

Dionysios Rossi
T (604) 640-4110
F (604) 622-5810
drossi@blg.com

Borden Ladner Gervais LLP
1200 Waterfront Centre
200 Burrard St, P.O. Box 48600
Vancouver, BC, Canada V7X 1T2
T 604.687.5744
F 604.687.1415
blg.com



File No. 551952/000002

October 24, 2018

Delivered by Email (commission.secretary@bcuc.com)

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

Attention: Patrick Wruck, Commission Secretary

Dear Sirs/Mesdames:

Re: FortisBC Alternative Energy Services Inc. 2018/2019 Revenue Requirements and Cost of Service Rate Application for the Thermal Energy Service to Delta School District No. 37 – Project No. 1598949 (the “Application”)

We are the solicitors to Delta School District No. 37 (“DSD”) and write in regard to the above-noted matter.

Please find enclosed DSD’s Information Request No. 1 on FAES Rebuttal Evidence.

Yours truly,

Borden Ladner Gervais LLP

Erika Lambert-Shirzad for:

Dionysios Rossi
CC Matthew Ghikas (mghikas@fasken.com)

DELTA SCHOOL DISTRICT NO. 37

Information Request No. 1 on FAES Rebuttal Evidence – October 24, 2018

FortisBC Alternative Energy Services Inc. 2018/2019 Revenue Requirements and Cost of Service Rate Application for the Thermal Energy Project Serving Delta School District No. 37 (the “2018/19 COS Application”)

Table of Contents	Page No.
1.0 Response to Frank Geyer.....	2
2.0 Load Forecast.....	2
3.0 Change in Configuration.....	4
4.0 Change in Configuration – Heat Pump Systems.....	7
5.0 Levelized Cost of Heat Pump Systems.....	10
6.0 Actual Cost and Performance of Heat Pump Systems.....	10
7.0 JCCLP’s Detailed Energy Models.....	13
8.0 JCCLP’s Design Philosophy.....	14
9.0 MCW’s Peak Capacity Analysis.....	14
10.0 The Impact of DSD’s Actions on System Efficiency.....	15
11.0 Response to Donald Poole.....	16
12.0 Lower Than Anticipated COS and Improved Efficiency.....	16

1.0 Reference RESPONSE TO FRANK GEYER
Current Proceeding, Exhibit B-7, pp.3-18

1.1 Please provide any notes prepared by Grant Bierlmeier with respect to his meetings with DSD about the Project.

In Exhibit B-7, p. 28, FAES states:

At the time of this meeting, FAES had not made an application to switch to the cost of service. There had only been two full years of service, and the transition had been expected to be as long as five years. As indicated above, it was expected that there would be a period of optimization, continued efforts to expand the rate pool, access the tax benefits, and/or negotiate a solution to switch to the COS Rate. In short, FAES wanted to exhaust available alternatives to manage the switch with the DSD before invoking its right to apply to the BCUC to switch. [Emphasis ours]

1.2 Please explain the meaning of the underlined phrase above:

- a. What does FAES mean by a “period of optimization” that would last two-to-five years?
- b. Why did FAES expect there would be a “period of optimization” that would last two-to-five years?

1.3 Please provide all documents substantiating FAES’ expectation that there would be a “period of optimization” that would last two-to-five years. Please provide all correspondence or other documents between the parties concerning these issues.

2.0 Reference: LOAD FORECAST
Current Proceeding, Exhibit B-7, p. 22.
2015/16 Revenue Requirements proceeding, Exhibit B-1, p. 7.
Current Proceeding, Exhibit B-1, p. 16, Table 2.

In Exhibit B-7 of the Current Proceeding, p. 22, FAES states:

The DSD is the only customer on this system and is responsible for the entire cost of service, regardless of the system demand.

In Exhibit B-1 of the 2015/16 Revenue Requirements proceeding, p. 7, FAES states:

The thermal load forecast found in this Application for DSD-37 for the fiscal year 2014/15 is based on weather normalized metered thermal data that represents the amount of thermal energy delivered to each of the schools. It should be noted that the forecasted load consists of seven months of actual data (July 2014 to January 2015) and five months of forecast data (February 2015 to June 2015). The forecasted load for 2014/15 is 5,443 MWh, down from what FAES had forecasted last year at 7,892 MWh. The revised forecast for 2014/15 better reflects the observed operating conditions at the schools.

FAES believes that the following factors contributed to the variance between the 2014/15 thermal load it submitted last year (7,892 MWh) and the one found in this Application. First, based on the

review of the design files, it would appear that despite best attempts by the design team, the previous load forecast included thermal load supplied by equipment other than FAES' thermal energy systems.

In Exhibit B-1 of the Current Proceeding, p. 16, FAES provides Table 2. Row 4 of Table 2 includes the below information. Note, based on the timing of the application, the 2017/18 value is forecast demand, not actual demand.

	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18
Actual Demand (MWh)	673	4,626	5,006	5,818	6,893	6,893

- 2.1 In light of the above, please explain FAES' position regarding the variance between the original forecast thermal energy sales of 10,605 MWh per year, and the current forecast thermal energy sales of 6,893 MWh per year.
 - 2.1.1 Did FAES over-estimate the DSD's total thermal energy demand prior to the issuance of the CPCN? Did FAES over-estimate the share of the DSD's thermal energy demand that could be provided by the Project, and under-estimate the share that would need to be provided by DSD equipment?
- 2.2 Please explain FAES' responses to Information Requests No. 2.1 and 2.1.1 in light of the referenced statement by FAES that "it would appear that despite the best efforts of the design team, the previous load forecast included thermal load supplied by equipment other than FAES' thermal energy systems."
- 2.3 Please also explain FAES' responses to Information Requests No. 2.1 and 2.1.1 in light of the thermal energy sales to DSD in 2013/14, 2014/15, and 2015/16, relative to the current forecast. These values are significantly lower than FAES' forecast for 2017/18 (e.g. the 2013/14 value of 4,626 is 30% lower than the forecast value for 2017/18).
- 2.4 Since 2013/14, has FAES taken any steps to reconfigure or otherwise modify the Project in an attempt to get the Project to satisfy an increased share of DSD's total thermal energy demand?
 - 2.4.1 If so, please describe: (a) all steps taken by FAES to increase the Project's ability to meet more of DSD's total thermal energy demand and (b) the results of such steps.

- 2.5 Does FAES attribute any of variance between actual thermal energy sales and projected thermal energy sales in prior years to the impact of the B.C. teachers' strike?¹ If so, please provide FAES' estimate of the impact of the B.C. teachers' strike, and explain that impact in light of the timing of the teachers' strike, which began in June 2014 and ended in September 2014.
- 2.6 Using information on heating degree days and any other information FAES considers relevant, please provide FAES' estimate of the weather-adjusted thermal energy sales for each prior year of the Project. Please provide a working spreadsheet showing FAES' calculations of weather-adjusted thermal energy demand for each prior year, and include all assumptions.

**3.0 Reference: CHANGE IN CONFIGURATION
Current Proceeding, Exhibit B-7, pp. 22-23.
Appendix "A"
Appendix "B"**

In Exhibit B-7, p. 22, FAES states:

Mr. Cleveland's comparison of the actual results of the Project against the forecasts included in the 2012 CPCN and Rates Application is flawed because the Project configuration changed. The Project configuration change affects the number of heat pumps and boilers included in the Project, which affects capital costs, fuel usage, emissions, and thermal demand.

In Exhibit B-7, p. 23, FAES lists the configuration changes agreed to by the parties, which included trading heat pumps at South Delta Secondary School for two boiler plant sites, and changing two sites from ground-source heat pumps to air-source heat pumps.

An email message sent by Grant Bierlmeier (FAES) to Frank Geyer (formerly DSD) at 5:19 p.m. on February 22, 2013, which is included in Appendix "A" hereto, discusses a proposal to swap ownership of heat pumps at South Delta Secondary School for adding boiler plants at two additional DSD sites. The email message includes Mr. Bierlmeier's estimate of the rate impact of the proposed trade. He explains why the proposed trade would result in no net change to the cost of service rates, and states:

By trading the air source heat pumps at South Delta for the Devon Gardens and Sunshine Hills, the rate impact is actually completely balanced, making this a reasonable trade from the perspective of the thermal energy rate.

An email message attached hereto as Appendix "B", which was sent by Grant Bierlmeier (FAES) to Frank Geyer (formerly of DSD) at 1:26 p.m. on July 11, 2013 encloses: (1) an Energy System Service Amendment Agreement for South Delta Secondary School (discussed in Appendix "A"); (2) an Energy System Service Amendment Agreement for North Delta Secondary School; (3) an

¹ See 2015/16 Revenue Proceedings, Exhibit B-1, p.8.

Energy System Service Amendment Agreement for Delview Secondary School; (4) a new Energy System Service Agreement for Sunshine Hill Elementary School and (5) a new Energy System Service Agreement for Devon Gardens Elementary School. The email message states, in part:

Frank,

I have attached five documents that reflect the changes we discussed with regard to the trade of systems between South Delta, Devon Gardens and Sunshine Hills along with the energy system changes at North Delta and Delview.

Here is a summary of the changes to the ESSA's:

Following agreed scope changes with Delta SD, three SD sites will have different thermal energy systems than originally planned and two additional sites will be added to the portfolio. For the site system changes, amendment letters have been drafted with the required changes and for the additional sites new service agreements have been drafted.

Following agreed scope changes with Delta SD, three SD sites will have different thermal energy systems than originally planned and two additional sites will be added to the portfolio.

...

Let me know if you have any concerns or questions. To be clear, none of this will affect the overall project budget and should be neutral to your rates. [Emphasis added].

- 3.1 Please provide working spreadsheets and any other documents relied upon or created by Mr. Bierlmeier to support his statement that the change to the configuration of the Project (which included amending three service agreements, and adding two new service agreements) would be "neutral to your [DSD's] rates."
- 3.2 Please advise whether any changes were made to the configuration of the Project after the amendments and additions made in July of 2013.
- 3.3 Please complete the following table by providing for each DSD site the output capacity, in kW, of the heat pump systems to be installed and operated by FAES and included in FAES' cost of service as of the CPCN Application filing, and as of the July 2013 change in configuration described in Appendix "B".

	Output capacity in kW of heat pump systems to be installed and operated by FAES and included in FAES' Cost of Service – As of CPCN Application filing	Output capacity in kW of heat pump systems to be installed and operated by FAES and included in FAES' Cost of Service – As of July 2013 Configuration Change
South Park		

Sunshine Hills		
Tilbury		
Richardson		
South Delta		
School Board Office		
Neilson Grove		
North Delta		
Pinewood		
Heath		
Holly		
Ladner		
Delview		
Devon Gardens		
English Bluff		
Cliff Drive		
Delta Manor		
Delta Secondary		
Annieville		
Beach Grove		
Chalmers		

3.4 As of July 11, 2013, what was FAES' estimate of the Project's cost of service rate?

**4.0 Reference: CHANGE IN CONFIGURATION – HEAT PUMP SYSTEMS
Current Proceeding, Exhibit C1-6, Prepared Testimony of Will Cleveland, Appendix D, Attachment 2, Tab 1.
Appendix “A”**

The email message sent by Grant Bierlmeier (FAES) to Frank Geyer (formerly DSD) at 5:19 p.m. on February 22, 2013, which is included in Appendix “A” hereto, discusses a proposal to remove the air source heat pumps at South Delta Secondary School from the Project in exchange for adding boiler plants at Sunshine Hill Elementary School and Devon Gardens Elementary School to the Project. Regarding the impact of removing the South Delta Secondary School air source heat pumps from the Project, the email states:

Then I tested removing the air source heat pumps at South Delta and their associated thermal energy. It turns out that the capital cost estimate for these is \$617k and they are gas backup units (all covered inside the JCI price for the equipment across the 19 sites). We were expecting that these would consume approximate 365MWh of electricity each year and provide 1,110 MWh of thermal energy each year.

In Exhibit C1-6, Prepared Testimony of Will Cleveland, Appendix D, Attachment 2, Tab 1 has information on the fuel consumption and energy output of the Project at the time of the CPCN proceeding. This information was taken from Appendix D to the November 28, 2011 CPCN Application (the “CPCN Application”). Cells J30 and J31 state that the total forecast annual electricity consumption at heat pump-based sites was 2,889 MWh per year, and the total forecast annual electricity consumption at other sites was 207 MWh per year.

4.1 Please provide the information necessary to complete the following table. Please provide stabilized annual values (i.e. exclude the first year or years which were forecast to have reduced sales and output while the Project was phased-in). Please provide forecast values at each point in time, i.e. forecast values at the time of the CPCN Application filing, and forecast values at the time of the July 2013 configuration change described in Appendix “B”.

	As of CPCN Application filing	As of July 2013 Configuration Change
Forecast stabilized annual thermal energy sales, in MWh, from FAES to DSD		

	As of CPCN Application filing	As of July 2013 Configuration Change
Forecast stabilized annual thermal energy production, in MWh, by gas boiler systems installed and operated by FAES and included in FAES' cost of service		
Stabilized annual natural gas consumption, in MWh, by gas boiler systems installed and operated by FAES and included in FAES' cost of service		
Stabilized annual thermal energy production, in MWh, by heat pump systems installed and operated by FAES and included in FAES' cost of service		
Stabilized annual electricity consumption, in MWh, by heat pump systems installed and operated by FAES and included in FAES' cost of service		
Stabilized annual electricity consumption, in MWh, by non-heat pump systems installed and operated by FAES and included in FAES' cost of service (e.g. pumping at gas boiler sites, etc)		

- 4.1.1 If there is a discrepancy between any of the values listed in the “As of the July 2013 Configuration Change” column in the response to Information Request No. 4.1 and the information included in the response to Information Request No. 3.1, please explain why.
- 4.1.2 If there is a discrepancy between any of the values listed in the “as of the CPCN Application filing” column in the response to Information Request No. 4.1 and the information included in Appendix D to the CPCN Application, please explain why.

- 4.1.3 If there is a discrepancy between any of the values listed in the “as of the CPCN Application filing” column in the response to Information Request No. 4.1 and the referenced values from Exhibit C1-6, Prepared Testimony of Will Cleveland, Appendix D, Attachment 2, Tab 1, please explain why.
- 4.2 Please complete the following table with forecast capital cost information for the Project as of the CPCN Application filing, and as of the July 2013 configuration change described in Appendix “B”. As most capital cost items have initial capital investment amounts as well as sustaining capital amounts, please provide total forecast capital costs for the Project through 2013/14, or whatever cut-off year will best capture initial capital costs and exclude sustaining capital amounts.

	As of CPCN Application filing	As of July 2013 Configuration Change
Forecast capital cost of heat pump-based systems (including heat pumps, ground loop fields, circulation pumps, and all associated piping and controls) to be installed by FAES and retained by FAES		
Forecast capital cost of heat pump-based systems (including heat pumps, ground loop fields, circulation pumps, and all associated piping and controls) to be installed by FAES and transferred to DSD		
Forecast capital cost of gas boiler-based systems installed by FAES		
Forecast capital cost of other systems and equipment (standalone thermal energy meters, etc) installed by FAES		
Total forecast FAES capital costs		

- 4.2.1 If FAES applies a different cut-off year between initial capital costs and sustaining capital amounts, please specify what year has been used and explain why it is a more appropriate cut-off year for distinguishing between initial capital costs and sustaining capital.

4.2.2 Please specify what costs are included within the row “Capital cost of other systems and equipment (standalone thermal energy meters, etc.)” in the response to Information Request No. 4.2.

**5.0 Reference: LEVELIZED COST OF HEAT PUMP SYSTEMS – FORECASTS
Current Proceeding, Exhibit B-7, pp. 26-28.**

5.1 Using the capital costs for the heat pump systems as of the CPCN Application filing, the forecast output from the heat pump systems as of the CPCN Application filing, and FAES’ estimates of maintenance costs, electricity consumption, electricity rates, and other O&M costs associated with the heat pump systems as of the CPCN Application filing, please calculate the forecast levelized cost of energy from the heat pump systems as of the CPCN Application filing.

5.1.1 Please provide an explanation of FAES’ methodology in providing a response to Information Request 5.1 and provide all assumptions.

5.1.2 Please provide a working spreadsheet of this calculation, and identify all sources for input assumptions.

5.2 Please provide the forecast levelized cost of energy from the heat pump systems included in the Project’s cost of service, as of the 2013 configuration change. Use the capital costs for the heat pump systems (but exclude the capital costs for the heat pump systems that were not to be retained by FAES), the forecast output from the heat pump systems as of the July 2013 configuration change, and FAES’ estimates of maintenance costs, electricity consumption, electricity rates, and other O&M costs associated with the heat pump systems as of the July 2013 configuration change.

5.2.1 Please provide an explanation of FAES’ methodology and note all assumptions.

5.2.1.1 Please use the same analysis period as used in the response to Information Request No. 5.1.

5.2.1.2 If FAES’ methodology for this calculation differs from the methodology used in the response to Information Request No. 5.1, please explain why.

5.2.2 Please provide a working spreadsheet of this calculation, and identify all sources for input assumptions.

**6.0 Reference: ACTUAL COST AND PERFORMANCE OF HEAT PUMP SYSTEMS
Current Proceeding, Exhibit B-7, pp. 26-27.
Current Proceeding, Exhibit B-1-1, Appendix “A”, Schedule 4.**

In Exhibit B-7, pp. 26-27, FAES states its concerns with the calculations of the unit cost of energy from heat pump-based systems included in DSD’s evidence in this proceeding.

In Exhibit B-1-1, Appendix “A”, Schedule 4, FAES provides fuel consumption amounts by the Project for prior years as well as a forecast for 2018/19.

- 6.1 Please complete the following table with actual capital costs. As some items have had both initial capital costs as well as sustaining capital amounts, please provide total actual capital costs through 2013/14, or whatever year best captures initial capital cost amounts and excludes sustaining capital amounts.

Actual capital cost of heat pump-based systems (including heat pumps, ground loop fields, pumps, and all associated piping and controls) installed by FAES and retained by FAES	
Actual capital cost of heat pump-based systems (including heat pumps, ground loop fields, pumps, and all associated piping and controls) installed by FAES and transferred to DSD	
Actual capital cost of gas boiler-based systems installed by FAES	
Actual capital cost of other systems and equipment (standalone thermal energy meters, etc)	
Total actual capital costs	

- 6.1.1 If FAES applies a different cut-off year between initial capital costs and sustaining capital amounts, please specify what year has been used and explain why it is a more appropriate cut-off year for distinguishing between initial capital costs and sustaining capital.

- 6.2 Please complete the following table:

	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
--	---------	---------	---------	---------	---------	---------	---------

FAES Electricity Consumption at Non-Heat Pump Sites, in MWh							
FAES Electricity Consumption at Heat Pump Sites, in MWh							
Total FAES Electricity Consumption, in MWh							

6.2.1 Please specify, for each year, whether the values provided are actuals or forecasts.

6.3 Please complete the table below. If metered thermal energy output from the heat pump systems installed and retained by FAES is not available, please estimate the thermal energy output from these systems using electrical consumption at the heat pump sites and FAES' estimate of the heat pump systems' overall coefficient of performance (COP).

	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
Thermal energy output from heat pump systems installed by FAES and retained by FAES							

6.3.1 Please provide the COP of the heat pump systems and clarify whether it is a measured COP or an estimated COP.

6.3.3 Please provide the original estimated COP for the heat pump systems (at the time of the CPCN Application filing) as well as the estimated COP for the heat pump systems as of the 2013 configuration change.

- 6.3.3.1 Please explain or provide justification for any variances between the forecast COP as of the CPCN Application filing, the forecast COP as of the 2013 configuration change, and the actual measured or estimated COP as of today.
- 6.4 Please provide an updated calculation of the levelized cost of energy from the heat pump systems included in the Project's cost of service, using the same analysis period used in the responses to Information Request No. 5.1 and Information Request No. 5.2. Use the actual installed capital costs for the heat pump systems (but exclude the capital costs for the heat pump systems that were not to be retained by FAES). Use the actual thermal energy output from the heat pump systems for prior years, and FAES' updated forecast of output from the heat pump systems for future years. Use actual O&M costs for prior years, and FAES' updated forecasts of O&M costs for future years.
- 6.4.1 If FAES' methodology for this calculation differs from the methodology used in the responses to Information Request No. 5.1 and Information Request No. 5.2, please explain why.
- 6.4.2 Please provide a working spreadsheet of the calculation, and identify all sources for input assumptions.

In Exhibit B-7, at p. 27, FAES states that:

To the extent that more natural gas is consumed than was expected, there is a minor impact to the DSD in terms of carbon offset purchases.

- 6.5 Please quantify the "minor impact" referred to above and, in particular:
- a. Please provide the actual post-retrofit natural gas consumption numbers for all of the school sites and compare these numbers to the post-retrofit natural gas consumption numbers specified for all of the school sites at p. 37 of the Design Build Agreement.
 - b. Please identify the precise financial impact to the DSD in terms of carbon offset purchases.

7.0 Reference **JCCLP'S DETAILED ENERGY MODELS**
Current Proceeding, Exhibit B-7, pp. 29-30.

- 7.1 Please provide a copy of the energy model outputs together with the input values used for assumptions on both existing and new mechanical systems being used for the Delview Secondary, Richardson Elementary, and Neilson Grove Elementary schools.
- 7.2 Please provide the analysis undertaken before the CPCN Application was filed that demonstrated that utilizing high-cost heat pumps at 11 of the school sites provided DSD with better "value for money" than utilizing lower-cost condensing boilers at these sites. In the

analysis, please calculate the payback period (in years) and the return on investment (in %) for utilizing heat pumps at the sites as opposed to utilizing condensing boilers at the sites.

8.0 Reference JCCLP'S DESIGN PHILOSOPHY
Current Proceeding, Exhibit B-7, pp. 30-31.

In Exhibit B-7, p. 30, FAES states that:

JCCLP's design philosophy also considered the equipment's sequence of operations as a key factor in determining how each piece of equipment operates together as a compatible system throughout the year. In simple terms, the sequence of operation is the complex set of instructions that governs how and when each piece of equipment operates.

8.1 Please provide the equipment's sequence of operations referred to above.

In Exhibit B-7, p. 30, FAES states that:

Through their energy modelling analysis of the school sites, JCCLP determined that the DSD's terminal systems (the thermal coils and radiant systems already existing in the schools) were capable of satisfying energy demand using lower temperatures during certain off-peak conditions.

8.2 Please provide the energy modelling analysis for all of the school sites to demonstrate that the installed central heating plants, including the specified control sequences, were capable of meeting the stated energy savings.

In Exhibit B-7, p. 31, FAES states that:

Based on what MCW said and did, MCW did not review the sequences of operations nor did it perform or review any detailed calculation of equipment operating hours.

8.3 Please provide the detailed calculations and equipment running hours to demonstrate energy savings and capability to meet building thermal demands with lower supply water temperatures.

9.0 Reference MCW'S PEAK CAPACITY ANALYSIS
Current Proceeding, Exhibit B-7, pp. 32-33.

In Exhibit B-7, p. 33, FAES states that:

The sequence of operations depicted in the Figure 1 above, show that during most of the year the atmospheric boilers that use natural gas and produce GHG's are not even in use.

9.1 Please explain how FAES can conclude from Figure 1 that the atmospheric boilers "are not even in use". Figure 1 appears to be a simple graphic representation of how the different components of the central plant are supposed to interact. It does not appear to show the hours of operation of the heat pumps and their actual energy contribution to the system.

Please provide any supporting documents or other information upon which FAES based the above-noted assertion.

In Exhibit B-7, p. 33, FAES states that:

...JCCLP prepared a detailed energy model and calculated energy savings based on the actual expected hours of the equipment each year considering each system's design and sequence of operations.

- 9.2 To the extent this has not already been provided in response to Information Request No. 7.1, please provide JCCLP's detailed energy model and calculations for all school sites, including the input reports, output reports and the name of the software used to generate the model. Please identify any assumptions made by JCCLP in preparing the model and undertaking the calculations.

In Exhibit B-7, p. 33, FAES states that:

Energy consumption is highly influenced by the operation and maintenance of the DSD's own terminal systems, which is not within FAES's control.

- 9.3 Please advise whether JCCLP investigated the operation and maintenance practices of the DSD with respect to its own terminal systems when designing the Project.
- 9.3.1 If JCCLP investigated the operation and maintenance practices of the DSD with respect to its own terminal systems when designing the Project, please advise what information was collected during this investigation, and how this information was taken into account by JCCLP when designing the Project. Please provide all correspondence or other documents between the parties concerning these issues.

**10.0 Reference THE IMPACT OF DSD'S ACTIONS ON SYSTEM EFFICIENCY
Current Proceeding, Exhibit B-7, pp. 33-36.**

In Exhibit B-7, p. 34, FAES states that:

The DSD's operations and maintenance of their terminal systems have impacted the system's efficiency.

- 10.1 Please quantify the impact of DSD's operations and maintenance of their terminal systems on the system's efficiency. Please provide all data relied upon by FAES to provide this calculation and identify any assumptions made by FAES in undertaking this calculation.

11.0 Reference RESPONSE TO DONALD POOLE
Current Proceeding, Exhibit B-7, pp. 37-40.

In Exhibit B-7, p. 37, FAES states that:

FAES and JCCLP did address the compatibility of the equipment, including incorporation of higher temperature equipment where the analysis suggested.

In Exhibit B-7, p. 38, FAES states that:

...the compatibility of systems was resolved through JCCLP's design philosophy, equipment selection, and the design of the sequence of operations.

- 11.1 Please explain how the compatibility of systems was resolved through JCCLP's design philosophy, equipment selection, and the design of the sequence of operations. Please provide all documents and information relied upon by JCCLP to resolve the compatibility of systems.

In Exhibit B-7, p. 39, FAES states that:

JCCLP did consider and install equipment such as higher temperature heat pumps on a case-by-case basis where the benefits exceeded costs.

- 11.2 Please identify every school site (other than the Neilsen Grove school site) where JCCLP considered installing equipment such as higher temperature heat pumps and decided to do so. Please also explain the reasoning for JCCLP's decision, and provide any relevant documents in this regard.
- 11.2.2 Please identify every school site where JCCLP considered installing equipment such as higher temperature heat pumps but decided not to do so. Please also explain the reasoning for JCCLP's decision, and provide any relevant documents in this regard.

12.0 Reference LOWER THAN ANTICIPATED COS AND IMPROVE
EFFICIENCY
Current Proceeding, Exhibit B-7, pp.41-42.

In Exhibit B-7, p. 41, FAES states that "the DSD saved over \$4 million from their BAU costs that they expected to pay up to July 1, 2018".

- 12.1 Please explain how FAES calculated the \$4 million figure noted above.
- 12.2 Please determine the amount of any cost savings, as compared with the BAU, if DSD is required to switch to the COS Rate.

From: Frank Geyer <fgeyer@deltasd.bc.ca>
Sent: February 23, 2013 2:09 PM
To: Bierlmeier, Grant
Cc: Kostka, Vladimir; Simon, Nicola; Jim White; Debra Eng; John Vantol
Subject: Re: Devon Gardens, Sunshine Hills and South Delta Analysis
Attachments: FAES TES Scenarios.xlsx

Hi Grant. Thanks for this.

I have repackaged the data you've sent into a spreadsheet we can all refer to, and attached it.

To summarize what I think you're saying:

- The scope at South Delta can be accomplished within the current project budget (\$6.4 Million)
- If we added Devon Gardens and Sunshine Hills to the package, we would see a cost of service rate reduction of \$0.0046/kWh as long as we transfer free of charge the existing plants

Given your figures and the above, I am leaning towards leaving the scope status quo. Rightfully or wrongfully, I fear messing with the agreement chemistry will lead to a negation or re-negotiation of the Market Rate, which currently sits \$0.03/kWh lower than the Base Case COS rate. If my team members have any concerns with my logic, I will pass them along.

Let me know if I got anything wrong in my review... Frank

"Bierlmeier, Grant" <Grant.Bierlmeier@fortisbc.com> on February-22-13 at 5:19 PM -0800 wrote:
Frank,

Every now and then I get surprised outright. I had expected that the two schools (Devon Gardens and Sunshine Hills) would not be a good tradeoff for the air source heat pumps at South Delta. Not only was I wrong, but it turns out they are an almost perfect trade. Let me explain:

First, I updated the financials for the latest prices, interest rates, tax rates and energy (to reflect the lower usage as per the budget discussions). Then, here is how things look.

1. The base case is a levelized rate of \$11.9 cents per kWh, which is what we all were expecting even after updating all the variables.

Base Case		
Annual Volume for Billing (MWh)		
<i>Present Value</i>		82,903
Cost of Service		
<i>Present Value(\$000's)</i>		9,899
Cost of Service Rate \$/kWh		\$0.119/kWh

2. Then I tested removing the air source heat pumps at South Delta and their associated thermal energy. It turns out that the capital cost estimate for these is \$671k and they are gas backup units (all covered inside the JCI price for the equipment across the 19 sites). We were expecting that these would consume approximately 365MWh of electricity each year and provide 1,100MWh of thermal energy each year. The results of this analysis on the cost of service indicate that our rates would go up to 12.5 cents/kWh to remove the South Delta air source heat pumps from the service, which is because removing the air source heat pumps effectively increases the relative proportion of geexchange in our portfolio:

Remove SD Heat Pumps		
-----------------------------	--	--

Annual Volume Impact (MWh)		
<i>Present Value</i>		(11,497)
<i>Total Volume for Billing PV</i>		71,406
Cost of Service Impact PV (\$000's)		(987)
Adjusted Cost of Service PV (\$000's)		8,912
Adjusted Rate		\$0.125/kWh

3. Then I looked at adding Devon Gardens and Sunshine Hills into the portfolio. I assumed that we would not pay for them (which also means we get no profit from them...) and that they would provide 545MWh of thermal energy while consuming 2,100GJ of natural gas between the two of them. The results of this analysis on cost of service indicate that our rates would go down to 11.5 cents/kWh since adding these sites would decrease the relative proportion of geexchange in the portfolio.

Add Devon Gardens and Sunshine Hills		
Annual Volume Impact (MWh)		
<i>Present Value</i>		5,655
<i>Total Volume for Billing PV</i>		88,557

Cost of Service Impact PV (\$000's) 272

Adjusted Cost of Service PV (\$000's) 10,171

Adjusted Rate \$0.115/kWh

4. By trading the air source heat pumps at South Delta for the Devon Gardens and Sunshine Hills, the rate impact is actually completely balanced, making this a reasonable trade from the perspective of the thermal energy rate. While Fortis would be forgoing the profit on the air source heat pump investments, we would be willing to do this "trade" as it maintains the integrity of the service overall as it was originally intended.

Trade air source for two boiler sites

Annual Volume Impact (MWh)

Present Value (5,842)

Total Volume for Billing PV 77,061

Cost of Service Impact PV (\$000's) (715)

Adjusted Cost of Service (\$000's) 9,184

Adjusted Rate \$0.119/kWh

At this point, while I am reluctant to make changes to our arrangements (the air source heat pumps are deliverable within the price JCI has provided to do everything and they are in fact gas peaking units) I would be prepared to bring forward whichever alternative you would like for approval. For you to consider, the trade will lower your annual bill to us by about 560MWh applied to the thermal energy rate (less the rate rider), so for example, next year, that would mean that our invoice for thermal energy would be lower by about \$37k assuming a rate of 6.6 cents after the rider is applied. In addition, you would save another 2,100GJ of gas from your budget to reflect Devon Gardens and Sunshine Hills, but you would have to add the air source heat pump related loads which are currently about 5,000GJ of gas, netting about 3,000 GJ of gas increase to your budget, which would be about \$30k of additional gas load to you, and you would still have to deal with an upgrade to heat pumps if you were able to.

There is a bit to think about here for you. As always, don't hesitate to ask any questions and we'll work with you to give you what you need to make the right choice for you. Like I said at the top, I didn't expect the trade-off between Devon Gardens, Sunshine Hills and South Delta air source heat pumps to work, but the analysis suggests they are a good trade-off.

Cheers,

Grant Bierlmeier

Business Development Manager

T: 250.380.5794 | C: 250.896.3098

FORTIS BC | [Thermal Energy Services](#)

This e-mail is the property of FortisBC Holdings Inc. and/or its affiliates in British Columbia and may contain confidential material for the sole use of the intended recipient(s). Any review, use, distribution or disclosure by others is strictly prohibited. FortisBC Holdings Inc. and its affiliates do not accept liability for any errors or omissions which arise as a result of e-mail transmission. If you are not the intended recipient, please contact the sender immediately and delete all copies of the message including removal from your hard drive. Thank you.

From: Bierlmeier, Grant <Grant.Bierlmeier@fortisbc.com>
Sent: July 11, 2013 1:26 PM
To: Frank Geyer
Cc: Simon, Nicola
Subject: ESSA documents
Attachments: ESSA Amendment Agreement SDSS.pdf; ESSA Amendment Agreement NDSS.pdf; ESSA Amendment Agreement Delview.pdf; ESSA - Sunshine Hills.pdf; ESSA - Devon Gardens.pdf

Frank,

I have attached five documents that reflect the changes we discussed with regard to the trade of systems between South Delta, Devon Gardens and Sunshine Hills along with the energy system changes at North Delta and Delview.

Here is a summary of the changes to the ESSA's:

Following agreed scope changes with Delta SD, three SD sites will have different thermal energy systems than originally planned and two additional sites will be added to the portfolio. For the site system changes, amendment letters have been drafted with the required changes and for the additional sites new service agreements have been drafted.

1. Service Agreement Amendments

South Delta Secondary School (SDSS): Removal of 50 ASHP from scope, GSHP system remains

North Delta Secondary School (NDSS): Change from GSHP system to AWHP system

Delview: Change from GSHP system to AWHP system

2. New Service Agreements

Devon Gardens: FAES to take over existing boilers, installation of control & metering

Sunshine Hills: FAES to take over existing boilers, installation of control & metering

Let me know if you have any concerns or questions. To be clear, none of this will affect the overall project budget and should be neutral to your rates.

Cheers,

Grant Bierlmeier

Business Development Manager

T: 250.380.5794 | C: 250.896.3098



This e-mail is the property of FortisBC Holdings Inc. and/or its affiliates in British Columbia and may contain confidential material for the sole use of the intended recipient(s). Any review, use, distribution or disclosure by others is strictly prohibited. FortisBC Holdings Inc. and its affiliates do not accept liability for any errors or omissions which arise as a result of e-mail transmission. If you are not the intended recipient, please contact the sender immediately and delete all copies of the message including removal from your hard drive. Thank you.

ENERGY SYSTEM SERVICE

AMENDMENT AGREEMENT

THIS AGREEMENT dated for reference the 5th day of July, 2013.

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 ALTERNATIVE ENERGY SERVICES INC., a company duly incorporated under the laws of the Province of British Columbia, having an office at 3700 – 2nd Avenue, Burnaby, British Columbia, V5C 6S4

("FAES")

OF THE SECOND PART

WHEREAS:

- A. The District and FortisBC Energy Inc. ("FEI") are parties to an Energy System Service Agreement made as of September 26, 2011 and amended by agreement dated October 31, 2011 (the "Service Agreement") whereby the District agreed to purchase from FEI Thermal Energy generated by an Energy System that FEI constructed, or will construct, on the Lands in respect of Delview Secondary School, all as more particularly identified in the Service Agreement;
- B. The Service Agreement was assigned by FEI to FAES, and FAES assumed all of the obligations of FEI under the Service Agreement, on March 15, 2012;
- C. The District and FAES wish to amend the Service Agreement to provide for the attachment of a new Schedule "A" to replace the existing Schedule "A" describing the Energy System.

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

1. DEFINITIONS

All the capitalized words in this Agreement and defined in the Service Agreement shall have the meanings ascribed to them in the Service Agreement.

ARTICLE 2

2.1 AMENDMENT

Schedule "A"- Energy System Description – Mechanical Equipment Plans and Specifications of the Service Agreement shall be amended by deleting the existing Schedule "A" and replacing it with the Schedule "A" attached to this Agreement.

2.2 CONSTRUCTION

From the date of this Agreement, this Agreement will be read and construed with the Service Agreement and, for such purposes, the Service Agreement shall be deemed to be amended in accordance with the provisions of this Agreement and as so amended shall be deemed to continue in full force and effect.

2.3 RATIFICATION

In all other respects, all of the covenants, clauses, terms, conditions and stipulations of the Service Agreement are ratified and confirmed and shall remain in effect.

2.4 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.

2.5 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 ALTERNATIVE ENERGY SERVICES INC.

by its authorized signatory:

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

by its authorized signatory:

SAMPLE SCHEDULE “A”

Energy System Description

Mechanical Equipment, Plans and Specifications

Equipment schedule:

- Replacement of one complete bank of atmospheric boilers by 1 Mod Con condensing boilers: Capacity: 850 MBH.
- 1 bank of atmospheric input 1,200 MBH (existing)
- Installation of 1 AWHP consisting of 2 modules: Capacity: $2 * 30 \text{ ton} = 60 \text{ ton}$
- 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.

ENERGY SYSTEM SERVICE

AMENDMENT AGREEMENT

THIS AGREEMENT dated for reference the 5th day of July, 2013.

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 ALTERNATIVE ENERGY SERVICES INC., a company duly incorporated under the laws of the Province of British Columbia, having an office at 3700 – 2nd Avenue, Burnaby, British Columbia, V5C 6S4

("FAES")

OF THE SECOND PART

WHEREAS:

- A. The District and FortisBC Energy Inc. ("FEI") are parties to an Energy System Service Agreement made as of September 26, 2011 and amended by agreement dated October 31, 2011 (the "Service Agreement") whereby the District agreed to purchase from FEI Thermal Energy generated by an Energy System that FEI constructed, or will construct, on the Lands in respect of North Delta Secondary School, all as more particularly identified in the Service Agreement;
- B. The Service Agreement was assigned by FEI to FAES, and FAES assumed the obligations of FEI under the Service Agreement, on March 15, 2012;
- C. The District and FAES wish to amend the Service Agreement to provide for the attachment of a new Schedule "A" to replace the existing Schedule "A" describing the Energy System.

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

1. DEFINITIONS

All the capitalized words in this Agreement and defined in the Service Agreement shall have the meanings ascribed to them in the Service Agreement.

ARTICLE 2

2.1 AMENDMENT

Schedule "A"- Energy System Description – Mechanical Equipment Plans and Specifications of the Service Agreement shall be amended by deleting the existing Schedule "A" and replacing it with the Schedule "A" attached to this Agreement.

2.2 CONSTRUCTION

From the date of this Agreement, this Agreement will be read and construed with the Service Agreement and, for such purposes, the Service Agreement shall be deemed to be amended in accordance with the provisions of this Agreement and as so amended shall be deemed to continue in full force and effect.

2.3 RATIFICATION

In all other respects, all of the covenants, clauses, terms, conditions and stipulations of the Service Agreement are ratified and confirmed and shall remain in effect.

2.4 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.

2.5 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 ALTERNATIVE ENERGY SERVICES INC.

by its authorized signatory:

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

by its authorized signatory:

SAMPLE SCHEDULE “A”

Energy System Description

Mechanical Equipment, Plans and Specifications

Equipment schedule:

- Replacement of one atmospheric boiler by 2 vertically stacked Mod Con condensing boilers: Capacity: 850 MBH x 2 = 1,700 MBH.
- 3 Patterson Kelley boilers input 1,900 MBH (existing)
- Replacement of the existing 110 ton Trane air-cooled chiller by 1 air to water heat pump (AWHP) of equivalent capacity.
- 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.

ENERGY SYSTEM SERVICE

AMENDMENT AGREEMENT

THIS AGREEMENT dated for reference the 5th day of July, 2013.

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 ALTERNATIVE ENERGY SERVICES INC., a company duly incorporated under the laws of the Province of British Columbia, having an office at 3700 – 2nd Avenue, Burnaby, British Columbia, V5C 6S4

("FAES")

OF THE SECOND PART

WHEREAS:

- A. The District and FortisBC Energy Inc. ("FEI") are parties to an Energy System Service Agreement made as of September 26, 2011 and amended by agreement dated October 31, 2011 (the "Service Agreement") whereby the District agreed to purchase from FEI Thermal Energy generated by an Energy System that FEI constructed, or will construct, on the Lands in respect of South Delta Secondary School, all as more particularly identified in the Service Agreement;
- B. The Service Agreement was assigned by FEI to FAES, and FAES assumed all of the obligations of FEI under the Service Agreement, on March 15, 2012;
- C. The District and FAES wish to amend the Service Agreement to provide for the attachment of a new Schedule "A" to replace the existing Schedule "A" describing the Energy System.

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

1. DEFINITIONS

All the capitalized words in this Agreement and defined in the Service Agreement shall have the meanings ascribed to them in the Service Agreement.

ARTICLE 2

2.1 AMENDMENT

Schedule "A"- Energy System Description – Mechanical Equipment Plans and Specifications of the Service Agreement shall be amended by deleting the existing Schedule "A" and replacing it with the Schedule "A" attached to this Agreement.

2.2 CONSTRUCTION

From the date of this Agreement, this Agreement will be read and construed with the Service Agreement and, for such purposes, the Service Agreement shall be deemed to be amended in accordance with the provisions of this Agreement and as so amended shall be deemed to continue in full force and effect.

2.3 RATIFICATION

In all other respects, all of the covenants, clauses, terms, conditions and stipulations of the Service Agreement are ratified and confirmed and shall remain in effect.

2.4 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.

2.5 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 ALTERNATIVE ENERGY SERVICES INC.

by its authorized signatory:

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

by its authorized signatory:

SAMPLE SCHEDULE “A”

Energy System Description

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.
- 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.
- BTU meters

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

ENERGY SYSTEM SERVICE AGREEMENT

DEVON GARDENS ELEMENTARY SCHOOL

THIS AGREEMENT dated for reference the 9th day of July, 2013.

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 ALTERNATIVE ENERGY SERVICES INC., a company
duly incorporated under the laws of the Province of British Columbia,
having an office at 3700 – 2nd Avenue, Burnaby, British Columbia, V5C
6S4

("FAES")

OF THE SECOND PART

WHEREAS:

A. The District is the owner of Devon Gardens Elementary School (the "Building") and lands located at 8884 Russell Drive, Delta, British Columbia, which lands are legally described as:

Parcel Identifier: 007-129-556

Lot:

LOT 886 DL 440 GP 2 NWD PL 34948

(the "Lands")

B. FAES wishes to supply to the Building, and the District wishes to purchase, Thermal Energy generated by an Energy System that FAES will construct on the Lands, and which FAES will own and operate, all pursuant to the terms of this Agreement.

C. The Thermal Energy supplied by FAES 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 26th, 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 FAES 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 FAES and listed in Schedule C;
 - (ii) that were or ought to have been discovered, foreseen or anticipated upon reasonable inspection by FAES prior to the Effective Date; and
 - (iii) that were caused by FAES or any person for whom FAES 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 FAES 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 FAES dated as of September 26th, 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) “FAES” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (ee) “FAES 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 FAES 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 FAES 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 FAES's obligations under the Agreement pursuant to Article 17; or
 - d. maintenance activities that FAES 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), FAES'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 FAES 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 FAES 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 FAES 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 FAES 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

FAES 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 FAES 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 FAES for provision of Service to the Building.

2.3 SPECIFICATIONS

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

FAES 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 FAES. FAES 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.

FAES 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. FAES 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, FAES will be entitled to proceed on the basis of the information provided to the District. FAES will revise the Specifications based on the comments from the District provided that doing so will not impact FAES'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, FAES 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

FAES 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

FAES 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 FAES, during the Term from and following the Acceptance Date, for so long as FAES 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 FAES, its assigns, employees, contractors, agents, invitees and licensees at all times hereafter for the purposes set out in this Agreement, provided FAES 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 FAES will be limited to the extent reasonably necessary to fulfil FAES'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 FAES, acting reasonably, may

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

FAES 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 FAES 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 FAES 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 FAES's access rights pursuant to Section 4.1.

4.3 PERMITS

FAES 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, FAES 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

FAES 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 FAES, FAES 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, FAES will provide the Services to the District throughout the Term.

5.2 SERVICE MONITORING AND REVIEW

The Parties acknowledge that FAES 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 FAES with reasonable cooperation in relation to the preparation of such reports.

5.3 STANDARD OF PERFORMANCE

In performing the Services, FAES 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 FAES to the Building will, except to the extent, if any, caused by any wrongful or negligent act of FAES or any person for whom FAES is responsible at law, render FAES 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, FAES 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, FAES 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 FAES 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.

FAES 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 FAES 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 FAES when due for the Thermal Energy that FAES 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

FAES 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 FAES will be made by cheque mailed to FAES 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 FAES 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 FAES 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 FAES and may be used by FAES in its business or removed in whole or in part as it may see fit, and for any of such purposes, and FAES 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 FAES 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, FAES 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 FAES as follows and acknowledges that FAES 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 FAES'S REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties contained in this Agreement, FAES 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) FAES has the full right, power and authority to enter into this Agreement;
- (b) all necessary corporate action on the part of FAES has been taken to authorize and approve the execution and delivery of this Agreement and the performance by FAES 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 FAES as of the date of this Agreement;
- (d) FAES is not party to any action, suit or legal proceeding, actual or threatened, and there are no circumstances, matters or things known to FAES which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or threatened against FAES before or by any Governmental Authority, which could affect FAES's ability to perform its obligations under this Agreement; and
- (e) FAES 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) FAES has all the required expertise to fulfill its obligations under this Agreement.

10.3 DELEGATION AND SUBCONTRACTING

FAES 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 FAES 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 FAES 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

FAES, 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. FAES 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 FAES 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 FAES'S INDEMNITY

Without limiting any other obligations of FAES provided herein, FAES 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 FAES of any of its obligations or warranties hereunder; or
- (b) the negligence or wilful misconduct of FAES, its employees, contractors or agents in respect of the Energy System, and in the performance of the obligations of FAES 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 FAES, 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 FAES, 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 FAES or its Affiliates or any of their respective officers, directors, members, employees, contractors or agents, or the breach or non-performance by FAES of any of its obligations or warranties hereunder.

12.3 CONSEQUENTIAL LOSS

In no event will the District or FAES 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 FAES 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 FAES, 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, "FAES Losses") which may be paid by, incurred by or asserted against FAES, 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 FAES Losses suffered were caused or contributed to by any act or omission of FAES or any person for whom FAES is in law responsible after FAES had knowledge of the Contaminants.

12.6 ENVIRONMENTAL INDEMNITY BY FAES

FAES 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 FAES 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 FAES INSURANCE COVERAGE.

- (a) FAES 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) FAES 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 FAES and all its officers, directors, employees, contractors and agents.

13.3 PRIORITY

FAES 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 FAES 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 FAES

- (a) FAES will be in default under this Agreement if FAES 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 FAES 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 FAES 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 FAES of written notice thereof from the District, the District may, at its option, undertake the necessary steps to remedy FAES's default at FAES's sole expense, which reasonable

costs shall be deducted from the Monthly Charges, and such actions will not relieve FAES 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 FAES by the District under this Agreement within thirty (30) days of receiving written notice from FAES 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 FAES 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 FAES and to continue to diligently pursue the curing of such default thereafter until cured.
- (b) If the District is in default of this Agreement, FAES 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 FAES, FAES 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 FAES 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 FAES (a "Service Interruption Notice" to FAES);
- (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 FAES (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 FAES (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 FAES within 30 days following the termination:

- (a) require FAES to remove the Energy System at FAES's cost in accordance with Section 15.5; or
- (b) acquire the Energy System from FAES 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 FAES, 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 FAES within 30 days following the termination:

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

15.4 TERMINATION BY FAES FOR CAUSE

If FAES terminates this Agreement pursuant to Section 14.2(c), FAES 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 FAES at the Adjusted Energy System Purchase Price.

15.5 REMOVAL OF THE ENERGY SYSTEM

If FAES 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, FAES shall promptly remove those portions of the Energy System located within the Building and at surface level at FAES's cost, and FAES 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 FAES prior to the 30th 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 FAES 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) FAES 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) FAES's obligations under this Section 15.6(b) shall arise only upon FAES's receipt of all amounts due and owing to FAES from the District under this Agreement, and (ii) during the period between the expiration or termination of the Agreement and FAES's receipt of amounts due and owing to FAES from the District under this Agreement, FAES 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 FAES'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

FAES 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 FAES

FAES 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 FAES is responsible pursuant to Section 4.5 that is removed from the Lands by FAES or any

person for whom it is in law responsible, will be and remain the sole and exclusive property and responsibility of FAES 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 FAES

The obligation of FAES 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 FAES, and which may be waived by FAES in accordance with Section 18.2:

- (a) FAES 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 FAES reserves the right to extend the period of time to that date when the board next convenes.

18.2 FAES 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, FAES 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

FAES'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 FAES'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

FAES 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 FAES:

FortisBC Energy Inc.
3700 – 2nd Avenue,
Burnaby,
British Columbia,
V5C 6S4

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

And for notices issued by the District under Section 14.3, also to the following contacts:

*{add in names/departments/fax numbers of contacts (such as operational contacts)
available 24/7}*

(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 FAES 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 FAES 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 FAES 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 FAES 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 FAES, to an Affiliate of FAES 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:

**THE BOARD OF EDUCATION OF
SCHOOL DISTRICT NO. 37 (DELTA)**
by its authorized signatory:

Joe Strain, Secretary-Treasurer

SAMPLE SCHEDULE “A”

Energy System Description

Mechanical Equipment, Plans and Specifications

Equipment schedule:

- Mod Com 300 & Hydrotherm boilers(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.

SCHEDULE “B”

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

ENERGY SYSTEM SERVICE AGREEMENT

SUNSHINE HILL ELEMENTARY SCHOOL

THIS AGREEMENT dated for reference the 9th day of July, 2013.

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 ALTERNATIVE ENERGY SERVICES INC., a company
duly incorporated under the laws of the Province of British Columbia,
having an office at 3700 – 2nd Avenue, Burnaby, British Columbia, V5C
6S4

("FAES")

OF THE SECOND PART

WHEREAS:

- A. The District is the owner of Sunshine Hills Elementary School (the "Building") and lands located at 11285 Bond Boulevard, Delta, British Columbia, which lands are legally described as:

Parcel Identifier: 001-639-480

Lot

BLK 8 SECS 13 AND 14 TWP 4 NWD PL 16521 S&E PART 5 ACRES MORE OR
LESS SHOWN ON PLAN WITH BYLAW FILED 47119 AND EPP23496

(the "Lands")

- B. FAES wishes to supply to the Building, and the District wishes to purchase, Thermal Energy generated by an Energy System that FAES will construct on the Lands, and which FAES will own and operate, all pursuant to the terms of this Agreement.

- C. The Thermal Energy supplied by FAES 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 26th, 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 FAES 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 FAES and listed in Schedule C;
 - (ii) that were or ought to have been discovered, foreseen or anticipated upon reasonable inspection by FAES prior to the Effective Date; and
 - (iii) that were caused by FAES or any person for whom FAES 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 FAES 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 FAES dated as of September 26th, 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) “FAES” means the Party so identified on page one of this Agreement, and its successors and permitted assigns;
- (ee) “FAES 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 FAES 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 FAES 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 FAES's obligations under the Agreement pursuant to Article 17; or
 - d. maintenance activities that FAES 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), FAES'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 FAES 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 FAES 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 FAES 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 FAES 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

FAES 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 FAES 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 FAES for provision of Service to the Building.

2.3 SPECIFICATIONS

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

FAES 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 FAES. FAES 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.

FAES 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. FAES 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, FAES will be entitled to proceed on the basis of the information provided to the District. FAES will revise the Specifications based on the comments from the District provided that doing so will not impact FAES'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, FAES 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

FAES 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

FAES 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 FAES, during the Term from and following the Acceptance Date, for so long as FAES 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 FAES, its assigns, employees, contractors, agents, invitees and licensees at all times hereafter for the purposes set out in this Agreement, provided FAES 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 FAES will be limited to the extent reasonably necessary to fulfil FAES'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 FAES, acting reasonably, may

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

FAES 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 FAES 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 FAES 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 FAES's access rights pursuant to Section 4.1.

4.3 PERMITS

FAES 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, FAES 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

FAES 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 FAES, FAES 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, FAES will provide the Services to the District throughout the Term.

5.2 SERVICE MONITORING AND REVIEW

The Parties acknowledge that FAES 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 FAES with reasonable cooperation in relation to the preparation of such reports.

5.3 STANDARD OF PERFORMANCE

In performing the Services, FAES 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 FAES to the Building will, except to the extent, if any, caused by any wrongful or negligent act of FAES or any person for whom FAES is responsible at law, render FAES 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, FAES 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, FAES 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 FAES 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.

FAES 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 FAES 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 FAES when due for the Thermal Energy that FAES 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

FAES 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 FAES will be made by cheque mailed to FAES 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 FAES 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 FAES 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 FAES and may be used by FAES in its business or removed in whole or in part as it may see fit, and for any of such purposes, and FAES 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 FAES 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, FAES 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 FAES as follows and acknowledges that FAES 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 FAES'S REPRESENTATIONS AND WARRANTIES

In addition to any other representations and warranties contained in this Agreement, FAES 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) FAES has the full right, power and authority to enter into this Agreement;
- (b) all necessary corporate action on the part of FAES has been taken to authorize and approve the execution and delivery of this Agreement and the performance by FAES 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 FAES as of the date of this Agreement;
- (d) FAES is not party to any action, suit or legal proceeding, actual or threatened, and there are no circumstances, matters or things known to FAES which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or threatened against FAES before or by any Governmental Authority, which could affect FAES's ability to perform its obligations under this Agreement; and
- (e) FAES 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) FAES has all the required expertise to fulfill its obligations under this Agreement.

10.3 DELEGATION AND SUBCONTRACTING

FAES 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 FAES 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 FAES 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

FAES, 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. FAES 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 FAES 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 FAES'S INDEMNITY

Without limiting any other obligations of FAES provided herein, FAES 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 FAES of any of its obligations or warranties hereunder; or
- (b) the negligence or wilful misconduct of FAES, its employees, contractors or agents in respect of the Energy System, and in the performance of the obligations of FAES 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 FAES, 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 FAES, 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 FAES or its Affiliates or any of their respective officers, directors, members, employees, contractors or agents, or the breach or non-performance by FAES of any of its obligations or warranties hereunder.

12.3 CONSEQUENTIAL LOSS

In no event will the District or FAES 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 FAES 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 FAES, 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, "FAES Losses") which may be paid by, incurred by or asserted against FAES, 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 FAES Losses suffered were caused or contributed to by any act or omission of FAES or any person for whom FAES is in law responsible after FAES had knowledge of the Contaminants.

12.6 ENVIRONMENTAL INDEMNITY BY FAES

FAES 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 FAES 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 FAES INSURANCE COVERAGE.

- (a) FAES 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) FAES 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 FAES and all its officers, directors, employees, contractors and agents.

13.3 PRIORITY

FAES 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 FAES 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 FAES

- (a) FAES will be in default under this Agreement if FAES 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 FAES 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 FAES 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 FAES of written notice thereof from the District, the District may, at its option, undertake the necessary steps to remedy FAES's default at FAES's sole expense, which reasonable

costs shall be deducted from the Monthly Charges, and such actions will not relieve FAES 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 FAES by the District under this Agreement within thirty (30) days of receiving written notice from FAES 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 FAES 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 FAES and to continue to diligently pursue the curing of such default thereafter until cured.
- (b) If the District is in default of this Agreement, FAES 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 FAES, FAES 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 FAES 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 FAES (a "Service Interruption Notice" to FAES);
- (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 FAES (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 FAES (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 FAES within 30 days following the termination:

- (a) require FAES to remove the Energy System at FAES's cost in accordance with Section 15.5; or
- (b) acquire the Energy System from FAES 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 FAES, 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 FAES within 30 days following the termination:

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

15.4 TERMINATION BY FAES FOR CAUSE

If FAES terminates this Agreement pursuant to Section 14.2(c), FAES 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 FAES at the Adjusted Energy System Purchase Price.

15.5 REMOVAL OF THE ENERGY SYSTEM

If FAES 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, FAES shall promptly remove those portions of the Energy System located within the Building and at surface level at FAES's cost, and FAES 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 FAES prior to the 30th 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 FAES 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) FAES 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) FAES's obligations under this Section 15.6(b) shall arise only upon FAES's receipt of all amounts due and owing to FAES from the District under this Agreement, and (ii) during the period between the expiration or termination of the Agreement and FAES's receipt of amounts due and owing to FAES from the District under this Agreement, FAES 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 FAES'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

FAES 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 FAES

FAES 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 FAES is responsible pursuant to Section 4.5 that is removed from the Lands by FAES or any

person for whom it is in law responsible, will be and remain the sole and exclusive property and responsibility of FAES 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 FAES

The obligation of FAES 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 FAES, and which may be waived by FAES in accordance with Section 18.2:

- (a) FAES 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 FAES reserves the right to extend the period of time to that date when the board next convenes.

18.2 FAES 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, FAES 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

FAES'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 FAES'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

FAES 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 FAES:

FortisBC Energy Inc.
3700 – 2nd Avenue,
Burnaby,
British Columbia,
V5C 6S4

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

And for notices issued by the District under Section 14.3, also to the following contacts:

{add in names/departments/fax numbers of contacts (such as operational contacts) available 24/7}

(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 FAES 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 FAES 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 FAES 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 FAES 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 FAES, to an Affiliate of FAES 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:

**THE BOARD OF EDUCATION OF
SCHOOL DISTRICT NO. 37 (DELTA)**
by its authorized signatory:

Joe Strain, Secretary-Treasurer

SAMPLE SCHEDULE “A”

Energy System Description

Mechanical Equipment, Plans and Specifications

Equipment schedule:

- Mod Com 300 & Hydrotherm boilers(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.

SCHEDULE “B”

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