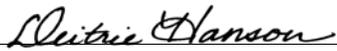
Batch Number:	06-0100	<b>ACM Environmental</b>
Lab Sample Number:	06000615	<b>3048-46</b>
Client Sample Number:	<b>3048-636</b>	<i>Job Club</i>

#### L-1 Dull gray hard tile material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		5% Miscellaneous Particles

Comments:

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

  
 Analyzed By: Deitrie Hanson 1/25/2006



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

**L-2 Black pliable mastic**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Asphalt Filler and Binder
		10% Mineral Particles

Comments:

**L-3 Gray granular material on white fine powdery material**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		65% Sand
		20% Talc Filler and Binder
		10% Mineral Fragments
		5% Filler and Binder

Comments:

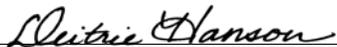
Batch Number: 06-0100	<b>ACM Environmental</b>
Lab Sample Number: 06000616	<b>3048-46</b>
Client Sample Number: <b>3048-637</b>	<b>Job Club</b>

**L-1 Off-white hard tile material with brown thin streaks**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		5% Miscellaneous Particles

Comments:

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

  
 Analyzed By: Deitrie Hanson 1/25/2006



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### Bulk Asbestos Fiber Analysis

**L-2 Yellow opaque pliable mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Resin and Binder
		10% Mineral Fragments

**Comments:**

**L-3 Gray granular material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		95% Sand
		5% Mineral Particles

**Comments:**

**L-4 Black mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Asphalt Filler and Binder
		10% Mineral Particles

**Comments:**

**L-5 White powdery material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Talc Filler and Binder
		10% Mineral Particles

**Comments:**

Batch Number:	06-0100	<b>ACM Environmental</b>
Lab Sample Number:	06000617	<b>3048-46</b>
Client Sample Number:	<b>3048-638</b>	<b>Job Club</b>

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 1/25/2006



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## Bulk Asbestos Fiber Analysis

### L-1 Dull turquoise paint on gray pliable rubbery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 80% Rubber Particles 10% Calcite Filler and Binder 5% Paint 5% Resin and Binder
--	---	--

**Comments:**

### L-2 Yellow transparent sticky mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 100% Resin and Binder
--	---	---

**Comments:**

### L-3 Brown fibrous papery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b> 99% Cellulose	<b>Non-Fibrous Components:</b> 1% Filler and Binder
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**Comments:**

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

*Deitrie Hanson*

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Analyzed By: Deitrie Hanson 1/25/2006



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### Bulk Asbestos Fiber Analysis

**ACM Environmental**  
2323 Quebec Street, Suite 211  
Vancouver, BC  
Project Location: Resource Center

PAI Batch Number: **06-0101**  
Client Job Number: **3048-46**  
Number of Samples: **12**  
Turn Around Time: **10 day**

Batch Number:	06-0101	<b>ACM Environmental</b>
Lab Sample Number:	06000618	<b>3048-46</b>
Client Sample Number:	<b>3048-639</b>	<i>Resource Center</i>

**L-1 Dull pink and dark gray thick pliable sheet vinyl tile material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		85% Plastic Particles
		10% Vinyl Filler and Binder
		5% Resin and Binder

**Comments:**

**L-2 Brown woven twisted fiber bundles**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		95% Straw
		5% Filler and Binder

**Comments:**

Batch Number:	06-0101	<b>ACM Environmental</b>
Lab Sample Number:	06000619	<b>3048-46</b>
Client Sample Number:	<b>3048-640</b>	<i>Resource Center</i>

Sampled By: Client  
Received By: John McCaslin 1/18/2006  
Reviewed By: George McCaslin 1/25/2006

Analyzed By: Deitrie Hanson 1/25/2006



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## Bulk Asbestos Fiber Analysis

**L-1 Bluish gray thick pliable rubbery material**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 65% Plastic Particles 30% Vinyl Filler and Binder 5% Resin and Binder
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**Comments:**

**L-2 Golden tan resinous mastic**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 95% Resin and Binder 3% Mineral Particles 2% Filler and Binder
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**Comments:**

**L-3 Golden tan woven twisted fiber bundles**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 95% Straw 3% Mineral Particles 2% Filler and Binder
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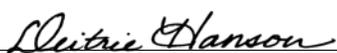
**Comments:**

**L-4 Black resinous mastic**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 90% Asphalt Filler and Binder 5% Mineral Filler and Binder 5% Filler and Binder
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**Comments:**

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

  
 Analyzed By: Deitrie Hanson 1/25/2006



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## Bulk Asbestos Fiber Analysis

Batch Number:	06-0101	<b>ACM Environmental</b>
Lab Sample Number:	06000620	<b>3048-46</b>
Client Sample Number:	<b>3048-641</b>	<i>Resource Center</i>

### L-1 Gray opaque sheet vinyl tile material with large white spots

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Plastic Particles
		10% Vinyl Filler and Binder

Comments:

### L-2 White fibrous papery backing

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>30% Chrysotile</b>	45% Cellulose	20% Talc Filler and Binder
		5% Mineral Fragments

Comments:

### L-3 Golden tan resinous mastic

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Resin and Binder
		10% Mineral Fragments

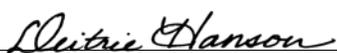
Comments:

### L-4 Golden tan wooden splinter material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	98% Cellulose	2% Filler and Binder

Comments:

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

  
 Analyzed By: Deitrie Hanson 1/25/2006



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### Bulk Asbestos Fiber Analysis

Batch Number:	06-0101	<b>ACM Environmental</b>
Lab Sample Number:	06000621	<b>3048-46</b>
Client Sample Number:	<b>3048-642</b>	<i>Resource Center</i>

**L-1 Pale brown and white streaked hard tile material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		5% Filler and Binder

**Comments:**

**L-2 Black resinous mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		96% Asphalt Filler and Binder
		4% Mineral Fragments

**Comments:**

Batch Number:	06-0101	<b>ACM Environmental</b>
Lab Sample Number:	06000622	<b>3048-46</b>
Client Sample Number:	<b>3048-643</b>	<i>Resource Center</i>

**L-1 Black pliable rubbery material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Rubber Particles
		10% Calcite Filler and Binder

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 1/25/2006



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### Bulk Asbestos Fiber Analysis

**L-2 White opaque pliable mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Resin and Binder
		10% Calcite Filler and Binder

**Comments:**

**L-3 Off-white paint**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		100% Paint

**Comments:**

**L-4 White crystalline powdery material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		85% Calcite Filler and Binder
		12% Perlite
		3% Mineral Fragments

**Comments:**

Batch Number: 06-0101	<b>ACM Environmental</b>
Lab Sample Number: 06000623	<b>3048-46</b>
Client Sample Number: <b>3048-644</b>	<i>Resource Center</i>

**L-1 Pale beige pliable thin vinyl material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		100% Vinyl Filler and Binder

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 1/25/2006



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### Bulk Asbestos Fiber Analysis

#### L-2 Off-white and brown fibrous papery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	98% Cellulose	2% Filler and Binder

**Comments:**

Batch Number:	06-0101	<b>ACM Environmental</b>
Lab Sample Number:	06000624	<b>3048-46</b>
Client Sample Number:	<b>3048-645</b>	<i>Resource Center</i>

#### Gray pliable rubbery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		95% Rubber Particles
		5% Mineral Fragments

**Comments:**

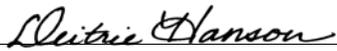
Batch Number:	06-0101	<b>ACM Environmental</b>
Lab Sample Number:	06000625	<b>3048-46</b>
Client Sample Number:	<b>3048-646</b>	<i>Resource Center</i>

#### L-1 Pale gray and brown thick pliable rubbery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		80% Rubber Particles
		15% Calcite Filler and Binder
		5% Vinyl Filler and Binder

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

  
 Analyzed By: Deitrie Hanson 1/25/2006



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### Bulk Asbestos Fiber Analysis

**L-2 Brown woven twisted thick fiber bundles**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Straw
		5% Filler and Binder
		5% Mineral Fragments

**Comments:**

Batch Number: 06-0101	<b>ACM Environmental</b>
Lab Sample Number: 06000626	<b>3048-46</b>
Client Sample Number: 3048-647	<i>Resource Center</i>

**L-1 Pale pinkish white pliable paint**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		100% Paint

**Comments:**

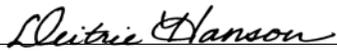
**L-2 White opaque pliable material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Paint
		10% Resin and Binder

**Comments:**

Batch Number: 06-0101	<b>ACM Environmental</b>
Lab Sample Number: 06000627	<b>3048-46</b>
Client Sample Number: 3048-648	<i>Resource Center</i>

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

  
 Analyzed By: Deitrie Hanson 1/25/2006



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## Bulk Asbestos Fiber Analysis

**L-1 Dark golden tan opaque brittle mastic**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 90% Resin and Binder 10% Mineral Particles
---	---	---

**Comments:**

**L-2 White crystalline powdery material**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 87% Calcite Filler and Binder 10% Perlite 3% Filler and Binder
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**Comments:**

**L-3 Dark golden tan opaque brittle mastic**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 95% Resin and Binder 5% Mineral Fragments
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**Comments:**

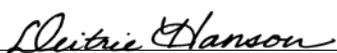
**L-4 Orange wooden splinter material**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b> 97% Cellulose	<b>Non-Fibrous Components:</b> 3% Resin and Binder
---	--	---

**Comments:**

Batch Number:	06-0101	<b>ACM Environmental</b>
Lab Sample Number:	06000628	<b>3048-46</b>
Client Sample Number:	<b>3048-649</b>	<i>Resource Center</i>

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/25/2006

  
 \_\_\_\_\_  
 Analyzed By: Deitrie Hanson 1/25/2006



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OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

**L-1 Pale pinkish white pliable paint**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 100% Paint

**Comments:**

**L-2 White crystalline powdery material**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 90% Calcite Filler and Binder  
5% Vermiculite  
5% Mineral Fragments

**Comments:**

**L-3 Pale tan fibrous papery material**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 97% Cellulose 3% Filler and Binder

**Comments:**

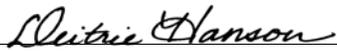
Batch Number:	06-0101	<b>ACM Environmental</b>
Lab Sample Number:	06000629	<b>3048-46</b>
Client Sample Number:	<b>3048-650</b>	<i>Resource Center</i>

**L-1 Pale pinkish white pliable paint**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 100% Paint

**Comments:**

Sampled By: Client  
Received By: John McCaslin 1/18/2006  
Reviewed By: George McCaslin 1/25/2006

  
Analyzed By: Deitrie Hanson 1/25/2006



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## Bulk Asbestos Fiber Analysis

### L-2 White crystalline powdery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		80% Calcite Filler and Binder
		15% Perlite
		5% Vermiculite

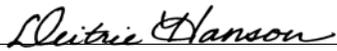
**Comments:**

### L-3 Off-white and green fibrous papery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
	97% Cellulose	3% Filler and Binder

**Comments:**

Sampled By: Client  
Received By: John McCaslin 1/18/2006  
Reviewed By: George McCaslin 1/25/2006

  
Analyzed By: Deitrie Hanson 1/25/2006



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### Bulk Asbestos Fiber Analysis

**ACM Environmental**  
2323 Quebec Street, Suite 211  
Vancouver, BC  
Project Location: Tilbury Maintenance

PAI Batch Number: **06-0097**  
Client Job Number: **3048-46**  
Number of Samples: **7**  
Turn Around Time: **10 day**

Batch Number:	06-0097	<b>ACM Environmental</b>
Lab Sample Number:	06000590	<b>3048-46</b>
Client Sample Number:	<b>3048-611</b>	<i>Tilbury Maintenance</i>

#### L-1 White paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		100% Paint

Comments:

#### L-2 Pale tan fibrous opaque material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
	55% Cellulose 35% Mineral Wool	15% Perlite 5% Filler and Binder

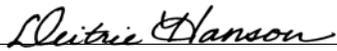
Comments:

#### L-3 White powdery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		92% Clay Filler and Binder 5% Mineral Particles 3% Filler and Binder

Comments:

Sampled By: Client  
Received By: John McCaslin 1/18/2006  
Reviewed By: George McCaslin 1/20/2006

  
Analyzed By: Deitrie Hanson 1/20/2006



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

Batch Number:	06-0097	<b>ACM Environmental</b>
Lab Sample Number:	06000591	<b>3048-46</b>
Client Sample Number:	<b>3048-612</b>	<i>Tilbury Maintenance</i>

#### L-1 Pale beige paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 100% Paint
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Comments:

#### L-2 Pale gray paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 100% Paint
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Comments:

#### L-3 White crystalline powdery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 95% Calcite Filler and Binder 3% Mineral Particles 2% Filler and Binder
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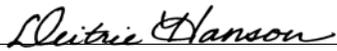
Comments:

#### L-4 Off-white thick hard chalky crystalline material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 95% Calcite Filler and Binder 3% Mineral Fragments 2% Filler and Binder
--	----------------------------------	--

Comments:

Sampled By: Client  
Received By: John McCaslin 1/18/2006  
Reviewed By: George McCaslin 1/20/2006

  
Analyzed By: Deitrie Hanson 1/20/2006



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## Bulk Asbestos Fiber Analysis

Batch Number:	06-0097	<b>ACM Environmental</b>
Lab Sample Number:	06000592	<b>3048-46</b>
Client Sample Number:	<b>3048-613</b>	<i>Tilbury Maintenance</i>

### L-1 White paint spots

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 100% Paint
--	----------------------------------	---------------------------------------

Comments:

### L-2 Transparent brittle coating material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 100% Resin and Binder
--	----------------------------------	--

Comments:

### L-3 Dull turquoise hard tile material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 45% Calcite Filler and Binder 40% Mineral Particles 10% Vinyl Filler and Binder 5% Miscellaneous Particles
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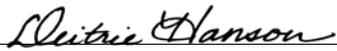
Comments:

### L-4 Black mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 90% Asphalt Filler and Binder 5% Mineral Particles 5% Filler and Binder
--	----------------------------------	--

Comments:

Sampled By: Client  
Received By: John McCaslin 1/18/2006  
Reviewed By: George McCaslin 1/20/2006

  
Analyzed By: Deitrie Hanson 1/20/2006





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**Bulk Asbestos Fiber Analysis**

**L-3 Black mastic**

<b>Asbestos Fibrous Components:</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
3% Chrysotile		90% Asphalt Filler and Binder
		5% Mineral Particles
		2% Miscellaneous Particles

**Comments:**

**(no layer exists for analysis)**

<b>Asbestos Fibrous Components:</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
-------------------------------------	---	--------------------------------

**Comments:**

**(no layer exists for analysis)**

<b>Asbestos Fibrous Components:</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
-------------------------------------	---	--------------------------------

**Comments:**

**(no layer exists for analysis)**

<b>Asbestos Fibrous Components:</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
-------------------------------------	---	--------------------------------

**Comments:**

**(no layer exists for analysis)**

<b>Asbestos Fibrous Components:</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
-------------------------------------	---	--------------------------------

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/20/2006

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 1/20/2006



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### Bulk Asbestos Fiber Analysis

Batch Number:	06-0097	<b>ACM Environmental</b>
Lab Sample Number:	06000594	<b>3048-46</b>
Client Sample Number:	<b>3048-615</b>	<i>Tilbury Maintenance</i>

#### L-1 White hard crystalline powdery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		92% Calcite Filler and Binder
		5% Mineral Particles
		3% Filler and Binder

Comments:

#### L-2 Brown fibrous papery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
	99% Cellulose	1% Filler and Binder

Comments:

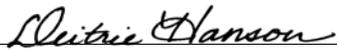
#### L-3 Pale grayish white fine powdery fibrous material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
	15% Cellulose	80% Talc Filler and Binder
		5% Mineral Particles

Comments:

Batch Number:	06-0097	<b>ACM Environmental</b>
Lab Sample Number:	06000595	<b>3048-46</b>
Client Sample Number:	<b>3048-616</b>	<i>Tilbury Maintenance</i>

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/20/2006

  
 Analyzed By: Deitrie Hanson 1/20/2006



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## Bulk Asbestos Fiber Analysis

### Dull gray pliable rubbery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Rubber Particles
		10% Calcite Filler and Binder

**Comments:**

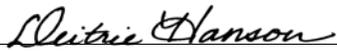
Batch Number:	06-0097	<b>ACM Environmental</b>
Lab Sample Number:	06000596	<b>3048-46</b>
Client Sample Number:	<b>3048-617</b>	<i>Tilbury Maintenance</i>

### Dull pale gray fibrous opaque material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	88% Mineral Wool	10% Mineral Particles
	2% Cellulose	

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 1/18/2006  
 Reviewed By: George McCaslin 1/20/2006

  
 Analyzed By: Deitrie Hanson 1/20/2006

**APPENDIX B**  
**Photographs**



12" Grey vinyl floor tiles with asbestos containing mastic (adjacent non-asbestos blue VFT) – Tilbury Maintenance building



Asbestos containing yellow flooring in Delview Learning Centre washroom

**ENERGY SYSTEM SERVICE AGREEMENT**

**SOUTH DELTA SECONDARY SCHOOL**

**THIS AGREEMENT** dated for reference the 26<sup>th</sup> day of September, 2011.

**BETWEEN:**

**THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 37 (DELTA)**  
a corporation established under the School Act R.S.B.C. 1996, c. 412 having an  
office at 4585 Harvest Drive, Delta, British Columbia, V4K 5B4

(the "District")

OF THE FIRST PART

**AND:**

**FORTISBC ENERGY INC.,** a company duly incorporated under the laws of the  
Province of British Columbia, having its registered office at 10th Floor, 1111  
West Georgia Street, Vancouver, B.C. V6E 4M3

("FEI")

OF THE SECOND PART

**WHEREAS:**

- A. The District is the owner of South Delta Secondary School (the "Building") and lands located at 750, 53<sup>rd</sup> Street, Delta, British Columbia, which lands are legally described as:

PID: 002-789-531 Property No: 135857

TIMBER LOT 32 EXCEPT FIRSTLY PART DEDICATED ROAD ON PLAN 77961  
SECONDLY PART SUBDIVIDED BY PLAN BCP6277 THIRDLY PART  
DEDICATED ROAD ON PLAN BCP6280 SECTION 3 TOWNSHIP 5 NEW  
WESTMINSTER DISTRICT

(the "Lands")

- B. FEI wishes to supply to the Building, and the District wishes to purchase, Thermal Energy generated by an Energy System that FEI will construct on the Lands, and which FEI will own and operate, all pursuant to the terms of this Agreement.
- C. The Thermal Energy supplied by FEI to the Building pursuant to this Agreement will be priced at the rate set forth in the Energy System Rate Development Agreement between the Parties dated September 26<sup>th</sup>, 2011.

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT** in consideration of the premises and the covenants, agreements, representations, warranties and payments set out herein, the receipt and sufficiency of which is hereby acknowledged by each Party, the Parties covenant and agree as follows:

## **ARTICLE 1 - INTERPRETATION**

### 1.1 DEFINITIONS

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

- (a) “Adjusted Energy System Purchase Price” means, as of the date on which a purchase of the Energy System pursuant to Article 15 is effective, either:
  - (i) the Rate Base Value; or
  - (ii) such other purchase price for the Energy System as is determined by the BCUC; plus all applicable taxes;
- (b) “Affiliate” has the meaning set out in the *Business Corporation Act*, S.B.C. 2002, c.57 and includes FortisBC Inc.;
- (c) “Agreement” means this agreement, including the preamble hereto and any schedules attached hereto and the terms “this Agreement”, “hereof”, “herein”, “hereunder” and “hereinafter” and similar expressions refer to the Agreement and not to any particular Section or other portion thereof and includes any agreement supplementary or ancillary thereto;
- (d) “Acceptance Date” means the date of BCUC Acceptance;
- (e) “BCUC” means the British Columbia Utilities Commission, or any successor thereto;
- (f) “BCUC Acceptance” has the meaning assigned to that term in Section 11.1;
- (g) “Building” has the meaning assigned to that term on page one of this Agreement;
- (h) “Building System” means the space heating, cooling and ventilation, and domestic hot water distribution and control systems existing in the Building, to which the Energy System will be connected;
- (i) “Business Day” means any day except Saturday and Sunday or any day on which banks are generally not open for business in Vancouver, British Columbia;
- (j) “Capital Contribution” means \$ 402,000;
- (k) “Commissioned” means once the Energy System is certified complete and operating in accordance with the Specifications by a professional engineer under seal;

- (l) “Commission Date” means the day on which the Energy System is Commissioned;
- (m) “Contaminants” means, collectively, any contaminant, toxic substance, dangerous good, or pollutant or any other substance which when released to the natural environment is likely to cause, at some immediate or future time, material harm or degradation to the natural environment or material risk to human health, and includes any radioactive materials, asbestos materials, urea formaldehyde, underground or aboveground tanks, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive or toxic substances, hazardous waste or waste of any kind, pesticides, defoliants, or any other solid, liquid, gas, vapour, odour or any other substance .the storage, manufacture, disposal, handling, treatment, generation, use, transport, remediation or Release into the Environment of which is now or hereafter prohibited, controlled or regulated under Environmental Laws;
- (n) “Continuing Service Interruption Notice” has the meaning assigned to that term in Section 14.3(b);
- (o) “Contractor” means a prime contractor hired by FEI to oversee and complete the construction and installation of the Energy System;
- (p) “Design and Construction” means the total construction and related services required to design, construct and commission the Energy System and connected components of the Building System;
- (q) “Design Thermal Energy” means the maximum amount of Thermal Energy that the Energy System is capable of delivering through the Thermal Energy Meter and is included in the Specifications;
- (r) “Disclosed Contaminants” means Contaminants:
  - (i) the existence of which are specifically identified in the reports provided by the District to FEI and listed in Schedule C;
  - (ii) that were or ought to have been discovered, foreseen or anticipated upon reasonable inspection by FEI prior to the Effective Date; and
  - (iii) that were caused by FEI or any person for whom FEI is responsible at law;
- (s) “District” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (t) “District Losses” has the meaning assigned to that term in Section 12.6;
- (u) “District Site Rules for Contractors” means the rules set forth in Schedule “B”;
- (v) “Effective Date” means the date set out on page one of this Agreement;
- (w) “Energy System” means the equipment that FEI constructs and owns which will provide the Building with its energy needs for space heating, cooling and ventilation, and domestic hot water use, all as set forth in this Agreement;

- (x) “Energy System Service Agreement” has the meaning assigned to that term in the Energy System Rate Development Agreement;
- (y) “Energy System Rate Development Agreement” means that energy system rate development agreement between the District and FEI dated as of September 26<sup>th</sup>, 2011;
- (z) “Environment” includes the air (including all layers of the atmosphere), land (including soil, sediment deposited on land, fill, lands submerged under water, buildings, and improvements), water (including oceans, lakes, rivers, streams, groundwater, and surface water), and all other external conditions and influences under which humans, animals, and plants live or are developed and “Environmental” will have a corresponding meaning;
- (aa) “Environmental Attributes” means:
  - (i) all attributes associated with, or that may be derived from the Energy System installed having decreased environmental impacts relative to the use of conventional heating and cooling and hot water heating systems including any existing or future credit, allowance, certificate, right, benefit or advantage or proprietary or contractual right whether or not tradable;
  - (ii) any existing or future instrument, including without limitation any environmental emission allowances and environmental emission reduction credits, reduction right, allowance, certificate or other unit of any kind whatsoever, whether or not tradable and any other proprietary or contractual right, whether or not tradable, and any resulting from, or otherwise related to the actual assumed reduction, displacement or offset of emissions associated with, or that may be derived from the Energy System installed; and
  - (iii) all revenues, entitlement, benefits and other proceeds arising from or related to the foregoing;
- (bb) “Environmental Laws” means any and all statutes, laws, regulations, orders, bylaws, standards, guidelines, protocols, permits, and other lawful requirements of any Governmental Authority having jurisdiction over the Lands or the Energy System now or hereafter in force with respect in any way to the Environment, environmental assessment, health, occupational health and safety, protection of any form of plant or animal life, or transportation of dangerous goods, including the principles of common law and equity;
- (cc) “Expiry Date” means the earlier of:
  - (i) June 30, 2031, or the expiry of any renewal term thereof; and
  - (ii) the closure of the Building, or the Building otherwise ceasing to operate as a school (as defined under the *School Act* (British Columbia));
- (dd) “FEI” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (ee) “FEI Losses” has the meaning assigned to that term in Section 12.5;

- (ff) “Force Majeure” has the meaning assigned to that term in Section 17.2;
- (gg) “Governmental Authority” means any federal, provincial, regional, municipal, local or other government, governmental or public department, court, tribunal, arbitral body, commission, board, bureau or agency and any subdivision, agent, commission, board or authority thereof;
- (hh) “Lands” has the meaning assigned to that term in Recital A and includes the Building located on the Lands;
- (ii) “Laws” means laws, statutes, regulations, bylaws, Permits and orders of any Governmental Authority having jurisdiction, including without limitation, Environmental Laws;
- (jj) “Maintain” means to operate, service and maintain in a safe and reliable condition and “maintaining” and “maintenance” have corresponding meanings;
- (kk) “Monthly Charges” means that amount to be paid by the District to FEI with respect to the delivery of Thermal Energy to the Building pursuant to the Energy System Rate Development Agreement and any other payments due and owing by the District under this Agreement;
- (ll) “Notifying Party” has the meaning assigned to that term in Section 16.1;
- (mm) “Party” means a signatory to this Agreement, and the “Parties” means all of such signatories;
- (nn) “Permits” means all permits, licences, certificates, approvals, authorizations, consents and the like issued by any Governmental Authority;
- (oo) “Rate Base Value” means the value of the Energy System that the BCUC accepts from time to time in accordance with the Energy System Rate Development Agreement;
- (pp) “Release” includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, migration, disposal, or dumping;
- (qq) “Right of Access and Licence” means the right and licence granted herein by the District to FEI pursuant to Section 4.1 of this Agreement;
- (rr) “Service Failure Notice” has the meaning assigned to that term in Section 14.3(c);
- (ss) “Service Interruption” means, in any hour:
  - (i) a failure of the Energy System in that hour to deliver Thermal Energy at the Thermal Energy Meter sufficient to meet the Thermal Energy demand of the Building during that hour in accordance with the Specifications up to the Design Thermal Energy, and except where such failure is directly caused by:
    - a. the careless or wilful damage to the Energy System by the District or its agents or other persons for whom the District is responsible;

- b. damage caused to the Energy System as a result of the negligent acts or omissions of the District, its agents or those for whom in law the District is responsible;
  - c. an event of Force Majeure that triggers the suspension of FEI's obligations under the Agreement pursuant to Article 17; or
  - d. maintenance activities that FEI is performing on the Energy System that have been scheduled with the consent of the District (such consent not to be unreasonably withheld); and
- (ii) if the failure described in Section 1.1(rr)(i), FEI's failure in that hour to deliver to the Building through alternative means thermal energy sufficient to maintain an average temperature of 16 degrees Celsius in each room of the Building intended to be served by the Energy System (all as determined by the District, acting reasonably);
- (tt) "Service Interruption Notice" has the meaning assigned to that term in Section 14.3(a);
- (uu) "Services" means those services to be provided by FEI to supply Thermal Energy to a Building from an Energy System, and for greater certainty includes the services described in Articles 5 and 6, and excludes the Design and Construction;
- (vv) "Specifications" means the specifications for the Energy System prepared by FEI in consultation with the District in accordance with Section 2.3 and includes the Design Thermal Energy;
- (ww) "Term" has the meaning assigned to that term in Section 3.1;
- (xx) "Thermal Energy" means the amount of energy that FEI provides to the Building measured through a Thermal Energy Meter;
- (yy) "Thermal Energy Meter" means a device that complies with the International Organization of Legal Metrology recommendations for measuring thermal energy; and
- (zz) "UCA" means the *Utilities Commission Act*, R.S.B.C. 1996, c. 473 as may be amended from time to time.

## 1.2 SCHEDULES

The following Schedules, as may be amended from time to time, are incorporated by reference into this Agreement:

Schedule "A"	Energy System Description
Schedule "B"	Delta School District Site Rules for Contractors
Schedule "C"	List of Environmental Reports

### 1.3 AMENDMENTS TO SCHEDULES

The District and FEI acknowledge that during the construction phase of the Energy System there may be additions and alterations to the Specifications for the Energy System which would result in more efficient use and operation of the Energy System. If these additions or alterations result in changes to any of the above Schedules, the Parties mutually agree to amend the Schedules by way of a written amendment prior to the Commission Date.

### 1.4 INTERPRETATION

Except where the context requires otherwise or except as otherwise expressly provided, in this Agreement:

- (a) all references to a designated Article or Section are to the designated Article or Section of this Agreement unless otherwise specifically stated;
- (b) the singular of any term includes the plural, and vice versa, and the use of any term is equally applicable to any gender and, where applicable, body corporate;
- (c) any reference to a corporate entity includes and is also a reference to any corporate entity that is a successor by merger, amalgamation, consolidation or otherwise to such entity;
- (d) the preamble and all schedules referred to and attached to this Agreement are incorporated by reference and will form a part of this Agreement;
- (e) all sums of money which are referred to in this Agreement are in lawful money of Canada;
- (f) the headings of the Articles and Sections set out in this Agreement are for convenience only and will not be considered in any interpretation of this Agreement;

## **ARTICLE 2 - DESIGN AND CONSTRUCTION OF THE ENERGY SYSTEM**

### 2.1 CONSTRUCTION

FEI will perform the Design and Construction:

- (a) in accordance and in compliance with the Specifications;
- (b) in a good and workmanlike manner using qualified workers, and in accordance with sound and currently accepted industry standards and codes of practice normally employed, at the time and place of performance, in projects of a similar type and nature;
- (c) to ensure operational compatibility with the Building System;
- (d) in a safe and environmentally sound manner, and in accordance with all applicable Laws; and
- (e) in accordance with the terms of this Agreement.

## 2.2 CAPITAL CONTRIBUTION

The District will pay to FEI within 30 days of the Commission Date the Capital Contribution for the purpose of reducing the capital investment and the associated carrying cost of capital by FEI for provision of Service to the Building.

## 2.3 SPECIFICATIONS

Subject to and in accordance with this Section 2.3, FEI shall prepare and complete the Specifications promptly following the Acceptance Date.

FEI confirms the Energy System, as described in the Specifications and as contemplated by the Energy System description set out in Schedule A, will be designed to meet the thermal energy requirements of the Building and operational compatibility of the Building System based in part on information supplied by the District as to historical usage, which information has not been independently verified by FEI. FEI shall have no liability to the District for the failure of the Energy System to satisfy the requirements of the Building where such failure is attributable to the information supplied by the District being incorrect, inaccurate or incomplete.

FEI will prepare the Specifications in consultation with the District in order to ensure the Energy System can be appropriately accommodated within the Building and interface with the Building Systems. FEI will submit material changes to the Specifications, both before and during construction, to the District for review and comment prior to such changes taking place. If the District does not comment on the Specifications or material changes to the Specifications or advise that it has no comment within five (5) Business Days of receipt, FEI will be entitled to proceed on the basis of the information provided to the District. FEI will revise the Specifications based on the comments from the District provided that doing so will not impact FEI's costs or adversely affect system performance.

Review of and comment on the Specifications by the District does not impose any obligation on the District to verify the suitability of the Energy System or be construed as confirmation by the District that the Energy System satisfactorily meets the Building's energy requirements.

## 2.4 WORK SCHEDULE

Within ten (10) Business Days following the Acceptance Date, FEI will submit to the District for review and comment a Gantt chart schedule for the Design and Construction listing activities to be undertaken during the Design and Construction stages, key milestones and approval dates and other pertinent dates. Any revisions to the schedule must be reviewed and commented by the District, which review and comment will not be unreasonably withheld, conditioned or delayed.

In order to ensure that the Building System remains operational during normal school hours (as defined in Schedule B), the cut-over from the existing heating/cooling plant to the Energy System shall be performed outside normal school hours.

## 2.5 REPORTING

FEI shall produce and submit a monthly progress report for the Design and Construction to the District until the Energy System is Commissioned.

## 2.6 TESTING AND COMMISSIONING

FEI shall coordinate and supervise the start-up and testing of the Energy System to ensure the Energy System and other components of the Building System affected by the Design and Construction are operating in accordance with the Specifications, upon which the Energy System will be Commissioned. The District shall be invited to participate in the start-up and testing exercise.

# ARTICLE 3 - TERM AND RENEWAL

## 3.1 TERM

The term of this Agreement commences on the Effective Date and continues until the Expiry Date unless it is terminated earlier as authorized under this Agreement ("Term").

## 3.2 RENEWAL

This Agreement will automatically renew for periods of ten (10) years unless either Party provides written notice to the other Party no less than six (6) months prior to the Expiry Date, provided that there shall be no automatic renewal in the event that the Expiry Date arises as a result of the closure of the Building, or the Building otherwise ceases to operate as a school (as defined under the *School Act* (British Columbia)).

# ARTICLE 4 - ACCESS AND PERMITS

## 4.1 ACCESS RIGHTS

The District hereby grants to FEI, during the Term from and following the Acceptance Date, for so long as FEI shall require it, but subject to Section 4.4, a full, free and uninterrupted licence and right of way on, over and under the Lands and Building, for FEI, its assigns, employees, contractors, agents, invitees and licensees at all times hereafter for the purposes set out in this Agreement, provided FEI will avoid to the extent reasonably possible, and otherwise minimize interference with and inconvenience to, the occupants of the Building and the access rights of FEI will be limited to the extent reasonably necessary to fulfil FEI's obligations hereunder.

Without limiting the generality of the foregoing, but subject to Section 4.4, such right of way and licence shall include the full power, right and liberty to excavate for, install, place, construct, renew, alter, repair, maintain, operate, use, abandon, remove or replace its infrastructure, in whole or in part, and to enter upon, along, across, over or under the Lands or Building and have continual access to the Energy System, with or without vehicles, supplies, machinery or equipment, for any of the purposes set out in this Agreement, and to clear such portion of the Lands and keep it cleared of obstructions which, in the opinion of FEI, acting reasonably, may

interfere with any of the rights granted to FEI herein. The District may direct, in its discretion, FEI to use alternate routing for any Environmental or other reasonable purpose.

FEI covenants and agrees with the District not to do or knowingly permit to be done anything which may, in the opinion of the District acting reasonably, damage or interfere with the Building or impair the operating efficiency thereof or create any hazard.

#### 4.2 CONDITION OF LAND

The District represents and warrants to FEI that as of the Effective Date:

- (a) to the best of the District's knowledge, the Lands are free of Contaminants other than those specifically identified in the reports provided by the District to FEI and listed in Schedule C; and
- (b) there are no actions, proceedings, investigations, claims (including remediation cost recovery claims) pending, or to the knowledge of the District, threatened, that would interfere with FEI's access rights pursuant to Section 4.1.

#### 4.3 PERMITS

FEI will obtain and maintain at its own expense all Permits necessary for the Design and Construction and the Services.

#### 4.4 SAFETY, SECURITY AND BUILDING ACCESS

Notwithstanding anything to the contrary in this Agreement, FEI will adhere, and will cause all persons for whom it is responsible under this Agreement (including, without limitation, the Contractor) to adhere to the District Site Rules for Contractors.

#### 4.5 REMEDIATION

FEI shall promptly remediate any Disclosed Contaminants on the Lands as required by applicable Law that result from, or are Released as a result of the Design and Construction or the Services, except to the extent caused or contributed to by the District's negligence. In the event that Contaminants on the Lands, other than Disclosed Contaminants, are discovered by FEI, FEI will promptly notify the District of such discovery and the Parties will review the impact of such discovery, if any, on the Design and Construction or the Services.

### **ARTICLE 5 - SERVICE PROVISION**

#### 5.1 PROVISION OF SERVICE

Subject to the terms and conditions of the Agreement, FEI will provide the Services to the District throughout the Term.

## 5.2 SERVICE MONITORING AND REVIEW

The Parties acknowledge that FEI may be required from time to time to prepare and submit reports to the BCUC concerning the operation and performance of the Energy System, and the District shall provide FEI with reasonable cooperation in relation to the preparation of such reports.

## 5.3 STANDARD OF PERFORMANCE

In performing the Services, FEI will:

- (a) use only qualified personnel and exercise the same degree of care, skill and supervision as would be exercised by a reasonable and prudent owner experienced in performing like services;
- (b) perform the Services in accordance with all applicable Laws;
- (c) perform the Services in accordance with ongoing industry standards and codes of practice; and
- (d) without limiting the effect of the foregoing, abide by any standards of performance in relation to the Services that the BCUC may set from time to time according to the provisions of the UCA.

## 5.4 INTERRUPTION

No interruption of any of the on-site and off-site services, utilities and amenities provided by FEI to the Building will, except to the extent, if any, caused by any wrongful or negligent act of FEI or any person for whom FEI is responsible at law, render FEI liable to the District or any person claiming through or under the District, or relieve the District from any of its obligations under this Agreement. Notwithstanding the foregoing, FEI will use all reasonable diligence to remedy any such interruption if it is within its power and obligation to do so.

# **ARTICLE 6 - ENERGY SYSTEM MAINTENANCE AND OPERATION**

## 6.1 MAINTENANCE AND REPAIR OF ENERGY SYSTEM

Subject to Section 6.2, FEI will perform the Services and otherwise maintain or cause to be maintained and repaired the Energy System throughout the Term:

- (a) in accordance with the Energy System design and operating specifications and requirements as established by the qualified engineers engaged by FEI in the design and construction of the Energy System, and the equipment manufacturers;
- (b) in a good and workman-like manner using qualified workers, and in accordance with sound and currently accepted industry standards and codes of practice normally employed, at the time and place of performance, in projects of a similar type and nature;
- (c) to ensure operational compatibility with the Building System;

- (d) in a safe and environmentally sound manner, and in accordance with all applicable Laws; and
- (e) in accordance with the terms of this Agreement.

FEI will not delay repair of the Energy System for any reason, including as a result of a dispute with the District in relation to the costs and expenses of repair pursuant to Section 6.2.

## 6.2 REPAIR DAMAGE

The District will be responsible for all costs and expenses incurred by FEI in respect of any damage to the Energy System caused by or resulting from:

- (a) the careless or wilful damage to the Energy System by the District or its agents or other persons for whom at law the District is responsible; or
- (b) damage caused to the Energy System as a result of the negligent acts or omissions of the District, its agents or those for whom in law the District is responsible.

## **ARTICLE 7 - CHARGES**

### 7.1 MONTHLY CHARGES

The District throughout the Term commencing on the Commission Date in accordance with this Article 7 will pay to FEI when due for the Thermal Energy that FEI delivers and meters to the Building according to the rates set out in the Energy System Rate Development Agreement plus all applicable taxes (including harmonized sales tax applicable thereon) and any imposed taxes levied after the Commission Date by a government or regulatory agency that are related to the Energy System (including, but not limited to capital taxes or royalties) and any other payments due and owing by the District under this Agreement.

### 7.2 MONTHLY STATEMENT

FEI will, within 15 days following the end of each month, deliver to the District a statement setting out the Monthly Charges including all applicable taxes payable for that month.

### 7.3 PAYMENT

The District will pay the full amount specified in each statement provided to it in accordance with Section 7.2 within 30 days of receipt of such statement. All amounts payable to FEI will be made by cheque mailed to FEI at its address for service specified in Section 20.5.

### 7.4 PAYMENT DUE

Subject to Section 14.1, the obligation of the District to pay the Monthly Charges continues whether or not the Energy System is being used to provide the Building with its energy needs for space and ventilation heating, cooling and domestic hot water use.

#### 7.5 ARREARS TO BEAR INTEREST

If any amount owing to FEI or the District is not paid on or before the date on which it is due, a late payment charge of 1.5% per month will be assessed each month on all outstanding balances not paid by the due date.

### **ARTICLE 8 - OWNERSHIP OF THE ENERGY SYSTEM**

Notwithstanding the payments made by the District to FEI under this Article 8, any provision of this Agreement, any degree of annexation or affixation, or rule of law or equity to the contrary the District will have no proprietary interest in the Energy System which is, and shall remain, the property of FEI and may be used by FEI in its business or removed in whole or in part as it may see fit, and for any of such purposes, and FEI may enter in, upon and under all the Lands for the purposes of the maintenance, renewals, repair, removal or operation of the Energy System or any part thereof; provided that FEI shall not leave any part of the Energy System in such a state as to constitute a nuisance or a danger to the public through neglect, non-use and want of repair, and provided further that nothing in this clause shall nullify or otherwise impact or invalidate in any way the District's rights under Article 15 to purchase the Energy System.

### **ARTICLE 9 - ENVIRONMENTAL ATTRIBUTES**

#### 9.1 ENVIRONMENTAL ATTRIBUTES

All right, title and interest now existing or which may exist at any time in the future in the potential or actual commercial value of any Environmental Attributes that arise or accrue by virtue of the construction and operation of the Energy System will belong to the District. At the request of the District, FEI will reasonably cooperate with the District in applying for and assigning any Environmental Attributes to the District.

#### 9.2 GRANTS

Any grants from any Governmental Authority, a Crown Corporation or non-governmental authority that may be derived from a reduction in energy consumption by the Building will belong to the District.

### **ARTICLE 10 - REPRESENTATIONS AND WARRANTIES**

#### 10.1 DISTRICT'S REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties contained in this Agreement, the District hereby represents and warrants to FEI as follows and acknowledges that FEI is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) the District has the full right, power and authority to enter into this Agreement;

- (b) all necessary action on the part of the District has been taken to authorize and approve the execution and delivery of this Agreement and the performance by the District of its obligations hereunder;
- (c) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to the District as of the date of this Agreement;
- (d) the District is not party to any action, suit or legal proceeding, actual or, to the knowledge of the District, threatened, and there are no circumstances, matters or things known to the District which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or, to the knowledge of the District, threatened against the District before or by any Governmental Authority, which could affect the District's ability to perform its obligations under this Agreement; and
- (e) no person, firm or corporation has or will have as of the Commission Date, any agreement, right, or option or right capable of becoming an agreement, right, or option for the purchase or acquisition of the Energy System.

## 10.2 FEI'S REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties contained in this Agreement, FEI hereby represents and warrants to the District as follows and acknowledges that the District is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) FEI has the full right, power and authority to enter into this Agreement;
- (b) all necessary corporate action on the part of FEI has been taken to authorize and approve the execution and delivery of this Agreement and the performance by FEI of its obligations hereunder;
- (c) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to FEI as of the date of this Agreement;
- (d) FEI is not party to any action, suit or legal proceeding, actual or threatened, and there are no circumstances, matters or things known to FEI which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or threatened against FEI before or by any Governmental Authority, which could affect FEI's ability to perform its obligations under this Agreement; and
- (e) FEI has or will have all permits, licenses, authorizations and other documentation required for the operation of the Energy System after the Commission Date; and
- (f) FEI has all the required expertise to fulfill its obligations under this Agreement.

### 10.3 DELEGATION AND SUBCONTRACTING

FEI may delegate and subcontract its obligations under this Agreement with respect to Design and Construction and Services to any contractor, consultant, agent or representative provided that FEI shall be fully responsible for the acts and omissions of such persons and those either directly or indirectly employed by them to the same extent as FEI for its own acts or omissions.

## **ARTICLE 11 - BCUC ACCEPTANCE**

### 11.1 REGULATORY REVIEW TERMINATION

Subject to Section 11.3, either Party may terminate this Agreement if within 90 days following the Effective Date, this Agreement and the Energy System Rate Development Agreement, including the Market Rate and the SD37 Rate Rider as defined in that Agreement have not been accepted for filing by the BCUC (such acceptance being herein called "BCUC Acceptance").

### 11.2 REGULATORY FILING

FEI, on behalf of itself and the District, and at its own cost, shall file the Agreement with the BCUC within a reasonable time after the Effective Date. FEI shall take all steps reasonably required to secure BCUC Acceptance, which shall consist of those procedural steps related to filing the Agreement and providing argument and witnesses in support of filing.

### 11.3 TERMINATION

A Party entitled to terminate under Section 11.1 must do so by giving notice to terminate to the other Party at any time after the right to terminate arises pursuant to Section 11.1, and prior to:

- (a) the date of issuance of the BCUC Acceptance; and
- (b) the date that is 90 days after the Effective Date.

### 11.4 EFFECT OF BCUC ACCEPTANCE

The Parties acknowledge that upon BCUC Acceptance, the Services will be subject to regulation by the BCUC under the UCA, and will form another class of service that FEI provides as a public utility. The Parties acknowledge that the terms of the UCA may supersede the terms and conditions of this Agreement.

## **ARTICLE 12 - INDEMNITY**

### 12.1 FEI'S INDEMNITY

Without limiting any other obligations of FEI provided herein, FEI will indemnify, defend, and save harmless the District and its trustees, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including the full amount of all legal fees and expenses on a

solicitor-client basis) which may be paid by, incurred by, or asserted against the District or its directors, officers, employees, agents, successors, or assigns, arising from or in connection with:

- (a) the breach or non-performance by FEI of any of its obligations or warranties hereunder; or
- (b) the negligence or wilful misconduct of FEI, its employees, contractors or agents in respect of the Energy System, and in the performance of the obligations of FEI pursuant to this Agreement,

excluding only such of the foregoing as arise from the fraud, negligence or wilful misconduct of the District or its trustees, officers, directors, members, employees, contractors or agents, or the breach or non-performance by the District of any of its obligations or warranties hereunder.

## 12.2 DISTRICT'S INDEMNITY

Without limiting any other obligations of the District provided herein, the District will indemnify, defend, and save harmless FEI, its Affiliates and their respective shareholders, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including the full amount of all legal fees and expenses on a solicitor-client basis) which may be paid by, incurred by, or asserted against FEI, its Affiliates or their respective shareholders, directors, officers, employees, agents, successors, or assigns, arising from or in connection with:

- (a) the breach or non-performance by the District of any of its obligations or warranties hereunder; or
- (b) the negligence or wilful misconduct of the District, its employees, contractors or agents in respect of the Energy System, and in the performance of the obligations of the District pursuant to this Agreement,

excluding only such of the foregoing as arise from the fraud, negligence or wilful misconduct of FEI or its Affiliates or any of their respective officers, directors, members, employees, contractors or agents, or the breach or non-performance by FEI of any of its obligations or warranties hereunder.

## 12.3 CONSEQUENTIAL LOSS

In no event will the District or FEI or any of their respective officers, directors, employees, contractors or agents be liable to the other Party for any indirect or consequential loss, cost or expense whatsoever, including any loss of profits, revenues or other economic loss, suffered by the other Party or its officers, directors, employees, contractors or agents.

## 12.4 SURVIVAL OF INDEMNITY

The indemnity of each of the District and FEI provided under this Article 12 will survive the Term of this Agreement.

## 12.5 ENVIRONMENTAL INDEMNITY BY THE DISTRICT

The District will indemnify and save harmless FEI, its Affiliates, directors, officers, shareholders, employees, agents, successors and permitted assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants (but not including Disclosed Contaminants) and remediation of the Lands and any affected adjacent property) (collectively, "FEI Losses") which may be paid by, incurred by or asserted against FEI, its Affiliates and their respective directors, officers, shareholders, employees, agents, successors or permitted assigns, arising from or in connection with any Contaminants (but not including Disclosed Contaminants) existing on the Lands prior to the Commission Date or brought onto the Lands or Released onto the Lands by the District or any person for whom it is in law responsible, except to the extent the FEI Losses suffered were caused or contributed to by any act or omission of FEI or any person for whom FEI is in law responsible after FEI had knowledge of the Contaminants.

## 12.6 ENVIRONMENTAL INDEMNITY BY FEI

FEI will indemnify and save harmless the District, its Affiliates and their respective trustees, directors, officers, employees, agents, successors and permitted assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the Lands and any affected adjacent property) (collectively, "District Losses") which may be paid by, incurred by or asserted against the District, its Affiliates, and their respective trustees, directors, officers, employees, agents, successors or permitted assigns, arising from or in connection with any Contaminants brought onto the Lands or any Disclosed Contaminants Released onto the Lands by FEI or any person for whom it is in law responsible, except to the extent the District Losses suffered were caused or contributed to by any act or omission of the District or any person for whom the District is in law responsible after the District had knowledge of the Contaminants.

# ARTICLE 13 - INSURANCE

## 13.1 FEI INSURANCE COVERAGE.

- (a) FEI will obtain and maintain at its own expense throughout the Term, Commercial General Liability Insurance for bodily injury, death and property damage in the minimum amount of five million (\$5,000,000) dollars per occurrence. The policy will contain a cross liability provision and will be maintained for a period ending no sooner than 12 months after the expiry or termination of this Agreement.
- (b) FEI will be responsible for the full amount of all premiums and deductibles required under this Section 13.1. All policies required herein must be effective at the Commission Date. Insurance will be purchased from insurers registered and licensed to underwrite

insurance in British Columbia. Policies will contain waivers of subrogation against the District and all its officers, directors, members, employees, contractors and agents.

### 13.2 DISTRICT INSURANCE COVERAGE

- (a) The District will obtain and maintain at its own expense throughout the Term Commercial General Liability Insurance for bodily injury, death and property damage in the minimum amount of five million (\$5,000,000) dollars per occurrence. The policy will contain a cross liability provision and will be maintained for a period ending no sooner than 12 months after the expiry or termination of this Agreement.
- (b) The District will be responsible for the full amount of all premiums and deductibles required under this Section 13.2. All policies required herein must be effective at the date of this Agreement. Insurance will be provided by the Provincial self-insured program. Policies will contain waivers of subrogation against FEI and all its officers, directors, employees, contractors and agents.

### 13.3 PRIORITY

FEI will ensure that the District is an additional insured under the insurance to be obtained and maintained pursuant to Section 13.1. The District will ensure that FEI is an additional insured under the insurance to be obtained and maintained pursuant to Section 13.2. In the event of a claim, the insurance carried by the Party responsible for actions which give rise to such claim will be the primary insurance with respect to such claim.

## **ARTICLE 14 - DEFAULT**

### 14.1 DEFAULT BY FEI

- (a) FEI will be in default under this Agreement if FEI is in breach of a material term, covenant, agreement, condition or obligation imposed on it under this Agreement and fails to cure such default within ten (10) days after receipt of written notice thereof from the District, or, if such default is not capable of being cured within such ten (10) day notice period, fails to commence in good faith the curing of such default upon receipt of such written notice of default from the District and to continue to diligently pursue the curing of such default thereafter until cured. For the purposes of this Section 14.1, Section 4.4 is hereby deemed to be a material term of this Agreement.
- (b) If FEI is in default of this Agreement, the District may at its option and without liability therefore or prejudice to any other right or remedy it, including under the UCA, may have suspend or refuse to make any payments due hereunder until the default has been fully remedied, and no such suspension or refusal will relieve FEI from any of its obligations under this Agreement.
- (c) In the event the default is not fully remedied within thirty (30) days of receipt by FEI of written notice thereof from the District, the District may, at its option, undertake the necessary steps to remedy FEI's default at FEI's sole expense, which reasonable costs

shall be deducted from the Monthly Charges, and such actions will not relieve FEI from any of its obligations under this Agreement or, at its option, and without any liability, terminate this Agreement without prejudice to any other right the District may have hereunder or at law or otherwise.

#### 14.2 DEFAULT BY THE DISTRICT

- (a) The District will be in default under this Agreement if the District fails or refuses to make any payment due to FEI by the District under this Agreement within thirty (30) days of receiving written notice from FEI after the date that payment is due or if the District is in breach of a material term, covenant, agreement, condition or obligation imposed on it under this Agreement and fails to cure such default within ten (10) days after receipt by the District of written notice thereof from FEI or, if such default is not capable of being cured within such ten (10) day notice period, fails to commence in good faith the curing of such default forthwith upon receipt of such written notice thereof from FEI and to continue to diligently pursue the curing of such default thereafter until cured.
- (b) If the District is in default of this Agreement, FEI may at its option and without liability therefore or prejudice to any other right or remedy it may have, including under the UCA, cease performing the Services and no such actions will relieve the District from any of its obligations under this Agreement.
- (c) In the event the default by the District is not fully remedied within thirty (30) days of receipt by the District of written notice from FEI, FEI may undertake the necessary steps to remedy the District's default at the District's sole expense and such action will not relieve the District from any of its obligations under this Agreement or, at its option, and without any liability, take whatever steps necessary to shut down the Energy System and terminate this Agreement without prejudice to any other right FEI may have hereunder or at law or otherwise.

#### 14.3 CROSS DEFAULT

- (a) If any Building experiences a Service Interruption at any time, the District may deliver a notice of such Service Interruption to FEI (a "Service Interruption Notice" to FEI);
- (b) If a Service Interruption continues for a period of 48 consecutive hours after the delivery of a Service Interruption Notice pursuant to Section 14.3(a), the District may deliver a notice of such continuing Service Interruption to FEI (a "Continuing Service Interruption Notice");
- (c) If a Service Interruption continues for a period of 120 consecutive hours after the delivery of a Continuing Service Interruption Notice, the District may at its option deliver a notice of such continuing Service Interruption to FEI (a "Service Failure Notice"); Within 60 days of either:
  - (i) the District's delivery of a Service Failure Notice pursuant to Section 14.3(c); or

- (ii) the District's delivery of a Continuing Service Interruption Notice pursuant to Section 14.3(b) that constitutes the fifth or greater Continuing Service Interruption Notice delivered in that calendar year;

the District may, at its option and without liability:

- (iii) terminate this Agreement without prejudice to any other right the District may have hereunder at law or otherwise; or
  - (iv) terminate the Energy System Rate Development Agreement and all Energy System Service Agreements (inclusive of this Agreement), without prejudice to any other right the District may have hereunder at law or otherwise.
- (d) For greater certainty, this Agreement shall be deemed to be terminated in the event that the District exercises its right to terminate all Energy System Service Agreement under another Energy System Service Agreement.

#### 14.4 SURVIVAL

Upon expiry or earlier termination of this Agreement for any reason, all claims, causes of action or other outstanding obligations remaining or being unfulfilled as of the expiry or termination of this Agreement and all of the provisions of this Agreement relating to the obligation or either the Parties to account to or indemnify the other and to pay to the other any amounts owing as at the date of expiry or termination in connection with this Agreement will survive such expiry or termination.

### **ARTICLE 15 – EXPIRY AND TERMINATION**

#### 15.1 EXPIRY

Upon expiry of the Term, unless otherwise agreed between the Parties and subject to agreement by the BCUC (if required pursuant to applicable Laws), the District may, at its option and by written notice to FEI within 30 days following the termination:

- (a) require FEI to remove the Energy System at FEI's cost in accordance with Section 15.5; or
- (b) acquire the Energy System from FEI at the Adjusted Energy System Purchase Price.

#### 15.2 TERMINATION OF THE ENERGY SYSTEM RATE DEVELOPMENT AGREEMENT

- (a) If the Energy System Rate Development Agreement is terminated as a result of the adoption, approval or implementation of a thermal energy rate tariff by the BCUC, this Agreement will automatically terminate effective as of the date of termination of the Energy System Rate Development Agreement;
- (b) If the Energy System Rate Development Agreement is terminated for cause by the District, this Agreement will be deemed to have been terminated pursuant to Section

14.1(c) as of the date of termination of the Energy System Rate Development Agreement, and Section 15.3 shall apply; and

- (c) If the Energy System Rate Development Agreement is terminated for cause by FEI, this Agreement will be deemed to have been concurrently terminated pursuant to Section 14.2(c) as of the date of termination of the Energy System Rate Development Agreement, and Section 15.4 shall apply.

### 15.3 TERMINATION BY THE DISTRICT FOR CAUSE

If the District terminates this Agreement pursuant to Sections 14.1(c) or 14.3, the District may, at its option and by written notice to FEI within 30 days following the termination:

- (a) require FEI to remove the Energy System, at its own cost, in accordance with Section 15.5; or
- (b) acquire the Energy System from FEI at the Adjusted Energy System Purchase Price.

### 15.4 TERMINATION BY FEI FOR CAUSE

If FEI terminates this Agreement pursuant to Section 14.2(c), FEI may, at its option and by written notice to the District:

- (a) remove the Energy System, at its own cost, in accordance with Section 15.5; or
- (b) require the District to purchase the Energy System from FEI at the Adjusted Energy System Purchase Price.

### 15.5 REMOVAL OF THE ENERGY SYSTEM

If FEI is required to remove the Energy System pursuant to Sections 15.1(a), 15.3(a) or 15.4(a) or otherwise upon expiry of this Agreement, FEI shall promptly remove those portions of the Energy System located within the Building and at surface level at FEI's cost, and FEI shall perform such removal activities using standards of performance that are equivalent to those that apply to the performance of the Services under this Agreement. Any portion of the Energy System not removed by FEI prior to the 30<sup>th</sup> day following the termination or expiry of the Agreement will, as of such day, be deemed to be automatically transferred to the District, and become the property of the District, all at no cost to the District.

### 15.6 ACQUISITION OF THE ENERGY SYSTEM

If the District elects to acquire the Energy System pursuant to Sections 15.1(b), 15.3(b) or 15.4(b):

- (a) the District shall pay the Adjusted Energy System Purchase Price to FEI within the later of 30 days of (i) the effective date of expiration or termination, and (ii) confirmation of the Adjusted Energy System Purchase Price; and

- (b) FEI will promptly execute and deliver any documents and records reasonably required by the District to effect and facilitate the transfer of the Energy System to the District, including bills of sale, operation and maintenance manuals and warranties, and will use reasonable commercial efforts to obtain any consents and approvals that may be required in relation to the transfer (including, without limitation, BCUC approval), provided that (i) FEI's obligations under this Section 15.6(b) shall arise only upon FEI's receipt of all amounts due and owing to FEI from the District under this Agreement, and (ii) during the period between the expiration or termination of the Agreement and FEI's receipt of amounts due and owing to FEI from the District under this Agreement, FEI shall continue to maintain, or shall permit the District to maintain, the Energy System in good working order.

Notwithstanding the foregoing, the Parties acknowledge and agree that FEI's ability to sell or otherwise transfer its interest in and to the Energy System to the District may be subject to BCUC approval under applicable Laws.

## **ARTICLE 16 - NON-COMPLIANCE AND ENVIRONMENTAL**

### **16.1 NOTIFICATION OF NON-COMPLIANCE**

FEI or the District (as applicable, the "Notifying Party") will promptly, upon becoming aware thereof, notify the other Party in writing of:

- (a) a Release of a Contaminant or any other occurrence or condition in the Energy System, the Lands or any adjacent property which could subject the other Party to any fines, penalties, orders or proceedings under applicable Laws;
- (b) any charge, order, investigation or notice of violation or non-compliance issued against the Notifying Party relating to the Energy System, or the operation of the Energy System, under any applicable Laws; and
- (c) any notice, claim, action or other proceeding by any third party against the Notifying Party in respect of the Design and Construction or the Services or concerning the Release or alleged Release of any Contaminants at or from the Energy System or the Lands.

### **16.2 NOTIFICATION BY FEI**

FEI will notify the appropriate Governmental Authorities of any Release of any Contaminants at or from the Energy System in accordance with applicable Laws. The District may, but is not obligated to, notify the appropriate Governmental Authorities of any Release of any Contaminants at or from the Energy System in accordance with applicable Laws.

### **16.3 OWNERSHIP OF CONTAMINANTS**

Notwithstanding any rule of law to the contrary, any Disclosed Contaminant Released from the Energy System, or any top soil, earth or other material containing a Contaminant for which FEI is responsible pursuant to Section 4.5 that is removed from the Lands by FEI or any person for

whom it is in law responsible, will be and remain the sole and exclusive property and responsibility of FEI and will not become the property of the District, notwithstanding the degree of its affixation to the Lands and notwithstanding the expiry or earlier termination of this Agreement.

#### 16.4 SURVIVAL OF OBLIGATIONS

The obligations of the Parties under this Article 16 will survive the expiry or termination of this Agreement.

### **ARTICLE 17 - FORCE MAJEURE**

#### 17.1 SUSPENSION

Subject to the other provisions of this Article 17, if either Party is unable or fails by reason of Force Majeure to perform in whole or in part any obligation or covenant set forth in this Agreement, with the exception of unpaid financial obligations, such inability or failure will be deemed not to be a breach of such obligation or covenant and the obligations of both Parties under this Agreement will be suspended to the extent necessary during the continuation of any inability or failure so caused by such Force Majeure.

#### 17.2 DEFINITION OF FORCE MAJEURE

For purposes of this Agreement, the term “Force Majeure” means any event or occurrence not within the control of the Party claiming Force Majeure and which by the exercise of reasonable diligence such Party is unable to prevent or overcome, including any acts of God, including lightning, earthquakes, storms, washouts, landslides, avalanches, fires, epidemics and floods; strikes, lockouts or other industrial disturbances; acts of the Queen’s or public enemies, sabotage, wars, blockades, insurrections, riots or civil disturbances, fires, explosions, breakages of or accidents to machinery or lines of pipe; the laws, orders, rules, regulations, acts or restraints of any court or governmental or regulatory authority. For the purposes of this Article 17, a Party is deemed to have control over the actions or omissions of those persons to which it, its agents, contractors or employees, have delegated, assigned or subcontracted its obligations and responsibilities. For greater certainty, a Force Majeure shall not include any weather related events that do not exceed 25 year events as recorded by Environment Canada or as otherwise may be determined by the BCUC from time to time.

#### 17.3 EXCEPTIONS

Neither Party will be entitled to the benefit of Section 17.1 under any of the following circumstances:

- (a) the Energy System not being Commissioned;
- (b) to the extent that the inability or failure was caused by the negligence or contributory negligence of the Party claiming Force Majeure;

- (c) to the extent that the inability or failure was caused by the Party claiming Force Majeure having failed to diligently attempt to remedy the condition by taking all reasonable acts and to resume the performance of such covenants and obligations with reasonable dispatch;
- (d) if the inability or failure was caused by lack of funds or is in respect of any amount due hereunder; or
- (e) unless, as soon as possible after the happening of the occurrence relied upon or as soon as possible after determining that the occurrence was in the nature of Force Majeure and would affect the claiming Party's ability to observe or perform any of its covenants or obligations under this Agreement, the claiming Party will have given to the other Party notice to the effect that the claiming Party is unable by reason of Force Majeure (the nature whereof will be therein specified) to perform the particular covenants or obligations.

#### 17.4 RESUMPTION OF OBLIGATIONS

The Party claiming Force Majeure will give notice to the other Party, as soon as possible after the Force Majeure condition is remedied, to the effect that the same had been remedied and that such Party has resumed, or is then in a position to resume, the performance of its suspended covenants and obligations hereunder either in whole or in part.

#### 17.5 SETTLEMENT OF LABOUR DISPUTES

Notwithstanding any of the provisions of this Article 17, and subject to Section 17.3, the settlement of labour disputes or industrial disturbances is entirely within the discretion of the particular Party involved and the Party may make settlement of it at the time and on terms and conditions as it may deem to be advisable and no delay in making settlement will deprive the Party of the benefit of Section 17.1.

### **ARTICLE 18 - CONDITIONS PRECEDENT**

#### 18.1 CONDITIONS PRECEDENT OF FEI

The obligation of FEI to carry out the transactions contemplated by this Agreement is subject to fulfillment of the following conditions on or before such date as may be specified, which is for the sole benefit of FEI, and which may be waived by FEI in accordance with Section 18.2:

- (a) FEI obtaining the approval by its board of directors of the terms and conditions of this Agreement on or before the 30th day following the Effective Date, provided that if such approval cannot be obtained by this date due to the fact that the board of directors has not yet considered the transaction FEI reserves the right to extend the period of time to that date when the board next convenes.

## 18.2 FEI NOTICE OF WAIVER

If a condition set out in Section 18.1 has not been satisfied on or before the date as may be specified for its fulfillment, FEI may waive compliance with the condition in whole or in part, in its sole discretion, by written notice to the District, failing which delivery of written notice of satisfaction or waiver of such condition, this Agreement will, to the extent any further obligations of the Parties which remain unfulfilled, be null and void, without liability between the Parties hereto, and, neither Party will be under any further obligation to the other to complete the transactions or future transactions, as the case may be, contemplated by this Agreement.

## **ARTICLE 19 - DISPUTE RESOLUTION**

### 19.1 REFERENCE TO ARBITRATION

The Parties will attempt to resolve all disputes which may arise under, out of, in connection with or in relation to this Agreement by negotiation. They will provide full and timely disclosure to one another of all facts relevant to the disputes to facilitate those negotiations. If any such dispute remains unresolved, for any reason, fifteen (15) days after either Party requested the other Party to enter into negotiations to resolve it, or if the Parties agree to waive negotiations in respect of it, then either Party may submit that dispute for final resolution by arbitration administered by the British Columbia International Commercial Arbitration Centre (“BCICAC”) under its “Shorter Rules for Domestic Commercial Arbitration”. The seat of that arbitration will be Vancouver, British Columbia, Canada. The language of that arbitration will be English. Alternatively, the Parties may agree, within the 15 days referred to above, to submit that dispute for final resolution by arbitration in another manner.

### 19.2 BINDING DECISION

The decision of the arbitrator, regardless of what arbitration procedure is used, will, for all purposes of this Agreement, be final and binding on the Parties.

### 19.3 CONTINUATION OF SERVICES

Each of the Parties will perform all of its respective obligations under this Agreement notwithstanding the existence of any dispute that arises from time to time between the Parties in respect of any matter related to this Agreement or during the resolution of any dispute in accordance with this Article 19.

### 19.4 COSTS

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 case, the non-prevailing Party shall pay all costs and expenses of the arbitration, but not those of the prevailing Party.

## ARTICLE 20 - GENERAL

### 20.1 RESPONSIBILITY FOR COSTS

FEI's performance of any of its obligations under this Agreement, including without limitation the obligation to design, construct and install the Energy System as provided in Section 2.1, shall be at FEI's sole cost and expense, unless expressly provided otherwise in this Agreement;

### 20.2 EXERCISE OF DISCRETION

Where anything in this Agreement is identified as being in either Party's discretion, such Party will have the right to exercise such discretion in its own best interest without regard for the interest of the other Party.

### 20.3 COOPERATION

FEI and the District will at all times extend co-operation to each other to ensure the orderly management and operation of the Energy System.

### 20.4 SOLICITATION

Nothing in this Agreement precludes either Party from soliciting or entering into, other contracts with the other Party.

### 20.5 NOTICES

Any notice or other communication required or permitted to be given under this Agreement will be effective only if in writing and when it is actually delivered (which delivery may be by telecopy or other telecommunications device) to the Party for whom it is intended at the following address or such other address in British Columbia as such Party may designate to the other Party by notice in writing delivered in accordance with this Section 20.5:

(a) if to FEI:

FortisBC Energy Inc.  
10th Floor, 1111 West Georgia Street  
Vancouver, B.C.  
V6E 4M3

Attention: Gareth Jones  
Telephone: 250-380-5972  
Telecopy: 250-388-6876

(b) if to the District:

Board of Education of School District No. 37 (Delta)  
4585 Harvest Drive  
Delta, B.C.  
V4K 5B4

Attention: Frank Geyer  
Telephone: 604-952-5336  
Telecopy: 604-952-5375

Notwithstanding the foregoing, notices with respect to Force Majeure will be given in writing by telecopy, or orally in person or by telephone (to be confirmed by telecopy), to the person or persons designated from time to time by the Parties as the person or persons authorized to receive such notices.

## 20.6 CONFIDENTIALITY

The District and FEI will treat as confidential the terms of this Agreement and all Confidential Information (as defined below) and will at all times during the term of this Agreement and for a reasonable time thereafter hold the terms of this Agreement and all Confidential Information in confidence and neither Party will, without the prior written consent of the other Party, disclose or divulge the terms of this Agreement or any Confidential Information to any person, provided that nothing in this Section 20.6 will restrict or prevent either Party from making any disclosure of such terms or any Confidential Information:

- (a) which is reasonably necessary or desirable for such Party to carry out and give full effect to the terms, conditions and intent of this Agreement and the matters contemplated hereby;
- (b) which is required by any Law, including the Freedom of Information and Protection of Privacy Act (British Columbia);
- (c) to any Governmental Authority;
- (d) to the British Columbia Utilities Commission or other regulatory agency as part or in support of any regulatory application or submission;
- (e) to the directors, officers or employees of such Party or to an Affiliate of such Party or to the directors, officers or employees of an Affiliate of such Party;
- (f) to the professional advisors of such Party on the same terms of confidentiality;
- (g) which is already in the public domain; or
- (h) in connection with legal proceedings or steps being taken to remedy a breach or default under this Agreement by the other Party.

For the purposes of this Section 20.6, "Confidential Information" means proprietary information of either Party such as data, plans, drawings, manuals, or specifications which have been provided by such Party, its employees, contractors, agents, subcontractors, Affiliates to the other Party pursuant to this Agreement or proprietary information either Party conceived or developed by or for such Party concerning construction practices, operation and maintenance practices, agreements, marketing plans and strategies, profits, costs, pricing and systems of procedure (provided that "Confidential Information" does not include information which was disclosed to the receiving Party by a third Party (unless, to the knowledge of the receiving Party, the third Party is under an obligation of confidentiality to the other Party) or any information developed or conceived by the receiving Party without using the "Confidential Information" of the other Party).

#### 20.7 SEVERABILITY

If any provision of this Agreement is found or determined to be invalid, illegal or unenforceable it will be construed to be separate and severable from this Agreement and will not impair the validity, legality or enforceability of any other provisions of this Agreement, and the remainder of this Agreement will continue to be binding on the Parties as if such provision had been deleted.

#### 20.8 NO WAIVER

No waiver by either Party of any default by the other in the performance of any of the provisions of this Agreement will operate or be construed as a waiver of any other or future default or defaults hereunder, whether of a like or a different character. To be binding, any waiver of any provision of this Agreement must be clearly expressed in writing to be signed by the waiving Party.

#### 20.9 BURDEN AND BENEFIT

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

#### 20.10 GOVERNING LAW

This Agreement and all matters arising hereunder will be governed by the laws of British Columbia and the federal laws of Canada applicable in British Columbia.

#### 20.11 ENTIRE AGREEMENT

This Agreement contains the whole agreement between the Parties in respect of the subject matter hereof and there are no terms, conditions or collateral agreements express, implied or statutory other than as expressly set forth in this Agreement and this Agreement supersedes all of the terms of any written or oral agreement or understanding between the Parties.

#### 20.12 TIME OF ESSENCE

Time is of the essence of this Agreement.

#### 20.13 FURTHER ASSURANCES

Each Party will, at all times hereafter on demand by the other, execute and deliver or cause to be executed and delivered all such further documents and do all such further acts and things as may be reasonably requested by the other Party to evidence, carry out and give full effect to the intent and meaning of this Agreement and to assure the completion of the transactions contemplated hereby.

#### 20.14 AMENDMENTS TO BE IN WRITING

Except as set out in this Agreement, no amendment or variation of this Agreement will be effective or binding upon the Parties unless such amendment or variation is set out in writing and duly executed by the Parties.

#### 20.15 FACSIMILE

This Agreement may be executed by the Parties and transmitted by facsimile transmission and, if so executed, transmitted and received, this Agreement will for all purposes be effective as if the Parties had delivered and executed the original Agreement and each Party undertakes to provide the other Party with a copy of this Agreement bearing original signatures forthwith upon demand.

#### 20.16 SUBJECT TO LEGISLATION

Notwithstanding any other provision hereof, this Agreement and the rights and obligations of FEI and the District under this Agreement are subject to all present and future laws, rules, regulations and orders of any legislative body, governmental agency or duly constituted authority now or hereafter having jurisdiction over FEI or the District.

#### 20.17 EXPENSES

Each Party to this Agreement shall be responsible for the payment of all costs, expenses, legal fees and disbursements incurred or to be incurred by it in negotiating and preparing this Agreement and all documents required to be delivered under this Agreement and otherwise relating to the transactions contemplated by this Agreement.

#### 20.18 NO CONTRARY AGREEMENT

No Party shall enter into an agreement or other commitment with any person if such agreement or commitment has terms or provisions in conflict with or inconsistent with the terms of this Agreement or which could reasonably be expected to lead to actions or consequences that would result in the Party being in breach of the commitments and obligations of the Party pursuant to this Agreement unless such other agreement or commitment is expressly approved by the other Parties.

#### 20.19 NO PARTNERSHIP

Nothing herein shall be deemed or construed to create a joint venture, partnership, employment or agency relationship between the Parties for any purpose.

20.20 ASSIGNMENT

Neither Party may assign this Agreement or any of its rights or obligations under this Agreement, and FEI may not assign, transfer or sell all or any part of the Energy System, except:

- (a) with the consent of the other Party, such consent not to be unreasonably withheld, delayed or conditioned; or
- (b) in the case of FEI, to an Affiliate of FEI which is a "public utility" as defined in the *UCA* on notice to, but without the consent of, the District.

20.21 COUNTERPARTS

This Agreement may be executed in counterparts with the same effect as if the Parties had signed the same document. All counterparts will be construed together and will constitute one agreement.

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

**FORTISBC ENERGY INC.**

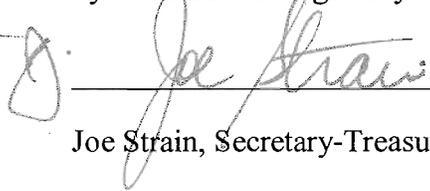
by its authorized signatory:

  
\_\_\_\_\_

Doug Stout,  
VP Energy Solutions & External Relations

**THE BOARD OF EDUCATION OF  
SCHOOL DISTRICT NO. 37 (DELTA)**

by its authorized signatory:

  
\_\_\_\_\_

Joe Strain, Secretary-Treasurer

# SAMPLE SCHEDULE “A”

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## Energy System Description

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### Mechanical Equipment Plans and Specifications

Equipment schedule:

- 3 ground source heat pumps water furnace 540NXW or equivalent. and associated pumps. The heat pump and related equipment will be installed in the boiler room at the old boilers location on the concrete pad.
- Each heat pump will have 1 pump on condenser side (5 Hp, 90gpm, 100 ft).
- Piping, control valves and other equipment and accessories connected to the above equipment.
- Connection of the heat pumps on the return of the boiler and installation of the 3 ways valves.
- 700 ft of piping 6 inches isolated between the field and the heat pump to be installed on the roof.
- Supply and do the injection of 2400 usgals of propylene/glycol with a concentration of 25%.
- Installation of geo-exchange field loop to match the designed performance of the system.
- Control systems for the above mentioned equipment.
- 50 Air Source Roof Top Unit
- BTU meters

Prior to commencement of the Mechanical Equipment construction, FEI shall provide detailed drawings to the District for review and acceptance.

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## **SCHEDULE “B”**

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# **Delta School District Site Rules for Contractors**

## **Delta School District Site Rules for Contractors**

### **1.0 Safety**

- 1.1 For the purposes of this section, “Safety Regulations” means the rules, regulations, and practices required by WorkSafeBC.
- 1.2 The Contractor shall be solely responsible for site safety during the execution of all assigned construction and maintenance activities, including work performed by subcontractors and suppliers, and for compliance with the Safety Regulations, and shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the work.
- 1.3 If the District is of the reasonable opinion that the Contractor has not taken such precautions as are necessary to ensure compliance with the requirements of Clause 1.2, the District may take or order any remedial measures which it deems necessary, including stopping the performance of all or any portion of the work, and the District may use the employees of itself, the Contractor, any subcontractor or any other contractors to perform such remedial measures. The Contractor acknowledges and agrees that any failure by the Contractor to comply with the Safety Regulations shall constitute a default of the Contractor's contractual obligations and the District may issue a written notice instructing the Contractor to correct the default in the two (2) working days immediately following receipt of such notice.
- 1.4 The Contractor shall file any notices or any similar document (including, without limitation, a Notice of Project where applicable) required pursuant to the Safety Regulations. This duty of the Contractor will be considered to be included in the work and no separate payment therefore will be made to the Contractor.
- 1.5 The Contractor shall develop, maintain and supervise for the duration of the work a comprehensive safety program that will effectively incorporate and implement all required safety precautions. The program shall, as a minimum, respond fully to the Safety Regulations and general construction practices for the safety of persons or property, including without limitation the WorkSafeBC regulations that may be applicable (e.g. WHMIS, dust control, etc.).
- 1.6 The Contractor shall provide a copy of the safety program described in Clause 1.5 to the District prior to the commencement of the work and shall, at all times require, as far as it is reasonably practical to do so, that every employer and worker performing work in respect of the project complies with such program.
- 1.7 The Contractor shall arrange regular safety meetings at its expense, record the minutes of such meetings and maintain a complete file for review by the appropriate authorities.
- 1.8 The Contractor shall supply and maintain, at its own expense, at its office or other well-known place at the work site, safety equipment necessary to protect the workers and general public against accident or injury as prescribed by the governing authorities.
- 1.9 The Contractor shall supply and maintain all articles necessary for giving first-aid to any person who may be injured on the work site and shall establish an emergency procedure for the immediate removal of any injured person to a hospital or a doctor's care in accordance with the Safety Regulations.
- 1.10 The Contractor shall, as required under the Safety Regulations, promptly report all accidents of any sort arising out of or in connection with the performance of the work whether on or adjacent to the work site, giving full details and statements of witnesses. The District shall be copied on all accident reports and investigation reports.

## **2.0 Security and Access**

- 2.1 **Site and Building Access:** The District's Maintenance Services Department will issue gate and building keys, electronic access cards (complete with instructions as to how to arm/disarm the building intrusion alarm system and how to contact the alarm monitoring station) and identification badges for the Contractor to enter the site and building, disarm/arm the building intrusion alarm system, and access the portions of the site where the Contractor's work is taking place. The Contractor and all subcontractors must check in at the school office (if occupied by District staff) prior to entering other parts of the building. The access cards, keys and identification badges shall be promptly returned to the District at the end of the contract.
- 2.2 **Security:** The Contractor shall assume all responsibility for the security of the work site. The Contractor must ensure that all windows, doors and gates are secure and the building intrusion alarm system is armed (unless District staff are still in the building) at the end of the workday. The Contractor must also safeguard the rest of the building and/or site from access through possible open construction areas. Security doors shall at all times remain closed and shall not be propped open, even for a short time. The Contractor is responsible for any costs arising when the District's security runner services is called to attend a work site for security matters resulting from the Contractor's negligence.
- 2.3 **Normal School Hours:** Normal hours of operation for the District are 0730h-1600h Monday to Friday, excluding statutory holidays. For after-hours and weekend work, the Contractor must notify the District's Maintenance Services Department at least one business day in advance of the work.

## **3.0 Conduct**

- 3.1 **Noise Due to Construction or Maintenance Activities:** In accordance with the Delta Noise Bylaw 1906, "no person shall carry on or cause to be carried any construction work, reconstruction, alteration, repair or demolition of a building or structure, the operation of machinery, or works in connection with any excavation or highway before 07:00h or after 1900h and day of the week from Monday to Friday, inclusive, before 0900h or after 1700h on Saturdays, or at any time Sundays. The Contractor shall respect the classroom operations in the vicinity of the work site and as such will make every attempt to limit noisy work to times outside of classroom operation or to adequately dampen, silence and/or soundproof equipment that generates noise to mitigate disruption to the classrooms.
- 3.2 **Communication devices:** Radio and cell phone volume shall be at the minimum volume which is consistent with the ability to operate the device.
- 3.3 **Roadways:** All speed limits and other traffic rules must be obeyed and access to the roadways should not be impeded. Parking and secure storage of materials and equipment by the Contractor and subcontractors shall only be in designated areas only.
- 3.4 **Cleanliness:** The work site must be maintained for an orderly appearance on a daily basis. Trash and construction debris shall be contained at all times and removed from the work site weekly.
- 3.5 **Toilets:** All temporary toilets shall have their doors faced away from streets. In no cases shall a worker utilize any staff washroom or other staff facilities at the work site, except as otherwise agreed in writing by the District. Under no circumstances will workers be permitted to use student washrooms.
- 3.6 **Identification Badges:** All workers shall have a District-assigned identification badge that clearly indicates the company's name and the worker's name. It is to be worn whenever at the work site.

- 3.7 **Smoking:** Smoking is not permitted on District property.
- 3.8 **Alcohol/Drugs:** No alcoholic beverages or non-prescription drugs shall be brought or consumed at the work site.
- 3.9 **Animals:** No dogs or other animals, are permitted at the work site without the written consent of the District.
- 3.10 **Fitness for Work:** All workers must be fit for work at all times. The District retains the right to request individuals leave the work site if unfit for any reason including, without limitation, inebriation, taking drugs, injury, fatigue, rudeness or any other reason that may affect the quality of the work or represents a breach of these rules.
- 3.11 **Theft:** Workers who steal from occupants or the District shall be immediately ejected from the work site. The Contractor is responsible for all such thefts irrespective of whether the worker is an employee of the Contractor or a subcontractor.
- 3.12 **Discrimination and Harassment:** The District actively promotes a safe and secure school environment and as such does not tolerate violations of human rights legislation, including:
- (a) discriminatory acts against any person with respect to the work or school environment or any educational program or service provided to or by that person because of race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age of that person, or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person;
  - (b) all forms of actual, attempted or threatened physical harm directed at any person; or
  - (c) any form of sexual harassment such as unwelcome sexual advances with actual or implied work related consequences; unwelcome remarks, questions, jokes or innuendo of a sexual nature including sexist comments or sexual invitations; verbal abuse, intimidation or threats of a sexual nature; unwelcome leering, staring or making sexual gestures; whistling or catcalls; display of pornographic or other sexual materials; offensive pictures, graffiti, cartoons or sayings; unwanted physical contact such as touching, patting, pinching or hugging; and physical assault of a sexual nature

## **SCHEDULE “C”**

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### **List of Environmental Reports**

# DELTA SCHOOL DISTRICT ASBESTOS MANAGEMENT PROGRAM

Building: South Delta Secondary

Date: November 24, 2009

Surveyor: James McArthur (ACM Environmental Corporation)

Room No.	AREA CONTAINS WRAPPED OR NON FRIABLE ASBESTOS, DO NOT DISTURB								AREA CONTAMINATED WITH ASBESTOS, SPECIAL ENTRY PROCEDURES REQUIRED								Comments
	1	2	3	4	5	6	7	8	1	2	3	4	5	6	7	8	
100																	Ceiling Texture (replaced with T-bar ceiling Summer 2008)
100E		X															Ceiling Texture (sections not replaced with T-bar ceiling)
152B		X															Ceiling Texture
152C		X															Ceiling Texture
152D		X															Ceiling Texture
157C		X															Ceiling Texture
159						X											12" Green Vinyl Floor Tile with White and Dark Streaks (<1%)
160A						X											12" Beige Vinyl Floor Tile (<1%)
163C						X											12" Beige Vinyl Floor Tile (<1%)
164						X											12" Beige Vinyl Floor Tile (<1%) (under staircase)
165						X											12" Beige Vinyl Floor Tile (<1%)
197		X															Ceiling Texture (sections not replaced with T-bar ceiling)
200		X															Ceiling Texture
203					X												Duct Mastics - Fume Hood

**Legend**

- 1 ASBESTOS IN ABOVE-CEILING SPACES
- 2 ASBESTOS ON CEILING SURFACES
- 3 ASBESTOS ON WALLS (DRYWALL OR CEMENT BOARD)
- 4 ASBESTOS IN BELOW-FLOOR AREAS

- 5 ASBESTOS ON VISIBLE PIPING AND/OR DUCTING
- 6 ASBESTOS IN FLOORING MATERIAL
- 7 ASBESTOS IN FIRE DOORS
- 8 ASBESTOS IN WINDOW PUTTY

**ASBESTOS MATERIALS SURVEY  
AND RISK ASSESSMENT**

**OF**

**SOUTH DELTA SECONDARY SCHOOL  
750 – 53<sup>rd</sup> Street  
Delta, BC**

**PREPARED FOR:**

**DELTA SCHOOL DISTRICT  
Maintenance Facility  
7186 Brown Street  
Delta, BC  
V4G 1G8**

**PREPARED BY:**

**ACM ENVIRONMENTAL CORPORATION  
#217 -2323 Quebec Street  
Vancouver, BC  
V5T 4S7  
604-873-8599**

**September 2005**

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## **EXECUTIVE SUMMARY**

A.C.M. Environmental Corporation (ACM) was retained by the Delta School District to perform an Asbestos Materials Survey and Risk Assessment for South Delta Secondary located at 750 – 53<sup>rd</sup> Street, Delta, BC.

The assessment involved an inspection of all areas of the building. The objective of the assessment was to identify the types and extent of asbestos containing materials within the building and any risks associated with the materials and the regular usage of the building.

The assessment was conducted using both visual and physical assessment techniques. Samples of materials suspected of containing asbestos were collected and forwarded, using proper chain of custody protocols, to Prezant Associates, Inc. for asbestos analysis. Asbestos sample results are located in Appendix A of this report.

Previous asbestos sampling information for the building was reviewed prior to conducting the survey assessment. ACM previously collected 5 bulk samples from the school on December 11, 1990. The sampling identified the main hallway ceiling texture coat materials and main office 2 x 4 ceiling tiles to be asbestos containing but have since been replaced with non-asbestos containing materials.

In summary, the findings from the assessment conclude that asbestos was found within the construction materials of the building and Mercury switches were observed, however, no PCB containing materials were found within the equipment of the building.

Four types of asbestos containing building materials were observed during this survey. These asbestos containing building materials include vinyl floor tile materials, ducting mastic materials, ceiling texture and drywall taping compound materials. Within the context of the report, areas have been detailed as to the locations of the asbestos containing materials, the content of asbestos where applicable, and the essential procedures to be followed for removal of these materials, as required.

The hazardous materials survey was conducted using non-destructive and some limited destructive testing methods. Areas within walls were not inspected as access was not possible without causing extensive damage to the walls. It should be noted that there is a possibility of asbestos containing materials existing within inaccessible wall and ceiling cavities, and under sub-floors. Possible asbestos-containing materials which may exist in these areas may

include but are not limited to: insulation materials (mechanical or construction), secondary layers of drywall or flooring, etc.

Roofing materials were not sampled at this time as the integrity of the waterproof membrane would be compromised, possibly voiding insurance coverage in the event of a water leak. If the roofing materials are to be disturbed during a renovation project, they must be sampled prior to the work taking place.

A random number of fluorescent lighting fixtures were opened up and inspected for possible PCB containing ballasts. PCB containing ballasts were observed within some of the fluorescent lighting fixtures inspected however, not all fixtures were opened. Mercury containing thermostat switches were observed within the building.

## **INTRODUCTION**

A.C.M. Environmental Corporation (ACM) was retained by the Delta School District to perform an Asbestos Materials Survey and Risk Assessment for the Delta Secondary located at 4615 – 51st Street, Delta, BC. All areas of the building were inspected and/or sampled during this survey and photographs of the site are included as Appendix B.

The objective of the assessment was to identify the types and extent of asbestos containing construction materials within the accessible areas of the building. The assessment at this time involved an inspection of all areas of the building not including the roofing materials.

The survey and assessment was conducted on September 7<sup>th</sup>, 8<sup>th</sup> and 13<sup>th</sup>, 2005 by Mr. James McArthur, AScT, Environmental Technician, for ACM and Mr. Jim Williams, Dipl. Tech., Environmental Technician, for ACM. Thirty-nine (39) representative bulk samples of materials suspected of containing asbestos were collected from the latest survey and are included as Appendix A of this report.

Previous asbestos sampling information for the building was reviewed prior to conducting the survey assessment. ACM previously collected 5 bulk samples from the school on December 11, 1990. The sampling identified some asbestos containing materials within the building such as ceiling texture coat, ceiling tiles and boiler room finishing cement. The latest survey identified that all of these materials have since been abated and replaced with non-asbestos containing materials.

## **METHODOLOGY**

The hazardous materials survey was conducted using non-destructive and some limited destructive testing methods. Areas within walls were not inspected as access was not possible without causing extensive damage to the walls. It should be noted that there is a possibility of asbestos containing materials existing within inaccessible wall and ceiling cavities, and under sub-floors. Possible asbestos-containing materials which may exist in these areas may include but are not limited to: insulation materials (mechanical or construction), secondary layers of drywall or flooring, etc.

The U.S. Environmental Protection Agency (USEPA) Guidance Document was selected for use in this study (1). The document identifies factors associated with the "condition" and the "potential for disturbance or erosion" of asbestos containing materials. These factors help to define the fibre release potential of the suspect asbestos containing materials and were used in a qualitative evaluation of materials found in the surveyed areas. Recommendations have been substantiated by additional information utilized from other documentation cited in the Reference Section of this report.

The bulk samples of suspect asbestos containing materials were forwarded, using proper chain of custody protocols, to Prezant Associates, Inc. for asbestos analysis. The samples were analyzed using polarized light microscopy (PLM) with dispersion staining in accordance with U.S. EPA method 600/R-93/116, "Method for Determination of Asbestos in Bulk Building Materials".

Other hazardous materials were visually inspected and are noted in this report.

The survey relied on the abilities and experience of the surveyor to gain access and identify possible asbestos containing materials. All areas of the building were accessed during the assessment excluding the roof.

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## **RESULTS & ASSOCIATED RISK LEVELS**

### **ASBESTOS**

Four types of asbestos containing materials were identified during the survey which could be affected by any potential renovation or demolition activities. These are drywall taping compound materials, vinyl floor tile materials, ducting mastic materials and ceiling texture materials. A breakdown for each type of material is as follows:

#### **Drywall Taping Compound Materials:**

Asbestos containing drywall taping compound materials were observed within rooms 108, 164 (storage), 209, 218 (ceiling) and the kitchen ceiling. Drywall taping compound materials were sampled in these areas and found to contain between <1% to 2% Chrysotile asbestos. The asbestos containing drywall taping compound materials are presently in fair to good condition. Although some areas within the older section of the school have been renovated, it must be assumed that all original drywall taping compound materials encountered within the building is asbestos containing unless further sampling determines otherwise. The new section of the school built in 2002 has non-asbestos containing drywall materials. This section includes classrooms 176 through 181, Gym 189 and Music room and adjoining rooms.

Prior to any activities taking place which could disturb the asbestos containing drywall materials, they must first be removed and disposed of in accordance with applicable regulations. The removal of the drywall materials will pose a moderate to high risk of asbestos exposure to the workers involved, therefore as a minimum, MODIFIED MODERATE RISK asbestos work procedures will be required for the removal of the asbestos containing drywall materials. Modified moderate risk asbestos work procedures incorporate the use of better dust control measures and increased personal protection in addition to regular moderate risk asbestos requirements.

WCB Regulations do not treat any materials with less than 1% asbestos as asbestos containing. Prior to any activities taking place which could disturb the asbestos containing drywall materials (<1%), workers should still use moderate risk procedures when exposed to the asbestos containing drywall materials, even in materials with less than 1% asbestos concentrations. The WCB states that workers must be properly protected from any potential exposure to airborne asbestos fibres. It is recommended that any work affecting the asbestos containing drywall materials be done using a minimum of moderate risk asbestos work procedures. Therefore as a minimum, MODERATE RISK asbestos work

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procedures will be required for the removal of the asbestos containing drywall materials (<1%). The drywall materials which are less than 1% do not have to be disposed of in accordance with applicable regulations as asbestos waste.

Vinyl Floor Tile Materials:

Asbestos containing vinyl floor tile materials were found within several areas of the building. The 12" green vinyl floor tiles with white and dark streaks observed within Rooms 159 – Copy room, 133 – Corridor, 118, 119, 121 and 134 were asbestos containing. The 12" beige vinyl floor tiles observed within Rooms 130, 125A & B – Auto shop, 130B & C, 142, 150 and 150B & D, 151C storage, storage room underneath the stage, 160A, 163C storage, underneath 164 stairs and 165 custodian room were asbestos containing. A sample of the asbestos containing vinyl floor tile materials were all found to contain <1% Chrysotile asbestos in the tiles. The materials are all presently in good condition.

WCB Regulations do not treat any materials with less than 1% asbestos as asbestos containing. Workers should still use moderate risk procedures when exposed to the vinyl floor tile materials, even in materials with less than 1% asbestos concentrations. The WCB states that workers must be properly protected from any potential exposure to airborne asbestos fibres. It is recommended that any work affecting all the vinyl floor tile materials be done using a minimum of moderate risk asbestos work procedures. Therefore as a minimum, MODERATE RISK asbestos work procedures will be required for the removal of the asbestos containing vinyl floor tile materials. The vinyl floor tile materials which are less than 1% do not have to be disposed of in accordance with applicable regulations as asbestos waste.

Duct Mastics:

Five asbestos containing duct mastic materials were observed within the old section of the school. The original square HVAC ducting observed on the roof and the grey ducting mastic observed in ceiling spaces in Room 151 and the 2<sup>nd</sup> floor hallway were found to have asbestos containing duct mastic. Asbestos containing duct mastic was also observed on the fume hood located within room 203. All samples of the asbestos containing duct mastics were found to contain 3% Chrysotile asbestos. The materials are presently in good condition. All original HVAC duct mastic observed within the building is to be treated as asbestos containing. Non-asbestos containing duct mastic was observed in the Wood Shop connected to various equipment within the shop area.

Prior to any activities taking place which could disturb the asbestos containing duct mastic materials, it must first be removed and disposed of in accordance

with applicable regulations. The removal of the asbestos containing duct mastic will pose a moderate risk of asbestos exposure to the workers involved, therefore as a minimum, MODERATE RISK asbestos work procedures will be required for the removal of the asbestos containing duct mastic.

Ceiling Texture Materials:

Asbestos containing ceiling texture materials were observed on the east stairwell of the building adjacent to Room 152. A sample of the ceiling texture material was collected from the stairwell area and was found to contain 3% Chrysotile asbestos. Four other textured ceiling/overspray samples were collected from other areas of the building and were all found to be non-asbestos containing. These areas include: Room 152, 2<sup>nd</sup> floor hallway outside Room 218, library (overspray) and stairwell outside Room 210. Any ceiling texture observed which appears dissimilar to the non-asbestos containing areas mentioned above should be treated as asbestos containing until further sampling determines otherwise.

Prior to any addition/renovation activities taking place which could disturb the asbestos containing ceiling texture materials, the materials must be removed from the affected areas and disposed of, in accordance with applicable regulations. The removal of the asbestos containing ceiling texture materials will pose a High Risk of asbestos exposure to the workers involved. Therefore as a minimum, HIGH RISK asbestos work procedures would be required for the removal of the asbestos containing ceiling texture materials.

**POLYCHLORINATED BIPHENYLS (PCBs)**

A random number of fluorescent light ballasts were visually inspected for possible PCB containing ballasts. PCB containing ballasts were observed within the fluorescent lighting fixtures within Room 151 storage area. Some PCB containing ballasts may exist in other areas, as not all fixtures were opened up.

PCB containing fluorescent light ballasts do not pose a risk to occupants of the building. If PCB containing ballasts are encountered during any renovations of the building, they must be separated from the fixtures and disposed of properly in accordance with applicable regulations.

**MERCURY THERMOSTATS**

A thermostat was observed within Room 158 – Administration office and was found to have a Mercury containing switch. If any Mercury containing thermostat switches are encountered within the building during renovation or repair activities, they must be removed intact from the thermostats and disposed of properly in accordance with applicable regulations.

## **RECOMMENDATIONS**

Prior to beginning any work that may impinge upon the hazardous materials within the building, the following must be performed:

- 1.) Any affected asbestos containing vinyl floor tiles, ducting mastics and drywall taping compound materials (less than 1%) should be removed of in accordance with applicable regulations. The removal of the asbestos containing vinyl floor tile, duct mastic and drywall materials will require MODERATE RISK asbestos work procedures to be followed. Any vinyl floor tile materials or drywall taping compound materials with less than 1% chrysotile asbestos do not have to be disposed of as asbestos waste.
- 2.) Any affected asbestos containing drywall taping compound materials (greater than 1%) should be removed of in accordance with applicable regulations. The removal of the asbestos containing drywall materials will require MODIFIED MODERATE RISK asbestos work procedures to be followed. Modified moderate risk asbestos work procedures incorporate the use of better dust control measures and increased personal protection in addition to regular moderate risk asbestos requirements.
- 3.) Any affected asbestos containing ceiling texture materials should be removed of in accordance with applicable regulations. The removal of the asbestos containing ceiling texture materials will require HIGH RISK asbestos work procedures to be followed. High risk asbestos work procedures incorporate the use of a full enclosure and a decontamination facility.
- 4.) If Mercury containing thermostat switches are encountered during any renovation or repair activities within the building, they must be removed and disposed of in accordance with applicable regulations.
- 5.) If PCB containing ballasts are encountered during any renovation or repair activities within the building, they must be removed and disposed of in accordance with applicable regulations.
- 6.) If any suspect asbestos containing materials are encountered within inaccessible wall or ceiling cavities, or under floors, during renovation or demolition activities, the work in the immediate area must stop and the supervisor contacted for further direction.

### **STATEMENT OF LIMITATIONS**

The ACM report is intended to direct the Client's attention to recognised environmental conditions and to potential sources of environmental contamination. The findings and conclusion regarding contamination of the property are based solely on the extent of observations and information gathered during the assessment. Nothing in the report is intended to express any legal opinion upon environmental liabilities relating to the site or whether operations legally conformed with relevant legislative requirements.

Furthermore, it must be understood that changing circumstances in the physical environment, the use of the property, as well in changes in any substances stored, used, handled at the property, could alter radically the conclusions and information contained in this report. Therefore, it is important that the property is periodically re-evaluated and the client kept informed as to developments, which may impact the property. This report is not intended to be used as contract specifications.

### **A.C.M. ENVIRONMENTAL CORPORATION**

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James McArthur, ASCT  
Environmental Technician

**REFERENCES**

- 1) USEPA. 1985. U.S. Environmental Protection Agency. "Guidance for Controlling Asbestos-Containing Materials in Buildings". Washington, DC: Office of Toxic Substances, USEPA.
- 2) Lory EE, Coin DC. 1981. "Management Procedure for Assessment of Friable Asbestos Insulating Material". Port Hueneme, CA: Civil Engineering Laboratory, Naval Construction Battalion Center.
- 3) Workers' Compensation Board of British Columbia, effective 15 April 1998, and all current amendments. Occupational Health and Safety Regulations.
- 4) 2002 Edition - Workers' Compensation Board of British Columbia. Safe Work Practices for Handling Asbestos.

**APPENDIX A**  
**Bulk Sample Results**



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

**ACM Environmental**  
2323 Quebec Street, Suite 211  
Vancouver, BC

PAI Batch Number: **05-2558**  
Client Job Number: **3048-19**  
Number of Samples: **42**  
Turn Around Time: **10 day**

Project Location: South Delta Secondary School

Batch Number:	05-2558	<b>ACM Environmental</b>
Lab Sample Number:	05014113	<b>3048-19</b>
Client Sample Number:	<b>3148-375</b>	<i>South Delta Secondary School</i>

#### White crystalline powdery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		65% Calcite Filler and Binder
		30% Perlite
		5% Mineral Fragments

#### Comments:

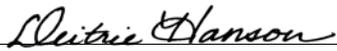
Batch Number:	05-2558	<b>ACM Environmental</b>
Lab Sample Number:	05014114	<b>3048-19</b>
Client Sample Number:	<b>3148-376</b>	<i>South Delta Secondary School</i>

#### L-1 White paint

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		100% Paint

#### Comments:

Sampled By: Client  
 Received By: John McCaslin 10/17/2005  
 Reviewed By: George McCaslin 10/28/2005

  
 Analyzed By: Deitrie Hanson 10/28/2005



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
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## Bulk Asbestos Fiber Analysis

### L-2 Dark brown smooth shiny pliable putty material

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 55% Rubber Particles 40% Calcite Filler and Binder 5% Resin and Binder
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Comments:

Batch Number: 05-2558	<b>ACM Environmental</b>
Lab Sample Number: 05014115	<b>3048-19</b>
Client Sample Number: 3148-377	<i>South Delta Secondary School</i>

### L-1 Off-white paint

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 100% Paint
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Comments:

### L-2 Bluish gray thick pliable putty-like material

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 70% Resin and Binder 25% Calcite Filler and Binder 5% Mineral Fragments
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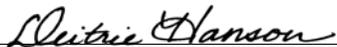
Comments:

### L-3 Blue thick paint

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 100% Paint
---	---	--

Comments:

Sampled By: Client  
 Received By: John McCaslin 10/17/2005  
 Reviewed By: George McCaslin 10/28/2005

  
 Analyzed By: Deitrie Hanson 10/28/2005



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### Bulk Asbestos Fiber Analysis

#### L-4 Black asphaltic thick mastic

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
3% <b>Chrysotile</b>	10% Cellulose	85% Asphalt Filler and Binder
		2% Mineral Fragments

**Comments:**

Batch Number: 05-2558	<b>ACM Environmental</b>
Lab Sample Number: 05014116	<b>3048-19</b>
Client Sample Number: <b>3148-378</b>	<i>South Delta Secondary School</i>

#### L-1 Beige paint

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		100% Paint

**Comments:**

#### L-2 Off-white crystalline powdery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
2% <b>Chrysotile</b>	3% Cellulose	90% Calcite Filler and Binder
		5% Vermiculite

**Comments:**

Batch Number: 05-2558	<b>ACM Environmental</b>
Lab Sample Number: 05014117	<b>3048-19</b>
Client Sample Number: <b>3148-379</b>	<i>South Delta Secondary School</i>

Sampled By: Client  
 Received By: John McCaslin 10/17/2005  
 Reviewed By: George McCaslin 10/28/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 10/28/2005



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## Bulk Asbestos Fiber Analysis

### L-1 Pale beige hard tile material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 45% Calcite Filler and Binder 40% Mineral Filler and Binder 10% Vinyl Filler and Binder 3% Non-Fibrous Tremolite 2% Miscellaneous Particles
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Comments:

### L-2 Black shiny mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 92% Asphalt Filler and Binder 5% Mineral Fragments 3% Filler and Binder
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Comments:

Batch Number: 05-2558	<b>ACM Environmental</b>
Lab Sample Number: 05014118	<b>3048-19</b>
Client Sample Number: 3148-380	<i>South Delta Secondary School</i>

### L-1 Pale beige hard tile material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 45% Calcite Filler and Binder 40% Mineral Filler and Binder 10% Vinyl Filler and Binder 3% Vinyl Filler and Binder 2% Filler and Binder
--	----------------------------------	--

Comments:

Sampled By: Client				
Received By: John McCaslin	10/17/2005		Analyzed By: Deitrie Hanson	10/28/2005
Reviewed By: George McCaslin	10/28/2005			



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### Bulk Asbestos Fiber Analysis

**L-2 Black thick pliable mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		92% Asphalt Filler and Binder
		5% Mineral Particles
		3% Filler and Binder

**Comments:**

Batch Number: 05-2558	<b>ACM Environmental</b>
Lab Sample Number: 05014119	<b>3048-19</b>
Client Sample Number: <b>3148-381</b>	<i>South Delta Secondary School</i>

**L-1 Pale beige hard tile material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		3% Miscellaneous Particles
		2% Non-Fibrous Tremolite

**Comments:**

**L-2 Black shiny mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Asphalt Filler and Binder
		5% Mineral Fragments
		5% Filler and Binder

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 10/17/2005  
 Reviewed By: George McCaslin 10/28/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 10/28/2005



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### Bulk Asbestos Fiber Analysis

Batch Number:	05-2558	<b>ACM Environmental</b>
Lab Sample Number:	05014120	<b>3048-19</b>
Client Sample Number:	<b>3148-382</b>	<i>South Delta Secondary School</i>

#### Gray opaque pliable thick putty material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		80% Resin and Binder
		15% Calcite Filler and Binder
		5% Mineral Fragments

**Comments:**

Batch Number:	05-2558	<b>ACM Environmental</b>
Lab Sample Number:	05014121	<b>3048-19</b>
Client Sample Number:	<b>3148-383</b>	<i>South Delta Secondary School</i>

#### L-1 White paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		100% Paint

**Comments:**

#### L-2 White crystalline powdery flaky material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		82% Calcite Filler and Binder
		15% Perlite
		3% Mineral Fragments

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 10/17/2005  
 Reviewed By: George McCaslin 10/28/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 10/28/2005



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## Bulk Asbestos Fiber Analysis

Batch Number:	05-2558	<b>ACM Environmental</b>
Lab Sample Number:	05014122	<b>3048-19</b>
Client Sample Number:	<b>3148-384</b>	<i>South Delta Secondary School</i>

### L-1 Gray granular fibrous material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	15% Synthetic	52% Calcite Filler and Binder
	5% Hair	10% Mineral Fragments
	3% Cellulose	5% Insect Parts
		5% Clay Filler and Binder
		5% Resin and Binder

**Comments:**

### L-2 Black asphaltic material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		90% Asphalt Filler and Binder
		5% Mineral Fragments
		5% Filler and Binder

**Comments:**

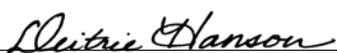
### L-3 Dull greenish beige hard tile material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<1% <b>Chrysotile</b>		50% Calcite Filler and Binder
		40% Mineral Filler and Binder
		5% Vinyl Filler and Binder
		>4% Miscellaneous Particles

**Comments:**

This layer contains <1% chrysotile asbestos.

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 Received By: John McCaslin 10/17/2005  
 Reviewed By: George McCaslin 10/28/2005

  
 Analyzed By: Deitrie Hanson 10/28/2005



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### Bulk Asbestos Fiber Analysis

Batch Number:	05-2558	<b>ACM Environmental</b>
Lab Sample Number:	05014123	<b>3048-19</b>
Client Sample Number:	<b>3148-385</b>	<i>South Delta Secondary School</i>

#### L-1 Pale beige hard tile material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		3% Vinyl Filler and Binder
		2% Filler and Binder

Comments:

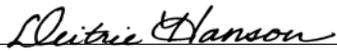
#### L-2 Black shiny pliable mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Asphalt Filler and Binder
		5% Mineral Fragments
		5% Filler and Binder

Comments:

Batch Number:	05-2558	<b>ACM Environmental</b>
Lab Sample Number:	05014124	<b>3048-19</b>
Client Sample Number:	<b>3148-386</b>	<i>South Delta Secondary School</i>

Sampled By: Client  
 Received By: John McCaslin 10/17/2005  
 Reviewed By: George McCaslin 10/28/2005

  
 Analyzed By: Deitrie Hanson 10/28/2005



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## Bulk Asbestos Fiber Analysis

**L-1 Pale beige hard thin tile material with red thin streaks**

<b>Asbestos Fibrous Components:</b> <1% Chrysotile	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 50% Calcite Filler and Binder 45% Mineral Filler and Binder >4% Vinyl Filler and Binder
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**Comments:**  
 This tile layer contains <1% chrysotile asbestos.

**L-2 Black mastic**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 90% Asphalt Filler and Binder 5% Mineral Fragments 5% Filler and Binder
---	---	---

**Comments:**

Batch Number: 05-2558	<b>ACM Environmental</b>
Lab Sample Number: 05014125	<b>3048-19</b>
Client Sample Number: 3148-387	<i>South Delta Secondary School</i>

**L-1 Pale gray paint**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 100% Paint
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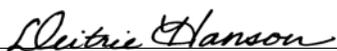
**Comments:**

**L-2 White crystalline powdery material**

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 80% Calcite Filler and Binder 18% Perlite 2% Mineral Fragments
---	---	--

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 10/17/2005  
 Reviewed By: George McCaslin 10/28/2005

  
 Analyzed By: Deitrie Hanson 10/28/2005



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### Bulk Asbestos Fiber Analysis

Batch Number:	05-2558	<b>ACM Environmental</b>
Lab Sample Number:	05014126	<b>3048-19</b>
Client Sample Number:	<b>3148-388</b>	<i>South Delta Secondary School</i>

**L-1 Pale pink paint**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 100% Paint
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Comments:

**L-2 White chalky powdery material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 95% Talc Filler and Binder 3% Mineral Fragments 2% Filler and Binder
--	----------------------------------	---

Comments:

Batch Number:	05-2558	<b>ACM Environmental</b>
Lab Sample Number:	05014127	<b>3048-19</b>
Client Sample Number:	<b>3148-389</b>	<i>South Delta Secondary School</i>

**L-1 Pale pink paint**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 100% Paint
--	----------------------------------	---------------------------------------

Comments:

Sampled By: Client  
 Received By: John McCaslin 10/17/2005  
 Reviewed By: George McCaslin 10/28/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 10/28/2005



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### Bulk Asbestos Fiber Analysis

#### L-2 Greenish gray thick putty-like mastic

<b>Asbestos Fibrous Components:</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
3% Chrysotile		75% Calcite Filler and Binder
		20% Resin and Binder
		2% Filler and Binder

**Comments:**

Batch Number: 05-2558	<b>ACM Environmental</b>
Lab Sample Number: 05014128	<b>3048-19</b>
Client Sample Number: 3148-390	<i>South Delta Secondary School</i>

#### L-1 Pale beige hard tile material

<b>Asbestos Fibrous Components:</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
<1% Chrysotile		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		>4% Lizardite

**Comments:**

This layer contains <1% chrysotile asbestos.

#### L-2 Black mastic

<b>Asbestos Fibrous Components:</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
No Asbestos Detected		90% Asphalt Filler and Binder
		5% Mineral Fragments
		5% Filler and Binder

**Comments:**

Batch Number: 05-2558	<b>ACM Environmental</b>
Lab Sample Number: 05014129	<b>3048-19</b>
Client Sample Number: 3148-391	<i>South Delta Secondary School</i>

Sampled By: Client  
 Received By: John McCaslin 10/17/2005  
 Reviewed By: George McCaslin 10/28/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 10/28/2005



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### Bulk Asbestos Fiber Analysis

**L-1 Pale pink paint**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 100% Paint

**Comments:**

**L-2 White chalky powdery material**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 75% Talc Filler and Binder  
20% Mineral Fragments  
5% Filler and Binder

**Comments:**

**L-3 Brown fibrous papery material**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 99% Cellulose 1% Filler and Binder

**Comments:**

Batch Number: 05-2558 **ACM Environmental**  
Lab Sample Number: 05014130 **3048-19**  
Client Sample Number: **3148-392** *South Delta Secondary School*

**White crystalline powdery fibrous material**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**3% Chrysotile** 10% Cellulose 55% Talc Filler and Binder  
30% Mineral Particles  
2% Mineral Fragments

**Comments:**

Sampled By: Client  
Received By: John McCaslin 10/17/2005  
Reviewed By: George McCaslin 10/28/2005

*Deitrie Hanson*  
Analyzed By: Deitrie Hanson 10/28/2005



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### Bulk Asbestos Fiber Analysis

Batch Number:	05-2558	<b>ACM Environmental</b>
Lab Sample Number:	05014131	<b>3048-19</b>
Client Sample Number:	<b>3148-393</b>	<i>South Delta Secondary School</i>

#### L-1 White paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		100% Paint

Comments:

#### L-2 White crystalline powdery fibrous material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		85% Calcite Filler and Binder
		10% Perlite
		5% Vermiculite

Comments:

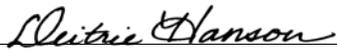
Batch Number:	05-2558	<b>ACM Environmental</b>
Lab Sample Number:	05014132	<b>3048-19</b>
Client Sample Number:	<b>3148-394</b>	<i>South Delta Secondary School</i>

#### L-1 Pale pink paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
		100% Paint

Comments:

Sampled By: Client  
 Received By: John McCaslin 10/17/2005  
 Reviewed By: George McCaslin 10/28/2005

  
 Analyzed By: Deitrie Hanson 10/28/2005



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### Bulk Asbestos Fiber Analysis

**L-2 Pale gray fibrous opaque material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		65% Sand
		30% Mineral Filler and Binder
		5% Filler and Binder

**Comments:**

Batch Number: 05-2558	<b>ACM Environmental</b>
Lab Sample Number: 05014133	<b>3048-19</b>
Client Sample Number: <b>3148-395</b>	<i>South Delta Secondary School</i>

**L-1 Pale gray paint**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		100% Paint

**Comments:**

**L-2 White crystalline powdery material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		80% Calcite Filler and Binder
		15% Perlite
		5% Mineral Fragments

**Comments:**

Batch Number: 05-2558	<b>ACM Environmental</b>
Lab Sample Number: 05014134	<b>3048-19</b>
Client Sample Number: <b>3148-396</b>	<i>South Delta Secondary School</i>

Sampled By: Client  
 Received By: John McCaslin 10/17/2005  
 Reviewed By: George McCaslin 10/28/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 10/28/2005



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## Bulk Asbestos Fiber Analysis

**L-1 Pale beige hard tile material with brown thin streaks**

<b>Asbestos Fibrous Components:</b> <1% <b>Chrysotile</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 45% Calcite Filler and Binder 40% Mineral Filler and Binder 10% Vinyl Filler and Binder >4% Miscellaneous Particles
--	---	--

**Comments:**  
 This layer contains <1% chrysotile asbestos.

**L-2 Black mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 90% Asphalt Filler and Binder 5% Mineral Fragments 5% Filler and Binder
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**Comments:**

Batch Number: 05-2558	<b>ACM Environmental</b>
Lab Sample Number: 05014135	<b>3048-19</b>
Client Sample Number: <b>3148-397</b>	<i>South Delta Secondary School</i>

**L-1 White paint**

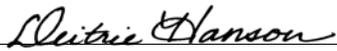
<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 100% Paint
--	---	--

**Comments:**

**L-2 Pale brown and white fibrous opaque material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b> 65% Cellulose 5% Glass Fiber	<b>Non-Fibrous Components:</b> 30% Perlite
--	--	---

**Comments:**

Sampled By: Client		
Received By: John McCaslin	10/17/2005	Analyzed By: Deitrie Hanson
Reviewed By: George McCaslin	10/28/2005	10/28/2005



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### Bulk Asbestos Fiber Analysis

Batch Number:	05-2558	<b>ACM Environmental</b>
Lab Sample Number:	05014136	<b>3048-19</b>
Client Sample Number:	<b>3148-398</b>	<i>South Delta Secondary School</i>

#### L-1 Pale gray paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 100% Paint
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Comments:

#### L-2 White crystalline powdery material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 50% Calcite Filler and Binder 40% Perlite 10% Mineral Fragments
--	----------------------------------	--

Comments:

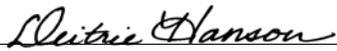
Batch Number:	05-2558	<b>ACM Environmental</b>
Lab Sample Number:	05014137	<b>3048-19</b>
Client Sample Number:	<b>3148-399</b>	<i>South Delta Secondary School</i>

#### L-1 Pale beige paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components: 100% Paint
--	----------------------------------	---------------------------------------

Comments:

Sampled By: Client  
 Received By: John McCaslin 10/17/2005  
 Reviewed By: George McCaslin 10/28/2005

  
 Analyzed By: Deitrie Hanson 10/28/2005



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### Bulk Asbestos Fiber Analysis

**L-2 White thick paint**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 100% Paint

**Comments:**

**L-3 Dull gray hard granular powdery material**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 65% Sand  
30% Mineral Filler and Binder  
5% Filler and Binder

**Comments:**

Batch Number: 05-2558 **ACM Environmental**  
Lab Sample Number: 05014138 **3048-19**  
Client Sample Number: **3148-400** *South Delta Secondary School*

**L-1 Greenish brown opaque brittle mastic**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**3% Chrysotile** 90% Calcite Filler and Binder  
7% Sand

**Comments:**

**L-2 Golden yellow fibrous opaque material**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 90% Glass Fiber 6% Resin and Binder  
4% Mineral Fragments

**Comments:**

Sampled By: Client  
Received By: John McCaslin 10/17/2005  
Reviewed By: George McCaslin 10/28/2005

Analyzed By: Deitrie Hanson 10/28/2005



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### Bulk Asbestos Fiber Analysis

Batch Number:	05-2558	<b>ACM Environmental</b>
Lab Sample Number:	05014139	<b>3048-19</b>
Client Sample Number:	<b>3148-401</b>	<i>South Delta Secondary School</i>

#### White chalky powdery granular material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		65% Calcite Filler and Binder
		30% Perlite
		5% Miscellaneous Particles

**Comments:**

Batch Number:	05-2558	<b>ACM Environmental</b>
Lab Sample Number:	05014140	<b>3048-19</b>
Client Sample Number:	<b>3148-402</b>	<i>South Delta Secondary School</i>

#### Greenish brown thick pliable mastic

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>3% Chrysotile</b>		65% Calcite Filler and Binder
		30% Resin and Binder
		2% Miscellaneous Particles

**Comments:**

Batch Number:	05-2558	<b>ACM Environmental</b>
Lab Sample Number:	05014141	<b>3048-19</b>
Client Sample Number:	<b>3148-403</b>	<i>South Delta Secondary School</i>

Sampled By: Client				
Received By: John McCaslin	10/17/2005		Analyzed By: Deitrie Hanson	10/28/2005
Reviewed By: George McCaslin	10/28/2005			



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## Bulk Asbestos Fiber Analysis

### White crystalline powdery flaky material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	5% Cellulose	70% Calcite Filler and Binder
		20% Vermiculite
		5% Mineral Fragments

**Comments:**

Batch Number: 05-2558	<b>ACM Environmental</b>
Lab Sample Number: 05014142	<b>3048-19</b>
Client Sample Number: <b>3148-404</b>	<i>South Delta Secondary School</i>

### L-1 Pale gray paint

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		100% Paint

**Comments:**

### L-2 White crystalline powdery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		70% Calcite Filler and Binder
		20% Perlite
		5% Mineral Fragments
		5% Filler and Binder

**Comments:**

### L-3 Pale greenish white fibrous papery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	99% Cellulose	1% Filler and Binder

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 10/17/2005  
 Reviewed By: George McCaslin 10/28/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 10/28/2005



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### Bulk Asbestos Fiber Analysis

Batch Number:	05-2558	<b>ACM Environmental</b>
Lab Sample Number:	05014143	<b>3048-19</b>
Client Sample Number:	<b>3148-405</b>	<i>South Delta Secondary School</i>

#### Pale taupe fibrous hard flaky material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	65% Cellulose	30% Vermiculite
		5% Mineral Fragments

**Comments:**

Batch Number:	05-2558	<b>ACM Environmental</b>
Lab Sample Number:	05014144	<b>3048-19</b>
Client Sample Number:	<b>3148-406</b>	<i>South Delta Secondary School</i>

#### L-1 Golden tan mastic

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		98% Resin and Binder
		2% Mineral Fragments

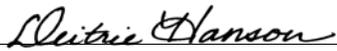
**Comments:**

#### L-2 Dull gray pliable putty-like material with fibers

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>3% Chrysotile</b>		92% Resin and Binder
		3% Mineral Fragments
		2% Filler and Binder

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 10/17/2005  
 Reviewed By: George McCaslin 10/28/2005

  
 Analyzed By: Deitrie Hanson 10/28/2005



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### Bulk Asbestos Fiber Analysis

Batch Number:	05-2558	<b>ACM Environmental</b>
Lab Sample Number:	05014145	<b>3048-19</b>
Client Sample Number:	<b>3148-407</b>	<i>South Delta Secondary School</i>

**L-1 Dark gray thick pliable hard material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		90% Rubber Particles
		10% Calcite Filler and Binder

**Comments:**

**L-2 Red paint and black paint**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		100% Paint

**Comments:**

Batch Number:	05-2558	<b>ACM Environmental</b>
Lab Sample Number:	05014146	<b>3048-19</b>
Client Sample Number:	<b>3148-408</b>	<i>South Delta Secondary School</i>

**L-1 Pale grayish white paint on pale beige paint**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		100% Paint

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 10/17/2005  
 Reviewed By: George McCaslin 10/28/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 10/28/2005



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## Bulk Asbestos Fiber Analysis

### L-2 Off-white crystalline powdery material

<b>Asbestos Fibrous Components:</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
<1% Chrysotile		92% Calcite Filler and Binder
		5% Vermiculite
		>2% Mineral Fragments

**Comments:**  
This layer contains <1% chrysotile asbestos.

### L-3 Brown fibrous papery material

<b>Asbestos Fibrous Components:</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
No Asbestos Detected	99% Cellulose	1% Filler and Binder

**Comments:**

### L-4 White powdery fibrous material

<b>Asbestos Fibrous Components:</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
No Asbestos Detected	15% Cellulose	80% Talc Filler and Binder
		5% Mineral Fragments

**Comments:**

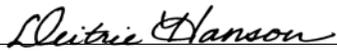
Batch Number:	05-2558	<b>ACM Environmental</b>
Lab Sample Number:	05014147	<b>3048-19</b>
Client Sample Number:	<b>3148-409</b>	<i>South Delta Secondary School</i>

### L-1 Pale grayish white paint

<b>Asbestos Fibrous Components:</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
No Asbestos Detected		100% Paint

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 10/17/2005  
 Reviewed By: George McCaslin 10/28/2005

  
 Analyzed By: Deitrie Hanson 10/28/2005



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### Bulk Asbestos Fiber Analysis

**L-2 White crystalline powdery material**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		80% Calcite Filler and Binder
		15% Perlite
		5% Mineral Fragments

**Comments:**

Batch Number: 05-2558	<b>ACM Environmental</b>
Lab Sample Number: 05014148	<b>3048-19</b>
Client Sample Number: 3148-410	<i>South Delta Secondary School</i>

**L-1 Bright yellow resinous mastic**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		96% Resin and Binder
		4% Mineral Fragments

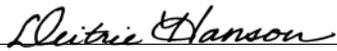
**Comments:**

**L-2 Dull gray pliable rubbery material with beige streaks**

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		80% Rubber Particles
		15% Calcite Filler and Binder
		5% Resin and Binder

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 10/17/2005  
 Reviewed By: George McCaslin 10/28/2005

  
 Analyzed By: Deitrie Hanson 10/28/2005



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### Bulk Asbestos Fiber Analysis

#### L-3 Black shiny material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		92% Asphalt Filler and Binder
		5% Mineral Fragments
		3% Filler and Binder

**Comments:**

Batch Number: 05-2558	<b>ACM Environmental</b>
Lab Sample Number: 05014149	<b>3048-19</b>
Client Sample Number: 3148-411	<i>South Delta Secondary School</i>

#### L-1 White paint

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		100% Paint

**Comments:**

#### L-2 Pale brown fibrous opaque material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
	85% Cellulose	10% Perlite
		5% Filler and Binder

**Comments:**

Batch Number: 05-2558	<b>ACM Environmental</b>
Lab Sample Number: 05014150	<b>3048-19</b>
Client Sample Number: 3148-412	<i>South Delta Secondary School</i>

Sampled By: Client  
 Received By: John McCaslin 10/17/2005  
 Reviewed By: George McCaslin 10/28/2005

*Deitrie Hanson*  
 Analyzed By: Deitrie Hanson 10/28/2005



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### Bulk Asbestos Fiber Analysis

**L-1 Pale pink paint**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 100% Paint

**Comments:**

**L-2 Off-white crystalline powdery material**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**<1% Chrysotile** 92% Calcite Filler and Binder  
5% Mineral Fragments  
>2% Mineral Fragments

**Comments:**

This layer contains <1% chrysotile asbestos.

Batch Number:	05-2558	<b>ACM Environmental</b>
Lab Sample Number:	05014151	<b>3048-19</b>
Client Sample Number:	<b>3148-413</b>	<i>South Delta Secondary School</i>

**L-1 Pale pink paint**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 100% Paint

**Comments:**

**L-2 Off-white crystalline powdery material**

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**<1% Chrysotile** 92% Calcite Filler and Binder  
5% Vermiculite  
>2% Mineral Fragments

**Comments:**

This layer contains <1% chrysotile asbestos.

Sampled By: Client  
Received By: John McCaslin 10/17/2005  
Reviewed By: George McCaslin 10/28/2005

*Deitrie Hanson*  
Analyzed By: Deitrie Hanson 10/28/2005



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### Bulk Asbestos Fiber Analysis

Batch Number:	05-2558	<b>ACM Environmental</b>
Lab Sample Number:	05014152	<b>3048-19</b>
Client Sample Number:	<b>3148-414</b>	<i>South Delta Secondary School</i>

#### L-1 White hard chalky material with tan mastic

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		92% Calcite Filler and Binder
		5% Resin and Binder
		3% Mineral Fragments

Comments:

#### L-2 Gray granular material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		95% Sand
		5% Mineral Fragments

Comments:

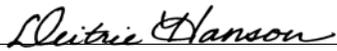
Batch Number:	05-2558	<b>ACM Environmental</b>
Lab Sample Number:	05014153	<b>3048-19</b>
Client Sample Number:	<b>3148-415</b>	<i>South Delta Secondary School</i>

#### L-1 White thick pliable opaque material

<b>Asbestos Fibrous Components:</b> <b>No Asbestos Detected</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
		95% Rubber Particles
		5% Paint

Comments:

Sampled By: Client  
 Received By: John McCaslin 10/17/2005  
 Reviewed By: George McCaslin 10/28/2005

  
 Analyzed By: Deitrie Hanson 10/28/2005



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
 OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

## Bulk Asbestos Fiber Analysis

### L-2 Gray smooth pliable hard rubbery material

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 90% Resin and Binder 5% Mineral Fragments 5% Filler and Binder
---	---	--

**Comments:**

Batch Number: 05-2558	<b>ACM Environmental</b>
Lab Sample Number: 05014154	<b>3048-19</b>
Client Sample Number: 3148-416	<i>South Delta Secondary School</i>

### L-1 White paint

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b> 100% Paint
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**Comments:**

### L-2 Pale brown fibrous opaque material

<b>Asbestos Fibrous Components:</b> No Asbestos Detected	<b>Non-Asbestos Fibrous Components:</b> 80% Cellulose	<b>Non-Fibrous Components:</b> 12% Perlite 5% Filler and Binder 3% Mineral Fragments
---	--	---

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 10/17/2005  
 Reviewed By: George McCaslin 10/28/2005

*Deitrie Hanson*

---

Analyzed By: Deitrie Hanson 10/28/2005

**APPENDIX B**  
**Photographs**



Observed secondary layers of drywall materials in some areas (Room 203)



Asbestos containing gold duct mastic above main hallway ceiling



Asbestos containing ceiling texture observed in East Stairwell behind Theatre (152)



Asbestos containing 12" Beige floor tile with dark & white streaks

**ENERGY SYSTEM SERVICE AGREEMENT**

**SOUTH PARK ELEMENTARY SCHOOL**

**THIS AGREEMENT** dated for reference the 26<sup>th</sup> day of September, 2011.

**BETWEEN:**

**THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 37 (DELTA)**  
a corporation established under the School Act R.S.B.C. 1996, c. 412 having an  
office at 4585 Harvest Drive, Delta, British Columbia, V4K 5B4

(the "District")

OF THE FIRST PART

**AND:**

**FORTISBC ENERGY INC.,** a company duly incorporated under the laws of the  
Province of British Columbia, having its registered office at 10th Floor, 1111  
West Georgia Street, Vancouver, B.C. V6E 4M3

("FEI")

OF THE SECOND PART

**WHEREAS:**

- A. The District is the owner of South Park Elementary School (the "Building") and lands located at 735 Gilcrest Drive, Delta, British Columbia, which lands are legally described as:

PID: 002-789-566 Property No: 113849

LOT 353 SECTION 3 TOWNSHIP 5 NEW WESTMINSTER DISTRICT PLAN 28834

(the "Lands")

- B. FEI wishes to supply to the Building, and the District wishes to purchase, Thermal Energy generated by an Energy System that FEI will construct on the Lands, and which FEI will own and operate, all pursuant to the terms of this Agreement.
- C. The Thermal Energy supplied by FEI to the Building pursuant to this Agreement will be priced at the rate set forth in the Energy System Rate Development Agreement between the Parties dated September 26<sup>th</sup>, 2011.

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT** in consideration of the premises and the covenants, agreements, representations, warranties and payments set out herein, the receipt and sufficiency of which is hereby acknowledged by each Party, the Parties covenant and agree as follows:

## **ARTICLE 1 - INTERPRETATION**

### 1.1 DEFINITIONS

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

- (a) “Adjusted Energy System Purchase Price” means, as of the date on which a purchase of the Energy System pursuant to Article 15 is effective, either:
  - (i) the Rate Base Value; or
  - (ii) such other purchase price for the Energy System as is determined by the BCUC; plus all applicable taxes;
- (b) “Affiliate” has the meaning set out in the *Business Corporation Act*, S.B.C. 2002, c.57 and includes FortisBC Inc.;
- (c) “Agreement” means this agreement, including the preamble hereto and any schedules attached hereto and the terms “this Agreement”, “hereof”, “herein”, “hereunder” and “hereinafter” and similar expressions refer to the Agreement and not to any particular Section or other portion thereof and includes any agreement supplementary or ancillary thereto;
- (d) “Acceptance Date” means the date of BCUC Acceptance;
- (e) “BCUC” means the British Columbia Utilities Commission, or any successor thereto;
- (f) “BCUC Acceptance” has the meaning assigned to that term in Section 11.1;
- (g) “Building” has the meaning assigned to that term on page one of this Agreement;
- (h) “Building System” means the space heating, cooling and ventilation, and domestic hot water distribution and control systems existing in the Building, to which the Energy System will be connected;
- (i) “Business Day” means any day except Saturday and Sunday or any day on which banks are generally not open for business in Vancouver, British Columbia;
- (j) “Capital Contribution” means \$ 27,000;
- (k) “Commissioned” means once the Energy System is certified complete and operating in accordance with the Specifications by a professional engineer under seal;

- (l) “Commission Date” means the day on which the Energy System is Commissioned;
- (m) “Contaminants” means, collectively, any contaminant, toxic substance, dangerous good, or pollutant or any other substance which when released to the natural environment is likely to cause, at some immediate or future time, material harm or degradation to the natural environment or material risk to human health, and includes any radioactive materials, asbestos materials, urea formaldehyde, underground or aboveground tanks, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive or toxic substances, hazardous waste or waste of any kind, pesticides, defoliants, or any other solid, liquid, gas, vapour, odour or any other substance .the storage, manufacture, disposal, handling, treatment, generation, use, transport, remediation or Release into the Environment of which is now or hereafter prohibited, controlled or regulated under Environmental Laws;
- (n) “Continuing Service Interruption Notice” has the meaning assigned to that term in Section 14.3(b);
- (o) “Contractor” means a prime contractor hired by FEI to oversee and complete the construction and installation of the Energy System;
- (p) “Design and Construction” means the total construction and related services required to design, construct and commission the Energy System and connected components of the Building System;
- (q) “Design Thermal Energy” means the maximum amount of Thermal Energy that the Energy System is capable of delivering through the Thermal Energy Meter and is included in the Specifications;
- (r) “Disclosed Contaminants” means Contaminants:
  - (i) the existence of which are specifically identified in the reports provided by the District to FEI and listed in Schedule C;
  - (ii) that were or ought to have been discovered, foreseen or anticipated upon reasonable inspection by FEI prior to the Effective Date; and
  - (iii) that were caused by FEI or any person for whom FEI is responsible at law;
- (s) “District” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (t) “District Losses” has the meaning assigned to that term in Section 12.6;
- (u) “District Site Rules for Contractors” means the rules set forth in Schedule “B”;
- (v) “Effective Date” means the date set out on page one of this Agreement;
- (w) “Energy System” means the equipment that FEI constructs and owns which will provide the Building with its energy needs for space heating, cooling and ventilation, and domestic hot water use, all as set forth in this Agreement;

- (x) “Energy System Service Agreement” has the meaning assigned to that term in the Energy System Rate Development Agreement;
- (y) “Energy System Rate Development Agreement” means that energy system rate development agreement between the District and FEI dated as of September 26<sup>th</sup>, 2011;
- (z) “Environment” includes the air (including all layers of the atmosphere), land (including soil, sediment deposited on land, fill, lands submerged under water, buildings, and improvements), water (including oceans, lakes, rivers, streams, groundwater, and surface water), and all other external conditions and influences under which humans, animals, and plants live or are developed and “Environmental” will have a corresponding meaning;
- (aa) “Environmental Attributes” means:
  - (i) all attributes associated with, or that may be derived from the Energy System installed having decreased environmental impacts relative to the use of conventional heating and cooling and hot water heating systems including any existing or future credit, allowance, certificate, right, benefit or advantage or proprietary or contractual right whether or not tradable;
  - (ii) any existing or future instrument, including without limitation any environmental emission allowances and environmental emission reduction credits, reduction right, allowance, certificate or other unit of any kind whatsoever, whether or not tradable and any other proprietary or contractual right, whether or not tradable, and any resulting from, or otherwise related to the actual assumed reduction, displacement or offset of emissions associated with, or that may be derived from the Energy System installed; and
  - (iii) all revenues, entitlement, benefits and other proceeds arising from or related to the foregoing;
- (bb) “Environmental Laws” means any and all statutes, laws, regulations, orders, bylaws, standards, guidelines, protocols, permits, and other lawful requirements of any Governmental Authority having jurisdiction over the Lands or the Energy System now or hereafter in force with respect in any way to the Environment, environmental assessment, health, occupational health and safety, protection of any form of plant or animal life, or transportation of dangerous goods, including the principles of common law and equity;
- (cc) “Expiry Date” means the earlier of:
  - (i) June 30, 2031, or the expiry of any renewal term thereof; and
  - (ii) the closure of the Building, or the Building otherwise ceasing to operate as a school (as defined under the *School Act* (British Columbia));
- (dd) “FEI” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (ee) “FEI Losses” has the meaning assigned to that term in Section 12.5;

- (ff) “Force Majeure” has the meaning assigned to that term in Section 17.2;
- (gg) “Governmental Authority” means any federal, provincial, regional, municipal, local or other government, governmental or public department, court, tribunal, arbitral body, commission, board, bureau or agency and any subdivision, agent, commission, board or authority thereof;
- (hh) “Lands” has the meaning assigned to that term in Recital A and includes the Building located on the Lands;
- (ii) “Laws” means laws, statutes, regulations, bylaws, Permits and orders of any Governmental Authority having jurisdiction, including without limitation, Environmental Laws;
- (jj) “Maintain” means to operate, service and maintain in a safe and reliable condition and “maintaining” and “maintenance” have corresponding meanings;
- (kk) “Monthly Charges” means that amount to be paid by the District to FEI with respect to the delivery of Thermal Energy to the Building pursuant to the Energy System Rate Development Agreement and any other payments due and owing by the District under this Agreement;
- (ll) “Notifying Party” has the meaning assigned to that term in Section 16.1;
- (mm) “Party” means a signatory to this Agreement, and the “Parties” means all of such signatories;
- (nn) “Permits” means all permits, licences, certificates, approvals, authorizations, consents and the like issued by any Governmental Authority;
- (oo) “Rate Base Value” means the value of the Energy System that the BCUC accepts from time to time in accordance with the Energy System Rate Development Agreement;
- (pp) “Release” includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, migration, disposal, or dumping;
- (qq) “Right of Access and Licence” means the right and licence granted herein by the District to FEI pursuant to Section 4.1 of this Agreement;
- (rr) “Service Failure Notice” has the meaning assigned to that term in Section 14.3(c);
- (ss) “Service Interruption” means, in any hour:
  - (i) a failure of the Energy System in that hour to deliver Thermal Energy at the Thermal Energy Meter sufficient to meet the Thermal Energy demand of the Building during that hour in accordance with the Specifications up to the Design Thermal Energy, and except where such failure is directly caused by:
    - a. the careless or wilful damage to the Energy System by the District or its agents or other persons for whom the District is responsible;

- b. damage caused to the Energy System as a result of the negligent acts or omissions of the District, its agents or those for whom in law the District is responsible;
  - c. an event of Force Majeure that triggers the suspension of FEI's obligations under the Agreement pursuant to Article 17; or
  - d. maintenance activities that FEI is performing on the Energy System that have been scheduled with the consent of the District (such consent not to be unreasonably withheld); and
- (ii) if the failure described in Section 1.1(rr)(i), FEI's failure in that hour to deliver to the Building through alternative means thermal energy sufficient to maintain an average temperature of 16 degrees Celsius in each room of the Building intended to be served by the Energy System (all as determined by the District, acting reasonably);
- (tt) "Service Interruption Notice" has the meaning assigned to that term in Section 14.3(a);
- (uu) "Services" means those services to be provided by FEI to supply Thermal Energy to a Building from an Energy System, and for greater certainty includes the services described in Articles 5 and 6, and excludes the Design and Construction;
- (vv) "Specifications" means the specifications for the Energy System prepared by FEI in consultation with the District in accordance with Section 2.3 and includes the Design Thermal Energy;
- (ww) "Term" has the meaning assigned to that term in Section 3.1;
- (xx) "Thermal Energy" means the amount of energy that FEI provides to the Building measured through a Thermal Energy Meter;
- (yy) "Thermal Energy Meter" means a device that complies with the International Organization of Legal Metrology recommendations for measuring thermal energy; and
- (zz) "UCA" means the *Utilities Commission Act*, R.S.B.C. 1996, c. 473 as may be amended from time to time.

## 1.2 SCHEDULES

The following Schedules, as may be amended from time to time, are incorporated by reference into this Agreement:

Schedule "A"	Energy System Description
Schedule "B"	Delta School District Site Rules for Contractors
Schedule "C"	List of Environmental Reports

### 1.3 AMENDMENTS TO SCHEDULES

The District and FEI acknowledge that during the construction phase of the Energy System there may be additions and alterations to the Specifications for the Energy System which would result in more efficient use and operation of the Energy System. If these additions or alterations result in changes to any of the above Schedules, the Parties mutually agree to amend the Schedules by way of a written amendment prior to the Commission Date.

### 1.4 INTERPRETATION

Except where the context requires otherwise or except as otherwise expressly provided, in this Agreement:

- (a) all references to a designated Article or Section are to the designated Article or Section of this Agreement unless otherwise specifically stated;
- (b) the singular of any term includes the plural, and vice versa, and the use of any term is equally applicable to any gender and, where applicable, body corporate;
- (c) any reference to a corporate entity includes and is also a reference to any corporate entity that is a successor by merger, amalgamation, consolidation or otherwise to such entity;
- (d) the preamble and all schedules referred to and attached to this Agreement are incorporated by reference and will form a part of this Agreement;
- (e) all sums of money which are referred to in this Agreement are in lawful money of Canada;
- (f) the headings of the Articles and Sections set out in this Agreement are for convenience only and will not be considered in any interpretation of this Agreement;

## **ARTICLE 2 - DESIGN AND CONSTRUCTION OF THE ENERGY SYSTEM**

### 2.1 CONSTRUCTION

FEI will perform the Design and Construction:

- (a) in accordance and in compliance with the Specifications;
- (b) in a good and workmanlike manner using qualified workers, and in accordance with sound and currently accepted industry standards and codes of practice normally employed, at the time and place of performance, in projects of a similar type and nature;
- (c) to ensure operational compatibility with the Building System;
- (d) in a safe and environmentally sound manner, and in accordance with all applicable Laws; and
- (e) in accordance with the terms of this Agreement.

## 2.2 CAPITAL CONTRIBUTION

The District will pay to FEI within 30 days of the Commission Date the Capital Contribution for the purpose of reducing the capital investment and the associated carrying cost of capital by FEI for provision of Service to the Building.

## 2.3 SPECIFICATIONS

Subject to and in accordance with this Section 2.3, FEI shall prepare and complete the Specifications promptly following the Acceptance Date.

FEI confirms the Energy System, as described in the Specifications and as contemplated by the Energy System description set out in Schedule A, will be designed to meet the thermal energy requirements of the Building and operational compatibility of the Building System based in part on information supplied by the District as to historical usage, which information has not been independently verified by FEI. FEI shall have no liability to the District for the failure of the Energy System to satisfy the requirements of the Building where such failure is attributable to the information supplied by the District being incorrect, inaccurate or incomplete.

FEI will prepare the Specifications in consultation with the District in order to ensure the Energy System can be appropriately accommodated within the Building and interface with the Building Systems. FEI will submit material changes to the Specifications, both before and during construction, to the District for review and comment prior to such changes taking place. If the District does not comment on the Specifications or material changes to the Specifications or advise that it has no comment within five (5) Business Days of receipt, FEI will be entitled to proceed on the basis of the information provided to the District. FEI will revise the Specifications based on the comments from the District provided that doing so will not impact FEI's costs or adversely affect system performance.

Review of and comment on the Specifications by the District does not impose any obligation on the District to verify the suitability of the Energy System or be construed as confirmation by the District that the Energy System satisfactorily meets the Building's energy requirements.

## 2.4 WORK SCHEDULE

Within ten (10) Business Days following the Acceptance Date, FEI will submit to the District for review and comment a Gantt chart schedule for the Design and Construction listing activities to be undertaken during the Design and Construction stages, key milestones and approval dates and other pertinent dates. Any revisions to the schedule must be reviewed and commented by the District, which review and comment will not be unreasonably withheld, conditioned or delayed.

In order to ensure that the Building System remains operational during normal school hours (as defined in Schedule B), the cut-over from the existing heating/cooling plant to the Energy System shall be performed outside normal school hours.

## 2.5 REPORTING

FEI shall produce and submit a monthly progress report for the Design and Construction to the District until the Energy System is Commissioned.

## 2.6 TESTING AND COMMISSIONING

FEI shall coordinate and supervise the start-up and testing of the Energy System to ensure the Energy System and other components of the Building System affected by the Design and Construction are operating in accordance with the Specifications, upon which the Energy System will be Commissioned. The District shall be invited to participate in the start-up and testing exercise.

# ARTICLE 3 - TERM AND RENEWAL

## 3.1 TERM

The term of this Agreement commences on the Effective Date and continues until the Expiry Date unless it is terminated earlier as authorized under this Agreement ("Term").

## 3.2 RENEWAL

This Agreement will automatically renew for periods of ten (10) years unless either Party provides written notice to the other Party no less than six (6) months prior to the Expiry Date, provided that there shall be no automatic renewal in the event that the Expiry Date arises as a result of the closure of the Building, or the Building otherwise ceases to operate as a school (as defined under the *School Act* (British Columbia)).

# ARTICLE 4 - ACCESS AND PERMITS

## 4.1 ACCESS RIGHTS

The District hereby grants to FEI, during the Term from and following the Acceptance Date, for so long as FEI shall require it, but subject to Section 4.4, a full, free and uninterrupted licence and right of way on, over and under the Lands and Building, for FEI, its assigns, employees, contractors, agents, invitees and licensees at all times hereafter for the purposes set out in this Agreement, provided FEI will avoid to the extent reasonably possible, and otherwise minimize interference with and inconvenience to, the occupants of the Building and the access rights of FEI will be limited to the extent reasonably necessary to fulfil FEI's obligations hereunder.

Without limiting the generality of the foregoing, but subject to Section 4.4, such right of way and licence shall include the full power, right and liberty to excavate for, install, place, construct, renew, alter, repair, maintain, operate, use, abandon, remove or replace its infrastructure, in whole or in part, and to enter upon, along, across, over or under the Lands or Building and have continual access to the Energy System, with or without vehicles, supplies, machinery or equipment, for any of the purposes set out in this Agreement, and to clear such portion of the Lands and keep it cleared of obstructions which, in the opinion of FEI, acting reasonably, may

interfere with any of the rights granted to FEI herein. The District may direct, in its discretion, FEI to use alternate routing for any Environmental or other reasonable purpose.

FEI covenants and agrees with the District not to do or knowingly permit to be done anything which may, in the opinion of the District acting reasonably, damage or interfere with the Building or impair the operating efficiency thereof or create any hazard.

#### 4.2 CONDITION OF LAND

The District represents and warrants to FEI that as of the Effective Date:

- (a) to the best of the District's knowledge, the Lands are free of Contaminants other than those specifically identified in the reports provided by the District to FEI and listed in Schedule C; and
- (b) there are no actions, proceedings, investigations, claims (including remediation cost recovery claims) pending, or to the knowledge of the District, threatened, that would interfere with FEI's access rights pursuant to Section 4.1.

#### 4.3 PERMITS

FEI will obtain and maintain at its own expense all Permits necessary for the Design and Construction and the Services.

#### 4.4 SAFETY, SECURITY AND BUILDING ACCESS

Notwithstanding anything to the contrary in this Agreement, FEI will adhere, and will cause all persons for whom it is responsible under this Agreement (including, without limitation, the Contractor) to adhere to the District Site Rules for Contractors.

#### 4.5 REMEDIATION

FEI shall promptly remediate any Disclosed Contaminants on the Lands as required by applicable Law that result from, or are Released as a result of the Design and Construction or the Services, except to the extent caused or contributed to by the District's negligence. In the event that Contaminants on the Lands, other than Disclosed Contaminants, are discovered by FEI, FEI will promptly notify the District of such discovery and the Parties will review the impact of such discovery, if any, on the Design and Construction or the Services.

### **ARTICLE 5 - SERVICE PROVISION**

#### 5.1 PROVISION OF SERVICE

Subject to the terms and conditions of the Agreement, FEI will provide the Services to the District throughout the Term.

## 5.2 SERVICE MONITORING AND REVIEW

The Parties acknowledge that FEI may be required from time to time to prepare and submit reports to the BCUC concerning the operation and performance of the Energy System, and the District shall provide FEI with reasonable cooperation in relation to the preparation of such reports.

## 5.3 STANDARD OF PERFORMANCE

In performing the Services, FEI will:

- (a) use only qualified personnel and exercise the same degree of care, skill and supervision as would be exercised by a reasonable and prudent owner experienced in performing like services;
- (b) perform the Services in accordance with all applicable Laws;
- (c) perform the Services in accordance with ongoing industry standards and codes of practice; and
- (d) without limiting the effect of the foregoing, abide by any standards of performance in relation to the Services that the BCUC may set from time to time according to the provisions of the UCA.

## 5.4 INTERRUPTION

No interruption of any of the on-site and off-site services, utilities and amenities provided by FEI to the Building will, except to the extent, if any, caused by any wrongful or negligent act of FEI or any person for whom FEI is responsible at law, render FEI liable to the District or any person claiming through or under the District, or relieve the District from any of its obligations under this Agreement. Notwithstanding the foregoing, FEI will use all reasonable diligence to remedy any such interruption if it is within its power and obligation to do so.

# **ARTICLE 6 - ENERGY SYSTEM MAINTENANCE AND OPERATION**

## 6.1 MAINTENANCE AND REPAIR OF ENERGY SYSTEM

Subject to Section 6.2, FEI will perform the Services and otherwise maintain or cause to be maintained and repaired the Energy System throughout the Term:

- (a) in accordance with the Energy System design and operating specifications and requirements as established by the qualified engineers engaged by FEI in the design and construction of the Energy System, and the equipment manufacturers;
- (b) in a good and workman-like manner using qualified workers, and in accordance with sound and currently accepted industry standards and codes of practice normally employed, at the time and place of performance, in projects of a similar type and nature;
- (c) to ensure operational compatibility with the Building System;

- (d) in a safe and environmentally sound manner, and in accordance with all applicable Laws; and
- (e) in accordance with the terms of this Agreement.

FEI will not delay repair of the Energy System for any reason, including as a result of a dispute with the District in relation to the costs and expenses of repair pursuant to Section 6.2.

## 6.2 REPAIR DAMAGE

The District will be responsible for all costs and expenses incurred by FEI in respect of any damage to the Energy System caused by or resulting from:

- (a) the careless or wilful damage to the Energy System by the District or its agents or other persons for whom at law the District is responsible; or
- (b) damage caused to the Energy System as a result of the negligent acts or omissions of the District, its agents or those for whom in law the District is responsible.

## ARTICLE 7 - CHARGES

### 7.1 MONTHLY CHARGES

The District throughout the Term commencing on the Commission Date in accordance with this Article 7 will pay to FEI when due for the Thermal Energy that FEI delivers and meters to the Building according to the rates set out in the Energy System Rate Development Agreement plus all applicable taxes (including harmonized sales tax applicable thereon) and any imposed taxes levied after the Commission Date by a government or regulatory agency that are related to the Energy System (including, but not limited to capital taxes or royalties) and any other payments due and owing by the District under this Agreement.

### 7.2 MONTHLY STATEMENT

FEI will, within 15 days following the end of each month, deliver to the District a statement setting out the Monthly Charges including all applicable taxes payable for that month.

### 7.3 PAYMENT

The District will pay the full amount specified in each statement provided to it in accordance with Section 7.2 within 30 days of receipt of such statement. All amounts payable to FEI will be made by cheque mailed to FEI at its address for service specified in Section 20.5.

### 7.4 PAYMENT DUE

Subject to Section 14.1, the obligation of the District to pay the Monthly Charges continues whether or not the Energy System is being used to provide the Building with its energy needs for space and ventilation heating, cooling and domestic hot water use.

#### 7.5 ARREARS TO BEAR INTEREST

If any amount owing to FEI or the District is not paid on or before the date on which it is due, a late payment charge of 1.5% per month will be assessed each month on all outstanding balances not paid by the due date.

### **ARTICLE 8 - OWNERSHIP OF THE ENERGY SYSTEM**

Notwithstanding the payments made by the District to FEI under this Article 8, any provision of this Agreement, any degree of annexation or affixation, or rule of law or equity to the contrary the District will have no proprietary interest in the Energy System which is, and shall remain, the property of FEI and may be used by FEI in its business or removed in whole or in part as it may see fit, and for any of such purposes, and FEI may enter in, upon and under all the Lands for the purposes of the maintenance, renewals, repair, removal or operation of the Energy System or any part thereof; provided that FEI shall not leave any part of the Energy System in such a state as to constitute a nuisance or a danger to the public through neglect, non-use and want of repair, and provided further that nothing in this clause shall nullify or otherwise impact or invalidate in any way the District's rights under Article 15 to purchase the Energy System.

### **ARTICLE 9 - ENVIRONMENTAL ATTRIBUTES**

#### 9.1 ENVIRONMENTAL ATTRIBUTES

All right, title and interest now existing or which may exist at any time in the future in the potential or actual commercial value of any Environmental Attributes that arise or accrue by virtue of the construction and operation of the Energy System will belong to the District. At the request of the District, FEI will reasonably cooperate with the District in applying for and assigning any Environmental Attributes to the District.

#### 9.2 GRANTS

Any grants from any Governmental Authority, a Crown Corporation or non-governmental authority that may be derived from a reduction in energy consumption by the Building will belong to the District.

### **ARTICLE 10 - REPRESENTATIONS AND WARRANTIES**

#### 10.1 DISTRICT'S REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties contained in this Agreement, the District hereby represents and warrants to FEI as follows and acknowledges that FEI is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) the District has the full right, power and authority to enter into this Agreement;

- (b) all necessary action on the part of the District has been taken to authorize and approve the execution and delivery of this Agreement and the performance by the District of its obligations hereunder;
- (c) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to the District as of the date of this Agreement;
- (d) the District is not party to any action, suit or legal proceeding, actual or, to the knowledge of the District, threatened, and there are no circumstances, matters or things known to the District which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or, to the knowledge of the District, threatened against the District before or by any Governmental Authority, which could affect the District's ability to perform its obligations under this Agreement; and
- (e) no person, firm or corporation has or will have as of the Commission Date, any agreement, right, or option or right capable of becoming an agreement, right, or option for the purchase or acquisition of the Energy System.

## 10.2 FEI'S REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties contained in this Agreement, FEI hereby represents and warrants to the District as follows and acknowledges that the District is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) FEI has the full right, power and authority to enter into this Agreement;
- (b) all necessary corporate action on the part of FEI has been taken to authorize and approve the execution and delivery of this Agreement and the performance by FEI of its obligations hereunder;
- (c) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to FEI as of the date of this Agreement;
- (d) FEI is not party to any action, suit or legal proceeding, actual or threatened, and there are no circumstances, matters or things known to FEI which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or threatened against FEI before or by any Governmental Authority, which could affect FEI's ability to perform its obligations under this Agreement; and
- (e) FEI has or will have all permits, licenses, authorizations and other documentation required for the operation of the Energy System after the Commission Date; and
- (f) FEI has all the required expertise to fulfill its obligations under this Agreement.

### 10.3 DELEGATION AND SUBCONTRACTING

FEI may delegate and subcontract its obligations under this Agreement with respect to Design and Construction and Services to any contractor, consultant, agent or representative provided that FEI shall be fully responsible for the acts and omissions of such persons and those either directly or indirectly employed by them to the same extent as FEI for its own acts or omissions.

## **ARTICLE 11 - BCUC ACCEPTANCE**

### 11.1 REGULATORY REVIEW TERMINATION

Subject to Section 11.3, either Party may terminate this Agreement if within 90 days following the Effective Date, this Agreement and the Energy System Rate Development Agreement, including the Market Rate and the SD37 Rate Rider as defined in that Agreement have not been accepted for filing by the BCUC (such acceptance being herein called "BCUC Acceptance").

### 11.2 REGULATORY FILING

FEI, on behalf of itself and the District, and at its own cost, shall file the Agreement with the BCUC within a reasonable time after the Effective Date. FEI shall take all steps reasonably required to secure BCUC Acceptance, which shall consist of those procedural steps related to filing the Agreement and providing argument and witnesses in support of filing.

### 11.3 TERMINATION

A Party entitled to terminate under Section 11.1 must do so by giving notice to terminate to the other Party at any time after the right to terminate arises pursuant to Section 11.1, and prior to:

- (a) the date of issuance of the BCUC Acceptance; and
- (b) the date that is 90 days after the Effective Date.

### 11.4 EFFECT OF BCUC ACCEPTANCE

The Parties acknowledge that upon BCUC Acceptance, the Services will be subject to regulation by the BCUC under the UCA, and will form another class of service that FEI provides as a public utility. The Parties acknowledge that the terms of the UCA may supersede the terms and conditions of this Agreement.

## **ARTICLE 12 - INDEMNITY**

### 12.1 FEI'S INDEMNITY

Without limiting any other obligations of FEI provided herein, FEI will indemnify, defend, and save harmless the District and its trustees, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including the full amount of all legal fees and expenses on a

solicitor-client basis) which may be paid by, incurred by, or asserted against the District or its directors, officers, employees, agents, successors, or assigns, arising from or in connection with:

- (a) the breach or non-performance by FEI of any of its obligations or warranties hereunder; or
- (b) the negligence or wilful misconduct of FEI, its employees, contractors or agents in respect of the Energy System, and in the performance of the obligations of FEI pursuant to this Agreement,

excluding only such of the foregoing as arise from the fraud, negligence or wilful misconduct of the District or its trustees, officers, directors, members, employees, contractors or agents, or the breach or non-performance by the District of any of its obligations or warranties hereunder.

## 12.2 DISTRICT'S INDEMNITY

Without limiting any other obligations of the District provided herein, the District will indemnify, defend, and save harmless FEI, its Affiliates and their respective shareholders, directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including the full amount of all legal fees and expenses on a solicitor-client basis) which may be paid by, incurred by, or asserted against FEI, its Affiliates or their respective shareholders, directors, officers, employees, agents, successors, or assigns, arising from or in connection with:

- (a) the breach or non-performance by the District of any of its obligations or warranties hereunder; or
- (b) the negligence or wilful misconduct of the District, its employees, contractors or agents in respect of the Energy System, and in the performance of the obligations of the District pursuant to this Agreement,

excluding only such of the foregoing as arise from the fraud, negligence or wilful misconduct of FEI or its Affiliates or any of their respective officers, directors, members, employees, contractors or agents, or the breach or non-performance by FEI of any of its obligations or warranties hereunder.

## 12.3 CONSEQUENTIAL LOSS

In no event will the District or FEI or any of their respective officers, directors, employees, contractors or agents be liable to the other Party for any indirect or consequential loss, cost or expense whatsoever, including any loss of profits, revenues or other economic loss, suffered by the other Party or its officers, directors, employees, contractors or agents.

## 12.4 SURVIVAL OF INDEMNITY

The indemnity of each of the District and FEI provided under this Article 12 will survive the Term of this Agreement.

## 12.5 ENVIRONMENTAL INDEMNITY BY THE DISTRICT

The District will indemnify and save harmless FEI, its Affiliates, directors, officers, shareholders, employees, agents, successors and permitted assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants (but not including Disclosed Contaminants) and remediation of the Lands and any affected adjacent property) (collectively, "FEI Losses") which may be paid by, incurred by or asserted against FEI, its Affiliates and their respective directors, officers, shareholders, employees, agents, successors or permitted assigns, arising from or in connection with any Contaminants (but not including Disclosed Contaminants) existing on the Lands prior to the Commission Date or brought onto the Lands or Released onto the Lands by the District or any person for whom it is in law responsible, except to the extent the FEI Losses suffered were caused or contributed to by any act or omission of FEI or any person for whom FEI is in law responsible after FEI had knowledge of the Contaminants.

## 12.6 ENVIRONMENTAL INDEMNITY BY FEI

FEI will indemnify and save harmless the District, its Affiliates and their respective trustees, directors, officers, employees, agents, successors and permitted assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the Lands and any affected adjacent property) (collectively, "District Losses") which may be paid by, incurred by or asserted against the District, its Affiliates, and their respective trustees, directors, officers, employees, agents, successors or permitted assigns, arising from or in connection with any Contaminants brought onto the Lands or any Disclosed Contaminants Released onto the Lands by FEI or any person for whom it is in law responsible, except to the extent the District Losses suffered were caused or contributed to by any act or omission of the District or any person for whom the District is in law responsible after the District had knowledge of the Contaminants.

# ARTICLE 13 - INSURANCE

## 13.1 FEI INSURANCE COVERAGE.

- (a) FEI will obtain and maintain at its own expense throughout the Term, Commercial General Liability Insurance for bodily injury, death and property damage in the minimum amount of five million (\$5,000,000) dollars per occurrence. The policy will contain a cross liability provision and will be maintained for a period ending no sooner than 12 months after the expiry or termination of this Agreement.
- (b) FEI will be responsible for the full amount of all premiums and deductibles required under this Section 13.1. All policies required herein must be effective at the Commission Date. Insurance will be purchased from insurers registered and licensed to underwrite

insurance in British Columbia. Policies will contain waivers of subrogation against the District and all its officers, directors, members, employees, contractors and agents.

### 13.2 DISTRICT INSURANCE COVERAGE

- (a) The District will obtain and maintain at its own expense throughout the Term Commercial General Liability Insurance for bodily injury, death and property damage in the minimum amount of five million (\$5,000,000) dollars per occurrence. The policy will contain a cross liability provision and will be maintained for a period ending no sooner than 12 months after the expiry or termination of this Agreement.
- (b) The District will be responsible for the full amount of all premiums and deductibles required under this Section 13.2. All policies required herein must be effective at the date of this Agreement. Insurance will be provided by the Provincial self-insured program. Policies will contain waivers of subrogation against FEI and all its officers, directors, employees, contractors and agents.

### 13.3 PRIORITY

FEI will ensure that the District is an additional insured under the insurance to be obtained and maintained pursuant to Section 13.1. The District will ensure that FEI is an additional insured under the insurance to be obtained and maintained pursuant to Section 13.2. In the event of a claim, the insurance carried by the Party responsible for actions which give rise to such claim will be the primary insurance with respect to such claim.

## **ARTICLE 14 - DEFAULT**

### 14.1 DEFAULT BY FEI

- (a) FEI will be in default under this Agreement if FEI is in breach of a material term, covenant, agreement, condition or obligation imposed on it under this Agreement and fails to cure such default within ten (10) days after receipt of written notice thereof from the District, or, if such default is not capable of being cured within such ten (10) day notice period, fails to commence in good faith the curing of such default upon receipt of such written notice of default from the District and to continue to diligently pursue the curing of such default thereafter until cured. For the purposes of this Section 14.1, Section 4.4 is hereby deemed to be a material term of this Agreement.
- (b) If FEI is in default of this Agreement, the District may at its option and without liability therefore or prejudice to any other right or remedy it, including under the UCA, may have suspend or refuse to make any payments due hereunder until the default has been fully remedied, and no such suspension or refusal will relieve FEI from any of its obligations under this Agreement.
- (c) In the event the default is not fully remedied within thirty (30) days of receipt by FEI of written notice thereof from the District, the District may, at its option, undertake the necessary steps to remedy FEI's default at FEI's sole expense, which reasonable costs

shall be deducted from the Monthly Charges, and such actions will not relieve FEI from any of its obligations under this Agreement or, at its option, and without any liability, terminate this Agreement without prejudice to any other right the District may have hereunder or at law or otherwise.

#### 14.2 DEFAULT BY THE DISTRICT

- (a) The District will be in default under this Agreement if the District fails or refuses to make any payment due to FEI by the District under this Agreement within thirty (30) days of receiving written notice from FEI after the date that payment is due or if the District is in breach of a material term, covenant, agreement, condition or obligation imposed on it under this Agreement and fails to cure such default within ten (10) days after receipt by the District of written notice thereof from FEI or, if such default is not capable of being cured within such ten (10) day notice period, fails to commence in good faith the curing of such default forthwith upon receipt of such written notice thereof from FEI and to continue to diligently pursue the curing of such default thereafter until cured.
- (b) If the District is in default of this Agreement, FEI may at its option and without liability therefore or prejudice to any other right or remedy it may have, including under the UCA, cease performing the Services and no such actions will relieve the District from any of its obligations under this Agreement.
- (c) In the event the default by the District is not fully remedied within thirty (30) days of receipt by the District of written notice from FEI, FEI may undertake the necessary steps to remedy the District's default at the District's sole expense and such action will not relieve the District from any of its obligations under this Agreement or, at its option, and without any liability, take whatever steps necessary to shut down the Energy System and terminate this Agreement without prejudice to any other right FEI may have hereunder or at law or otherwise.

#### 14.3 CROSS DEFAULT

- (a) If any Building experiences a Service Interruption at any time, the District may deliver a notice of such Service Interruption to FEI (a "Service Interruption Notice" to FEI);
- (b) If a Service Interruption continues for a period of 48 consecutive hours after the delivery of a Service Interruption Notice pursuant to Section 14.3(a), the District may deliver a notice of such continuing Service Interruption to FEI (a "Continuing Service Interruption Notice");
- (c) If a Service Interruption continues for a period of 120 consecutive hours after the delivery of a Continuing Service Interruption Notice, the District may at its option deliver a notice of such continuing Service Interruption to FEI (a "Service Failure Notice"); Within 60 days of either:
  - (i) the District's delivery of a Service Failure Notice pursuant to Section 14.3(c); or

- (ii) the District's delivery of a Continuing Service Interruption Notice pursuant to Section 14.3(b) that constitutes the fifth or greater Continuing Service Interruption Notice delivered in that calendar year;

the District may, at its option and without liability:

- (iii) terminate this Agreement without prejudice to any other right the District may have hereunder at law or otherwise; or
  - (iv) terminate the Energy System Rate Development Agreement and all Energy System Service Agreements (inclusive of this Agreement), without prejudice to any other right the District may have hereunder at law or otherwise.
- (d) For greater certainty, this Agreement shall be deemed to be terminated in the event that the District exercises its right to terminate all Energy System Service Agreement under another Energy System Service Agreement.

#### 14.4 SURVIVAL

Upon expiry or earlier termination of this Agreement for any reason, all claims, causes of action or other outstanding obligations remaining or being unfulfilled as of the expiry or termination of this Agreement and all of the provisions of this Agreement relating to the obligation or either the Parties to account to or indemnify the other and to pay to the other any amounts owing as at the date of expiry or termination in connection with this Agreement will survive such expiry or termination.

### **ARTICLE 15 – EXPIRY AND TERMINATION**

#### 15.1 EXPIRY

Upon expiry of the Term, unless otherwise agreed between the Parties and subject to agreement by the BCUC (if required pursuant to applicable Laws), the District may, at its option and by written notice to FEI within 30 days following the termination:

- (a) require FEI to remove the Energy System at FEI's cost in accordance with Section 15.5; or
- (b) acquire the Energy System from FEI at the Adjusted Energy System Purchase Price.

#### 15.2 TERMINATION OF THE ENERGY SYSTEM RATE DEVELOPMENT AGREEMENT

- (a) If the Energy System Rate Development Agreement is terminated as a result of the adoption, approval or implementation of a thermal energy rate tariff by the BCUC, this Agreement will automatically terminate effective as of the date of termination of the Energy System Rate Development Agreement;
- (b) If the Energy System Rate Development Agreement is terminated for cause by the District, this Agreement will be deemed to have been terminated pursuant to Section

14.1(c) as of the date of termination of the Energy System Rate Development Agreement, and Section 15.3 shall apply; and

- (c) If the Energy System Rate Development Agreement is terminated for cause by FEI, this Agreement will be deemed to have been concurrently terminated pursuant to Section 14.2(c) as of the date of termination of the Energy System Rate Development Agreement, and Section 15.4 shall apply.

### 15.3 TERMINATION BY THE DISTRICT FOR CAUSE

If the District terminates this Agreement pursuant to Sections 14.1(c) or 14.3, the District may, at its option and by written notice to FEI within 30 days following the termination:

- (a) require FEI to remove the Energy System, at its own cost, in accordance with Section 15.5; or
- (b) acquire the Energy System from FEI at the Adjusted Energy System Purchase Price.

### 15.4 TERMINATION BY FEI FOR CAUSE

If FEI terminates this Agreement pursuant to Section 14.2(c), FEI may, at its option and by written notice to the District:

- (a) remove the Energy System, at its own cost, in accordance with Section 15.5; or
- (b) require the District to purchase the Energy System from FEI at the Adjusted Energy System Purchase Price.

### 15.5 REMOVAL OF THE ENERGY SYSTEM

If FEI is required to remove the Energy System pursuant to Sections 15.1(a), 15.3(a) or 15.4(a) or otherwise upon expiry of this Agreement, FEI shall promptly remove those portions of the Energy System located within the Building and at surface level at FEI's cost, and FEI shall perform such removal activities using standards of performance that are equivalent to those that apply to the performance of the Services under this Agreement. Any portion of the Energy System not removed by FEI prior to the 30<sup>th</sup> day following the termination or expiry of the Agreement will, as of such day, be deemed to be automatically transferred to the District, and become the property of the District, all at no cost to the District.

### 15.6 ACQUISITION OF THE ENERGY SYSTEM

If the District elects to acquire the Energy System pursuant to Sections 15.1(b), 15.3(b) or 15.4(b):

- (a) the District shall pay the Adjusted Energy System Purchase Price to FEI within the later of 30 days of (i) the effective date of expiration or termination, and (ii) confirmation of the Adjusted Energy System Purchase Price; and

- (b) FEI will promptly execute and deliver any documents and records reasonably required by the District to effect and facilitate the transfer of the Energy System to the District, including bills of sale, operation and maintenance manuals and warranties, and will use reasonable commercial efforts to obtain any consents and approvals that may be required in relation to the transfer (including, without limitation, BCUC approval), provided that (i) FEI's obligations under this Section 15.6(b) shall arise only upon FEI's receipt of all amounts due and owing to FEI from the District under this Agreement, and (ii) during the period between the expiration or termination of the Agreement and FEI's receipt of amounts due and owing to FEI from the District under this Agreement, FEI shall continue to maintain, or shall permit the District to maintain, the Energy System in good working order.

Notwithstanding the foregoing, the Parties acknowledge and agree that FEI's ability to sell or otherwise transfer its interest in and to the Energy System to the District may be subject to BCUC approval under applicable Laws.

## **ARTICLE 16 - NON-COMPLIANCE AND ENVIRONMENTAL**

### **16.1 NOTIFICATION OF NON-COMPLIANCE**

FEI or the District (as applicable, the "Notifying Party") will promptly, upon becoming aware thereof, notify the other Party in writing of:

- (a) a Release of a Contaminant or any other occurrence or condition in the Energy System, the Lands or any adjacent property which could subject the other Party to any fines, penalties, orders or proceedings under applicable Laws;
- (b) any charge, order, investigation or notice of violation or non-compliance issued against the Notifying Party relating to the Energy System, or the operation of the Energy System, under any applicable Laws; and
- (c) any notice, claim, action or other proceeding by any third party against the Notifying Party in respect of the Design and Construction or the Services or concerning the Release or alleged Release of any Contaminants at or from the Energy System or the Lands.

### **16.2 NOTIFICATION BY FEI**

FEI will notify the appropriate Governmental Authorities of any Release of any Contaminants at or from the Energy System in accordance with applicable Laws. The District may, but is not obligated to, notify the appropriate Governmental Authorities of any Release of any Contaminants at or from the Energy System in accordance with applicable Laws.

### **16.3 OWNERSHIP OF CONTAMINANTS**

Notwithstanding any rule of law to the contrary, any Disclosed Contaminant Released from the Energy System, or any top soil, earth or other material containing a Contaminant for which FEI is responsible pursuant to Section 4.5 that is removed from the Lands by FEI or any person for

whom it is in law responsible, will be and remain the sole and exclusive property and responsibility of FEI and will not become the property of the District, notwithstanding the degree of its affixation to the Lands and notwithstanding the expiry or earlier termination of this Agreement.

#### 16.4 SURVIVAL OF OBLIGATIONS

The obligations of the Parties under this Article 16 will survive the expiry or termination of this Agreement.

### **ARTICLE 17 - FORCE MAJEURE**

#### 17.1 SUSPENSION

Subject to the other provisions of this Article 17, if either Party is unable or fails by reason of Force Majeure to perform in whole or in part any obligation or covenant set forth in this Agreement, with the exception of unpaid financial obligations, such inability or failure will be deemed not to be a breach of such obligation or covenant and the obligations of both Parties under this Agreement will be suspended to the extent necessary during the continuation of any inability or failure so caused by such Force Majeure.

#### 17.2 DEFINITION OF FORCE MAJEURE

For purposes of this Agreement, the term "Force Majeure" means any event or occurrence not within the control of the Party claiming Force Majeure and which by the exercise of reasonable diligence such Party is unable to prevent or overcome, including any acts of God, including lightning, earthquakes, storms, washouts, landslides, avalanches, fires, epidemics and floods; strikes, lockouts or other industrial disturbances; acts of the Queen's or public enemies, sabotage, wars, blockades, insurrections, riots or civil disturbances, fires, explosions, breakages of or accidents to machinery or lines of pipe; the laws, orders, rules, regulations, acts or restraints of any court or governmental or regulatory authority. For the purposes of this Article 17, a Party is deemed to have control over the actions or omissions of those persons to which it, its agents, contractors or employees, have delegated, assigned or subcontracted its obligations and responsibilities. For greater certainty, a Force Majeure shall not include any weather related events that do not exceed 25 year events as recorded by Environment Canada or as otherwise may be determined by the BCUC from time to time.

#### 17.3 EXCEPTIONS

Neither Party will be entitled to the benefit of Section 17.1 under any of the following circumstances:

- (a) the Energy System not being Commissioned;
- (b) to the extent that the inability or failure was caused by the negligence or contributory negligence of the Party claiming Force Majeure;

- (c) to the extent that the inability or failure was caused by the Party claiming Force Majeure having failed to diligently attempt to remedy the condition by taking all reasonable acts and to resume the performance of such covenants and obligations with reasonable dispatch;
- (d) if the inability or failure was caused by lack of funds or is in respect of any amount due hereunder; or
- (e) unless, as soon as possible after the happening of the occurrence relied upon or as soon as possible after determining that the occurrence was in the nature of Force Majeure and would affect the claiming Party's ability to observe or perform any of its covenants or obligations under this Agreement, the claiming Party will have given to the other Party notice to the effect that the claiming Party is unable by reason of Force Majeure (the nature whereof will be therein specified) to perform the particular covenants or obligations.

#### 17.4 RESUMPTION OF OBLIGATIONS

The Party claiming Force Majeure will give notice to the other Party, as soon as possible after the Force Majeure condition is remedied, to the effect that the same had been remedied and that such Party has resumed, or is then in a position to resume, the performance of its suspended covenants and obligations hereunder either in whole or in part.

#### 17.5 SETTLEMENT OF LABOUR DISPUTES

Notwithstanding any of the provisions of this Article 17, and subject to Section 17.3, the settlement of labour disputes or industrial disturbances is entirely within the discretion of the particular Party involved and the Party may make settlement of it at the time and on terms and conditions as it may deem to be advisable and no delay in making settlement will deprive the Party of the benefit of Section 17.1.

### **ARTICLE 18 - CONDITIONS PRECEDENT**

#### 18.1 CONDITIONS PRECEDENT OF FEI

The obligation of FEI to carry out the transactions contemplated by this Agreement is subject to fulfillment of the following conditions on or before such date as may be specified, which is for the sole benefit of FEI, and which may be waived by FEI in accordance with Section 18.2:

- (a) FEI obtaining the approval by its board of directors of the terms and conditions of this Agreement on or before the 30th day following the Effective Date, provided that if such approval cannot be obtained by this date due to the fact that the board of directors has not yet considered the transaction FEI reserves the right to extend the period of time to that date when the board next convenes.

## 18.2 FEI NOTICE OF WAIVER

If a condition set out in Section 18.1 has not been satisfied on or before the date as may be specified for its fulfillment, FEI may waive compliance with the condition in whole or in part, in its sole discretion, by written notice to the District, failing which delivery of written notice of satisfaction or waiver of such condition, this Agreement will, to the extent any further obligations of the Parties which remain unfulfilled, be null and void, without liability between the Parties hereto, and, neither Party will be under any further obligation to the other to complete the transactions or future transactions, as the case may be, contemplated by this Agreement.

## **ARTICLE 19 - DISPUTE RESOLUTION**

### 19.1 REFERENCE TO ARBITRATION

The Parties will attempt to resolve all disputes which may arise under, out of, in connection with or in relation to this Agreement by negotiation. They will provide full and timely disclosure to one another of all facts relevant to the disputes to facilitate those negotiations. If any such dispute remains unresolved, for any reason, fifteen (15) days after either Party requested the other Party to enter into negotiations to resolve it, or if the Parties agree to waive negotiations in respect of it, then either Party may submit that dispute for final resolution by arbitration administered by the British Columbia International Commercial Arbitration Centre (“BCICAC”) under its “Shorter Rules for Domestic Commercial Arbitration”. The seat of that arbitration will be Vancouver, British Columbia, Canada. The language of that arbitration will be English. Alternatively, the Parties may agree, within the 15 days referred to above, to submit that dispute for final resolution by arbitration in another manner.

### 19.2 BINDING DECISION

The decision of the arbitrator, regardless of what arbitration procedure is used, will, for all purposes of this Agreement, be final and binding on the Parties.

### 19.3 CONTINUATION OF SERVICES

Each of the Parties will perform all of its respective obligations under this Agreement notwithstanding the existence of any dispute that arises from time to time between the Parties in respect of any matter related to this Agreement or during the resolution of any dispute in accordance with this Article 19.

### 19.4 COSTS

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 case, the non-prevailing Party shall pay all costs and expenses of the arbitration, but not those of the prevailing Party.

## ARTICLE 20 - GENERAL

### 20.1 RESPONSIBILITY FOR COSTS

FEI's performance of any of its obligations under this Agreement, including without limitation the obligation to design, construct and install the Energy System as provided in Section 2.1, shall be at FEI's sole cost and expense, unless expressly provided otherwise in this Agreement;

### 20.2 EXERCISE OF DISCRETION

Where anything in this Agreement is identified as being in either Party's discretion, such Party will have the right to exercise such discretion in its own best interest without regard for the interest of the other Party.

### 20.3 COOPERATION

FEI and the District will at all times extend co-operation to each other to ensure the orderly management and operation of the Energy System.

### 20.4 SOLICITATION

Nothing in this Agreement precludes either Party from soliciting or entering into, other contracts with the other Party.

### 20.5 NOTICES

Any notice or other communication required or permitted to be given under this Agreement will be effective only if in writing and when it is actually delivered (which delivery may be by telecopy or other telecommunications device) to the Party for whom it is intended at the following address or such other address in British Columbia as such Party may designate to the other Party by notice in writing delivered in accordance with this Section 20.5:

(a) if to FEI:

FortisBC Energy Inc.  
10th Floor, 1111 West Georgia Street  
Vancouver, B.C.  
V6E 4M3

Attention: Gareth Jones  
Telephone: 250-380-5972  
Telecopy: 250-388-6876

(b) if to the District:

Board of Education of School District No. 37 (Delta)  
4585 Harvest Drive  
Delta, B.C.  
V4K 5B4

Attention: Frank Geyer  
Telephone: 604-952-5336  
Telecopy: 604-952-5375

Notwithstanding the foregoing, notices with respect to Force Majeure will be given in writing by telecopy, or orally in person or by telephone (to be confirmed by telecopy), to the person or persons designated from time to time by the Parties as the person or persons authorized to receive such notices.

## 20.6 CONFIDENTIALITY

The District and FEI will treat as confidential the terms of this Agreement and all Confidential Information (as defined below) and will at all times during the term of this Agreement and for a reasonable time thereafter hold the terms of this Agreement and all Confidential Information in confidence and neither Party will, without the prior written consent of the other Party, disclose or divulge the terms of this Agreement or any Confidential Information to any person, provided that nothing in this Section 20.6 will restrict or prevent either Party from making any disclosure of such terms or any Confidential Information:

- (a) which is reasonably necessary or desirable for such Party to carry out and give full effect to the terms, conditions and intent of this Agreement and the matters contemplated hereby;
- (b) which is required by any Law, including the Freedom of Information and Protection of Privacy Act (British Columbia);
- (c) to any Governmental Authority;
- (d) to the British Columbia Utilities Commission or other regulatory agency as part or in support of any regulatory application or submission;
- (e) to the directors, officers or employees of such Party or to an Affiliate of such Party or to the directors, officers or employees of an Affiliate of such Party;
- (f) to the professional advisors of such Party on the same terms of confidentiality;
- (g) which is already in the public domain; or
- (h) in connection with legal proceedings or steps being taken to remedy a breach or default under this Agreement by the other Party.

For the purposes of this Section 20.6, “Confidential Information” means proprietary information of either Party such as data, plans, drawings, manuals, or specifications which have been provided by such Party, its employees, contractors, agents, subcontractors, Affiliates to the other Party pursuant to this Agreement or proprietary information either Party conceived or developed by or for such Party concerning construction practices, operation and maintenance practices, agreements, marketing plans and strategies, profits, costs, pricing and systems of procedure (provided that “Confidential Information” does not include information which was disclosed to the receiving Party by a third Party (unless, to the knowledge of the receiving Party, the third Party is under an obligation of confidentiality to the other Party) or any information developed or conceived by the receiving Party without using the “Confidential Information” of the other Party).

#### 20.7 SEVERABILITY

If any provision of this Agreement is found or determined to be invalid, illegal or unenforceable it will be construed to be separate and severable from this Agreement and will not impair the validity, legality or enforceability of any other provisions of this Agreement, and the remainder of this Agreement will continue to be binding on the Parties as if such provision had been deleted.

#### 20.8 NO WAIVER

No waiver by either Party of any default by the other in the performance of any of the provisions of this Agreement will operate or be construed as a waiver of any other or future default or defaults hereunder, whether of a like or a different character. To be binding, any waiver of any provision of this Agreement must be clearly expressed in writing to be signed by the waiving Party.

#### 20.9 BURDEN AND BENEFIT

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

#### 20.10 GOVERNING LAW

This Agreement and all matters arising hereunder will be governed by the laws of British Columbia and the federal laws of Canada applicable in British Columbia.

#### 20.11 ENTIRE AGREEMENT

This Agreement contains the whole agreement between the Parties in respect of the subject matter hereof and there are no terms, conditions or collateral agreements express, implied or statutory other than as expressly set forth in this Agreement and this Agreement supersedes all of the terms of any written or oral agreement or understanding between the Parties.

#### 20.12 TIME OF ESSENCE

Time is of the essence of this Agreement.

#### 20.13 FURTHER ASSURANCES

Each Party will, at all times hereafter on demand by the other, execute and deliver or cause to be executed and delivered all such further documents and do all such further acts and things as may be reasonably requested by the other Party to evidence, carry out and give full effect to the intent and meaning of this Agreement and to assure the completion of the transactions contemplated hereby.

#### 20.14 AMENDMENTS TO BE IN WRITING

Except as set out in this Agreement, no amendment or variation of this Agreement will be effective or binding upon the Parties unless such amendment or variation is set out in writing and duly executed by the Parties.

#### 20.15 FACSIMILE

This Agreement may be executed by the Parties and transmitted by facsimile transmission and, if so executed, transmitted and received, this Agreement will for all purposes be effective as if the Parties had delivered and executed the original Agreement and each Party undertakes to provide the other Party with a copy of this Agreement bearing original signatures forthwith upon demand.

#### 20.16 SUBJECT TO LEGISLATION

Notwithstanding any other provision hereof, this Agreement and the rights and obligations of FEI and the District under this Agreement are subject to all present and future laws, rules, regulations and orders of any legislative body, governmental agency or duly constituted authority now or hereafter having jurisdiction over FEI or the District.

#### 20.17 EXPENSES

Each Party to this Agreement shall be responsible for the payment of all costs, expenses, legal fees and disbursements incurred or to be incurred by it in negotiating and preparing this Agreement and all documents required to be delivered under this Agreement and otherwise relating to the transactions contemplated by this Agreement.

#### 20.18 NO CONTRARY AGREEMENT

No Party shall enter into an agreement or other commitment with any person if such agreement or commitment has terms or provisions in conflict with or inconsistent with the terms of this Agreement or which could reasonably be expected to lead to actions or consequences that would result in the Party being in breach of the commitments and obligations of the Party pursuant to this Agreement unless such other agreement or commitment is expressly approved by the other Parties.

#### 20.19 NO PARTNERSHIP

Nothing herein shall be deemed or construed to create a joint venture, partnership, employment or agency relationship between the Parties for any purpose.

20.20 ASSIGNMENT

Neither Party may assign this Agreement or any of its rights or obligations under this Agreement, and FEI may not assign, transfer or sell all or any part of the Energy System, except:

- (a) with the consent of the other Party, such consent not to be unreasonably withheld, delayed or conditioned; or
- (b) in the case of FEI, to an Affiliate of FEI which is a "public utility" as defined in the *UCA* on notice to, but without the consent of, the District.

20.21 COUNTERPARTS

This Agreement may be executed in counterparts with the same effect as if the Parties had signed the same document. All counterparts will be construed together and will constitute one agreement.

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

**FORTISBC ENERGY INC.**

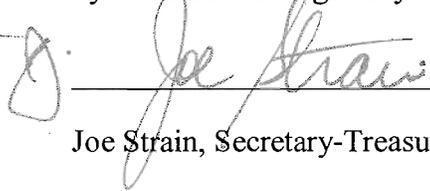
by its authorized signatory:

  
\_\_\_\_\_

Doug Stout,  
VP Energy Solutions & External Relations

**THE BOARD OF EDUCATION OF  
SCHOOL DISTRICT NO. 37 (DELTA)**

by its authorized signatory:

  
\_\_\_\_\_

Joe Strain, Secretary-Treasurer

# SAMPLE SCHEDULE “A”

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## Energy System Description

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### Mechanical Equipment Plans and Specifications

Equipment schedule:

- 1 ground source heat pumps water furnace 540NXW or equivalent. and associated pumps. The heat pump and related equipment will be installed in the boiler room at the old boilers location on the concrete pad.
- Each heat pump will have 1 pump on condenser side (5 Hp, 90gpm, 100 ft).
- Piping, control valves and other equipment and accessories connected to the above equipment.
- Connection of the heat pumps on the return of the boiler and installation of the 3 way valves.
- 500 ft of piping 4 inches isolated between the field and the heat pump The pipes will be installed on the roof.
- Installation of geo-exchange field loop to match the designed performance of the system.
- Supply and do the injection of 800 usgals of propylene/glycol with a concentration of 25%.
- Control systems for the above mentioned equipment.
- BTU meters

Prior to commencement of the Mechanical Equipment construction, FEI shall provide detailed drawings to the District for review and acceptance.

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## **SCHEDULE “B”**

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# **Delta School District Site Rules for Contractors**

## **Delta School District Site Rules for Contractors**

### **1.0 Safety**

- 1.1 For the purposes of this section, “Safety Regulations” means the rules, regulations, and practices required by WorkSafeBC.
- 1.2 The Contractor shall be solely responsible for site safety during the execution of all assigned construction and maintenance activities, including work performed by subcontractors and suppliers, and for compliance with the Safety Regulations, and shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the work.
- 1.3 If the District is of the reasonable opinion that the Contractor has not taken such precautions as are necessary to ensure compliance with the requirements of Clause 1.2, the District may take or order any remedial measures which it deems necessary, including stopping the performance of all or any portion of the work, and the District may use the employees of itself, the Contractor, any subcontractor or any other contractors to perform such remedial measures. The Contractor acknowledges and agrees that any failure by the Contractor to comply with the Safety Regulations shall constitute a default of the Contractor's contractual obligations and the District may issue a written notice instructing the Contractor to correct the default in the two (2) working days immediately following receipt of such notice.
- 1.4 The Contractor shall file any notices or any similar document (including, without limitation, a Notice of Project where applicable) required pursuant to the Safety Regulations. This duty of the Contractor will be considered to be included in the work and no separate payment therefore will be made to the Contractor.
- 1.5 The Contractor shall develop, maintain and supervise for the duration of the work a comprehensive safety program that will effectively incorporate and implement all required safety precautions. The program shall, as a minimum, respond fully to the Safety Regulations and general construction practices for the safety of persons or property, including without limitation the WorkSafeBC regulations that may be applicable (e.g. WHMIS, dust control, etc.).
- 1.6 The Contractor shall provide a copy of the safety program described in Clause 1.5 to the District prior to the commencement of the work and shall, at all times require, as far as it is reasonably practical to do so, that every employer and worker performing work in respect of the project complies with such program.
- 1.7 The Contractor shall arrange regular safety meetings at its expense, record the minutes of such meetings and maintain a complete file for review by the appropriate authorities.
- 1.8 The Contractor shall supply and maintain, at its own expense, at its office or other well-known place at the work site, safety equipment necessary to protect the workers and general public against accident or injury as prescribed by the governing authorities.
- 1.9 The Contractor shall supply and maintain all articles necessary for giving first-aid to any person who may be injured on the work site and shall establish an emergency procedure for the immediate removal of any injured person to a hospital or a doctor's care in accordance with the Safety Regulations.
- 1.10 The Contractor shall, as required under the Safety Regulations, promptly report all accidents of any sort arising out of or in connection with the performance of the work whether on or adjacent to the work site, giving full details and statements of witnesses. The District shall be copied on all accident reports and investigation reports.

## **2.0 Security and Access**

- 2.1 **Site and Building Access:** The District's Maintenance Services Department will issue gate and building keys, electronic access cards (complete with instructions as to how to arm/disarm the building intrusion alarm system and how to contact the alarm monitoring station) and identification badges for the Contractor to enter the site and building, disarm/arm the building intrusion alarm system, and access the portions of the site where the Contractor's work is taking place. The Contractor and all subcontractors must check in at the school office (if occupied by District staff) prior to entering other parts of the building. The access cards, keys and identification badges shall be promptly returned to the District at the end of the contract.
- 2.2 **Security:** The Contractor shall assume all responsibility for the security of the work site. The Contractor must ensure that all windows, doors and gates are secure and the building intrusion alarm system is armed (unless District staff are still in the building) at the end of the workday. The Contractor must also safeguard the rest of the building and/or site from access through possible open construction areas. Security doors shall at all times remain closed and shall not be propped open, even for a short time. The Contractor is responsible for any costs arising when the District's security runner services is called to attend a work site for security matters resulting from the Contractor's negligence.
- 2.3 **Normal School Hours:** Normal hours of operation for the District are 0730h-1600h Monday to Friday, excluding statutory holidays. For after-hours and weekend work, the Contractor must notify the District's Maintenance Services Department at least one business day in advance of the work.

## **3.0 Conduct**

- 3.1 **Noise Due to Construction or Maintenance Activities:** In accordance with the Delta Noise Bylaw 1906, "no person shall carry on or cause to be carried any construction work, reconstruction, alteration, repair or demolition of a building or structure, the operation of machinery, or works in connection with any excavation or highway before 07:00h or after 1900h and day of the week from Monday to Friday, inclusive, before 0900h or after 1700h on Saturdays, or at any time Sundays. The Contractor shall respect the classroom operations in the vicinity of the work site and as such will make every attempt to limit noisy work to times outside of classroom operation or to adequately dampen, silence and/or soundproof equipment that generates noise to mitigate disruption to the classrooms.
- 3.2 **Communication devices:** Radio and cell phone volume shall be at the minimum volume which is consistent with the ability to operate the device.
- 3.3 **Roadways:** All speed limits and other traffic rules must be obeyed and access to the roadways should not be impeded. Parking and secure storage of materials and equipment by the Contractor and subcontractors shall only be in designated areas only.
- 3.4 **Cleanliness:** The work site must be maintained for an orderly appearance on a daily basis. Trash and construction debris shall be contained at all times and removed from the work site weekly.
- 3.5 **Toilets:** All temporary toilets shall have their doors faced away from streets. In no cases shall a worker utilize any staff washroom or other staff facilities at the work site, except as otherwise agreed in writing by the District. Under no circumstances will workers be permitted to use student washrooms.
- 3.6 **Identification Badges:** All workers shall have a District-assigned identification badge that clearly indicates the company's name and the worker's name. It is to be worn whenever at the work site.

- 3.7 **Smoking:** Smoking is not permitted on District property.
- 3.8 **Alcohol/Drugs:** No alcoholic beverages or non-prescription drugs shall be brought or consumed at the work site.
- 3.9 **Animals:** No dogs or other animals, are permitted at the work site without the written consent of the District.
- 3.10 **Fitness for Work:** All workers must be fit for work at all times. The District retains the right to request individuals leave the work site if unfit for any reason including, without limitation, inebriation, taking drugs, injury, fatigue, rudeness or any other reason that may affect the quality of the work or represents a breach of these rules.
- 3.11 **Theft:** Workers who steal from occupants or the District shall be immediately ejected from the work site. The Contractor is responsible for all such thefts irrespective of whether the worker is an employee of the Contractor or a subcontractor.
- 3.12 **Discrimination and Harassment:** The District actively promotes a safe and secure school environment and as such does not tolerate violations of human rights legislation, including:
  - (a) discriminatory acts against any person with respect to the work or school environment or any educational program or service provided to or by that person because of race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age of that person, or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person;
  - (b) all forms of actual, attempted or threatened physical harm directed at any person; or
  - (c) any form of sexual harassment such as unwelcome sexual advances with actual or implied work related consequences; unwelcome remarks, questions, jokes or innuendo of a sexual nature including sexist comments or sexual invitations; verbal abuse, intimidation or threats of a sexual nature; unwelcome leering, staring or making sexual gestures; whistling or catcalls; display of pornographic or other sexual materials; offensive pictures, graffiti, cartoons or sayings; unwanted physical contact such as touching, patting, pinching or hugging; and physical assault of a sexual nature

## **SCHEDULE “C”**

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### **List of Environmental Reports**



**ASBESTOS MATERIALS SURVEY  
AND RISK ASSESSMENT**

**OF**

**SOUTH PARK ELEMENTARY SCHOOL  
735 Gilchrist Drive  
Delta, BC**

**PREPARED FOR:**

**DELTA SCHOOL DISTRICT  
Maintenance Facility  
7186 Brown Street  
Delta, BC  
V4G 1G8**

**PREPARED BY:**

**ACM ENVIRONMENTAL CORPORATION  
#217 -2323 Quebec Street  
Vancouver, BC  
V5T 4S7  
604-873-8599**

**November 2005**

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<b>Bulk Sample Results</b>	<b>Appendix A</b>
<b>Photographs</b>	<b>Appendix B</b>

## **EXECUTIVE SUMMARY**

A.C.M. Environmental Corporation (ACM) was retained by the Delta School District to perform an Asbestos Materials Survey and Risk Assessment for South Park Elementary located at 735 Gilchrist Drive, Delta, BC.

The assessment involved an inspection of all areas of the building. The objective of the assessment was to identify the types and extent of asbestos containing materials within the building and any risks associated with the materials and the regular usage of the building.

The assessment was conducted using both visual and physical assessment techniques. Samples of materials suspected of containing asbestos were collected and forwarded, using proper chain of custody protocols, to Prezant Associates, Inc. for asbestos analysis. Asbestos sample results are located in Appendix A of this report.

In summary, the findings from the assessment conclude that asbestos was found within the construction materials of the building, however, no PCB or Mercury containing materials were found within the equipment of the building.

Two types of asbestos containing building materials were observed during this survey which includes vinyl floor tile and ducting mastic materials. Within the context of the report, areas have been detailed as to the locations of the asbestos containing materials, the content of asbestos where applicable, and the essential procedures to be followed for removal of these materials, as required.

The hazardous materials survey was conducted using non-destructive and some limited destructive testing methods. Areas within walls were not inspected as access was not possible without causing extensive damage to the walls. It should be noted that there is a possibility of asbestos containing materials existing within inaccessible wall and ceiling cavities, and under sub-floors. Possible asbestos-containing materials which may exist in these areas may include but are not limited to: insulation materials (mechanical or construction), secondary layers of drywall or flooring, etc.

Roofing materials were not sampled at this time as the integrity of the waterproof membrane would be compromised, possibly voiding insurance coverage in the event of a water leak. If the roofing materials are to be disturbed during a renovation project, they must be sampled prior to the work taking place.

A random number of fluorescent lighting fixtures were opened up and inspected for possible PCB containing ballasts. No PCB containing ballasts were observed

within the fluorescent lighting fixtures inspected, although some may exist, as not all fixtures were opened. No Mercury containing thermostat switches were observed within the building.

## **INTRODUCTION**

A.C.M. Environmental Corporation (ACM) was retained by the Delta School District to perform an Asbestos Materials Survey and Risk Assessment for South Park Elementary located at 735 Gilchrist Drive, in Delta, BC. All areas of the building were inspected and/or sampled during this survey and photographs of the site are included as Appendix B.

The objective of the assessment was to identify the types and extent of asbestos containing construction materials within the accessible areas of the building. The assessment at this time involved an inspection of all areas of the building not including the roofing materials.

The survey and assessment was conducted on November 1, 2005 by Mr. James McArthur, ASCT, Environmental Technician, for ACM. Twelve (12) representative bulk samples of materials suspected of containing asbestos were collected from the latest survey and are included as Appendix A of this report.

## **METHODOLOGY**

The hazardous materials survey was conducted using non-destructive and some limited destructive testing methods. Areas within walls were not inspected as access was not possible without causing extensive damage to the walls. It should be noted that there is a possibility of asbestos containing materials existing within inaccessible wall and ceiling cavities, and under sub-floors. Possible asbestos-containing materials which may exist in these areas may include but are not limited to: insulation materials (mechanical or construction), secondary layers of drywall or flooring, etc.

The U.S. Environmental Protection Agency (USEPA) Guidance Document was selected for use in this study (1). The document identifies factors associated with the "condition" and the "potential for disturbance or erosion" of asbestos containing materials. These factors help to define the fibre release potential of the suspect asbestos containing materials and were used in a qualitative evaluation of materials found in the surveyed areas. Recommendations have been substantiated by additional information utilized from other documentation cited in the Reference Section of this report.

The bulk samples of suspect asbestos containing materials were forwarded, using proper chain of custody protocols, to Prezant Associates, Inc. for asbestos analysis. The samples were analyzed using polarized light microscopy (PLM) with dispersion staining in accordance with U.S. EPA method 600/R-93/116, "Method for Determination of Asbestos in Bulk Building Materials".

Other hazardous materials were visually inspected and are noted in this report.

The survey relied on the abilities and experience of the surveyor to gain access and identify possible asbestos containing materials. All areas of the building were accessed during the assessment excluding the roof.

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## **RESULTS & ASSOCIATED RISK LEVELS**

### **ASBESTOS**

Two types of asbestos containing materials were identified during the survey which could be affected by any potential renovation or demolition activities. These are vinyl floor tile materials and duct mastic materials. A breakdown for each type of material is as follows:

#### **Vinyl Floor Tile Materials:**

Asbestos containing vinyl floor tile materials were observed in various areas of the building. These would include; 12" Light brown floor tiles with brownish/red streaks observed in the northwest & southwest hallways adjacent to classrooms 105 and 134, respectively, Staff Room kitchen area and Room 150A; 12" Beige floor tiles with brown streaks observed as the outside pattern of the floor tiles in west hallway area of the school & classrooms 135 & 136; 12" Beige floor tiles with white & orange streaks observed in the Kitchen – 148 and Change room 150, 150B, 143 and 144. All of the asbestos containing floor tile materials were found to contain <1% Chrysotile asbestos. The materials are all presently in fair to good condition. The 12" floor tiles observed in the computer room 101, classrooms 103, 120, 130 and the inside pattern of the northwest hallway floor tile are all non-asbestos containing.

WCB Regulations do not treat any materials with less than 1% asbestos as asbestos containing. Workers should still use moderate risk procedures when exposed to the vinyl floor tile materials, even in materials with less than 1% asbestos concentrations. The WCB states that workers must be properly protected from any potential exposure to airborne asbestos fibres. It is recommended that any work affecting all the vinyl floor tile materials be done using a minimum of moderate risk asbestos work procedures. Therefore as a minimum, MODERATE RISK asbestos work procedures will be required for the removal of the asbestos containing vinyl floor tile materials. Vinyl floor tile materials which are less than 1% do not have to be disposed of in accordance with applicable regulations as asbestos waste.

#### **Duct Mastics:**

Asbestos containing duct mastic materials were observed within the ceiling space sections and exposed in various areas of the school. The original square HVAC ducting was found to have asbestos containing orange duct mastic on the seals and joints. A sample of the asbestos containing duct mastic was collected from the mezzanine fan room adjacent to the gym stage and found to contain 4% Chrysotile asbestos. The materials are presently in good condition. All original

orange ducting mastic observed within the building is to be treated as asbestos containing.

Prior to any activities taking place which could disturb the asbestos containing duct mastic materials, it must first be removed and disposed of in accordance with applicable regulations. The removal of the asbestos containing duct mastic will pose a moderate risk of asbestos exposure to the workers involved, therefore as a minimum, MODERATE RISK asbestos work procedures will be required for the removal of the asbestos containing duct mastic.

### **POLYCHLORINATED BIPHENYLS (PCBs)**

A random number of fluorescent light ballasts were visually inspected for possible PCB containing ballasts. No PCB containing ballasts were observed within the fluorescent lighting fixtures inspected in both buildings, although some may exist, as not all fixtures were opened up.

PCB containing fluorescent light ballasts do not pose a risk to occupants of the building. If any PCB containing ballasts are encountered during any renovations of the building, they must be separated from the fixtures and disposed of properly in accordance with applicable regulations.

### **MERCURY THERMOSTATS**

No thermostats observed within the building were found to have a mercury containing switch. If any Mercury containing thermostat switches are encountered within the building during renovation or repair activities, they must be removed intact from the thermostats and disposed of properly in accordance with applicable regulations.

### **RECOMMENDATIONS**

Prior to beginning any work that may impinge upon the hazardous materials within the building, the following must be performed:

- 1.) Any affected asbestos containing 12" vinyl floor tiles or ducting mastic materials should be removed in accordance with applicable regulations. The removal of the asbestos containing vinyl floor tile or duct mastic materials will require MODERATE RISK asbestos work procedures to be followed. The vinyl floor tile materials do not have to be disposed of as asbestos waste (<1% Chrysotile asbestos).
- 2.) If any Mercury containing thermostat switches are encountered during any renovation or repair activities within the building, they must be removed and disposed of in accordance with applicable regulations.
- 3.) If any PCB containing ballasts are encountered during any renovation or repair activities within the building, they must be removed and disposed of in accordance with applicable regulations.
- 4.) If any suspect asbestos containing materials are encountered within inaccessible wall or ceiling cavities, or under floors, during renovation or demolition activities, the work in the immediate area must stop and the supervisor contacted for further direction.

**STATEMENT OF LIMITATIONS**

The ACM report is intended to direct the Client's attention to recognised environmental conditions and to potential sources of environmental contamination. The findings and conclusion regarding contamination of the property are based solely on the extent of observations and information gathered during the assessment. Nothing in the report is intended to express any legal opinion upon environmental liabilities relating to the site or whether operations legally conformed with relevant legislative requirements.

Furthermore, it must be understood that changing circumstances in the physical environment, the use of the property, as well in changes in any substances stored, used, handled at the property, could alter radically the conclusions and information contained in this report. Therefore, it is important that the property is periodically re-evaluated and the client kept informed as to developments, which may impact the property. This report is not intended to be used as contract specifications.

**A.C.M. ENVIRONMENTAL CORPORATION**

---

James McArthur, ASCT  
Environmental Technician

**REFERENCES**

- 1) USEPA. 1985. U.S. Environmental Protection Agency. "Guidance for Controlling Asbestos-Containing Materials in Buildings". Washington, DC: Office of Toxic Substances, USEPA.
- 2) Lory EE, Coin DC. 1981. "Management Procedure for Assessment of Friable Asbestos Insulating Material". Port Hueneme, CA: Civil Engineering Laboratory, Naval Construction Battalion Center.
- 3) Workers' Compensation Board of British Columbia, effective 15 April 1998, and all current amendments. Occupational Health and Safety Regulations.
- 4) 2002 Edition - Workers' Compensation Board of British Columbia. Safe Work Practices for Handling Asbestos.

**APPENDIX A**  
**Bulk Sample Results**



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

**ACM Environmental**  
2323 Quebec Street, Suite 211  
Vancouver, BC

Project Location: South Park Elementary School

PAI Batch Number: **05-2773**  
Client Job Number: **3048-44**  
Number of Samples: **12**  
Turn Around Time: **10 day**

Batch Number:	05-2773	<b>ACM Environmental</b>
Lab Sample Number:	05015232	<b>3048-44</b>
Client Sample Number:	<b>3048-486</b>	<i>South Park Elementary School</i>

#### L-1 Dull gray hard tile material with white thin streaks

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
50% Calcite Filler and Binder  
40% Mineral Filler and Binder  
5% Resin and Binder  
5% Filler and Binder

**Comments:**

#### L-2 Black resinous mastic

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
92% Asphalt Filler and Binder  
5% Mineral Particles  
3% Miscellaneous Particles

**Comments:**

Batch Number:	05-2773	<b>ACM Environmental</b>
Lab Sample Number:	05015233	<b>3048-44</b>
Client Sample Number:	<b>3048-487</b>	<i>South Park Elementary School</i>

Sampled By: Client  
Received By: John McCaslin 11/10/2005  
Reviewed By: George McCaslin 11/23/2005

Analyzed By: Deitrie Hanson 11/23/2005



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

#### L-1 Pale yellowish beige and pale gray paint

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 100% Paint

Comments:

#### L-2 White fine crystalline powdery material

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 3% Glass Fiber 85% Calcite Filler and Binder  
12% Perlite

Comments:

Batch Number: 05-2773 **ACM Environmental**  
Lab Sample Number: 05015234 **3048-44**  
Client Sample Number: **3048-488** *South Park Elementary School*

#### L-1 Pale cream hard tile material

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 45% Calcite Filler and Binder  
40% Mineral Filler and Binder  
10% Vinyl Filler and Binder  
5% Miscellaneous Particles

Comments:

#### L-2 Black resinous mastic

**Asbestos Fibrous Components:** Non-Asbestos Fibrous Components: Non-Fibrous Components:  
**No Asbestos Detected** 90% Asphalt Filler and Binder  
5% Mineral Particles  
5% Filler and Binder

Comments:

Sampled By: Client  
Received By: John McCaslin 11/10/2005  
Reviewed By: George McCaslin 11/23/2005

Analyzed By: Deitrie Hanson 11/23/2005



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

Batch Number:	05-2773	<b>ACM Environmental</b>
Lab Sample Number:	05015235	<b>3048-44</b>
Client Sample Number:	<b>3048-489</b>	<i>South Park Elementary School</i>

#### L-1 Light brown hard tile material with brown and red streaks

<b>Asbestos Fibrous Components:</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
<1% <b>Chrysotile</b>		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		>4% Mineral Particles

**Comments:**  
This tile contains <1% chrysotile asbestos.

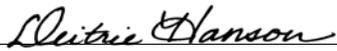
#### L-2 Black resinous mastic

<b>Asbestos Fibrous Components:</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
<b>No Asbestos Detected</b>		92% Asphalt Filler and Binder
		5% Mineral Particles
		3% Filler and Binder

**Comments:**

Batch Number:	05-2773	<b>ACM Environmental</b>
Lab Sample Number:	05015236	<b>3048-44</b>
Client Sample Number:	<b>3048-490</b>	<i>South Park Elementary School</i>

Sampled By: Client  
 Received By: John McCaslin 11/10/2005  
 Reviewed By: George McCaslin 11/23/2005

  
 Analyzed By: Deitrie Hanson 11/23/2005



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

### Bulk Asbestos Fiber Analysis

#### Orange opaque hard duct mastic

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
4% <b>Chrysotile</b>		72% Calcite Filler and Binder
		20% Resin and Binder
		4% Filler and Binder

**Comments:**

This duct mastic was so hard it broke the glass slide during preparation. The analyst ashed a portion of the orange mastic and mounted the residue in the oil.

Batch Number:	05-2773	<b>ACM Environmental</b>
Lab Sample Number:	05015237	<b>3048-44</b>
Client Sample Number:	<b>3048-491</b>	<i>South Park Elementary School</i>

#### Black smooth shiny pliable asphaltic material with orange fibers

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	5% Cellulose	95% Asphalt Filler and Binder

**Comments:**

Batch Number:	05-2773	<b>ACM Environmental</b>
Lab Sample Number:	05015238	<b>3048-44</b>
Client Sample Number:	<b>3048-492</b>	<i>South Park Elementary School</i>

#### L-1 White paint on dull gray paint

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		100% Paint

**Comments:**

Sampled By:	Client		
Received By:	John McCaslin	11/10/2005	
Reviewed By:	George McCaslin	11/23/2005	Analyzed By: Deitrie Hanson



NVLAP LAB CODE 200613-0



1730 Minor Avenue, Suite 900 Seattle, WA 98101  
OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

## Bulk Asbestos Fiber Analysis

### L-2 White crystalline powdery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	2% Cellulose	92% Calcite Filler and Binder
		3% Mineral Particles
		3% Miscellaneous Particles

**Comments:**

Batch Number: 05-2773	<b>ACM Environmental</b>
Lab Sample Number: 05015239	<b>3048-44</b>
Client Sample Number: <b>3048-493</b>	<i>South Park Elementary School</i>

### L-1 Pale gray hard tile material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>&lt;1% Chrysotile</b>		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		>4% Miscellaneous Particles

**Comments:**

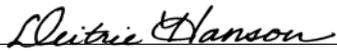
This tile contains <1% chrysotile asbestos.

### L-2 Black mastic

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		85% Asphalt Filler and Binder
		10% Resin and Binder
		5% Mineral Particles

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 11/10/2005  
 Reviewed By: George McCaslin 11/23/2005

  
 Analyzed By: Deitrie Hanson 11/23/2005



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### Bulk Asbestos Fiber Analysis

#### L-3 Gray granular hard material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	5% Cellulose	70% Sand
		25% Mineral Filler and Binder

**Comments:**

Batch Number: 05-2773	<b>ACM Environmental</b>
Lab Sample Number: 05015240	<b>3048-44</b>
Client Sample Number: <b>3048-494</b>	<i>South Park Elementary School</i>

#### L-1 Dark brown hard tile material with brown and white streaks

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		5% Resin and Binder

**Comments:**

#### L-2 Black mastic

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		92% Asphalt Filler and Binder
		5% Mineral Particles
		3% Filler and Binder

**Comments:**

Batch Number: 05-2773	<b>ACM Environmental</b>
Lab Sample Number: 05015241	<b>3048-44</b>
Client Sample Number: <b>3048-495</b>	<i>South Park Elementary School</i>

Sampled By: Client			
Received By: John McCaslin	11/10/2005		
Reviewed By: George McCaslin	11/23/2005	Analyzed By: Deitrie Hanson	11/23/2005



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 OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

## Bulk Asbestos Fiber Analysis

### L-1 Dull beige hard tile material with thin orange and white streaks

<b>Asbestos Fibrous Components:</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
<1% <b>Chrysotile</b>		45% Calcite Filler and Binder
		40% Mineral Filler and Binder
		10% Vinyl Filler and Binder
		>4% Miscellaneous Particles

**Comments:**  
 This tile contains <1% chrysotile asbestos.

### L-2 Black resinous mastic

<b>Asbestos Fibrous Components:</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
<b>No Asbestos Detected</b>		92% Asphalt Filler and Binder
		5% Mineral Particles
		3% Filler and Binder

**Comments:**

### L-3 Gray hard granular powdery material

<b>Asbestos Fibrous Components:</b>	<b>Non-Asbestos Fibrous Components:</b>	<b>Non-Fibrous Components:</b>
<b>No Asbestos Detected</b>		92% Sand
		8% Mineral Filler and Binder

**Comments:**

Batch Number:	05-2773	<b>ACM Environmental</b>
Lab Sample Number:	05015242	<b>3048-44</b>
Client Sample Number:	<b>3048-496</b>	<i>South Park Elementary School</i>

Sampled By: Client			
Received By: John McCaslin	11/10/2005		
Reviewed By: George McCaslin	11/23/2005	Analyzed By: Deitrie Hanson	11/23/2005



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## Bulk Asbestos Fiber Analysis

**Dull gray thick pliable rubbery material with long straight fibers**

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	10% Glass Fiber	85% Rubber Particles
		5% Resin and Binder

**Comments:**

Batch Number:	05-2773	<b>ACM Environmental</b>
Lab Sample Number:	05015243	<b>3048-44</b>
Client Sample Number:	<b>3048-497</b>	<i>South Park Elementary School</i>

### L-1 Pale beige painted woven fiber bundles

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	90% Cotton	5% Paint
		5% Mineral Filler and Binder

**Comments:**

### L-2 Pale beige fibrous papery material

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>	97% Cellulose	3% Filler and Binder

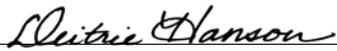
**Comments:**

### L-3 Golden orange resinous mastic

<b>Asbestos Fibrous Components:</b>	Non-Asbestos Fibrous Components:	Non-Fibrous Components:
<b>No Asbestos Detected</b>		95% Resin and Binder
		5% Mineral Particles

**Comments:**

Sampled By: Client  
 Received By: John McCaslin 11/10/2005  
 Reviewed By: George McCaslin 11/23/2005

  
 Analyzed By: Deitrie Hanson 11/23/2005



NVLAP LAB CODE 200613-0



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OFFICE: (206) 281-8858 FAX: (206) 281-8922 e-mail: laboratory@prezant.com

## Bulk Asbestos Fiber Analysis

**L-4 Silver thin sheeting material**

**Asbestos Fibrous Components:**  
**No Asbestos Detected**

Non-Asbestos Fibrous Components:

Non-Fibrous Components:  
100% Foil

**Comments:**

Sampled By: Client

Received By: John McCaslin 11/10/2005

Reviewed By: George McCaslin 11/23/2005

Analyzed By: Deitrie Hanson

11/23/2005

**APPENDIX B**  
**Photographs**



Asbestos containing 12" Light brown VFT with orange streaks (NW & SW Corridors)



Asbestos containing 12" Beige VFT with orange & white streaks observed in Kitchen



Asbestos containing orange mastic observed in Gym Mechanical Room

**AMENDING AGREEMENT  
(ENERGY SYSTEM SERVICE AGREEMENTS)**

THIS AMENDING AGREEMENT is made effective as of October 31, 2011 (the “Effective Date”)

BETWEEN:

**FORTISBC ENERGY INC. (“FEI”)**

AND:

**THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 37 (Delta) (the “District”)**

**WHEREAS:**

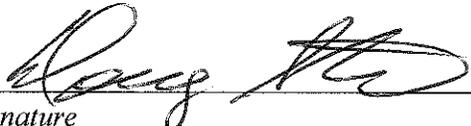
- A. FEI and the District entered into 19 identical Energy System Service Agreements, one for each of the locations identified in Schedule A attached hereto, and each dated for reference September 26, 2011 (collectively, the “ESSAs”);
- B. The parties wish to amend all of the ESSAs to extend the dates related to the BCUC Acceptance (as defined in the ESSAs), on the terms and conditions set out in this Amending Agreement.

**NOW THEREFORE IN CONSIDERATION** of the premises and mutual covenants and agreements hereinafter contained and other good and valuable consideration, the parties hereto covenant and agree with each other as follows:

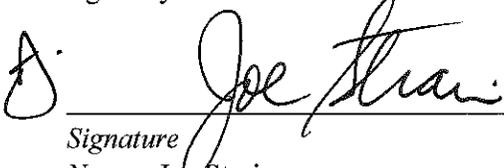
- 1. The following amendments are made to each ESSA effective as of the Effective Date:
  - (a) Section 11.1 is hereby amended by deleting the phrase “*within 90 days following the Effective Date*” and replacing it with “*by March 31, 2012*”; and
  - (b) Sub-section 11.3(b) is hereby amended by deleting the phrase “*the date that is 90 days after the Effective Date*” and replacing it with “*March 31, 2012*”.
- 2. Each ESSA, as amended by this Amending Agreement, will remain in full force and effect and, together with this Amending Agreement, will be read and interpreted as one agreement.
- 3. This Amending Agreement may be executed and delivered in counterparts with the same effect as if the parties had signed and delivered the same document and all counterparts will be construed together and will constitute one agreement.

**IN WITNESS WHEREOF** the parties have executed this Agreement as of the Effective Date.

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

  
\_\_\_\_\_  
*Signature*  
Name: Douglas Stout  
Title: VP, Energy Solutions and External Relations

**THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 37 (Delta)**, by its authorized signatory:

  
\_\_\_\_\_  
*Signature*  
Name: Joe Strain  
Title: Secretary-Treasurer

## SCHEDULE A

<b>Building</b>	<b>Address</b>
Annieville Elementary	9240 - 112 <sup>th</sup> Street, Delta
Beach Grove Elementary	5955 - 17A Avenue, Delta
Chalmers Elementary	11315 - 75 <sup>th</sup> Avenue, Delta
Cliff Drive Elementary	5025 - 12 <sup>th</sup> Avenue, Delta
Heath Elementary	11364 - 72 <sup>nd</sup> Avenue, Delta
Holly Elementary	4630 - 61 <sup>st</sup> Street, Delta
Ladner Elementary	5016 - 44 <sup>th</sup> Avenue, Delta
District Maintenance Facility	7186 Brown Street, Delta
Neilson Grove Elementary	5500 Admiral Boulevard, Delta
School Board Office	4585 - Harvest Drive, Delta
Delta Manor Education Centre	4750 - 57 <sup>th</sup> Street, Delta
South Delta Secondary	750 - 53 <sup>rd</sup> Street, Delta
South Park Elementary	735 Gilcrest Drive, Delta
Delta Secondary	4629 - 51 <sup>st</sup> Street, Delta
Delview Secondary	9111 - 116 <sup>th</sup> Street, Delta
English Bluff Elementary	402 - 48 <sup>th</sup> Street, Delta
Pinewood Elementary	11777 Pinewood Drive, Delta
Richardson Elementary	11339 - 83 <sup>rd</sup> Avenue, Delta
North Delta Secondary	11447 - 82 <sup>nd</sup> Avenue, Delta

## ENERGY SYSTEM RATE DEVELOPMENT AGREEMENT

**THIS AGREEMENT** dated for reference the 26<sup>th</sup> day of September, 2011.

**BETWEEN:**

**THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 37 (DELTA)**  
a corporation established under the School Act R.S.B.C. 1996, c. 412 having an  
office at 4585 Harvest Drive, Delta, British Columbia, V4K 5B4  
(the "District")

OF THE FIRST PART

**AND:**

**FORTISBC ENERGY INC.**, a company duly incorporated under the laws of the  
Province of British Columbia, having its registered office at 10th Floor, 1111  
West Georgia Street, Vancouver, B.C. V6E 4M3  
(“FEI”)

OF THE SECOND PART

**WHEREAS:**

- A. The District is the owner of certain buildings in the Delta School District located on lands in Delta, British Columbia, as more particularly described in Schedule A to this Agreement, as such Schedule may be amended from time to time (the “Buildings”).
- B. The Parties intend to use commercially reasonable and good faith efforts to negotiate and enter into Energy System Services Agreements in respect of each of the Buildings, whereby FEI will provide thermal energy to such Buildings using Energy Systems that FEI will own, operate and maintain.
- C. The Parties wish to agree on a single rate for Thermal Energy that FEI delivers to the District under each of the Energy System Services Agreements.

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT** in consideration of the premises and the covenants, agreements, representations, warranties and payments set out herein, the receipt and sufficiency of which is hereby acknowledged by each Party, the Parties covenant and agree as follows:

## ARTICLE 1 - INTERPRETATION

### 1.1 DEFINITIONS

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

- (a) “Affiliate” has the meaning set out in the *Business Corporations Act*, S.B.C. 2002, c.57;
- (b) “AFUDC” means the Approval for Funds Used During Construction rate for FEI that the BCUC approves from time to time;
- (c) “Annual Period” means the period from July 1 to June 30 each year for the purpose of setting rates;
- (d) “Annual Cost of Service” means FEI’s total cost of Services for all of the Buildings in respect of which the Parties have entered into Energy System Service Agreements at any time during the Term and that have been approved by the BCUC, including:
  - (i) the return on the Rate Base Value of FEI necessary to provide Service to all of the Buildings in respect of which the Parties have entered into Energy System Service Agreements at any time during the Term and that have been approved by the BCUC, utilizing the capital structure of FEI, the debt financing rate in that capital structure and the benchmark rate of return on equity for utilities in British Columbia plus 50 basis points;
  - (ii) amortization, depreciation and tax costs;
  - (iii) direct costs;
  - (iv) Energy Purchase Costs;
  - (v) a reasonable amount for overhead allocation and administration;
  - (vi) the annual amount necessary to recover the SD37 Rate Rider discount provided in the immediately prior Annual Period;
  - (vii) the annual amount necessary to amortize the District Deferral Account balance, either credit or debit, over the remaining years in the Term or ten (10) years, whichever is longer; and
  - (viii) any other amount that the BCUC determines that it should include from time to time;
- (e) “Agreement” means this agreement, including the preamble hereto and any schedules attached hereto and the terms “this Agreement”, “hereof”, “herein”, “hereunder” and “hereinafter” and similar expressions refer to the Agreement and not to any particular Section or other portion thereof and includes any agreement supplementary or ancillary thereto;
- (f) “Bankrupt or Insolvent” means, with respect to a Party:
  - (i) the Party has started proceedings to be adjudicated a voluntary bankrupt or consented to the filing of a bankruptcy proceeding against it; or

- (ii) the Party has filed a petition or similar proceeding seeking reorganization, arrangement or similar relief under any bankruptcy or insolvency law; or
  - (iii) a receiver, liquidator, trustee or assignee in bankruptcy has been appointed for the Party or the Party has consented to the appointment of a receiver, liquidator, trustee or assignee in bankruptcy; or
  - (iv) the Party has voluntarily suspended the transaction of its usual business; or
  - (v) a court has issued an order declaring the Party bankrupt or insolvent;
- (g) "BAU" means Business As Usual, as if no new Energy System were constructed in the Buildings;
- (h) "BCICAC" has the meaning given in Section 10.1;
- (i) "BCUC" means the British Columbia Utilities Commission;
- (j) "BCUC Acceptance" has the meaning given in Section 6.1;
- (k) "Buildings" have the meaning given in page one of this Agreement, and "Building" means any one of such Buildings;
- (l) "Business Day" means any day except Saturday and Sunday or any day on which banks are generally not open for business in Vancouver, British Columbia;
- (m) "Capital Contribution" means the amount the District provides to FEI that reduces the Rate Base Value of assets that form the basis for calculating the cost of capital in the Annual Cost of Service;
- (n) "Condition Fulfillment Date" has the meaning given in Section 9.2;
- (o) "Cost of Service Rate" means the following amount:  
$$((\text{FACS} - \text{EPC}) / \text{FTED}) + \text{Energy Rate}$$
where:  
"FACS" = the forecast Annual Cost of Service;  
"EPC" = Energy Purchase Costs; and  
"FTED" = the Thermal Energy for the applicable Annual Period;
- (p) "District" means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (q) "District Deferral Account" means the record of the cumulative difference between the Annual Cost of Service and revenues, including a provision for interest at the AFUDC rate;
- (r) "Effective Date" means the date set out on page one hereof;
- (s) "Energy Purchase Costs" means the cost of purchasing energy to supply all Energy Systems at all Buildings;

- (t) “Energy Rate” means the quotient of the forecast Energy Purchase Costs at the prevailing rates that the BCUC approves from time to time, and the forecast of Thermal Energy deliveries for the applicable Annual Period for all Buildings in respect of which the Parties have entered into Energy System Service Agreements at any time during the Term and that have been approved by the BCUC;
- (u) “Energy Reimbursement” means the sum of:
  - (i) the amount that FEI pays for electricity, natural gas or any other energy source, that the District utilizes for any purpose and that FEI does not require to operate an Energy System that is either measurable by a sub-meter, or that the Parties estimate; plus
  - (ii) the amount that the District pays for electricity, natural gas, or other energy source, to operate an Energy System that is either measurable by a sub-meter, or that the Parties estimate;
- (v) “Energy System” means, in respect of any Building, the equipment that FEI constructs and owns which provides such Building with its thermal energy needs for space and ventilation heating, cooling and domestic hot water use, all as set forth in the Energy System Service Agreement for that Building;
- (w) “Energy System Service Agreement” means, in respect of any Building, the agreement (if any) entered into by the Parties in respect of the construction, operation and maintenance by FEI of an Energy System for that Building;
- (x) “Environment” includes the air (including all layers of the atmosphere), land (including soil, sediment deposited on land, fill, lands submerged under water, buildings, and improvements), water (including oceans, lakes, rivers, streams, groundwater, and surface water), and all other external conditions and influences under which humans, animals, and plants live or are developed and “Environmental” will have a corresponding meaning;
- (y) “Expiry Date” means June 30, 2031 or the expiry of any renewal term thereof;
- (z) “FEI” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (aa) “Governmental Authority” means any federal, provincial, regional, municipal, local or other government, governmental or public department, court, tribunal, arbitral body, commission, board, bureau or agency and any subdivision, agent, commission, board or authority thereof;
- (bb) “Index Adjustment” means, at any point in time, the quotient of most recent natural gas index value for British Columbia from Statistics Canada with CANSIM vector number V41692506 divided by 112.0;
- (cc) “Initial Market Rate” has the meaning given in Schedule B;

- (dd) "Laws" means laws, statutes, regulations, bylaws, Permits and orders of any Governmental Authority having jurisdiction, including without limitation, Environmental Laws;
- (ee) "Market Rate" at any point in time means an amount equal to:  
Initial Market Rate x Index Adjustment;
- (ff) "Monthly Charges" means that amount established pursuant to this Agreement that the District is to pay for Thermal Energy deliveries to any Building from an Energy System, being (i) the product of the Thermal Energy Rate and delivered Thermal Energy, plus (ii) all applicable taxes, for the calendar month immediately prior to the date of invoice;
- (gg) "Monthly Statement" has the meaning given in Section 4.2;
- (hh) "Party" means a signatory to this Agreement, and the "Parties" means all of such signatories;
- (ii) "Permits" means all permits, licences, certificates, approvals, authorizations, consents and the like issued by any Governmental Authority;
- (jj) "Rate Base Value" means the amount approved by the BCUC from time to time that is comprised of:
  - (i) mid-year net plant in-service (gross plant in service, less Capital Contributions, less accumulated depreciation relating to both, and negative salvage);
  - (ii) work-in-progress not attracting allowance for funds used during construction;
  - (iii) the mid-year balance of unamortized deferral accounts (regulatory assets and liabilities);
  - (iv) the thirteen-month average of cash working capital and other working capital; and
  - (v) mid-year future income tax asset and offsetting liability;
- (kk) "Services" means those services to be provided by FEI to supply Thermal Energy to a Building from an Energy System;
- (ll) "SD37 Rate Rider" has the meaning given in Schedule B and is the result of negotiations between the District and FEI that considered the circumstances of the District in conjunction with the Capital Contribution that the District is providing to FEI;
- (mm) "Tariff Election Notice" has the meaning given in Section 2.3(a);
- (nn) "Tariff Transfer Application" has the meaning given in Section 2.3(b);
- (oo) "Term" means the term of this Agreement as defined in Section 2.1;
- (pp) "Thermal Energy" means the amount of energy that FEI provides to the District at all of the Buildings measured through a Thermal Energy Meter;
- (qq) "Thermal Energy Meter" means a device that complies with the International Organization of Legal Metrology recommendations for measuring thermal energy;

- (rr) “Thermal Energy Rate” means the Market Rate until either:
- (i) the District notifies FEI in writing that it elects to pay the Cost of Service Rate; or
  - (ii) FEI receives approval from the BCUC to charge the Cost of Service Rate, provided that:
    - a. at least 90 days prior to submitting its application to the BCUC, FEI notifies the District in writing of its desire to charge the Cost of Service Rate;
    - b. FEI includes in the application any comments that the District provides to FEI within 90 days of the notification in section (a) above; and
    - c. FEI sends a complete copy of the application to the District prior to submitting it to the BCUC;

after which time the Thermal Energy Rate means the Cost of Service Rate and the Market Rate will no longer be available.

## 1.2 SCHEDULES

The following Schedules, as may be amended from time to time, are incorporated by reference into this Agreement:

Schedule A	Buildings as amended pursuant to this Agreement
Schedule B	Initial Market Rate

## 1.3 INTERPRETATION

Except where the context requires otherwise or except as otherwise expressly provided, in this Agreement:

- (a) all references to a designated Article or Section are to the designated Article or Section of this Agreement unless otherwise specifically stated;
- (b) the singular of any term includes the plural, and vice versa, and the use of any term is equally applicable to any gender and, where applicable, body corporate;
- (c) any reference to a corporate entity includes and is also a reference to any corporate entity that is a successor by merger, amalgamation, consolidation or otherwise to such entity;
- (d) the preamble and all schedules referred to and attached to this Agreement are incorporated by reference and will form a part of this Agreement;
- (e) all sums of money which are referred to in this Agreement are in lawful money of Canada; and
- (f) the headings of the Articles and Sections set out in this Agreement are for convenience only and will not be considered in any interpretation of this Agreement.

## ARTICLE 2 - TERM AND TERMINATION

### 2.1 TERM

The term of this Agreement (“Term”) commences on the Effective Date and continues until the Expiry Date, subject to renewal for the period specified in Section 2.2, unless it is terminated earlier as authorized under this Agreement.

### 2.2 RENEWAL

This Agreement will automatically renew for periods of ten (10) years unless either Party provides written notice to the other Party no less than six (6) months prior to the Expiry Date.

### 2.3 TARIFF OPTION

The Parties acknowledge and agree that FEI may apply at its own cost to the BCUC for approval of a general tariff for thermal energy delivery to buildings that are comparable to the Buildings. At any time following the approval of such tariff rates by the BCUC:

- (a) the District, in its sole discretion, may elect to pay such tariff rates for Thermal Energy rather than the Thermal Energy Rate by delivering to FEI a notice in writing confirming such election (the “Tariff Election Notice”).
- (b) FEI, in its sole discretion may notify the District of its intention to apply to the BCUC to have the District pay such tariff rates for Thermal Energy rather than the Thermal Energy Rate (“Tariff Transfer Application”).
- (c) In the event that the District elects to pay such tariff rates pursuant to Section 2.3(a), or FEI notifies the District of its intention to apply to the BCUC to have the District pay the tariff pursuant to Section 2.3(b):
  - (i) FEI will prepare and submit the Tariff Transfer Application to the BCUC for approval, provided that the preparation and submission of the Tariff Transfer Application, and for greater certainty any application by FEI to the BCUC to have the District pay such tariff rates for Thermal Energy rather than the Thermal Energy Rate, shall be subject to the District’s prior written consent (which may not be unreasonably withheld or delayed); and
  - (ii) FEI will include in the Tariff Transfer Application a request for BCUC approval to continue to apply the SD37 Rate Rider to the tariff rate when calculating the charges for the District.

### 2.4 TERMINATION

- (1) FEI may terminate this Agreement by notice to the District upon any of the following events:
  - (1) if the District is Bankrupt or Insolvent; or
  - (2) if District is in material default of any of its covenants, representations, warranties or other obligations under this Agreement, unless within 30 days after the date of

notice by FEI to the District of the default, the District has cured the default or, if the default cannot be cured within that 30 day period, the District has demonstrated to the reasonable satisfaction of FEI that the District is working diligently and expeditiously to cure the default and the default is cured within a further reasonable period of time; or

- (iii) if the election of the tariff by the District will result in termination of this Agreement and may, at the discretion of FEI, result in the termination of the Energy System Service Agreement for each Building, and the adoption of the tariff terms and conditions for each Building, subject to the approval of the BCUC if required by applicable Laws.

Any termination pursuant to this Section 2.4 (a) shall be effective immediately upon delivery of the notice of termination to the District.

- (2) The District may terminate this Agreement by notice to FEI upon any of the following events:
  - (1) if the FEI is Bankrupt or Insolvent; or
  - (2) if FEI is in material default of any of its covenants, representations, warranties or other obligations under this Agreement, unless within 30 days after the date of notice by the District to FEI of the default, FEI has cured the default or, if the default cannot be cured within that 30 day period, FEI has demonstrated to the reasonable satisfaction of the District that FEI is working diligently and expeditiously to cure the default and the default is cured within a further reasonable period of time.

Any termination pursuant to this Section 2.4 (b) shall be effective immediately upon delivery of the notice of termination to FEI.

- (3) This Agreement shall terminate immediately upon the delivery by the District to FEI of a Tariff Election Notice.

## 2.4 CROSS DEFAULT

For greater certainty, this Agreement shall be deemed to be terminated in the event that the District exercises its right of termination in respect of all Energy System Service Agreements under an Energy System Service Agreement.

## ARTICLE 3 - SERVICE PROVISION

### 3.1 INTENT TO NEGOTIATE ENERGY SYSTEM SERVICE AGREEMENT

The Parties shall use commercially reasonable and good faith efforts to negotiate and enter into Energy System Service Agreements for each Building on mutually agreeable terms on or before the first anniversary of the Effective Date.

### 3.2 EXCLUSIVITY

The District hereby covenants and agrees with FEI that, during the Term the District shall not supply, construct, install, operate or maintain any thermal energy system other than an Energy System to provide space heating and cooling and domestic hot water to any Building in respect of which the Parties have entered into an Energy System Services Agreement that has been approved by the BCUC and then remains in force, or use or allow any person, firm or corporation other than FEI to supply or distribute thermal energy to any such Building for the purpose of providing space heating and cooling or domestic hot water.

## ARTICLE 4 - RATES AND CHARGES

### 4.1 THERMAL ENERGY RATE

The Parties agree that the rates for Thermal Energy provided under the Energy System Service Agreements shall be as set forth in this Agreement.

Either Party may, by notice to the other Party, amend Schedule A during the Term to add as a Building any additional building owned by the District, subject to (a) BCUC approval, if necessary under applicable Laws, and (b) the Parties having entered into an agreement that is substantially equivalent to an Energy System Services Agreement in respect of such building.

FEI may include a thermal energy system that provides energy for space and ventilation heating, cooling and domestic hot water to one or more buildings owned by third parties in the calculation of the Thermal Energy Rate provided that:

- (a) doing so will not increase or otherwise adversely affect the Thermal Energy Rate; and
- (b) there will be no physical connection of any third party thermal energy system to the Buildings or Lands (as that term is defined in any Energy System Service Agreement) without the prior approval of the District.

### 4.2 MONTHLY STATEMENTS

Subject to Section 4.1, FEI will, within 15 days following the end of each month, deliver to the District a statement setting out the Monthly Charges in respect of each Building that is subject to an Energy System Service Agreement, inclusive of all applicable taxes payable for that month (the "Monthly Statement").

On each Monthly Statement, FEI will provide for information purposes, the applicable Cost of Service Rate for that period until such time as the District notifies FEI in writing that it wishes to pay the Cost of Service Rate for all Buildings.

### 4.3 ADJUSTMENTS TO THERMAL ENERGY RATE AND MONTHLY STATEMENTS

Each month, FEI will adjust the Thermal Energy Rate on the Monthly Statements for changes in the Market Rate and/or the Cost of Service Rate that are applicable from time to time. In addition, FEI will apply the relevant Energy Reimbursement amount to each Building, either positive or negative to the Monthly Statement for that Building.

FEI will add the SD37 Rate Rider to the Thermal Energy Rate for the purpose of calculating the Monthly Charges as follows:

Thermal Energy Rate + SD37 Rate Rider

#### 4.4 ACCOUNTING AND REPORTING

FEI will maintain accounting records pertaining to the utility operations for each Building that is subject to an Energy System Service Agreement. On or before March 31<sup>st</sup> of every calendar year during the Term, FEI will produce and provide to the District an estimate of the District Deferral Account balance as of July 1<sup>st</sup> of that calendar year, and the Annual Cost of Service for the next Annual Period that commences on that July 1<sup>st</sup>. FEI will file this information with the BCUC and copy the District on each annual filing.

### ARTICLE 5 - REPRESENTATIONS AND WARRANTIES

#### 5.1 DISTRICT'S REPRESENTATIONS AND WARRANTIES

The District hereby represents and warrants to FEI as follows, as of the Effective Date, and acknowledges that FEI is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) the District has the full right, power and authority to enter into this Agreement;
- (b) all necessary action on the part of the District has been taken to authorize and approve the execution and delivery of this Agreement and the performance by the District of its obligations hereunder;
- (c) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to the District as of the date of this Agreement;
- (d) the District is not party to any action, suit or legal proceeding, actual or threatened, and there are no circumstances, matters or things known to the District which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or threatened against the District before or by any Governmental Authority, which could affect the District's ability to perform its obligations under this Agreement.

#### 5.2 FEI'S REPRESENTATIONS AND WARRANTIES

FEI hereby represents and warrants to the District as follows, as of the Effective Date, and acknowledges that the District is relying on these representations and warranties in entering into the transactions contemplated by this Agreement:

- (a) FEI has the full right, power and authority to enter into this Agreement;
- (b) all necessary corporate action on the part of FEI has been taken to authorize and approve the execution and delivery of this Agreement and the performance by FEI of its obligations hereunder;

- (c) this Agreement and the performance of its obligations under this Agreement does not and will not breach any provisions of any other agreement or Law that is binding on or applicable to FEI as of the date of this Agreement;
  - (d) FEI is not party to any action, suit or legal proceeding, actual or threatened, and there are no circumstances, matters or things known to FEI which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or threatened against FEI before or by any Governmental Authority, which could affect FEI's ability to perform its obligations under this Agreement.
- 5.3 The representations and warranties set out in Sections 5.1 and 5.2 hereof shall survive termination of this Agreement.

## ARTICLE 6 - BCUC ACCEPTANCE

### 6.1 REGULATORY REVIEW TERMINATION

Subject to Section 6.3, either Party may terminate this Agreement if within 90 days following the Effective Date, this Agreement has not been accepted for filing by the BCUC, including the Market Rate and the SD37 Rate Rider as defined in this Agreement (such acceptance of this Agreement including the Market Rate and the SD37 Rate Rider being herein called "BCUC Acceptance").

### 6.2 REGULATORY FILING

FEI, on behalf of itself and the District, and at its own cost, shall file the Agreement with the BCUC within a reasonable time after the Effective Date. FEI shall take all steps reasonably required to secure BCUC Acceptance, which shall consist of those procedural steps related to filing the Agreement and providing argument and witnesses in support of filing.

### 6.3 TERMINATION

A Party entitled to terminate under Section 6.1 must do so by giving notice to terminate to the other Party at any time after the right to terminate arises pursuant to Section 6.1, and prior to:

- (a) the date of issuance of the BCUC Acceptance; and
- (b) the date that is 90 days after the Effective Date.

### 6.4 EFFECT OF BCUC ACCEPTANCE

The Parties acknowledge that upon BCUC Acceptance, the Services will be subject to regulation by the BCUC under the UCA, and will form another class of service that FEI provides as a public utility. The Parties acknowledge that the terms of the UCA may supersede the terms and conditions of this Agreement.

## **ARTICLE 7 - CONSEQUENTIAL LOSS**

### **7.1 CONSEQUENTIAL LOSS**

In no event will either Party or any of their respective officers, directors, employees, contractors or agents be liable to the other Party for any indirect or consequential loss, cost or expense whatsoever, including any loss of profits, revenues or other economic loss, suffered by the other Party or its officers, directors, employees, contractors or agents relating to, or in any way connected with, a Party's performance or non-performance under this Agreement.

## **ARTICLE 8 - SURVIVAL**

### **8.1 SURVIVAL**

Upon expiry or earlier termination of this Agreement for any reason, all claims, causes of action or other outstanding obligations remaining or being unfulfilled as of the expiry or termination of this Agreement and all of the provisions of this Agreement relating to the obligation of either Party to account to or indemnify the other Party and to pay to the other Party any amounts owing as at the date of expiry or termination in connection with this Agreement will survive such expiry or termination.

## **ARTICLE 9 - CONDITIONS PRECEDENT**

### **9.1 CONDITIONS PRECEDENT OF FEI**

The obligation of FEI to carry out the transactions contemplated by this Agreement is subject to fulfillment of the following conditions on or before such date as may be specified, which is for the sole benefit of FEI, and which may be waived by FEI in accordance with Section 9.2:

- (a) FEI obtaining the approval by its board of directors of the terms and conditions of this Agreement on or before the 30th day following the Effective Date, provided that if such approval cannot be obtained by this date due to the fact that the board of directors has not yet considered the transaction FEI reserves the right to extend the period of time to that date when the board next convenes.

### **9.2 FEI NOTICE OF WAIVER**

If a condition set out in Section 9.1 has not been satisfied on or before the date as may be specified for its fulfillment (in each case, the "Condition Fulfillment Date"), FEI may waive compliance with the condition in whole or in part, in its sole discretion, by written notice to the District delivered on or prior to such Condition Fulfillment Date, failing which delivery of written notice of satisfaction or waiver of such condition, this Agreement will, to the extent any further obligations of the Parties which remain unfulfilled, be null and void, without liability between the Parties hereto, and, neither Party will be under any further obligation to the other to complete the transactions or future transactions, as the case may be, contemplated by this Agreement.

## **ARTICLE 10 - DISPUTE RESOLUTION**

### **10.1 REFERENCE TO ARBITRATION**

The Parties will attempt to resolve all disputes which may arise under, out of, in connection with or in relation to this Agreement by negotiation. They will provide full and timely disclosure to one another of all facts relevant to the disputes to facilitate those negotiations. If any such dispute remains unresolved, for any reason, fifteen (15) days after either Party requested the other Party to enter into negotiations to resolve it, or if the Parties agree to waive negotiations in respect of it, then either Party may submit that dispute for final resolution by arbitration administered by the British Columbia International Commercial Arbitration Centre ("BCICAC") under its "Shorter Rules for Domestic Commercial Arbitration". The seat of that arbitration will be Vancouver, British Columbia, Canada. The language of that arbitration will be English. Alternatively, the Parties may agree, within the 15 days referred to above, to submit that dispute for final resolution by arbitration in another manner.

### **10.2 BINDING DECISION**

The decision of the arbitrator, regardless of what arbitration procedure is used, will, for all purposes of this Agreement, be final and binding on the Parties.

### **10.3 CONTINUATION OF SERVICES**

Each of the Parties will perform all of its respective obligations under this Agreement notwithstanding any dispute between the Parties and during the resolution of any dispute in accordance with this Article 10.

### **10.4 COSTS**

The Parties will each pay half of the costs and expenses of any arbitration, other than those incurred directly by the Parties, unless the arbitrator determines that one Party has prevailed, in which case the non-prevailing Party will pay all costs and expenses of the arbitration, but not any of those incurred directly by the prevailing Party.

## **ARTICLE 11 - GENERAL**

### **11.1 SOLICITATION**

Nothing in this Agreement precludes either Party from soliciting or entering into, other contracts with the other Party.

## 11.2 NOTICES

Any notice or other communication required or permitted to be given under this Agreement will be effective only if in writing and when it is actually delivered (which delivery may be by telecopy or other telecommunications device) to the Party for whom it is intended at the following address or such other address in British Columbia as such Party may designate to the other Party by notice in writing delivered in accordance with this Section 11.2:

(a) if to FEI:

FortisBC Energy Inc.  
10th Floor, 1111 West Georgia Street  
Vancouver, B.C.  
V6E 4M3

Attention: Gareth Jones  
Telephone: 250-380-5972  
Telecopy: 250-388-6876

(b) if to the District:

Board of Education of School District No. 37 (Delta)  
4585 Harvest Drive  
Delta, B.C.  
V4K 5B4

Attention: Frank Geyer  
Telephone: 604-952-5336  
Telecopy: 604-952-5375

## 11.3 CONFIDENTIALITY

Each Party will treat as confidential the terms of this Agreement and all Confidential Information (as defined below) of the other Party and will at all times during the term of this Agreement and for a reasonable time thereafter hold the terms of this Agreement and all Confidential Information of the Party in confidence and neither Party will, without the prior written consent of the other Party, disclose or divulge the terms of this Agreement or any Confidential Information of the other Party to any person, provided that nothing in this Section 11.3 will restrict or prevent either Party from making any disclosure of such terms or any Confidential Information of the other Party:

- (a) which is reasonably necessary or desirable for such Party to carry out and give full effect to the terms, conditions and intent of this Agreement and the matters contemplated hereby;
- (b) which is required by any Law;
- (c) to any Governmental Authority;
- (d) to the directors, officers or employees of such Party or to an Affiliate of such Party or to the directors, officers or employees of an Affiliate of such Party;

- (e) to the professional advisors of such Party on the same terms of confidentiality;
- (f) which is already in the public domain; or
- (g) in connection with legal proceedings or steps being taken to remedy a breach or default under this Agreement by the other Party.

For the purposes of this Section 11.3, "Confidential Information" means proprietary information of either Party such as data, plans, drawings, manuals, or specifications which have been provided by such Party, its employees, contractors, agents, subcontractors, Affiliates to the other Party pursuant to this Agreement or proprietary information either Party conceived or developed by or for such Party concerning construction practices, operation and maintenance practices, agreements, marketing plans and strategies, profits, costs, pricing and systems of procedure (provided that "Confidential Information" does not include information which was disclosed to the receiving Party by a third person (unless, to the knowledge of the receiving Party, the third person is under an obligation of confidentiality to the other Party) or any information developed or conceived by the receiving Party without using the "Confidential Information" of the other Party).

#### 11.4 SEVERABILITY

If any provision of this Agreement is found or determined to be invalid, illegal or unenforceable it will be construed to be separate and severable from this Agreement and will not impair the validity, legality or enforceability of any other provisions of this Agreement, and the remainder of this Agreement will continue to be binding on the Parties as if such provision had been deleted.

#### 11.5 NO WAIVER

No waiver by either Party of any default by the other in the performance of any of the provisions of this Agreement will operate or be construed as a waiver of any other or future default or defaults hereunder, whether of a like or a different character. To be binding, any waiver of any provision of this Agreement must be clearly expressed in writing to be signed by the waiving Party.

#### 11.6 BURDEN AND BENEFIT

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

#### 11.7 GOVERNING LAW

This Agreement and all matters arising hereunder will be governed by the laws of British Columbia and the federal laws of Canada applicable in British Columbia.

#### 11.8 ENTIRE AGREEMENT

This Agreement contains the whole agreement between the Parties in respect of the subject matter hereof and there are no terms, conditions or collateral agreements express, implied or statutory other than as expressly set forth in this Agreement and this Agreement supersedes all of the terms of any written or oral agreement or understanding between the Parties, including without limitation the letter of intent between the Parties dated February 7, 2011.

#### 11.9 TIME OF ESSENCE

Time is of the essence of this Agreement.

#### 11.10 FURTHER ASSURANCES

Each Party will, at all times hereafter on demand by the other, execute and deliver or cause to be executed and delivered all such further documents and do all such further acts and things as may be reasonably requested by the other Party to evidence, carry out and give full effect to the intent and meaning of this Agreement and to assure the completion of the transactions contemplated hereby.

#### 11.11 AMENDMENTS TO BE IN WRITING

Except as set out in this Agreement, no amendment or variation of this Agreement will be effective or binding upon the Parties unless such amendment or variation is set out in writing and duly executed by the Parties.

#### 11.12 FACSIMILE

This Agreement may be executed by the Parties and transmitted by facsimile transmission and, if so executed, transmitted and received, this Agreement will for all purposes be effective as if the Parties had delivered and executed the original Agreement and each Party undertakes to provide the other Party with a copy of this Agreement bearing original signatures forthwith upon demand.

#### 11.13 SUBJECT TO LEGISLATION

Notwithstanding any other provision hereof, this Agreement and the rights and obligations of the Parties under this Agreement are subject to all present and future laws, rules, regulations and orders of any legislative body, governmental agency or duly constituted authority now or hereafter having jurisdiction over FEI or the District.

#### 11.14 NO PARTNERSHIP

Nothing herein shall be deemed or construed to create a joint venture, partnership, employment or agency relationship between the Parties for any purpose.

#### 11.15 ASSIGNMENT

Neither Party may assign this Agreement or any of its rights or obligations under this Agreement except:

- (a) with the consent of the other Party, such consent not to be unreasonably withheld, delayed or conditioned; or
- (b) in the case of FEI, to an Affiliate of FEI which is a "public utility" as defined in the *Utilities Commission Act*, R.S.B.C. 1996, c. 473 on notice to, but without the consent of, the District.

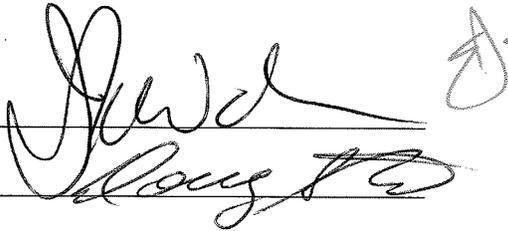
11.16 COUNTERPARTS

This Agreement may be executed in counterparts with the same effect as if the Parties had signed the same document. All counterparts will be construed together and will constitute one agreement.

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

**FORTISBC ENERGY INC.**

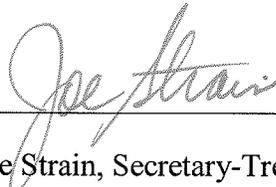
by its authorized signatory:

  
\_\_\_\_\_

**BOARD OF EDUCATION OF**

**SCHOOL DISTRICT NO. 37 (DELTA)**

by its authorized signatory:

  
\_\_\_\_\_

Joe Strain, Secretary-Treasurer

**SCHEDULE A**

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**BUILDINGS**

During the Term, each of the following buildings will be subject to this Agreement as long as the District continues to own or operate such building then and there exists in force an Energy System Services Agreement in respect of such building. The Annual Cost of Service will include the costs of providing service to all of the buildings in respect of which the Parties enter into Energy System Service Agreements during the Term.

Address	Building
9240 - 112 <sup>th</sup> Street, Delta	Annieville Elementary
5955 - 17A Avenue, Delta	Beach Grove Elementary
11315 - 75 <sup>th</sup> Avenue, Delta	Chalmers Elementary
5025 - 12 <sup>th</sup> Avenue, Delta	Cliff Drive Elementary
11364 - 72 <sup>nd</sup> Avenue, Delta	Heath Elementary
4630 - 61 <sup>st</sup> Street, Delta	Holly Elementary
5016 - 44 <sup>th</sup> Avenue, Delta	Ladner Elementary
7186 - Brown Street, Delta	District Maintenance Facility
5500 - Admiral Boulevard, Delta	Neilson Grove Elementary
4585 - Harvest Drive, Delta	School Board Office
4750 - 57 <sup>th</sup> Street, Delta	Delta Manor Education Centre
750 - 53 <sup>rd</sup> Street, Delta	South Delta Secondary
735 - Gilcrest Drive, Delta	South Park Elementary
4629 - 51 <sup>st</sup> Street, Delta	Delta Secondary
9111 - 116 <sup>th</sup> Street, Delta	Delview Secondary
402 - 48 <sup>th</sup> Street, Delta	English Bluff Elementary
11777 Pinewood Drive, Delta	Pinewood Elementary
11339 - 83 <sup>rd</sup> Avenue, Delta	Richardson Elementary
11447 - 82 <sup>nd</sup> Avenue, Delta	North Delta Secondary

**SCHEDULE B**

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**INITIAL MARKET RATE**

<b>Delta School District No. 37</b>		<b>2011/2012 Estimates</b>
Buildings	#	19
Total Building Area	m <sup>2</sup>	114,877
<b>Weather Normalization</b>		
Natural Gas	GJ	58,650
Electricity	MWh	1,300
Fossil Fuel GHG Emissions	tCO <sub>2</sub> e	2,915
Thermal Energy	MWh	10,600
Business as Usual (“BAU”) Thermal Energy Annual Costs	\$/,000’s	941
<b>Initial Market Rate</b>	<b>\$/kWh</b>	<b>\$ 0.089</b>
SD37 Negotiated Reduction to BAU	\$/,000’s	(188)
<b>SD37 Rate Rider</b>	<b>\$/kWh</b>	<b>\$ (0.018)</b>

**AMENDING AGREEMENT TO ENERGY SYSTEM RATE DEVELOPMENT AGREEMENT**

THIS AMENDING AGREEMENT is made effective as of October 31, 2011 (the “Effective Date”)

BETWEEN:

**FORTISBC ENERGY INC. (“FEI”)**

AND:

**THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 37 (Delta) (the “District”)**

**WHEREAS:**

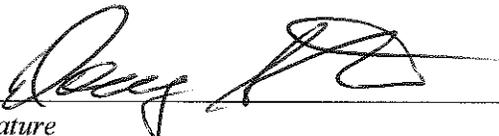
- A. FEI and the District entered into an Energy System Rate Development Agreement dated for reference September 26, 2011 (the “RDA”);
- B. The parties wish to amend the RDA to extend the dates related to the BCUC Acceptance (as defined in the RDA), on the terms and conditions set out in this Amending Agreement.

**NOW THEREFORE IN CONSIDERATION** of the premises and mutual covenants and agreements hereinafter contained and other good and valuable consideration, the parties hereto covenant and agree with each other as follows:

- 1. The following amendments are made to the RDA effective as of the Effective Date:
  - (a) Section 6.1 is hereby amended by deleting the phrase “*within 90 days following the Effective Date*” and replacing it with “*by March 31, 2012*”; and
  - (b) Sub-section 6.3(b) is hereby amended by deleting the phrase “*the date that is 90 days after the Effective Date*” and replacing it with “*March 31, 2012*”.
- 2. The RDA, as amended by this Amending Agreement, will remain in full force and effect and, together with this Amending Agreement, will be read and interpreted as one agreement.
- 3. This Amending Agreement may be executed and delivered in counterparts with the same effect as if the parties had signed and delivered the same document and all counterparts will be construed together and will constitute one agreement.

**IN WITNESS WHEREOF** the parties have executed this Agreement as of the Effective Date.

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

  
\_\_\_\_\_  
*Signature*  
Name: Douglas Stout  
Title: VP, Energy Solutions and External Relations

**THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 37 (Delta)**, by its authorized signatory:

  
\_\_\_\_\_  
*Signature*  
Name: Joe Strain  
Title: Secretary-Treasurer

**Appendix F**

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## 1. CPCN AND RATES APPLICATION

### 1.1 BCUC DECISION AND ORDER G-31-12

**Page 1** “The Panel acknowledges that the contracts were negotiated in good faith by two sophisticated parties and is reluctant to interfere. Nevertheless, even with the level of sophistication of the parties, the service offering is new, the regulatory environment very complex, and there are issues that could not have been easily anticipated by the parties.”

**Page 19** “In the case of a competitive market such as this, it may be appropriate for the Commission to defer to the terms of a negotiated agreement where a customer freely agrees to a contract with a service provider. However, in matters where there is a natural monopoly service, or where a natural monopoly service is potentially impacted by the activity, the Commission is obliged to use its regulatory mandate to ensure fair and reasonable rates that are not cross subsidized by the customers of the natural monopoly.”

**Page 22** “The Panel will rely on the following regulatory principles:

- A willing customer in a freely competitive market has options and the choice to make the required tradeoffs between the desired package of service, price, and quality.
- A competitive service provider who is also a natural monopoly service provider requires active Commission oversight to reduce the potential for cross-subsidization between the competitive service and the natural monopoly service.
- Fair use of natural monopoly resources would be in the public interest for the natural monopoly service.
- Fair access to natural monopoly resources would be in the public interest for the natural monopoly service.”

**Page 42**

- “The initial rate charged will be a single pooled negotiated “market rate” for all of the thermal energy and systems provided by FEI at all of the 19 sites. The SD37 Deferral Account will be used to record any variances between both the forecast cost of service and revenues, and between the market rate and cost of service rate. These variances will be recovered in rates in subsequent years as part of the cost of service;
- The SD may elect to switch to a “cost of service rate” at any time during the contract. Once the SD has switched to the cost of service rate, it cannot switch back to the market rate in the future. If FEI and the SD cannot come to a mutual agreement on when the switch should occur, then FEI has the option to apply to the BCUC to request the switch.(Exhibit B-3, BCUC 1.38.9);”

**Page 52** Delta SD’s understanding of the “market rate” is that is it synonymous with the “avoided costs” that it expects to pay under current operating conditions of its existing system.

1 Delta SD indicates that the \$0.089 per kWh rate is reflective of a) the cost of energy (natural  
2 gas, electricity), b) associated carbon offsets, and c) operation and maintenance of the existing  
3 heating plants at the affected facilities, at the time of the agreement (Exhibit C1-2, BCUC  
4 1.22.1).

5 **Page 53** Ultimately, FEI will have the ability to apply to the BCUC to move the SD to the COS  
6 rate. Once the SD has switched to the COS rate, FEI will discontinue calculating the “market  
7 rate.” Both FEI and Delta SD acknowledged that the Contracts prohibit Delta SD from switching  
8 back to the “market rate”, once it has transitioned to the COS rate (Exhibit B-3, BCUC 1.38.7  
9 and Exhibit C1-2, BCUC 1.21.2). The COS rate includes the following components:

- 10 • The calculated COS which may change from time to time; and
- 11 • The amortization of the SD37 Deferral Account.

12 FEI expects a reasonable transition period is within 2 to 5 years (Exhibit B-3, BCUC 1.38.3).

13 **Page 65** “However, the Panel is of the view that the parties to this agreement are sophisticated,  
14 Delta SD needs to replace aging infrastructure, and the Project presents Delta SD with the  
15 opportunity to reduce its GHG emissions while helping to mitigate its exposure to potentially  
16 increasing carbon offset costs in the future. The Panel also acknowledges that the Project may  
17 provide a benefit to FEI as it undergoes a transformation and that this could potentially benefit  
18 its existing natural gas customers. Accordingly, the Panel considers this a justification for the  
19 Project to proceed.”

20 **Page 70** “The Panel agrees with Delta SD that regulatory oversight can provide protective  
21 benefits. However, the Panel cautions Delta SD that in providing regulatory oversight of this  
22 Project and the ensuing rates, the Commission must make a determination of what it considers  
23 to be just and reasonable. The Panel will consider the fact that the rates proposed have been  
24 agreed to by two sophisticated commercial parties, fully capable of representing themselves,  
25 that the agreements signed are a result of arms-length negotiations, represented by competent  
26 legal counsel; and that the DSD has its own accountability mechanisms in place such as elected  
27 trustees to ensure that its interests are protected.”

28 **Page 76** “Finally, the Commission’s usual practice of monitoring CPCN projects is by way of  
29 periodic construction progress reports in light of a potential need for prudency reviews. In this  
30 case, however, because of the two sophisticated parties involved, the Commission will not take  
31 on the monitoring role, including monitoring any re-scoping exercises. Delta SD will still have  
32 recourse by way of a complaint process pursuant to the provisions of the UCA.”

33 **Page 84** “The Panel realizes that the terms of GT&C 12A, under which these contracts were  
34 negotiated, compelled FEI to apply a COS model. However, the Panel has now determined that  
35 GT&C 12A does not apply to this Application. **Accordingly, we encourage Delta SD and FEI**  
36 **to revisit the COS model and consider a pricing model that may better allocate risks**  
37 **between the two parties. We will provide the parties with 30 days to reconsider their**  
38 **positions at which time the parties are requested to provide the Commission with an**

1 **updated rate filing.** With respect to the issue of the rate, the Panel urges Delta SD to negotiate  
2 a rate with FEI that both fits its current budget yet does not result in unreasonably deferring  
3 costs to the future.”

## 4 **1.2 EXHIBIT B-1 – FEI APPLICATION**

5 **Page 44-45** Although there is no set time by which the SD must switch from the transitional  
6 “market rate” to the cost of service rate, the variance between the “market rate” and the true  
7 cost of service will be captured in the SD37 Deferral Account, and either recovered from, or  
8 returned to, the customer. It is not likely to be in the customer’s interest to remain on the “market  
9 rate” if it means accumulating significant balances that must be recovered down the road.  
10 Further, there may be a strong economic incentive for the customer to switch to the cost of  
11 service rate in the near future. The cost of service initially will be very low, which is the product  
12 of favorable treatment for tax purposes of the geoexchange solutions in particular, which are the  
13 more capital intensive of the energy systems in this solution. Canadian tax law enables capital  
14 cost allowance rates of 50% for these systems, which means that should the SD remain on  
15 market rates for some period of time, the deferral account impact may in fact produce a credit  
16 initially, that reduces rates in the future, rather than a debit that increases rates in the future.

17 As the “market rate” was intended to be transitional in nature, and was not intended as a  
18 mechanism for the customer to delay paying the cost of service over the longer term, the RDA  
19 confers upon FEI the right to apply to the BCUC for approval to switch the thermal energy rate  
20 from the market rate to the cost of service rate at any time. This provision recognizes that the  
21 BCUC remains the authority that will hear a dispute, however unlikely, between the SD and FEI  
22 respecting when to switch to cost of service rates. Nonetheless, it is important to note that both  
23 FEI and the SD, as demonstrated by the financial analysis, including sensitivity analysis, expect  
24 that the cost of service rate will be competitive with the market rate and provide benefits to the  
25 SD in the form of low and/or less volatile rates.”

## 26 **1.3 EXHIBIT B-3 - BCUC IR 1 TO FEI**

27 **“BCUC 38.3** What is FEI’s interpretation of a reasonable —initial transition period? || 1 year? 2  
28 years?

29 **FEI Response:** A transition within 2 to 5 years is expected to be reasonable. However, since  
30 the purpose of the market rate is to provide a smooth transition from market rates to cost of  
31 service and both the market rate and cost of service rate are subject to forecast variations, the  
32 agreement with the SD maintains timing flexibility for the switch.”

33 **“BCUC 38.4** What factors or criteria should the SD consider before triggering their election to  
34 switch to the cost of service rate?

35 **FEI Response:** Ultimately, this is a question for the SD and not FEI. However, in FEI’s opinion,  
36 at any given time that the SD is on the market rates the SD may well consider such things as

1 the outright difference between the two rates first, the budgetary conditions they currently  
2 operate within, the prevailing market conditions for energy and the fact that the market rate is  
3 intended to smooth the transition, not provide a market speculation mechanism.”

4 “**BCUC 38.5** What factors or criteria should FEI consider before triggering the need to apply to  
5 the Commission to charge the cost of service rate?

6 **FEI Response:** Both FEI and the SD have satisfied themselves reasonably that the cost of  
7 service will provide overall benefits to the SD but require a mechanism to ease the transition to  
8 the cost of service that respects the nature of the relationship between market rates and cost of  
9 service. As such FEI anticipates submitting initial cost of service rates for Commission approval  
10 once it is requested by the SD. The only way that FEI will make a unilateral submission to the  
11 Commission to move the SD to cost of service is if the SD and FEI have a disagreement about  
12 when the switch should occur. Given that both parties expect that the cost of service will provide  
13 advantages, and both parties desire those advantages, FEI does not expect to be making a  
14 submission to move the SD to the cost of service. In short, the provision is necessary as a  
15 dispute resolution mechanism in the event that the parties cannot agree.”

16 “**BCUC 38.11** Given that the initial market rate charged to the SD is intended to be different than  
17 the actual cost of service rate, please discuss (in FEI’s opinion) how Section 59 of the UCA  
18 would apply.

19 **FEI Response:** The assumption in this question appears to be that the market rate will not,  
20 ultimately, recover the cost of service from the SD. FEI assumes that the reference to how  
21 section 59 of the Act would apply is based on this assumption. That is, the question appears to  
22 ask how a rate that does not recover the cost of service can be just and reasonable. FEI wishes  
23 to point out that the assumption upon which this question appears to be based is incorrect. As  
24 explained in Section 6.3.5 of the Application, variances between the market rate and the actual  
25 cost of service will be recorded in the SD37 deferral account and either recovered from or  
26 returned to the customer over the life of the contract. As a result, the rates charged to the SD  
27 are cost of service rates as contemplated under GT&C 12A and are just and reasonable.”

#### 28 **1.4 EXHIBIT B-10 - BCUC IR 2 TO FEI**

29 “**BCUC 2.2** Please discuss why FEI believes the cost of service rate model to be the best model  
30 in a competitive environment to encourage public utilities to increase efficiency, reduce costs  
31 and enhance performance. ll

32 **FEI Response:** FEU is not advocating that the Cost of Service model is the best rate option in a  
33 competitive environment but rather it is a competitive model that FEU has proposed in  
34 conjunction with its GT&C 12A (approved by Order G-141-09) that will meet the needs of some  
35 customers in a just and reasonable manner. ESAC for example offers a Performance Based  
36 Model to its customers that links energy savings to the payment for the cost of the project. This  
37 would appeal to customers who have energy savings to capture but have no funds to invest.

1 Since under such a model an ESAC member is providing a public utility service, their rates must  
2 be approved by the Commission.

3 In the case of the SD, the cost of service rate is the product of negotiation between FEI and the  
4 SD and the terms are mutually acceptable. It ultimately results in the cost of providing service  
5 being recovered from the customer over the full fixed year term. There is modification to some  
6 degree, as it includes a transition mechanism to ensure that in the short term the rate reflects  
7 the customer's energy costs in the absence of the project. In a competitive market environment  
8 that exists for TES projects, the rate must be understandable and acceptable to the customer  
9 and approved by the Commission. (Please see Exhibit B-1, pages 38 – 47).

10 The cost of service model is used by FEU to set rates for its customers and has been reviewed  
11 and approved in a number of revenue requirement hearings for the natural gas service. A cost  
12 of service model is also set out in GT&C 12A for TES and it is the model that FEI proposes to  
13 use for this TES customer.”

## 14 **1.5 FEI FINAL SUBMISSION**

15 “67. Since the purpose of the market rate is to provide a smooth transition from market rates to  
16 cost of service rates and both the market rate and cost of service rate are subject to forecast  
17 variations, the agreement maintains timing flexibility for the switch. The RDA provides that the  
18 DSD may elect to transition to the cost of service rate at a time suitable for the DSD, by  
19 providing FEI with written notice. Alternatively, FEI can apply to the BCUC to start charging the  
20 cost of service rate if it feels the need to do so. It is in the interests of the DSD to switch to the  
21 cost of service rate as soon as possible because it is ultimately less expensive for the customer.  
22 The present value of the market rate (business-as-usual environment) is \$12.404 million and the  
23 present value of the cost of service is \$11.221 million, for a difference of \$1.183 million, to the  
24 benefit of the DSD. FEI anticipates that a transition to the cost of service rate within 2 to 5 years  
25 is the most likely outcome.”

## 26 **1.6 EXHIBIT C1-2 - BCUC IR 1 TO DSD**

27 “BCUC 1.3 Is the Delta SD aware that being regulated by the Commission does not necessarily  
28 require a cost-of-service based rate? For instance, the range of options may include the  
29 Commission accepting a rate negotiated between the parties, without a detailed review.

30 **DSD Response:** Delta SD is aware that there are a variety of rate options that may exist, and  
31 that the role of the Commission is to review (level of detail at the discretion of the Commission)  
32 and approve the rate, whether cost-of-service or negotiated.”

33 “BCUC 1.4 Should the Commission accept the Delta SD signing the terms of the agreement as  
34 sufficient evidence that the application is in the public interest?

1 **DSD Response:** Yes. Delta SD believes that the agreement with FEI, as approved by the Board  
2 of Education, is in the best interest of Delta SD and its stakeholders.”

3 **20.0 TRIGGERING SWITCH FROM MARKET RATE TO COST OF SERVICE RATE**

4 Reference: Exhibit B-3, BCUC 1.38.4 In response to BCUC 1.38.4, when asked what factor or  
5 criteria the Delta SD should consider before triggering their election to switch to the cost of  
6 service rate, FEI replied:

7 “Ultimately this is a question for the SD and not FEI.

8 However, in FEI’s opinion, at any given time that the SD is on the market rates the SD may well  
9 consider such things as the outright difference between the two rates first, the budgetary  
10 conditions they currently operate within, the prevailing market conditions for energy and the fact  
11 that the market rate is intended to the transition, not provide a market speculation mechanism.”

12 **BCUC 20.1** Does FEI’s response accurately describe the factors that the Delta SD would  
13 consider before triggering an election to switch from the market rate to the cost of service rate?

14 **DSD Response:** Yes, these factors have been discussed during agreement negotiations and  
15 are well understood by Delta SD.

16 **BCUC 20.2** Are there any other factors not listed here that the Delta SD would consider?

17 **DSD Response:** Not at this time.”

18 **26.0 RATE DESIGN**

19 Reference: Exhibit B-3, BCUC 1.64.4 “During negotiations, which are confidential, many  
20 alternatives were discussed. However, the SD expressed a strong preference for this model  
21 whereby the thermal energy rate is inclusive of all costs. In this manner, it is much more  
22 transparent and simple for the SD to understand what their costs for thermal energy are and to  
23 obtain the flexibility that they desire, which levelized rates are not well suited for.” (Exhibit B-3,  
24 BCUC 64.4)

25 **BCUC 26.1** In the view of the Delta SD, what are the advantages or disadvantages for FEI to  
26 implement a fixed rate or levelized rate contract? Who bears the risks for cost overruns in each  
27 rate options?

28 **DSD Response:** Delta SD desired an open book approach to the thermal energy service  
29 replacement, meaning Delta SD was looking for the all-in cost using the new thermal plants to  
30 be easily identifiable and compared to the cost to operate the existing heating plants. Assuming  
31 “fixed rate” is synonymous with “levelized rate”, the commodity costs (i.e. natural gas, electricity)  
32 are not included – which did not satisfy Delta SD’s requirement. Please refer to BCUC IR 1- 2.1  
33 Response regarding cost overruns.

1 **BCUC 26.2** If a fixed rate option was once discussed in negotiations, please explain why this  
2 was rejected (you may file your response in confidence if required).

3 **DSD Response:** The fixed rate option was discussed and rejected by Delta SD as it did not  
4 satisfy its needs for transparency. Please refer to BCUC IR 1- 26.1 Response for more  
5 information.

## 6 **2. MAY 2014 REVENUE REQUIREMENT APPLICATION FOR 2014/15**

### 7 **2.1 BCUC IR1 TO FAES**

8 “**BCUC 1.4** Please explain whether there is any prescriptive timing in the Service Agreements  
9 which would require the customer to switch to the prevailing COS rate? Could the customer stay  
10 on the Market Rate for an extensive period of time, without any penalty?”

11 **FAES Response:** No, there is no prescriptive timing in the Service Agreements which would  
12 require the Customer to switch to the prevailing COS rate. There is no penalty; however,  
13 differences between the actual revenues from the market rate and the cost of service will flow to  
14 the deferral account during the time that the Customer remains on the market rate and this  
15 account will ultimately be recovered from the Customer. As noted in the Application, the  
16 expectation is that the Customer will switch over to the cost of service rate after an initial  
17 transition period. FAES works closely with the Customer to keep them informed of their choice  
18 between the two rates and the implications on future rates.”

## 19 **3. APRIL 2015 REVENUE REQUIREMENT APPLICATION FOR 2015/16**

### 20 **3.1 BCUC ORDER G-146-15A REASONS FOR DECISION**

21 “According to the FortisBC Energy Inc. Application for a Certificate of Public Convenience and  
22 Necessity and Approval of Contracts and Rate for Public Utility Service to Provide Thermal  
23 Energy Service to Delta School District Number 37 (CPCN application), the market rate was  
24 considered a “transitional” rate, devised to represent a reasonable approximation of Delta SD’s  
25 thermal energy costs in the absence of the FAES project. Any difference between the revenues  
26 collected from Delta SD while they are paying the market rate, and the forecast cost of service  
27 is accumulated in the Delta SD 37 Deferral Account for amortization into the COS rate at the  
28 time the switch occurs.

29 Although, there is no set time that the switch to COS must be made, FAES indicated that as  
30 long as the switch is deferred, the difference between the market rate and COS will continue to  
31 flow to the deferral account. At the time of the CPCN application, FAES (then FEI) expected that  
32 a reasonable transitional period from the market rate to a COS rate was within 2-5 years.”

1 **3.2 DSD FINAL ARGUMENT**

2 “15. As the Commission also noted in the CPCN Decision, FEI originally anticipated that DSD  
3 would elect to switch from the market rate to the cost of service rate within two-to-five years.  
4 Importantly, DSD notes that period of time that has not yet elapsed.”

5 “17. It bears emphasis that the rights and obligations of the Rate Agreement were freely  
6 negotiated by the parties. The Commission subsequently approved the provision of thermal  
7 energy services by FAES to DSD on those terms. At all times material to the various  
8 Commission proceedings concerning the provision of thermal energy services by FAES to DSD,  
9 DSD has proceeded on the understanding that the contractual obligations set out in the Rate  
10 Agreement would be honoured by FAES and enforced by the Commission, except in the event  
11 of an overriding public interest that would warrant the Commission's intervention. It would be  
12 wholly unfair for the Commission to now fundamentally alter the terms of the bargain between  
13 the parties absent any request by the parties for such intervention, and absent any overriding  
14 public interest considerations that would justify such drastic action. To the contrary, DSD  
15 submits that all of the relevant public interest considerations militate in favour of continued  
16 nonintervention by the Commission.”

**Appendix G**

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**COMPLIANCE FILING TO ORDER G-31-12**



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

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Regulatory Affairs Correspondence  
Email: [gas.regulatory.affairs@fortisbc.com](mailto:gas.regulatory.affairs@fortisbc.com)

April 3, 2012

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

Attention: Ms. Alanna Gillis, Acting Commission Secretary

Dear Ms. Gillis:

**Re: FortisBC Alternative Energy Services Inc.**

**Revisions to Rates and Rate Design for Thermal Energy Service to Delta School District Number 37**

**British Columbia Utilities Commission ("BCUC" or the "Commission") Order No. G-31-12 Compliance Filing**

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On November 28, 2011, FortisBC Energy Inc. ("FEI") applied for a Certificate of Public Convenience and Necessity ("CPCN") from the Commission to construct and operate an energy system to provide thermal energy to Delta School District Number 37 (the "SD"). The application sought approval of, among other things, the rates and the rate design contained within the Energy System Rate Development Agreement (the "RDA").

On March 9, 2012, the Commission issued its Decision (the "Decision") and Order No. G-31-12 (the "Order") granting a CPCN on the condition that the Service Agreements and the RDA be assigned to an affiliate of FEI. On March 16, 2012, subsequent to FEI's filing and pursuant to paragraph 1 of the Order requiring the provision of proof of the assignments, the Commission issued a CPCN to FortisBC Alternative Energy Service Inc. ("FAES") by Order No. C-3-12.

In paragraph 2 of the Order, the Commission denied the proposed rates and rate design as set out in the RDA. However, the Commission indicated in paragraph 3 of the Order that, with the agreement of FEI and Delta, it would approve a rate and rate design based upon a 60/40 debt/equity capital structure containing:

- a) A restriction of the rate schedule to Delta School District's current and future sites;
- b) Allowances for:



- i. capitalized overheads;
  - ii. cash working capital;
  - iii. inflation and escalation on capital replacements/sustaining capital; and
  - iv. replacement of “unpaid time” by FEI employees with “paid time”;
- c) A cost of debt rate based on an entity with a BBB rating with an additional premium to reflect the extra cost to arrange an incremental small debt issue; and
  - d) A maximum of 50 basis points premium above the benchmark Return on Equity or a lower negotiated equity premium.

FAES and the SD have both agreed to revise the rates and rate design consistent with the rate design described above, specifically including:

- a) A 60/40 debt/equity capital structure as was originally submitted by FEI;
- b) A restriction of the rate schedule to the current and future sites of the SD, as was originally submitted by FEI;
- c) Inclusion of allowances in the cost of service for:
  - i. Capitalized overheads at the rate of 14%;
  - ii. Cash working capital at the rate of 12.5% of operations and maintenance expense;
  - iii. Inflation and escalation on capital replacements and sustaining capital items; and
  - iv. Replacement of “unpaid time” with “paid time” by FEI employees of \$20,000<sup>1</sup>;
- d) A cost of debt rate of 5.91% rather than the FEI embedded cost of debt of 6.88%, based on an entity with a BBB rating with an additional premium to reflect the extra cost to arrange an incremental small debt issue; and
- e) A 50 basis point premium above the benchmark return on equity as negotiated in the RDA.

This rate design lowers the forecast of the levelized rate from \$0.120/kWh as was submitted on January 25, 2012 to \$0.116/kWh.

With respect to the directive to replace “unpaid time” by FEI employees with paid time, FAES would like to clarify that the project development costs already account for “unpaid” time. This is because the hourly rate for the allocation of employee costs to projects such as the

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<sup>1</sup> The total project development costs relating to both “paid” and “unpaid” employee time is now \$145,000. This amount consists of the \$125,000 identified in BCUC IR 2.51.1 and the additional \$20,000 for “unpaid time” now included.



SD includes both base compensation and incentive compensation. That is, M&E employees are not paid for overtime on the basis of overtime hours worked, instead the employees receive a base salary tied to hours worked plus an annual incentive payment. While not a specific requirement, achieving the incentive payment will generally require working extra hours from time to time. However, FAES believes that the intent of the directive was to increase the forecast costs associated with the project and as such, an arbitrary increase of 15%, or \$20,000, has been added to the internal project development costs. FAES and the SD believe that this is a reasonable compromise. Furthermore, although FEI and FAES will continue with the practice of not tracking “unpaid” hours, FEI and FAES will also continue to ensure that M&E costs are appropriately allocated to projects.

Since each of the items described above are cost of service inputs, which the RDA describes as being subject to BCUC approval from time to time, this new rate and the rate design do not require any amendments to the RDA or Service Agreements.

Further, the Order, pursuant to paragraphs 4 (a) through (c), directed that FEI or its affiliate, in this case FAES, submit three reports to the SD and to the Commission within thirty (30) days of the date of the Order (by April 9, 2012). Accordingly, attached are the following reports:

1. Determination of the cost of debt;
2. Rate base items and recovery method after 20 years; and
3. Schedule of market rates versus cost of service rates.

Paragraph 4(d) requested that FAES and FEI (the “Companies”) confirm in writing whether the current Transfer Pricing Policy (“TPP”) requires any amendments in the short term to deal with the regulated affiliate and services which may be provided to it. The Companies hereby confirm that the TPP, with changes as requested in the FortisBC Energy Utilities (“FEU”) 2012-2013 Revenue Requirements Application (“2012-2013 RRA”), is adequate to deal with the provision of regulated services between FEI and FAES. Although, as confirmed in the Decision at page 97, the TPP pertains to the use of utility resources by an affiliated non-regulated business and does not apply between two regulated entities, in the 2012-2013 RRA the FEU requested approval to use the existing TPP with the exclusion of the overhead charge of 10 percent and the facility fee as the basis for cross charges between the regulated FEU and FortisBC Inc. (“FBC”) entities.<sup>2</sup> Thus, consistent with the treatment requested in the 2012-2013 RRA, the TPP excluding the overhead charge and facility fee will be used as a basis for cross charges between FEI and FAES. The Companies further confirm that they will follow this adjusted TPP methodology until the Commission orders otherwise. FEI and FAES also note the references at pages 91 and 98 of the Decision to a future process to review the cost allocation methodology affecting thermal energy service (including the Delta SD Project) and other regulated utility services provided by the Companies. The Companies believe this future review process is the appropriate context in which to establish cost allocation approaches that are fair for the customers of all regulated service offerings.

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<sup>2</sup> FEU 2012-2013 RRA, Exhibit B-1, Page 276 and Appendix L-3



April 3, 2012  
British Columbia Utilities Commission  
Revisions to Rates and Rate Design for Thermal Energy Service to Delta SD  
BCUC Order No. G-31-12 Compliance Filing  
Page 4

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Accordingly, and pursuant to paragraphs 4(f) and (g) of the Order, FEI will track and charge to FAES all overhead that it incurs for the provision of service to the Delta SD. Further, FAES and FEI will track the costs of providing service to the Delta SD, regardless of the entity providing the service, and will evaluate the cost allocation methodology on an ongoing basis.

Pursuant to paragraph 4(e) of the Order, FEI also confirms that the entire Thermal Energy Services Deferral Account will be maintained and remain with FEI until such time as the panels in the AES Inquiry, the FEU 2012-2013 RRA or other proceedings direct otherwise.

If you require further information or have any questions regarding this submission, please contact Grant Bierlmeier at (250) 380-5794.

Yours very truly,

**on behalf of FORTISBC ALTERNATIVE ENERGY SERVICES INC.**

***Original signed by:***

Diane Roy

Attachments

**Attachment 1**

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**COMPLIANCE FILING - EXECUTED**

**COMPLIANCE FILING**  
**BRITISH COLUMBIA UTILITIES COMMISSION**  
**ORDER No. G-31-12**  
**RATES AND RATE DESIGN**

TO: British Columbia Utilities Commission

Pursuant to:

- A. The British Columbia Utilities Commission (BCUC) Order No. G-31-12 (the "Order") dated March 9, 2012, paragraph 2 and 3 indicating that the BCUC denies the rates and rate design as applied for, but will approve the rates and rate design based upon a 60/40 debt/equity capital structure containing:
  - a) A restriction of the rate schedule to Delta School District's (the SD) current and future sites;
  - b) Allowances for:
    - a. capitalized overheads;
    - b. cash working capital;
    - c. inflation and escalation on capital replacements/sustaining capital; and
    - d. replacement of "unpaid time" by FortisBC Energy Inc. (FEI) employees with "paid time";
  - c) A cost of debt rate based on an entity with a BBB rating with an additional premium to reflect the extra cost to arrange an incremental small debt issue; and
  - d) A maximum of 50 basis points premium above the benchmark Return on Equity or a lower negotiated equity premium.
- B. Paragraphs 4 (b) and (c) that direct that FEI or its affiliate, as the case may be, in this case, FortisBC Alternative Energy Service Inc. (FAES), submit to the SD and to the Commission within thirty (30) days of the date of the Order (by April 9, 2012 the following reports:
  - a) Rate Base items and recovery method after 20 years; and
  - b) Schedule of market rates versus cost of service rates
1. FAES and the SD confirm that the rates and rate design acceptable to the BCUC as set out in Order G-31-12 are also acceptable to both FAES and the SD and are consistent with the existing terms of the Energy System Rate Development Agreement (RDA). The specific cost of service items and rate design attributes the BCUC requires FAES and the SD to accept in order to approve the rates and rate design are as follows:
  - a) A 60/40 debt/equity capital structure as was originally submitted to the BCUC;
  - b) Restriction of the rate schedule to the current and future sites of the SD, as was originally submitted to the BCUC;

- c) Inclusion of allowances in the Cost of Service for:
    - a. Capitalized overheads at the rate of 14%;
    - b. Cash working capital at the rate of 12.5% of OM&A;
    - c. Inflation and escalation on capital replacements and sustaining capital items; and
    - d. Replacement of "unpaid time" with "paid time" by FEI employees of \$20,000;
  - d) A cost of debt rate of 5.91% rather than the FEI embedded cost of debt of 6.88%, based on an entity with a BBB rating with an additional premium to reflect the extra cost to arrange an incremental small debt issue; and
  - e) A 50 basis point premium above the benchmark Return on Equity as negotiated in the RDA.
2. This rate and rate design lowers the forecast of the levelized rate from \$0.120/kWh as was submitted on January 25, 2012 to \$0.116/kWh.
  3. Since each of these items are cost of service inputs, which the RDA describes being subject to BCUC approval from time to time, this new rate and the rate design do not require any amendments to the RDA or Service Agreements.
  4. FAES has provided to the SD the following reports:
    - a) Rate Base items and recovery method after 20 years; and
    - b) Schedule of market rates versus cost of service rates.

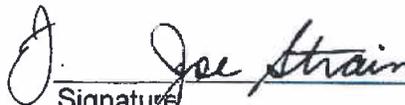
The SD confirms receipt of these reports and accepts the information contained within to be consistent with the intent of the SD.

Dated as at April 3, 2012

**FORTISBC  
ALTERNATIVE ENERGY SERVICES INC.**

  
 \_\_\_\_\_  
 Signature  
 Name: SARAH JONES  
 Title: VP EGM

**BOARD OF EDUCATION OF  
SCHOOL DISTRICT NO. 37 (DELTA)**

  
 \_\_\_\_\_  
 Signature  
 Name: Joe Strain  
 Title: Secretary-Treasurer

**Attachment 2**

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**ENDING RATE BASE AND RISK**



**FORTISBC ENERGY INC. ON BEHALF OF FORTISBC ALTERNATIVE ENERGY SERVICES INC.**  
 DELTA SCHOOL DISTRICT DECISION AND ORDER NO. G-31-12 COMPLIANCE FILING

## Ending Rate Base and Risk

As requested in order G-31-12 from the BCUC, the following is a summary of the items included in rate base at the end of the 20 year contract term and how these amounts will be recovered in the event the Service Agreements are not renewed.

The ending rate base is comprised of the depreciated value of the original capital investment, including the contribution in aid of construction, as well as the depreciated value of the sustainment capital necessary to provide ongoing service. The forecast ending rate base includes sustaining capital items and depreciation. The actual ending rate base may differ from this value due to the actual sustaining capital items that are necessary to deliver service to the SD as well as any changes to depreciation rates that may occur. Further, the ending rate base also includes amounts for capitalized overhead on O&M costs and for cash working capital. Of note, the capitalized overhead increases the ending rate base by \$650k. The table below summarizes the balances for each of these items at the end of the 20 year contract term:

### Rate Base Summary (000s)

	Initial Investment (2012/2013)	Additional investments (2014-2031)	Accumulated Depreciation (2031)	Ending Net Book Value
<b>Plant</b>				
Pumps	\$ 1,829	\$ -	\$ (1,636)	\$ 193
Boilers	\$ 663	\$ -	\$ (369)	293
Ground Source Heat Exchangers	\$ 4,196	\$ -	\$ (1,613)	2,583
Sustaining Capital	\$ -	\$ 3,110	\$ (590)	2,520
Capitalized Overhead	\$ 58	\$ 822	\$ (232)	648
CIAC	(1,357)	-	651	(707)
<b>Total Plant</b>	<b>\$ 5,389</b>	<b>\$ 3,932</b>	<b>\$ (3,790)</b>	<b>\$ 5,532</b>
<b>Cash Working Capital</b>				<b>46</b>
<b>TOTAL 2031 ENDING RATE BASE</b>				<b>5,577</b>
<b>2030 ENDING RATE BASE</b>				<b>5,792</b>
<b>2031 MID-YEAR RATE BASE ((Opening 2031 Rate Base + Ending 2031 Rate Base) / 2)</b>				<b>\$ 5,685</b>

It is anticipated that at the end of the contract term, the energy systems will be in good working order and capable of continuous, reliable and efficient service.

To mitigate the risk that the Delta School District will not continue service at the end of the contract term, FAES will carefully manage the actual sustainment capital expenditures to minimize the actual cost of service, while also providing reliable service at competitive rates.



**FORTISBC ENERGY INC. ON BEHALF OF FORTISBC ALTERNATIVE ENERGY SERVICES INC.**  
DELTA SCHOOL DISTRICT DECISION AND ORDER NO. G-31-12 COMPLIANCE FILING

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In the event the DSD does not renew the contract or purchase the energy systems at the end of the initial term, some of the assets might be available to be re-deployed; however, as discussed in response to BCUC IR 1.59.3, some of the assets (e.g. the loop fields) would potentially be stranded and be at shareholder risk. If, at the end of the term, the Commission were to determine that the thermal energy system assets serving the DSD were no longer used and useful, then the shareholder would bear the risk.

On a present value basis, the rate base forecast at the end of the 20 year contract term is \$1.3M, which represents approximately 25% of the initial \$5.3M capital investment necessary to begin service. FAES must manage the amount of rate base by:

- Minimizing initial and sustaining capital investments in rate base
- Minimizing the thermal energy rates
- Delivering safe, reliable service on a continuous basis to the Delta School District
- Growing the overall thermal energy service

As can be seen, it is in the best interests of FAES to manage the costs, provide quality service to the SD in order to enhance the probability that the SD will choose to renew their service beyond the initial term and enable FAES to continue to earn a reasonable return on the assets it employs to provide this service into the future.

**Attachment 3**

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**MARKET RATE AND COST OF SERVICE  
RATE COMPARISON**



**FORTISBC ENERGY INC. ON BEHALF OF FORTISBC ALTERNATIVE ENERGY SERVICES INC.**  
 DELTA SCHOOL DISTRICT DECISION AND ORDER NO. G-31-12 COMPLIANCE FILING

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## Market Rate comparison to Cost of Service Rate

As per the British Columbia Utilities Commission (BCUC) Order G-31-12, FortisBC Alternative Energy Services Inc. (FAES), an affiliate of FortisBC Energy Inc. (FEI) is providing the following schedule comparing the Net Present Value of the “market rate” to the cost-of service rate including amortization of the SD37 deferral account. FAES has recalculated the cost of service and rates based on the modifications set out in section 3 of the Order. The following are the updated NPV values requested in the Order.

	NPV (\$000's)
Market Rate	\$13,060
Cost of Service	\$11,415
Amortization	\$1,719
Cost of Service plus Amortization	\$13,134
Rate Rider	(\$1,740)
Thermal Energy Rate less Rate Rider	\$11,407

From this calculation, it is apparent that the rate the SD37 will pay (Thermal Energy Rate less Rate Rider) is effectively equal to the cost of service, as is the intent. In addition, the cost-of-service is lower than the market rate as is the intent. While the forecast cost of service including amortization is slightly higher than the market rate, it is not relevant, because the rate that the SD will pay includes both the amortization and the rate rider. The following two items are relevant in considering the actual rates that the SD will pay:

- The rate rider is applied to the rates that the SD pays and is then amortized in the following year. This causes a slight difference between the NPV of the Rate Rider and the Amortization amounts.
- Any difference between cost of service and revenues (other than the rate rider, which is amortized directly the following year as described above) is amortized over the remainder of the initial term. Since the amortization offsets the difference between revenues and cost of service, the amortization merely brings revenues back in line with the cost of service overall.



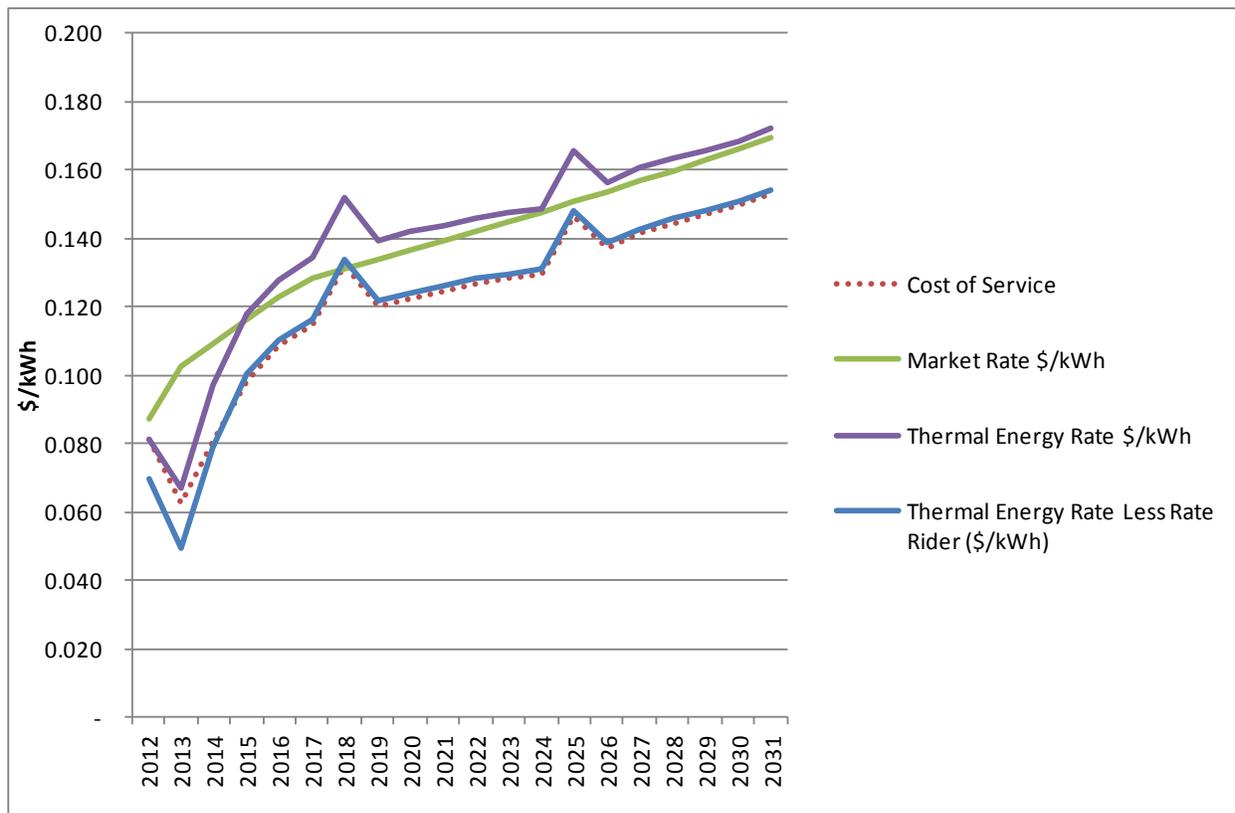
**FORTISBC ENERGY INC. ON BEHALF OF FORTISBC ALTERNATIVE ENERGY SERVICES INC.**  
 DELTA SCHOOL DISTRICT DECISION AND ORDER NO. G-31-12 COMPLIANCE FILING

The chart below illustrates graphically the relationships described by the NPV table above. Notably, on page 47 of the BCUC Decision for Order G-31-12, the BCUC states:

*“Delta SD would effectively be providing a floor thermal rate, and only other systems with higher or equivalent costs would have an incentive to join.”*

While the BCUC also made it clear that this service is currently limited to Delta School District’s current and future buildings, the rate design does respond to this issue by setting a thermal energy rate above the cost of service of the Delta SD, so as to facilitate the potential integration of other customers into the pool. In this context, the rate rider plays an important role. Also visible in this graph are the years in which significant sustainment capital is invested by FAES to ensure ongoing service quality and performance of the energy systems.

In this table, it is also apparent that the rate the SD will pay (Thermal Energy Rate less Rate Rider) is virtually identical to the cost-of-service each year, as was the intent of the rate design absent expansion of the pool.



**Attachment 4**

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**COST OF DEBT FOR DELTA SCHOOL DISTRICT  
THERMAL ENERGY SERVICE**



**FORTISBC ENERGY INC. ON BEHALF OF FORTISBC ALTERNATIVE ENERGY SERVICES INC.**  
 DELTA SCHOOL DISTRICT DECISION AND ORDER NO. G-31-12 COMPLIANCE FILING

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## Cost of Debt for Delta School District Thermal Energy Service

Following receipt of order G-31-12 from the BCUC, FAES has derived a cost of debt for providing thermal energy service to Delta School District of 5.91%. This is consistent with an entity with a BBB rating (investment grade) including an additional premium to reflect the extra cost to arrange an incremental small debt issue as of March 14, 2012.

FAES will apply this rate for a period of 20 years for the initial term of the Energy System Rate Development Agreement (RDA).

In order to establish this rate, FAES obtained BBB debt rate quotes from two Canadian Chartered banks, CIBC World Markets and RBC Capital Markets as of March 14, 2012 and March 13, 2012 respectively.

FAES calculated the rate as follows, as per the Order G-21-12 – “Includes a cost of debt rate based on an entity with a BBB rating with an additional premium to reflect the extra cost to arrange an incremental small debt issue”:

Credit Spread	CIBC Interpolated BBB 20-year rate	3.08%	
	RBC Interpolated BBB 20-year rate <sup>1</sup>	<u>3.16%</u>	
	Average Rate		3.12%
GOC	CIBC Interpolated GOC Benchmark 20 - year	2.53%	
	RBC Interpolated GOC Benchmark - 20 year <sup>1</sup>	<u>2.34%</u>	
	Average Rate		2.44%
Issuance Fee Annualized			<u>0.35%</u>
Total Interest Rate			5.91%

<sup>1</sup> - Linear Interpolation

**Attachment 5**

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**FINANCIAL MODEL OUTPUT**

Live Spreadsheets provided **Confidentially** in electronic format

**Fortis BC**Thermal Energy Solutions*School District No 37 - Delta*

## Financial Schedules

	<u>Schedule</u>
Revenue Requirement	1
Cost of Natural Gas	2
Cost of Electricity	3
O&M and Property Tax	4
Income Tax	5
Capital Cost Allowance	6
Rate Base	7
Capital Spending	8
Gross Plant In Service and Contributions in Aid of Construction	9
Accumulated Depreciation and Amortization	10
Deferred Charges	11
Rate Design	12
Economic Test	13

Fortis BC  
 Thermal Energy Solutions  
 School District No 37 - Delta

**Thermal Energy Solutions: Illustrative Revenue Requirement**  
 (\$000's), unless otherwise stated

Line	Particulars	Reference	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
1	<b>Revenue Requirement</b>																					
2	Cost of Natural Gas	Schedule 2, Line 17	48	114	127	134	142	147	150	153	156	160	163	166	169	173	176	180	183	187	191	195
3	Cost of Electricity	Schedule 3, Line 17	26	174	228	234	241	248	255	262	270	277	285	293	301	310	318	327	336	346	355	365
6	Operation and Maintenance	Schedule 4, Line 19	144	214	218	223	227	232	391	244	249	254	259	264	270	430	284	289	295	301	307	313
7	Property Taxes	Schedule 4, Line 30	-	-	1	4	8	11	12	12	14	13	13	13	14	14	14	16	15	15	15	16
8	Depreciation Expense	Schedule 10, -(Line 17 + Line 38)	64	142	156	160	164	165	166	168	177	185	187	188	190	212	234	236	238	239	253	267
12	Income Taxes	Schedule 5, Line 17	(276)	(464)	(262)	(100)	(17)	38	59	73	62	54	67	75	82	25	(6)	32	58	76	54	40
13	Earned Return	Schedule 7, Line 24	164	360	390	388	386	376	370	360	370	379	369	359	348	393	434	421	407	393	411	429
14																						
15	<b>Annual Revenue Requirement</b>	<b>Sum of Lines 1 through 13</b>	<b>170</b>	<b>540</b>	<b>858</b>	<b>1,043</b>	<b>1,150</b>	<b>1,217</b>	<b>1,404</b>	<b>1,274</b>	<b>1,298</b>	<b>1,321</b>	<b>1,343</b>	<b>1,359</b>	<b>1,373</b>	<b>1,556</b>	<b>1,455</b>	<b>1,501</b>	<b>1,532</b>	<b>1,557</b>	<b>1,587</b>	<b>1,625</b>

Fortis BC  
 Thermal Energy Solutions  
 School District No 37 - Delta

Thermal Energy Solutions: Cost of Natural Gas  
 (\$000's), unless otherwise stated  
 Schedule 2

Line	Particulars	Reference	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
1	<b>Energy</b>																					
2	<b>Natural Gas (GJ)</b>																					
3	Residential		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
4	Small Commercial (< 2,000 GJs/555 MWh)		5,803	12,995	13,641	13,641	13,641	13,641	13,641	13,641	13,641	13,641	13,641	13,641	13,641	13,641	13,641	13,641	13,641	13,641	13,641	13,641
5	Large Commercial (> 2,000 GJs/555 MWh)		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
6	Small Institution (< 2,000 GJs/555 MWh)		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
7	Large Institution (> 2,000 GJs/555 MWh)		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
8	<b>Total Natural Gas (GJ)</b>		5,803	12,995	13,641	13,641	13,641	13,641	13,641	13,641	13,641	13,641	13,641	13,641	13,641	13,641	13,641	13,641	13,641	13,641	13,641	13,641
9																						
10	<b>Cost</b>																					
11	<b>Natural Gas Cost</b>																					
12	Residential	Line 3 x \$ per GJ/1000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
13	Small Commercial (< 2,000 GJs/555 kWh)	Line 4 x \$ per GJ/1000	48	114	127	134	142	147	150	153	156	160	163	166	169	173	176	180	183	187	191	195
14	Large Commercial (> 2,000 GJs/555 kWh)	Line 5 x \$ per GJ/1000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
15	Small Institution (< 2,000 GJs/555 kWh)	Line 6 x \$ per GJ/1000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
16	Large Institution (> 2,000 GJs/555 kWh)	Line 7 x \$ per GJ/1000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
17	<b>Total Natural Gas Energy Cost</b>	<b>Sum of Lines 12 through 16</b>	<b>48</b>	<b>114</b>	<b>127</b>	<b>134</b>	<b>142</b>	<b>147</b>	<b>150</b>	<b>153</b>	<b>156</b>	<b>160</b>	<b>163</b>	<b>166</b>	<b>169</b>	<b>173</b>	<b>176</b>	<b>180</b>	<b>183</b>	<b>187</b>	<b>191</b>	<b>195</b>

Fortis BC  
 Thermal Energy Solutions  
 School District No 37 - Delta

Thermal Energy Solutions: Cost of Electricity  
 (\$000's), unless otherwise stated  
 Schedule 3

Line	Particulars	Reference	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
1	<b>Energy</b>																					
2	<b>Electricity (MWh)</b>																					
3	Residential		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
4	Small Commercial (< 2,000 GJs/555 MWh)		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
5	Large Commercial (> 2,000 GJs/555 MWh)		377	2,376	3,095	3,095	3,095	3,095	3,095	3,095	3,095	3,095	3,095	3,095	3,095	3,095	3,095	3,095	3,095	3,095	3,095	3,095
6	Small Institution (< 2,000 GJs/555 MWh)		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
7	Large Institution (> 2,000 GJs/555 MWh)		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
8	<b>Total Electricity (MWh)</b>		<b>377</b>	<b>2,376</b>	<b>3,095</b>																	
9																						
10	<b>Cost</b>																					
11	<b>Electricity Cost</b>																					
12	Residential	Line 3 x \$ per MWh	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
13	Small Commercial (< 2,000 GJs/555 kWh)	Line 4 x \$ per MWh	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
14	Large Commercial (> 2,000 GJs/555 kWh)	Line 5 x \$ per MWh	26	174	228	234	241	248	255	262	270	277	285	293	301	310	318	327	336	346	355	365
15	Small Institution (< 2,000 GJs/555 kWh)	Line 6 x \$ per MWh	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
16	Large Institution (> 2,000 GJs/555 kWh)	Line 7 x \$ per MWh	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
17	<b>Total Electricity Cost</b>	<b>Sum of Lines 12 through 16</b>	<b>26</b>	<b>174</b>	<b>228</b>	<b>234</b>	<b>241</b>	<b>248</b>	<b>255</b>	<b>262</b>	<b>270</b>	<b>277</b>	<b>285</b>	<b>293</b>	<b>301</b>	<b>310</b>	<b>318</b>	<b>327</b>	<b>336</b>	<b>346</b>	<b>355</b>	<b>365</b>

Fortis BC  
 Thermal Energy Solutions  
 School District No 37 - Delta

**Thermal Energy Solutions: Indicative O&M, Other Revenue and Property Tax**  
 (\$000's), unless otherwise stated

Line	Particulars	Reference	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
1	<b>Gross O&amp;M</b>																					
2	Labour Costs		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
3																						
4	Vehicle Costs		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
5	Employee Expenses		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
6	Materials & Supplies		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
7	Computer Costs		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
8	Fees & Administrations Costs		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
9	Contractor Costs		134	199	203	207	211	216	364	227	232	236	241	246	251	400	264	269	274	280	286	291
10	Facilities		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
11	Overheads and Shared Services Allocation <sup>1</sup>		34	50	51	52	53	54	91	57	58	59	60	61	63	100	66	67	69	70	71	73
12																						
13	Non-Labour Costs	Sum of Lines 4 through 11	168	249	254	259	264	269	455	284	290	295	301	307	314	500	330	336	343	350	357	364
14																						
15	Total Gross O&M Expenses	Line 2 + Line 13	168	249	254	259	264	269	455	284	290	295	301	307	314	500	330	336	343	350	357	364
16																						
17	(Less): Capitalized Overhead	-Line 15 x 14%	(24)	(35)	(36)	(36)	(37)	(38)	(64)	(40)	(41)	(41)	(42)	(43)	(44)	(70)	(46)	(47)	(48)	(49)	(50)	(51)
18																						
19	Net O&M	Line 15 + Line 17	144	214	218	223	227	232	391	244	249	254	259	264	270	430	284	289	295	301	307	313
20																						
21																						
22	<b>Other Revenue</b>																					
23	Environmental Credits		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
24	Electricity Sales Revenue		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
25	Total Other Revenue		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
26																						
27	<b>Property Taxes</b>																					
28	General, School and Other		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
29	1% in Lieu of General Municipal Tax <sup>2</sup>	Schedule 12, Line 26 x 1%	-	-	1	4	8	11	12	12	14	13	13	13	14	14	14	16	15	15	15	16
30	Total Property Taxes	Line 28 + Line 29	-	-	1	4	8	11	12	12	14	13	13	13	14	14	14	16	15	15	15	16
31																						
32	1- Overhead charge from FEI																					
33	2- Calculation is based on the second preceeding year; ex., 2014 is based on 2012 revenue																					

Fortis BC  
 Thermal Energy Solutions  
 School District No 37 - Delta

**Thermal Energy Solutions: Indicative Income Tax Expense**  
 (\$000's), unless otherwise stated  
 Schedule 5

Line	Particulars	Reference	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
1	<b>Income Tax Expense</b>																					
2																						
3	Earned Return	Schedule 7, Line 24	164	360	390	388	386	376	370	360	370	379	369	359	348	393	434	421	407	393	411	429
4	Deduct: Interest on Debt	Schedule 7, Line 23	(77)	(169)	(183)	(182)	(181)	(177)	(174)	(169)	(174)	(178)	(173)	(169)	(163)	(185)	(204)	(198)	(191)	(185)	(193)	(202)
5	Add: Depreciation Expense	Schedule 10, -(Line 17 + Line 38)	64	142	156	160	164	165	166	168	177	185	187	188	190	212	234	236	238	239	253	267
6	Deduct: Overhead Capitalized Expensed for Tax	Schedule 4, Line 17 x 6/14	(10)	(15)	(15)	(16)	(16)	(16)	(27)	(17)	(17)	(18)	(18)	(18)	(19)	(30)	(20)	(20)	(21)	(21)	(21)	(22)
7	Deduct: Capital Cost Allowance	Schedule 6, Line 40	(968)	(1,709)	(1,133)	(650)	(403)	(234)	(159)	(122)	(169)	(207)	(163)	(134)	(110)	(316)	(463)	(344)	(257)	(197)	(288)	(352)
8	Taxable Income After Tax	Sum of Lines 3 through 7	(827)	(1,392)	(786)	(300)	(51)	114	176	220	186	161	201	226	245	74	(18)	95	175	229	161	121
9																						
10	Income Tax Rate		25.00%	25.00%	25.00%	25.00%	25.00%	25.00%	25.00%	25.00%	25.00%	25.00%	25.00%	25.00%	25.00%	25.00%	25.00%	25.00%	25.00%	25.00%	25.00%	25.00%
11	1- Current Income Tax Rate	1- Line 10	75.00%	75.00%	75.00%	75.00%	75.00%	75.00%	75.00%	75.00%	75.00%	75.00%	75.00%	75.00%	75.00%	75.00%	75.00%	75.00%	75.00%	75.00%	75.00%	75.00%
12																						
13	Taxable Income	Line 8 / Line 11	(1,103)	(1,856)	(1,048)	(400)	(68)	152	235	294	249	215	268	302	327	99	(24)	127	234	305	215	161
14																						
15	Total Income Tax Expense	Line 13 x Line 10	(276)	(464)	(262)	(100)	(17)	38	59	73	62	54	67	75	82	25	(6)	32	58	76	54	40
16	Adjustments		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
17	Net Tax Expense	Line 15 + Line 16	(276)	(464)	(262)	(100)	(17)	38	59	73	62	54	67	75	82	25	(6)	32	58	76	54	40
18																						
19	Loss Carry-forward																					
20	Opening Balance		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
21	Loss Carry-forward		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
22	Loss Utilization		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
23	Closing Balance		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

Fortis BC  
 Thermal Energy Solutions  
 School District No 37 - Delta

**Thermal Energy Solutions: Capital Cost Allowance**  
 (\$000's), unless otherwise stated  
 Schedule 6

Line Particulars	Reference	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
<b>1 Pumps- Class 43.2 @ 50%</b>																					
2	Opening Balance		933	629	315	157	79	39	20	10	5	2	1	1	0	0	0	0	0	0	0
3	Additions	1,244	217	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
4	CCA	(311)	(521)	(315)	(157)	(79)	(39)	(20)	(10)	(5)	(2)	(1)	(1)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)
5	Closing Balance	933	629	315	157	79	39	20	10	5	2	1	1	0	0	0	0	0	0	0	0
<b>6</b>																					
<b>7 Boilers low CCA- Class 17 @ 8%</b>																					
8	Opening Balance		523	481	443	407	375	345	317	292	268	247	227	209	192	177	163	150	138	127	117
9	Additions	545	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
10	CCA	(22)	(42)	(38)	(35)	(33)	(30)	(28)	(25)	(23)	(21)	(20)	(18)	(17)	(15)	(14)	(13)	(12)	(11)	(10)	(9)
11	Closing Balance	523	481	443	407	375	345	317	292	268	247	227	209	192	177	163	150	138	127	117	107
<b>12</b>																					
<b>13 Loop Field (Ground Source Heat Exchanger)- Class 43.2 @ 50%</b>																					
14	Opening Balance		1,894	1,511	756	378	189	94	47	24	12	6	3	1	1	0	0	0	0	0	0
15	Additions	2,525	752	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
16	CCA	(631)	(1,135)	(756)	(378)	(189)	(94)	(47)	(24)	(12)	(6)	(3)	(1)	(1)	(0)	(0)	(0)	(0)	(0)	(0)	(0)
17	Closing Balance	1,894	1,511	756	378	189	94	47	24	12	6	3	1	1	0	0	0	0	0	0	0
<b>18</b>																					
<b>19 Sustaining Capital- Class 43.2 @ 50%</b>																					
20	Opening Balance		-	-	15	144	72	36	17	9	4	2	1	1	0	0	0	0	0	0	0
21	Additions	-	-	20	181	-	-	21	-	-	-	-	-	-	-	-	-	-	-	-	-
22	CCA	-	-	(5)	(53)	(72)	(36)	(23)	(17)	(9)	(4)	(2)	(1)	(1)	(0)	(0)	(0)	(0)	(0)	(0)	(0)
23	Closing Balance	-	-	15	144	72	36	34	17	9	4	2	1	1	0	0	0	0	0	0	0
<b>24</b>																					
<b>25 Sustaining Capital- Class 43.1 @ 30%</b>																					
26	Opening Balance		-	-	-	-	-	-	-	-	436	305	233	163	114	1,305	935	654	458	321	977
27	Additions	-	-	-	-	-	-	-	-	513	-	23	-	-	1,441	25	-	-	-	885	-
28	CCA	-	-	-	-	-	-	-	-	(77)	(131)	(95)	(70)	(49)	(250)	(395)	(280)	(196)	(137)	(229)	(293)
29	Closing Balance	-	-	-	-	-	-	-	-	436	305	233	163	114	1,305	935	654	458	321	977	684
<b>30</b>																					
<b>31 Capitalized Overhead- Class average @ 44.7%</b>																					
32	Opening Balance		15	26	42	51	57	61	83	77	74	73	73	74	75	96	89	86	85	85	86
33	Additions	20	23	36	36	37	38	64	40	41	41	42	43	44	70	46	47	48	49	50	51
34	CCA	(4)	(12)	(20)	(27)	(31)	(34)	(41)	(46)	(43)	(42)	(42)	(42)	(43)	(49)	(53)	(50)	(49)	(49)	(49)	(50)
35	Closing Balance	15	26	42	51	57	61	83	77	74	73	73	74	75	96	89	86	85	85	86	87
<b>36</b>																					
<b>37 Total CCA</b>																					
38	Opening Balance		3,365	2,648	1,570	1,137	771	575	501	419	804	638	540	449	383	1,578	1,187	890	680	532	1,179
39	Additions	4,333	993	55	218	37	38	85	40	553	41	65	43	44	1,511	71	47	48	49	935	51
40	CCA	(968)	(1,709)	(1,133)	(650)	(403)	(234)	(159)	(122)	(169)	(207)	(163)	(134)	(110)	(316)	(463)	(344)	(257)	(197)	(288)	(352)
41	Closing Balance	3,365	2,648	1,570	1,137	771	575	501	419	804	638	540	449	383	1,578	1,187	890	680	532	1,179	878

Fortis BC  
 Thermal Energy Solutions  
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**Thermal Energy Solutions: Indicative Rate Base**

(S000's), unless otherwise stated

Schedule 7

Line Particulars	Reference	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
<b>1 TES Rate Base</b>																					
2 Gross Plant In Service- Beginning	Schedule 9, Line 9	-	5,212	6,746	6,801	7,019	7,056	7,094	7,179	7,218	7,772	7,813	7,879	7,922	7,966	9,476	9,547	9,595	9,643	9,692	10,627
3 Gross Plant In Service- Ending	Schedule 9, Line 33	5,212	6,746	6,801	7,019	7,056	7,094	7,179	7,218	7,772	7,813	7,879	7,922	7,966	9,476	9,547	9,595	9,643	9,692	10,627	10,678
4																					
5 Accumulated Depreciation- Beginning	Schedule 10, Line 9	-	(75)	(244)	(434)	(628)	(826)	(1,024)	(1,225)	(1,427)	(1,637)	(1,857)	(2,077)	(2,300)	(2,523)	(2,769)	(3,038)	(3,308)	(3,579)	(3,852)	(4,139)
6 Accumulated Depreciation- Ending	Schedule 10, Line 33	(75)	(244)	(434)	(628)	(826)	(1,024)	(1,225)	(1,427)	(1,637)	(1,857)	(2,077)	(2,300)	(2,523)	(2,769)	(3,038)	(3,308)	(3,579)	(3,852)	(4,139)	(4,440)
7																					
8 CIAC - Beginning	Schedule 9, Line 37	-	(850)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)
9 CIAC - Ending	Schedule 9, Line 40	(850)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)
10																					
11 Accumulated Amortization- Beginning	Schedule 10, Line 37	-	11	38	72	106	140	174	208	242	276	310	344	378	412	446	481	515	549	583	617
12 Accumulated Amortization- Ending	Schedule 10, Line 40	11	38	72	106	140	174	208	242	276	310	344	378	412	446	481	515	549	583	617	651
13																					
14 Net Plant in Service, Mid-Year	Sum (Lines 2 through 12 )/2	2,149	4,740	5,133	5,111	5,077	4,950	4,846	4,741	4,865	4,982	4,849	4,716	4,571	5,147	5,715	5,539	5,350	5,160	5,406	5,639
15																					
16 Adjustment to 13-month average		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
17 Unamortized Deferred Charges, Mid-Year	Schedule 11, Line 21	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
18 Cash Working Capital	Schedule 4, Line 15 x 1/8	21	31	32	32	33	34	57	35	36	37	38	38	39	63	41	42	43	44	45	46
19 <b>Total TES Rate Base</b>	<b>Sum of Lines 14 through 18</b>	<b>2,170</b>	<b>4,771</b>	<b>5,164</b>	<b>5,144</b>	<b>5,110</b>	<b>4,984</b>	<b>4,903</b>	<b>4,777</b>	<b>4,902</b>	<b>5,019</b>	<b>4,887</b>	<b>4,754</b>	<b>4,610</b>	<b>5,210</b>	<b>5,756</b>	<b>5,581</b>	<b>5,393</b>	<b>5,204</b>	<b>5,451</b>	<b>5,685</b>
20																					
21 <b>Return on TES Rate Base</b>																					
22 Equity Return <sup>1</sup>	Line 19 x ROE x Equity %	87	191	207	206	204	199	196	191	196	201	195	190	184	208	230	223	216	208	218	227
23 Debt Component <sup>2</sup>	Line 19 x (LTD Rate x LTD%)	77	169	183	182	181	177	174	169	174	178	173	169	163	185	204	198	191	185	193	202
24 Total Earned Return	Line 22 + Line 23	<b>164</b>	<b>360</b>	<b>390</b>	<b>388</b>	<b>386</b>	<b>376</b>	<b>370</b>	<b>360</b>	<b>370</b>	<b>379</b>	<b>369</b>	<b>359</b>	<b>348</b>	<b>393</b>	<b>434</b>	<b>421</b>	<b>407</b>	<b>393</b>	<b>411</b>	<b>429</b>
25 Return on Rate Base %	Line 24 / Line 19	7.55%	7.55%	7.55%	7.55%	7.55%	7.55%	7.55%	7.55%	7.55%	7.55%	7.55%	7.55%	7.55%	7.55%	7.55%	7.55%	7.55%	7.55%	7.55%	7.55%
26																					
27																					
28																					
29 Cost of Service Discount Rate	1 + Line 25	1.08	1.16	1.24	1.34	1.44	1.55	1.66	1.79	1.92	2.07	2.23	2.39	2.57	2.77	2.98	3.20	3.44	3.70	3.98	4.28
30																					
31 <sup>1</sup> Equity component of rate base at 40.0% with return on equity of 10.0%																					
32 <sup>2</sup> Debt component of rate base at 60.0% with debt rate of 5.91%																					

Fortis BC  
 Thermal Energy Solutions  
 School District No 37 - Delta

Thermal Energy Solutions: Capital Spending  
 (\$000's), unless otherwise stated  
 Schedule 8

Line Particulars	Reference	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
1																					
2 Capital Spending 2012 Onwards																					
3 Pumps		1,488	328	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
4 Boilers low CCA		652	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
5 Loop Field (Ground Source Heat Exchanger)		3,020	1,137	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
6 Sustaining Capital		-	-	20	181	-	-	21	-	513	-	23	-	-	1,441	25	-	-	-	885	-
7 Total Capital Spending 2012 Onwards	Sum of Lines 3 through 6	5,159	1,465	20	181	-	-	21	-	513	-	23	-	-	1,441	25	-	-	-	885	-
8																					
9 AFUDC 2012 Onwards																					
10 Pumps		6	7	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
11 Boilers low CCA		11	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
12 Loop Field (Ground Source Heat Exchanger)		12	27	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
13 Sustaining Capital		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
14 Total AFUDC 2012 Onwards	Sum of Lines 10 through 13	29	34	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
15																					
16 Total Capital Spending <sup>1</sup>	Line 7	5,159	1,465	20	181	-	-	21	-	513	-	23	-	-	1,441	25	-	-	-	885	-
17 Total AFUDC	Line 14	29	34	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
18 Total Annual Capital Spending and AFUDC	Line 16 + Line 17	5,188	1,499	20	181	-	-	21	-	513	-	23	-	-	1,441	25	-	-	-	885	-
19																					
20 Contributions in Aid of Construction		(850)	(507)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
21 Removal Costs		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
22 Net Annual Project Costs- Capital	Line 20 + Line 21	4,338	992	20	181	-	-	21	-	513	-	23	-	-	1,441	25	-	-	-	885	-
23																					
24 Total Project Costs- Capital Spending and AFUDC	Sum of Line 18	9,797																			
25 Total Net Project Costs- Capital Spending, AFUDC, CIAC & Removal Costs	Sum of Lines 18 and 22	8,440																			
26																					
27 1- Excluding capitalized overhead; First year of analysis includes all prior year spending for development costs																					

Fortis BC  
 Thermal Energy Solutions  
 School District No 37 - Delta

**Thermal Energy Solutions: Gross Plant in Service & Contributions in Aid of Construction**  
 (\$000's), unless otherwise stated  
 Schedule 9

Line Particulars	Reference	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
<b>1 Gross Plant in Service</b>																					
2																					
3 Gross Plant in Service, Beginning																					
4 Pumps	Preceding Year, Line 28	-	1,493	1,829	1,829	1,829	1,829	1,829	1,829	1,829	1,829	1,829	1,829	1,829	1,829	1,829	1,829	1,829	1,829	1,829	1,829
5 Boilers low CCA	Preceding Year, Line 29	-	663	663	663	663	663	663	663	663	663	663	663	663	663	663	663	663	663	663	663
6 Loop Field (Ground Source Heat Exchanger)	Preceding Year, Line 30	-	3,032	4,196	4,196	4,196	4,196	4,196	4,196	4,196	4,196	4,196	4,196	4,196	4,196	4,196	4,196	4,196	4,196	4,196	4,196
7 Sustaining Capital	Preceding Year, Line 31	-	-	-	20	201	201	201	223	223	736	736	759	759	759	2,199	2,225	2,225	2,225	2,225	3,110
8 Capitalized Overhead	Preceding Year, Line 32	-	24	58	94	130	167	205	269	308	349	390	432	476	519	589	636	683	731	780	830
9 Total Gross Plant in Service, Beginning	Sum of Lines 4 through 8	-	5,212	6,746	6,801	7,019	7,056	7,094	7,179	7,218	7,772	7,813	7,879	7,922	7,966	9,476	9,547	9,595	9,643	9,692	10,627
10																					
11 Gross Plant in Service, Additions <sup>1</sup>																					
12 Pumps	Schedule 8, Line 3 + Line 10	1,493	336	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
13 Boilers low CCA	Schedule 8, Line 4 + Line 11	663	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
14 Loop Field (Ground Source Heat Exchanger)	Schedule 8, Line 5 + Line 12	3,032	1,164	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
15 Sustaining Capital	Schedule 8, Line 6 + Line 13	-	-	20	181	-	-	21	-	513	-	23	-	-	1,441	25	-	-	-	885	-
16 Capitalized Overhead	Schedule 4, -Line 17	24	35	36	36	37	38	64	40	41	41	42	43	44	70	46	47	48	49	50	51
17 Total Gross Plant in Service, Additions	Sum of Lines 12 through 16	5,212	1,534	55	218	37	38	85	40	553	41	65	43	44	1,511	71	47	48	49	935	51
18																					
19 Gross Plant in Service, Retirements																					
20 Pumps		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
21 Boilers low CCA		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
22 Loop Field (Ground Source Heat Exchanger)		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
23 Sustaining Capital		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
24 Capitalized Overhead		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
25 Total Gross Plant in Service, Retirements	Sum of Lines 20 through 24	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
26																					
27 Gross Plant in Service, Ending																					
28 Pumps	Line 4 + Line 12 + Line 20	1,493	1,829	1,829	1,829	1,829	1,829	1,829	1,829	1,829	1,829	1,829	1,829	1,829	1,829	1,829	1,829	1,829	1,829	1,829	1,829
29 Boilers low CCA	Line 5 + Line 13 + Line 21	663	663	663	663	663	663	663	663	663	663	663	663	663	663	663	663	663	663	663	663
30 Loop Field (Ground Source Heat Exchanger)	Line 6 + Line 14 + Line 22	3,032	4,196	4,196	4,196	4,196	4,196	4,196	4,196	4,196	4,196	4,196	4,196	4,196	4,196	4,196	4,196	4,196	4,196	4,196	4,196
31 Sustaining Capital	Line 7 + Line 15 + Line 23	-	-	20	201	201	201	223	223	736	736	759	759	759	2,199	2,225	2,225	2,225	2,225	3,110	3,110
32 Capitalized Overhead	Line 8 + Line 16 + Line 24	24	58	94	130	167	205	269	308	349	390	432	476	519	589	636	683	731	780	830	881
33 Total Gross Plant in Service, Ending	Sum of Lines 28 through 32	5,212	6,746	6,801	7,019	7,056	7,094	7,179	7,218	7,772	7,813	7,879	7,922	7,966	9,476	9,547	9,595	9,643	9,692	10,627	10,678
34																					
35																					
36 <b>Contributions in Aid of Construction (CIAC)</b>																					
37 CIAC, Beginning	Preceding Year, Line 40	-	(850)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)
38 Additions	Schedule 8, Line 20	(850)	(507)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
39 Retirements		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
40 CIAC, Ending	Sum of Lines 37 through 39	(850)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)	(1,357)
41																					

42 1- AFUDC included in 2012 and 2013 Gross Plant in Service Additions is calculated using actual estimated timing of spend while assuming a mid-year in service date for all projects

Fortis BC  
 Thermal Energy Solutions  
 School District No 37 - Delta

**Thermal Energy Solutions: Accumulated Depreciation & Amortization**

(5000's), unless otherwise stated

Schedule 10

Line Particulars	Reference	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
<b>1 Accumulated Depreciation</b>																					
2																					
3 Accumulated Depreciation, Beginning																					
4 Pumps	Preceding Year, Line 28		(35)	(112)	(196)	(281)	(366)	(450)	(535)	(620)	(704)	(789)	(874)	(958)	(1,043)	(1,128)	(1,212)	(1,297)	(1,382)	(1,466)	(1,551)
5 Boilers low CCA	Preceding Year, Line 29		(9)	(28)	(47)	(66)	(85)	(104)	(123)	(142)	(161)	(180)	(199)	(218)	(237)	(256)	(275)	(293)	(312)	(331)	(350)
6 Loop Field (Ground Source Heat Exchanger)	Preceding Year, Line 30		(30)	(103)	(187)	(271)	(354)	(438)	(522)	(606)	(690)	(774)	(858)	(942)	(1,026)	(1,110)	(1,194)	(1,278)	(1,361)	(1,445)	(1,529)
7 Sustaining Capital	Preceding Year, Line 31		-	-	(0)	(3)	(9)	(15)	(21)	(27)	(41)	(62)	(84)	(105)	(127)	(170)	(233)	(297)	(361)	(424)	(501)
8 Capitalized Overhead	Preceding Year, Line 32		(0)	(2)	(4)	(7)	(11)	(17)	(23)	(32)	(41)	(52)	(63)	(76)	(91)	(107)	(124)	(143)	(163)	(185)	(208)
9 Total Accumulated Depreciation, Beginning	Sum of Lines 4 through 8		(75)	(244)	(434)	(628)	(826)	(1,024)	(1,225)	(1,427)	(1,637)	(1,857)	(2,077)	(2,300)	(2,523)	(2,769)	(3,038)	(3,308)	(3,579)	(3,852)	(4,139)
10																					
11 Accumulated Depreciation, Depreciation Expense <sup>1</sup>																					
12 Pumps@ 4.63%	Schedule 9, Line 4 & Line 12	(35)	(77)	(85)	(85)	(85)	(85)	(85)	(85)	(85)	(85)	(85)	(85)	(85)	(85)	(85)	(85)	(85)	(85)	(85)	(85)
13 Boilers low CCA@ 2.86%	Schedule 9, Line 5 & Line 13	(9)	(19)	(19)	(19)	(19)	(19)	(19)	(19)	(19)	(19)	(19)	(19)	(19)	(19)	(19)	(19)	(19)	(19)	(19)	(19)
14 Loop Field (Ground Source Heat Exchanger)@ 2%	Schedule 9, Line 6 & Line 14	(30)	(72)	(84)	(84)	(84)	(84)	(84)	(84)	(84)	(84)	(84)	(84)	(84)	(84)	(84)	(84)	(84)	(84)	(84)	(84)
15 Sustaining Capital@ 2.87%	Schedule 9, Line 7 & Line 15	-	-	(0)	(3)	(6)	(6)	(6)	(6)	(14)	(21)	(21)	(22)	(22)	(42)	(63)	(64)	(64)	(64)	(76)	(89)
16 Capitalized Overhead@ 2.87%	Schedule 9, Line 8 & Line 16	(0)	(1)	(2)	(3)	(4)	(5)	(7)	(8)	(9)	(11)	(12)	(13)	(14)	(16)	(18)	(19)	(20)	(22)	(23)	(25)
17 Total Depreciation Expense	Sum of Lines 12 through 16	(75)	(169)	(190)	(194)	(198)	(199)	(200)	(202)	(211)	(219)	(221)	(222)	(224)	(246)	(268)	(270)	(272)	(273)	(287)	(301)
18																					
19 Accumulated Depreciation, Retirements																					
20 Pumps	Schedule 9, -Line 20	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
21 Boilers low CCA	Schedule 9, -Line 21	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
22 Loop Field (Ground Source Heat Exchanger)	Schedule 9, -Line 22	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
23 Sustaining Capital	Schedule 9, -Line 23	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
24 Capitalized Overhead	Schedule 9, -Line 24	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
25 Total Accumulated Depreciation, Retirements	Sum of Lines 20 through 24	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
26																					
27 Accumulated Depreciation, Ending																					
28 Pumps	Line 4 + Line 12 + Line 20	(35)	(112)	(196)	(281)	(366)	(450)	(535)	(620)	(704)	(789)	(874)	(958)	(1,043)	(1,128)	(1,212)	(1,297)	(1,382)	(1,466)	(1,551)	(1,636)
29 Boilers low CCA	Line 5 + Line 13 + Line 21	(9)	(28)	(47)	(66)	(85)	(104)	(123)	(142)	(161)	(180)	(199)	(218)	(237)	(256)	(275)	(293)	(312)	(331)	(350)	(369)
30 Loop Field (Ground Source Heat Exchanger)	Line 6 + Line 14 + Line 22	(30)	(103)	(187)	(271)	(354)	(438)	(522)	(606)	(690)	(774)	(858)	(942)	(1,026)	(1,110)	(1,194)	(1,278)	(1,361)	(1,445)	(1,529)	(1,613)
31 Sustaining Capital	Line 7 + Line 15 + Line 23	-	-	(0)	(3)	(9)	(15)	(21)	(27)	(41)	(62)	(84)	(105)	(127)	(170)	(233)	(297)	(361)	(424)	(501)	(590)
32 Capitalized Overhead	Line 8 + Line 16 + Line 24	(0)	(2)	(4)	(7)	(11)	(17)	(23)	(32)	(41)	(52)	(63)	(76)	(91)	(107)	(124)	(143)	(163)	(185)	(208)	(232)
33 Total Accumulated Depreciation, Ending	Sum of Lines 28 through 32	(75)	(244)	(434)	(628)	(826)	(1,024)	(1,225)	(1,427)	(1,637)	(1,857)	(2,077)	(2,300)	(2,523)	(2,769)	(3,038)	(3,308)	(3,579)	(3,852)	(4,139)	(4,440)
34																					
35																					
36 <b>Accumulated Amortization of Contributions in Aid of Construction (CIAC)</b>																					
37 Accumulated Amortization CIAC, Beginning	Preceding Year, Line 40																				
38 Amortization	Schedule 9, Line 37 & Line 38	11	28	34	34	34	34	34	34	34	34	34	34	34	34	34	34	34	34	34	34
39 Retirements	Schedule 9, -Line 39	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
40 Accumulated Amortization CIAC, Ending	Sum of Lines 37 through 39	11	38	72	106	140	174	208	242	276	310	344	378	412	446	481	515	549	583	617	651
41																					
42 <b>Removal Cost Provision</b>																					
43 Pumps		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
44 Boilers low CCA		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
45 Loop Field (Ground Source Heat Exchanger)		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
46 Sustaining Capital		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
47 Total Removal Cost Provision	Sum of Lines 43 through 46	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
48																					
49																					

1- Depreciation & Amortization Expense calculation is based on opening balance + additions x 1/2 for all years, including 2012 and 2013, as project in service dates vary in those years

Fortis BC  
 Thermal Energy Solutions  
 School District No 37 - Delta

**Thermal Energy Solutions: Deferred Charges**  
 (\$000's), unless otherwise stated  
 Schedule 11

Line Particulars	Reference	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	
1																						
2	<b>Deferred Charge- Non-Rate Base</b>																					
3	Opening Balance	Preceding Year, Line 10	-	25	146	175	166	156	147	137	128	118	108	98	88	77	66	56	45	33	22	11
4	Opening Balance, Adjustment		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
5	Gross Additions	Schedule 12, Line 8 - Line 26	24	116	19	(20)	(20)	(19)	(19)	(18)	(18)	(17)	(17)	(16)	(16)	(15)	(15)	(14)	(14)	(13)	(12)	(12)
6	Tax		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
7	AFUDC & Adjustments	(Line 3 + Line 4 + Line 5 /2 ) * AFUDC rate	1	6	10	11	10	10	9	9	8	7	7	6	5	4	3	3	2	1	0	
8	Net Additions	Sum of Lines 3 through 7	25	121	29	(9)	(9)	(9)	(10)	(10)	(10)	(10)	(10)	(10)	(11)	(11)	(11)	(11)	(11)	(11)	(11)	(11)
9	Amortization Expense		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
10	Closing Balance	Line 8 + Line 9	25	146	175	166	156	147	137	128	118	108	98	88	77	66	56	45	33	22	11	(1)
11																						
12	<b>Deferred Charge- Rate Base</b>																					
13	Opening Balance	Preceding Year, Line 20	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
14	Opening Balance, Adjustment		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
15	Gross Additions		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
16	Tax		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
17	Net Additions	Sum of Lines 13 through 16	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
18	Amortization Expense		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
19	Closing Balance	Line 17 + Line 18	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
20																						
21	Deferred Charge, Mid-Year	(Line 13 + Line 14 + Line 19 ) /2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	

Fortis BC  
 Thermal Energy Solutions  
 School District No 37 - Delta

**Thermal Energy Solutions: Indicative Rate Design**

(5000's), unless otherwise stated

Line	Particulars	Reference	PV	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
1	Annual Volume for Billing (MWh)			2,099	8,617	10,605	10,605	10,605	10,605	10,605	10,605	10,605	10,605	10,605	10,605	10,605	10,605	10,605	10,605	10,605	10,605	10,605	10,605
2	Present Value	Line 1 / Schedule 7, Line 29	98,105	1,952	7,451	8,525	7,927	7,371	6,854	6,373	5,926	5,510	5,123	4,764	4,430	4,119	3,830	3,561	3,311	3,079	2,863	2,662	2,475
3																							
4	Market Rate \$/kWh		0.133	0.087	0.103	0.109	0.116	0.123	0.129	0.131	0.134	0.136	0.139	0.142	0.145	0.148	0.151	0.154	0.157	0.160	0.163	0.166	0.170
5	Market Rate Revenue	Line 4 x Line 1		183	884	1,160	1,233	1,306	1,363	1,390	1,418	1,447	1,476	1,505	1,535	1,566	1,597	1,629	1,662	1,695	1,729	1,763	1,799
6	Present Value	Line 5 / Schedule 7, Line 29	13,060	170	764	933	922	908	881	836	792	752	713	676	641	608	577	547	519	492	467	443	420
7																							
8	Cost of Service	Schedule 1, Line 15		170	540	858	1,043	1,150	1,217	1,404	1,274	1,298	1,321	1,343	1,359	1,373	1,556	1,455	1,501	1,532	1,557	1,587	1,625
9	Present Value	Line 8 / Schedule 7, Line 29	11,415	158	467	690	780	800	786	843	712	674	638	603	568	533	562	489	469	445	420	398	379
10	Cost of Service Rate \$/kWh	Line 8 / Line 1		0.081	0.063	0.081	0.098	0.108	0.115	0.132	0.120	0.122	0.125	0.127	0.128	0.129	0.147	0.137	0.142	0.145	0.147	0.150	0.153
11																							
12	COS Switch			-	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
13	Amortization Period			20	19	18	17	16	15	14	13	12	11	10	9	8	7	6	5	4	3	2	1
14	Amortization of Deferral Account			-	37	169	208	208	207	207	206	206	205	205	204	204	203	203	202	202	201	201	200
15	Present Value		1,719	-	32	136	156	144	134	124	115	107	99	92	85	79	73	68	63	59	54	50	47
16																							
17	COS Including Amortization	Line 8 + Line 14		170	577	1,027	1,252	1,358	1,424	1,610	1,481	1,504	1,527	1,547	1,564	1,577	1,759	1,658	1,704	1,734	1,758	1,787	1,824
18	Present Value		13,134	158	499	826	936	944	920	968	827	781	738	695	653	612	635	557	532	503	475	449	426
19																							
20	Thermal Energy Rate \$/kWh	Line 17 / Line 1		0.081	0.067	0.097	0.118	0.128	0.134	0.152	0.140	0.142	0.144	0.146	0.147	0.149	0.166	0.156	0.161	0.164	0.166	0.169	0.172
21																							
22	SD 37 Rate Rider		(0.018)	(0.018)	(0.018)	(0.018)	(0.018)	(0.018)	(0.018)	(0.018)	(0.018)	(0.018)	(0.018)	(0.018)	(0.018)	(0.018)	(0.018)	(0.018)	(0.018)	(0.018)	(0.018)	(0.018)	(0.018)
23	SD 37 Rate Discount	Line 22 x Line 1		(37)	(153)	(188)	(188)	(188)	(188)	(188)	(188)	(188)	(188)	(188)	(188)	(188)	(188)	(188)	(188)	(188)	(188)	(188)	(188)
24	Present Value	Line 23 / Schedule 7, Line 29	(1,740)	(35)	(132)	(151)	(141)	(131)	(122)	(113)	(105)	(98)	(91)	(84)	(79)	(73)	(68)	(63)	(59)	(55)	(51)	(47)	(44)
25																							
26	Total Annual Revenue			146	424	839	1,064	1,170	1,236	1,422	1,292	1,316	1,339	1,359	1,376	1,389	1,571	1,470	1,515	1,546	1,570	1,599	1,636
27	Present Value	Line 26 / Schedule 7, Line 29	11,407	136	367	675	795	813	799	855	722	684	647	611	575	539	567	494	473	449	424	401	382
28	Thermal Energy Rate Less Rate Rider (\$/kWh)		0.116	0.070	0.049	0.079	0.100	0.110	0.117	0.134	0.122	0.124	0.126	0.128	0.130	0.131	0.148	0.139	0.143	0.146	0.148	0.151	0.154
29																							
30																							
31	PV of Deferral Account Balance	Schedule 11, Line 10 / Schedule 7, Line 29		23	126	141	124	109	95	82	71	61	52	44	37	30	24	19	14	10	6	3	(0)

Fortis BC  
 Thermal Energy Solutions  
 School District No 37 - Delta  
 (\$000's), unless otherwise stated  
 Schedule 13

Economic Test Summary	
PV of Inflows	12,396 (Sum of Line 9)
PV of Outflows	12,101 (Sum of Line 21)
PI	1.02 (PV of Inflows / PV of Outflows)
Total Required Contribution for PI=1	-

Line	Particulars	Reference	Initial Capital	Year																			
				2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
1	After-Tax WACC			6.66%	6.66%	6.66%	6.66%	6.66%	6.66%	6.66%	6.66%	6.66%	6.66%	6.66%	6.66%	6.66%	6.66%	6.66%	6.66%	6.66%	6.66%	6.66%	
2	Discount Factor	Previous Year Line 2 x ( 1 + Line 1 )	1.00	1.07	1.14	1.21	1.29	1.38	1.47	1.57	1.67	1.79	1.91	2.03	2.17	2.31	2.47	2.63	2.81	2.99	3.19	3.40	3.63
3																							
4	<b>Inflow</b>																						
5	Rate Revenue	Schedule 12, Line 26		146	424	839	1,064	1,170	1,236	1,422	1,292	1,316	1,339	1,359	1,376	1,389	1,571	1,470	1,515	1,546	1,570	1,599	1,636
6	Rate \$/kWh	Line 5 / Schedule 12, Line 1		\$ 0.070	\$ 0.049	\$ 0.079	\$ 0.100	\$ 0.110	\$ 0.117	\$ 0.134	\$ 0.122	\$ 0.124	\$ 0.126	\$ 0.128	\$ 0.130	\$ 0.131	\$ 0.148	\$ 0.139	\$ 0.143	\$ 0.146	\$ 0.148	\$ 0.151	\$ 0.154
7																							
8	Annual Net Cash Inflow	Line 5		146	424	839	1,064	1,170	1,236	1,422	1,292	1,316	1,339	1,359	1,376	1,389	1,571	1,470	1,515	1,546	1,570	1,599	1,636
9	Discounted Cash Inflow	Line 8 / Line 2		137	373	692	822	848	839	906	772	737	703	669	635	601	637	559	540	517	492	470	451
10																							
11	<b>Outflow</b>																						
12	Capital Investment	Schedule 8, Line 22	-	4,338	992	20	181	-	-	21	-	513	-	23	-	-	1,441	25	-	-	-	885	-
13	Cost of Energy Sold	Schedule 1, Line 2 + Line 3		74	288	354	368	383	395	405	416	426	437	448	459	471	483	495	507	520	533	546	560
14	O & M	Schedule 4, Line 15		168	249	254	259	264	269	284	290	295	301	307	314	314	330	336	343	350	357	364	
15	Property Taxes	Schedule 4, Line 30		0	0	1	4	8	11	12	12	14	13	13	13	14	14	14	16	15	15	15	16
16	Income Tax Expense <sup>1</sup>	(Line 8 - Line 13 - Line 14 - Line 15 ) x tax rate		(24)	(28)	57	108	129	140	137	145	146	148	149	149	148	144	158	164	167	168	170	174
17	CCA Tax Shield	Schedule 5, Line 7 x Line 10		(242)	(427)	(283)	(163)	(101)	(58)	(40)	(30)	(42)	(52)	(41)	(33)	(28)	(79)	(116)	(86)	(64)	(49)	(72)	(88)
18	Terminal Value	Schedule 7, Line 19 (2031)																					(5,685)
19																							
20	Annual Net Cash Outflow	Sum of Lines 12 through 18	0	4,314	1,074	404	759	683	757	991	827	1,347	842	894	895	918	2,502	906	937	980	1,017	1,902	(4,659)
21	Discounted Cash Outflow	Line 20 / Line 2	0	4,044	944	333	586	495	514	631	494	754	442	440	413	397	1,015	344	334	328	319	559	(1,283)
22																							
23	Cash Flow	Line 8 - Line 20	0	(4,168)	(650)	436	305	487	479	431	466	(31)	497	465	480	471	(930)	564	578	566	553	(303)	6,296
24	Discounted Cash Flow	Line 9 - Line 21	0	(3,907)	(571)	359	236	353	325	274	278	(18)	261	229	222	204	(377)	214	206	189	173	(89)	1,734
25																							
26	PV of cash Flow	Sum of Line 24	295																				
27																							
28																							
29																							

<sup>1</sup> - Before CCA & Overhead Capitalized Tax Shield

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**Attachment 6**  
**DRAFT ORDER**



**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER**

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**DRAFT ORDER**

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

and

An Application by FortisBC Energy Inc.

For a Certificate of Public Convenience and Necessity for the Approval of a Rate Schedule to Provide Thermal Energy Services to Delta School District Number 37

**BEFORE:**

(Date)

**WHEREAS:**

- A. On November 28, 2011, FortisBC Energy Inc. (FEI) filed an application (the Application) for a Certificate of Public Convenience and Necessity (CPCN) for the construction and operation of thermal energy projects at 19 individual sites for the Delta School District Number 37 (Delta SD), under sections 45 and 46 of the Utilities Commission Act (Act), and for the approval of rates and rate design established by an Energy System Rate Development Agreement (RDA) and individual Energy System Service Agreements (Service Agreements) entered into between FEI and Delta SD, as just and reasonable rates under sections 59 through 61 of the Act;
- B. On March 9, 2012, the British Columbia Utilities Commission (the Commission) issued its Decision and Order G-31-12 (the "Order") granting approval of the CPCN on the condition that the RDA and the Service Agreements be assigned to an affiliate of FEI with proof of the assignments being submitted to the Commission by no later than 30 days from the date of the Order;
- C. In the Order, the Commission denied approval of the proposed the rate and rate design, as applied for and as set out in the RDA and the Service Agreements;
- D. In paragraph 3 of the Order, the Commission indicated that it would accept for filing by no later than 30 days from the date of the Order a rate and rate design based upon a 60/40 debt/equity capital structure which contains the following modifications:

**BRITISH COLUMBIA  
UTILITIES COMMISSION**

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- a) The rate schedule is restricted to Delta School District's current and future sites;
  - b) The rate must include allowances for capitalized overhead, cash working capital, inflation and escalation on capital replacements/sustaining capital items and replace "unpaid time" by FEI employees with "paid time";
  - c) Includes a cost of debt rate based on an entity with a BBB rating with an additional premium to reflect the extra cost to arrange an incremental small debt issue; and
  - d) Provides for a maximum 50 basis points premium above the benchmark Return on Equity or a lower negotiated equity premium.
- E. Further, in paragraph 4 of the Order, the Commission directed that if FEI accepts the condition attached to the grant of the CPCN and FEI and Delta School District agree to submit a revised rate schedule and rate design as referred to above, then FEI, or its affiliate, as the case may be, are directed to:
- a) Within 30 days from the date of this Order, file with the Commission a report stating what is the cost of debt rate as specified above and how it was determined;
  - b) Within 30 days from the date of this Order, provide to Delta School District and the Commission a report setting forth the items that are included in the \$4.1 million rate base at the end of the 20 year term with an explanation as to how that amount is to be recovered in the event the Service Agreements are not renewed;
  - c) Within 30 days from the date of this Order, provide to Delta School District and the Commission a schedule showing the Net Present Value comparison between the "market rate" and the cost-of-service rate including in both instances the amortization of the SD37 Deferral Account;
  - d) Within 30 days from the date of this Order, advise the Commission in writing whether its current Transfer Pricing Policy requires any amendments in the short term to deal with the regulated affiliate and services, which may be provided to it and follow its current Transfer Pricing Policy until the Commission otherwise orders;
  - e) Maintain the entire Thermal Energy Services Deferral Account with FEI until such time as the Panels in the AES Inquiry, the FEU 2012/2013 RRA or other proceedings direct otherwise;
  - f) Track and charge to its affiliate all overhead incurred for the provision of services to the Delta School District; and
  - g) Examine, track and develop, if necessary, its cost allocation methodology to ensure all appropriate costs are allocated to the Delta School District thermal service, regardless of the particular entity providing them.

**BRITISH COLUMBIA  
UTILITIES COMMISSION****ORDER  
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- F. On March 16, 2012, FEI provided an executed copy of the assignment agreement between FEI and its affiliate FortisBC Alternative Energy Services Inc. ("FAES") for the Service Agreements and the RDA along with the related notices (the "Assignment");
- G. On March 16, 2012, subsequent to FEI filing proof of the Assignment to FAES, the Commission issued a CPCN to FAES by Order No. C-13-12 for the construction and operation of the Delta SD thermal energy projects as described in the Application;
- H. On April 3, 2012, FAES and the Delta SD submitted evidence indicating that both FAES and the Delta SD agree to accept the Commission's rate and rate design containing the following components:
- a) A 60/40 debt/equity capital structure as was originally submitted by FEI;
  - b) Restriction of the rate schedule to the current and future sites of the SD, as was originally submitted by FEI;
  - c) Inclusion of allowances in the Cost of Service for:
    - a. Capitalized overheads at the rate of 14%;
    - b. Cash working capital at the rate of 12.5% of OM&A;
    - c. Inflation and escalation on capital replacements and sustaining capital items; and
    - d. Replacement of "unpaid time" with "paid time" by FEI employees of \$20,000;
  - d) A cost of debt rate of 5.91% rather than the FEI embedded cost of debt of 6.88%, based on an entity with a BBB rating with an additional premium to reflect the extra cost to arrange an incremental small debt issue; and
  - e) A 50 basis point premium above the benchmark Return on Equity as originally negotiated in the RDA.
- I. On April 3, 2012, FAES filed the following information:
- a. FAES report stating the cost of debt rate and how FAES determined the rate are accepted as filed;
  - b. FAES report setting forth the details of the ending rate base of \$5.6M in 20 years, explaining how the amount is to be recovered in the event Service Agreements are not renewed, including evidence that the report has been shared with Delta SD;
  - c. FAES schedule showing the Net Present value comparison between the "market rate" and the cost-of-service rate including in both instances the amortization of the SD37 Deferral Account, including evidence that the report has been shared with Delta SD; and
  - d. FAES and FEI confirmation that the current Transfer Pricing Policy does not require any amendments to deal with the regulated affiliate FAES and services which may be provided by FEI to FAES.

**BRITISH COLUMBIA  
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**NOW THEREFORE** the Commission orders as follows:

1. The rates and rate design are approved containing the following components:
  - a. A 60/40 debt/equity capital structure;
  - b. Restriction of the rate schedule to the current and future sites of the SD;
  - c. Inclusion of allowances in the Cost of Service for:
    - i. Capitalized overheads at the rate of 14%;
    - ii. Cash working capital at the rate of 12.5% of OM&A;
    - iii. Inflation and escalation on capital replacements and sustaining capital items; and
    - iv. Replacement of “unpaid time” with “paid time” by FEI employees of \$20,000;
  - d. A cost of debt rate of 5.91% rather than the FEI embedded cost of debt of 6.88%, based on an entity with a BBB rating with an additional premium to reflect the extra cost to arrange an incremental small debt issue; and
  - e. A 50 basis point premium above the benchmark Return on Equity.
  
2. The following information is accepted as filed:
  - a. FAES report stating the cost of debt rate and how FAES determined the rate are accepted as filed;
  - b. FAES report setting forth the details of the ending rate base of \$5.6M in 20 years, explaining how the amount is to be recovered in the event Service Agreements are not renewed, including evidence that the report has been shared with Delta SD;
  - c. FAES schedule showing the Net Present value comparison between the “market rate” and the cost-of-service rate including in both instances the amortization of the SD37 Deferral Account, including evidence that the report has been shared with Delta SD; and
  - d. FAES and FEI confirmation that the current Transfer Pricing Policy does not require any amendments to deal with the regulated affiliate FAES and services which may be provided by FEI to FAES.

**DATED** at the City of Vancouver, In the Province of British Columbia, this        day of **<MONTH>**, 2011.

BY ORDER