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May 7, 2021

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

Attention: Mr. Patrick Wruck, Commission Secretary

Dear Mr. Wruck:

**Re: City of Richmond (City) – Application for an Order pursuant to Section 36 of the
Utilities Commission Act (UCA) – Project No. 1599196
FortisBC Energy Inc. (FEI) Response and Proposed Terms and Conditions**

FEI writes pursuant to the regulatory timetable established by the British Columbia Utilities Commission (BCUC) in Order G-121-21 with respect to the City's application for an order regarding relocation of FEI's operating gas mains that conflict with running lines and a manhole of the City's new storm sewer system in Burkeville (FEI Offset Project). FEI hereby provides its response to the City's application and FEI's proposed terms and conditions for the relocation work related to the FEI Offset Project.

FEI submits that the BCUC should order, pursuant to section 32 (or alternatively section 36) of the *Utilities Commission Act* (UCA), that FEI's proposed revised terms and conditions for FEI's Offset Project as set out in Appendix B are in the public interest and will apply to the FEI Offset Project. A draft form of order is included as Appendix E.

This filing is organized as follows:

- Sections 1 and 2 set out general background and the chronology of events. A more detailed chronology is included in Appendix A. Among other things, it shows that FEI has acted in a diligent and collaborative manner throughout. The passage of time has largely been attributable to an approximately six month delay in the City providing comments on FEI's standard terms and conditions.
- Section 3 describes FEI's proposed terms and conditions, which address points originally identified by the City as being of concern and other matters subsequently raised by the City in its application. Appendix B includes email correspondence sent to counsel for the City on April 27, 2021, attaching FEI's proposed terms and a blackline showing changes from the version provided to the City in August 2020. Appendix C provides the City's response to FEI's proposed revised terms. Appendix D provides a section-by-section rationale for the proposed revisions to the terms and conditions.

- Section 4 explains why the City’s requested order is unreasonable and addresses the order sought by FEI.

1. Background:

On July 29, 1955, the Public Utilities Commission (now the BCUC), issued a CPCN (1955 CPCN) to the British Columbia Electric Company Limited (now FEI) for the “supply of natural gas in the Lower Mainland area of British Columbia”.¹ The Lower Mainland was defined in the 1955 CPCN to include the Township of Richmond (now the City of Richmond). The 1955 CPCN was approved by Order in Council 2133 on August 25, 1955. FEI also has a deemed CPCN for the system under section 45(2) of the *Utilities Commission Act* (UCA). FEI is a “gas utility” under the *Gas Utility Act*.

FEI operates approximately 732 km of gas lines in the City. Approximately 600 km of this total are distribution pressure gas lines, most of which are located in City public places. The remaining approximately 132 km are high pressure gas lines and a portion of these are located in City public places. FEI serves over 46,000 natural gas customers in the City of Richmond. The gas lines involved in the FEI Offset Project are distribution pressure lines and are all in operation.

a. FEI and the City have No Operating Agreement

FEI currently has operating agreements with over 100 municipalities setting out agreed terms and conditions on FEI’s use of municipal public spaces. The City is among the few municipalities with whom FEI does not have an operating agreement.²

b. The Process for Addressing Municipal Requests in Richmond

FEI has a standard process to manage requests from third parties (including municipalities and private developers) for alterations of in-service gas mains. FEI follows this process for requests received from the City. The process involves:

- FEI receives a request from a third party for an alteration of a portion of FEI’s gas main. The request is typically accompanied by drawings from the third party.
- FEI develops preliminary design drawings for FEI’s assets to be altered.
- FEI develops a cost estimate and sends a Quote Letter to the third party (or its contractor). The Quote Letter includes standard terms and conditions governing the alteration work FEI will undertake at the third party’s request.
- If the request comes from a municipality, the municipality accepts the Quote Letter and provides a purchase order (or a purchase order number) in the amount of the estimate and confirms it accepts the Quote Letter. In the case of private

¹ https://www.bclaws.gov.bc.ca/civix/document/id/oic/arc_oic/2133_1955.

² The others are the Resort Municipality of Whistler, City of West Kelowna, Norther Rockies Regional Municipality, and the Village of Anmore.

developers, FEI requires prepayment and the form of Quote Letter and attached terms and conditions used for developers differs accordingly.

- FEI develops detailed design drawings for FEI's assets to be altered. These are referred to as "MCO drawing(s)" (Material Construction Order drawing(s)).
- FEI submits the MCO drawing(s) to the third party for review and approval.
- FEI receives municipal approval of the MCO drawing(s).
- FEI schedules and undertakes the work.
- FEI invoices the third party once the work is complete.

FEI's standard terms and conditions for municipality-requested alterations take into account whether or not FEI and the municipality have an operating agreement. If FEI and a municipality have an operating agreement, certain terms and conditions governing FEI's alteration work have already been agreed to in the operating agreement. However, none of FEI's operating agreements are sufficiently detailed to eliminate the need for additional terms and conditions governing specific alterations.

FEI has used the same basic forms of Quote Letter and terms and conditions for many years, with relatively few changes.

Since 2015, FEI altered its gas mains at the request of the City on nine occasions, each of which were managed through the above process. The standard Quote Letter and attached terms have been routinely used.

2. The City's Burkeville Projects and FEI's Offset Project:

On August 12, 2020, FEI received a request from the City's contractor (McElhanney Engineering) for alteration of FEI's gas main at the three locations. For these three locations, FEI followed its standard process as described in Section 1 above with three exceptions.

First, FEI inadvertently provided the City's contractor with the form of Quote Letter and terms used for third parties such as private developers. As noted above, the primary difference is that the form used for private developers contemplates prepayment, whereas municipalities just provide a purchase order. However, FEI confirmed in August, 2020, shortly after providing the Quote Letters, that the City's alteration requests would be processed once the City provided a purchase order number to FEI. FEI proceeded on that basis and no attempt was made to require prepayment.

Second, FEI actually went further than it typically does to advance the FEI Offset Project before having a signed Quote Letter and purchase order. FEI did not wait for the City to return a signed Quote Letter and purchase order prior to preparing the MCO drawings for each of the three gas main alterations, and submitting them to the City for review and approval. FEI's expectation was that the City would be proceeding with the work and the City would return a signed Quote Letter to FEI as it had done previously.

FEI typically does not proceed with the preparation of the MCO drawings prior to receiving the signed Quote Letter and purchase order because the Quote Letter provides confirmation

that the municipality intends to proceed with the project, and there is agreement on the terms and conditions governing the work, including payment of FEI's costs.

Third, FEI scheduled the work before having the signed Quote Letter and purchase order.

a. Timeline

In order to facilitate the BCUC's consideration of this issue, FEI prepared a timeline of key events, which was attached to FEI's letter dated April 22, 2021 (Exhibit C1-1). The timeline in Appendix A to this filing includes additional details, with the additions underlined for ease of reference. Key correspondence referenced in the chronology not already included in Exhibit C1-1, has also been provided in Appendix A. FEI wishes to highlight the following points:

- (i) FEI received a request for gas main alterations at three locations from the City's contractor, McElhanney Engineering (McElhanney) on August 12, 2020.
- (ii) On August 31, 2020, McElhanney emailed FEI confirming that "the City of Richmond will be paying for these offsets similar to the previous phase...". In the previous phase, the City had agreed to pay actual costs using the standard terms used for municipalities without an operating agreement.
- (iii) FEI provided the City with all three Quote Letters on August 31, 2020. It advised the City at that time that a purchase order number had to be provided before FEI could proceed with the work, which is FEI's standard practice. FEI issued three separate Quote Letters to the City so that if the City did not require all three alterations, the amount on the purchase order issued by the City would not be affected. The terms and conditions attached to each of the three Quote Letters were identical. The Quote Letters are attached as Schedule C to the City's Application.
- (iv) The City had the Quote Letters for approximately six months³ before providing FEI with any comments.
- (v) During that six-month interval, FEI proceeded with the design work on all three projects despite not having signed Quote Letters and the City not providing purchase orders, in the expectation that the City would be proceeding with the work. FEI provided MCO drawings to the City for all three of the FEI Offset Projects.
- (vi) The City approved the MCO drawings for two of the requested alterations in January 2021, and in March 2021 for the remaining alteration.
- (vii) When the City provided comments on the Quote Letter on February 12, 2021, after having them for approximately six months, it only proposed three changes. It did not identify all of the issues stated in paragraphs 15 and 16 of the City's Application.
- (viii) One week later, on February 19, 2021, FEI advised the City that it agreed in principle to two of the City's three proposed changes. The only outstanding issue that FEI was aware of was the indemnity provision in Section 12.
- (ix) On March 5, 2021, FEI's lawyer and the City's lawyer discussed Section 12.

³ FEI incorrectly stated seven months in Exhibit C1-1 and at the procedural conference. FEI apologizes for the error.

- (x) FEI was still making attempts to contact the City to follow-up on that remaining issue, but FEI and the City had not had any further discussions at the time the City filed the BCUC Application.
- (xi) FEI sent proposed revised terms to the City on April 27, 2021. The City rejected them on May 4, 2021 in favour of the terms it included in the Application.

b. FEI is Ready to Proceed Once Legal Terms are Addressed

FEI confirms that it is ready to proceed with the requested FEI Offset Projects at the three locations once the legal terms governing the alteration work have been settled. FEI confirms that the City has approved FEI's MCO drawings for the gas main alterations at the three requested locations. The approved MCO drawings are attached as Appendix D to the City's Application. FEI has scheduled the alteration work to be completed the week of June 14, 2021. This is a departure from FEI's standard process; FEI does not typically schedule alteration work until the party requesting the work has agreed to the Quote Letter and issued a purchase order (or provided prepayment in the amount of an estimate in the case of non-municipalities) and FEI has received approval from the municipality for its MCO drawings.

3. The Relocation Work Terms:

As described in section 2 above, FEI was first made aware that the City had concerns with the Quote Letter and terms and conditions when, after approximately six months, the City requested three changes to the terms and conditions on February 12, 2021. Specifically, the City requested the following changes to FEI's terms and conditions:

- s. 1.1 more specific site location – definition of site should be specific to the area identified in the Quote Letter.
- s. 11.3 add reference to information or data, which is required to be disclosed in accordance with applicable laws including the Freedom of Information and Protection of Privacy Act (British Columbia).
- s. 12 change to Limitation of Liability and Indemnity – “delete the word ‘gross’ throughout this section (it is used 3 times). Fortis must be accountable for its own negligence” and “In the current wording the City is providing Fortis with an indemnity, but Fortis is not providing the City with any indemnity.”

FEI agreed to two of the three changes on February 19, 2021 but did not agree to the City's requested change to section 12. FEI and the City had a further discussion about section 12 on March 5, 2021 and FEI indicated it would need to consider the requested change internally. The City's Application pre-empted that assessment.

FEI has since prepared a revised Quote Letter and terms and conditions (“Revised Terms and Conditions”) that address the issues the City originally identified in February 2021. In addition, FEI modified and updated some of the language in certain sections subsequently identified in the City's Application as being of concern to the City. Appendix B to this filing includes email correspondence sent to counsel for the City on April 27, 2021, attaching the Revised Terms and Conditions, and a blackline comparison to the terms previously sent to the City on August 31, 2020 for one of the three gas main alterations requested by the City. As described in Section 22.a(iii) above, the terms and conditions for each of the three gas

main alterations were identical. As a result, FEI only provided one comparison. Appendix C contains the reply email from counsel for the City.

a. Terms sent to City on April 27, 2021

On April 27, 2021, FEI provided the Revised Terms and Conditions to the City. The Revised Terms and Conditions contain the following changes:

(i) Changes made by FEI in response to the City's three requested changes in February 2021:

- First, Section 1 General – The description of the Site can be more detailed based on information provided by the City in their initial drawings, in accordance with the City's request.
- Second, Section 11 Confidentiality – The City had identified a desire to include some specific language to acknowledge that the City is subject to British Columbia *Freedom of Information and Protection of Privacy Act* (FOIPPA). As requested, this section has been revised to specifically refer to the FOIPPA.
- Third, Section 12 Limitation of Liability and Indemnity (s. 12) – The City's request was two-fold: "delete the word 'gross' throughout this section (it is used 3 times). Fortis must be accountable for its own negligence" and "In the current wording the City is providing Fortis with an indemnity, but Fortis is not providing the City with any indemnity." Consistent with the City's request, this section has been revised to use a negligence standard, rather than gross negligence. In other words, FEI bears the risk for its own negligence. However, FEI has not inserted a reciprocal indemnity because under the terms and conditions, FEI accepts responsibility for loss incurred by the Municipality or a third party to the extent that the loss is directly attributable to the negligence or wilful misconduct of FEI, its employees, contractors, subcontractors or agents (except incidental, special, punitive or consequential).

(ii) Changes made by FEI to address issues subsequently raised by the City in the Application:

- Access (s. 2) – This clause has been modified to take into account the possibility that the City may not own the land adjacent to the Site.
- Section 3 Commencement of the Work - The wording of the Quote Letter and this clause has been adjusted to reflect the fact that FEI does not require prepayment from City, and rather only requires the City to issue a purchase order (PO). The language regarding FEI not covenanting to perform the work diligently or by any scheduled dates has been removed, which was a concern identified by the City.
- Section 7 Estimate and Terms of Payment – This clause has been adjusted to remove the language that FEI does not warrant that the Estimate is a reasonable estimate, with which the City takes issue in the Application. Instead, it sets out the basis for the Estimate and includes an acknowledgement from the City that the final costs may differ. FEI believes that this is a commercially reasonable approach.

- Section 10 Termination – This clause has been revised to make it reciprocal and set out the implications if a party terminates. FEI has drafted the clause now so that FEI will not be entitled to reimbursement if it terminates without cause. The City would also have recourse to the BCUC in the hypothetical circumstance where FEI took this approach but the work still needed to be done.
- Section 13 Dispute Resolution – This clause has been updated to reflect the BCUC’s role and the new names of arbitration agencies and legislation.

FEI recognizes that the City identified some clauses (e.g. Force Majeure) as unnecessary or not applicable and FEI has not removed these clauses from the Revised Terms and Conditions. FEI’s view is that clauses of this nature are commercially reasonable, even if they never end up being used for the three gas line alterations that are the subject of this Application.

b. FEI’s Proposed Terms are Reasonable

The table attached in Appendix D to this filing further explains the rationale for the key terms in the Revised Terms and Conditions that the City identified as being of concern. FEI submits that these terms are commercially reasonable and appropriately form part of the terms and conditions that should govern the FEI Offset Project. In addition, the table explains the rationale for terms that the City identified as being of concern and were not revised.

4. Requested Order:

a. City’s Requested Order is Problematic

The City’s requested order is problematic for the following reasons.

- (i) It addresses only one term governing FEI’s work: payment. Allocation of risk is also an important part of commercial arrangements, particularly with respect to construction projects. The FEI Offset Projects would not be required but for the City’s request to alter FEI’s facilities, and this should be reflected in the risk allocation. There are other terms governing FEI’s work as set out in the Revised Terms and Conditions that deal with allocation of risk in a reasonable manner.
- (ii) It requires the City to pay FEI’s “reasonable costs”. To the extent that this is suggesting the City only has to pay the amount of the estimate, it is commercially unreasonable. The estimate is an estimate, not a fixed price offer, and the City should be required to pay all costs provided they are incurred based on reasonable construction practices. The alteration work is being done at the request of the City and FEI maintains that the City should be responsible for paying FEI’s actual costs.
- (iii) The City is asking that FEI be required to pay the City’s costs of the Application. Costs awards are very uncommon before the BCUC, and are not necessary in this case in any form. However, if costs were to be considered, FEI submits that the facts would tend to support a costs award against the City, not against FEI.

The City is suggesting there is urgency to getting gas main alteration work completed and the Application was necessary. However, FEI submits that the Application may not have been necessary had the City raised its concerns with FEI in a timely manner, and engaged with FEI in a meaningful way prior to filing its Application. The City had the Quote Letter for approximately six months before it raised any concerns. During that time, FEI carried on preparing for the FEI Offset Projects. When the City did raise concerns in February 2021, it only raised three concerns and FEI agreed to the City's requested changes to address two of the three concerns. FEI was still considering the change to the Limitation of Liability and Indemnity section because it was a significant departure from its standard terms and conditions, which the City had previously accepted on multiple occasions. The City was aware of this at the time the Application was filed. FEI has confirmed that it has scheduled the work anyway.

b. Approve Terms as Revised and Proposed by FEI

FEI respectfully submits that the BCUC should approve the Revised Terms and Conditions as proposed by FEI for the gas main alteration work that is the subject of this Application. FEI has included a form of order sought in Appendix E to this filing.

FEI's position is that the BCUC should make its determination pursuant to section 32 of the UCA, not section 36. As this is a matter of legal argument, the explanation will be made in due course. FEI submits that it would be most efficient if the City would include its rationale for citing section 36 in its reply filing, which would facilitate a timely response.

If further information is required, please contact the undersigned.

Sincerely,

FORTISBC ENERGY INC.

Original signed:

Diane Roy

Attachments

cc (email only): City of Richmond - Anthony Capucinello Iraci, City Solicitor ACapuccinelloiraci@richmond.ca;
Ian Webb Counsel, iwebb@lawsonlundell.com;

Appendix A

City of Richmond Job Requests – FEI Chronology of Key Dates

PART 1 - PLANNING PROCESS FOR FEI JOBS	
#2800502944 – Wellington Crescent and LW of Handley Avenue	
#2800502945 – Handley Avenue & Douglas Crescent	
#28500502946 – Handley Ave and LE of Douglas Crescent	
August 12, 2020	FEI receives request for gas main alterations <u>in Burkeville for the next phase of the City's project</u> from City's contractor, McElhanney Engineering ("McElhanney"). <i>(Email correspondence in Exhibit C1-1, Appendix A)</i>
<u>August 14, 2020</u>	<u>The City's contractor provides FEI with marked up sketches showing the locations where the alterations of FEI's gas mains are required.</u> <i>(Email correspondence in Exhibit C1-1, Appendix A)</i>
<u>August 19, 2020</u>	<u>FEI responds to the City's contractor providing FEI order numbers for the three requested locations. FEI asks for a timeframe for the alterations and confirmation of who will be paying for the alterations.</u> <i>(Email correspondence in Exhibit C1-1, Appendix A)</i>
August 31, 2020	FEI provides Quote Letters (with terms and conditions) to the City. <u>FEI confirms that the request for alteration work at the three locations will be processed once FEI receives purchase order numbers from the City.</u> <i>(Email correspondence in Exhibit C1-1, Appendix A)</i>
<u>August 31, 2020</u>	<u>The City's contractor informs FEI that crews plan to start work in the next couple of weeks and will start at the end closest to the location of FEI Job #28500502946 and requests that that job be scheduled first. The City's contractor confirms the City will be paying for the alterations.</u> <i>(Email correspondence in Exhibit C1-1, Appendix A)</i>
September 4, 2020	FEI provided revised Quote Letter (with terms and conditions) to the City for Job 2800502946. The revision is to the Estimated Cost. <i>(Email correspondence in Exhibit C1-1, Appendix A)</i>
October 14, 2020	McElhanney emails FEI inquiring about the status of gas main alterations. FEI responds that <u>detailed</u> design drawings for the alterations ¹ have not been completed yet because the City has not returned the signed Quote Letters (and purchase order numbers). FEI explains that once FEI receives the signed Quote Letters, the detailed design drawings will be prepared and submitted to the City for approval, and FEI will schedule the work following receipt of the City's approvals. <i>(Email correspondence in Exhibit C1-1, Appendix A)</i>
November 20, 2020	Although the City has not provided a signed Quote Letters (and purchase order numbers), FEI proceeds with preparation of the detailed design drawings.
#2800502944 – Wellington Crescent and LW of Handley Avenue	
December 10, 2020	FEI submits detailed design drawings to the City for approval.
January 6, 2021	FEI receives approval of detailed design drawings from the City.
#2800502945 – Handley Avenue & Douglas Crescent	
February 17, 2021	FEI submits detailed design drawings to the City for approval.
March 4, 2021	FEI receives approval of detailed design drawings from the City.
#28500502946 – Handley Ave and LE of Douglas Crescent	
January 8, 2021	FEI submits detailed design drawings to the City.
January 20, 2021	FEI receives approval of detailed design drawings from the City.

¹ The ~~formal~~detailed design drawings are the Main Construction Order (MCO) ~~or MCO~~drawings.

City of Richmond Job Requests – FEI Chronology of Key Dates

PART 2 - CORRESPONDENCE REGARDING CITY’S CONCERNS WITH QUOTE LETTER WITH TERMS AND CONDITIONS

February 12, 2021	<p>City emails FEI asking FEI to send an updated agreement with the following changes:</p> <p>(i) Change on date of estimate.</p> <p>(ii) Change to Terms and Conditions:</p> <ul style="list-style-type: none"> • s. 1.1 more specific site location - clearer definition of site. • s. 11.3 add reference to disclose in accordance with law including <i>Freedom of Information and Protection of Privacy Act (British Columbia)</i>. • s. 12 change to Limitation of Liability and Indemnity – deletion of “gross” throughout the section. <p>Email states:</p> <p>These changes were requested by the City of Richmond Legal Department. All we need is these changes and we will sign the agreement and send the purchase order.</p> <p><i>(Email correspondence in Exhibit C1-1, Appendix B)</i></p>
February 19, 2021	<p>FEI emails City indicating FEI has no issue changing s.1.1 and s. 11.3 as per City’s request, however, will not make change to s. 12. FEI explains quote is not just for City of Richmond, and has been created to quote to Municipalities without an operating agreement.</p> <p><i>(Email correspondence in Exhibit C1-1, Appendix B)</i></p>
February 24, 2021	<p>City’s lawyer speaks to FEI Planner and follows up with email requesting contact information for FEI lawyer.</p> <p><i>(Email correspondence in Exhibit C1-1, Appendix B)</i></p>
March 5, 2021	<p>City’s lawyer and FEI’s lawyer (with Planner) <u>have a</u> conference call. City’s lawyer advises that City of Richmond objects to indemnity provision of terms and conditions and advises that City will pursue all avenues to resolve including asking BCUC to impose short term solution prior to getting new operating agreement. FEI’s lawyer indicates will need to consult internally regarding City’s requested changes to indemnity. FEI’s lawyer commits to providing an update to City.</p>
March 11, 2021	<p>FEI’s lawyer leaves voicemail message for City’s lawyer</p>
March 12, 2021	<p>FEI’s lawyer misses a call from an unrecognized number, no voicemail. FEI’s lawyer calls the number, believes it to be the City’s lawyer’s answering service and leaves a voicemail message for City’s lawyer.</p>
<u>March 16 & 17, 2021</u>	<p><u>FEI’s lawyer and City’s lawyer exchange telephone calls. No discussions occur.</u></p>
<u>March 18, 2021</u>	<p><u>FEI’s lawyer receives call from City’s lawyer. No voicemail is recorded but FEI’s records indicate the call is over 3 minutes in duration.</u></p>
April 1, 2021	<p>City files Application with BCUC</p>
<u>April 12, 2021</u>	<p><u>FEI’s lawyer calls City’s lawyer and leaves a voicemail message.</u></p>
<u>April 23, 2021</u>	<p><u>Procedural Conference</u></p>
<u>April 27, 2021</u>	<p><u>FEI sends proposed revised terms and conditions to City. (Email correspondence in Appendix B to this filing)</u></p>
<u>May 4, 2021</u>	<p><u>City responds to FEI confirming it does not agree to the revised terms and conditions. (Email correspondence in Appendix B to this filing)</u></p>

Appendix B

From: Ghikas, Matt
Sent: Tuesday, April 27, 2021 9:52 AM
To: Ian Webb (iwebb@lawsonlundell.com)
Cc: Taylor, Alison
Subject: [External Email] - FortisBC/City of Richmond - Proposed Revisions to FEI Terms for Burkeville Relocations
Attachments: 2800502944_Quote to Customer Terms and Conditions - Proposed Richmond Quote Letter with TCs April 26.pdf; Proposed Richmond Quote Letter with TCs April 26.docx

CAUTION: This is an external email.
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Ian

As I indicated at the procedural conference, FEI had already been working on a revised document that made changes in relation to the three comments that the City had originally made in its email correspondence (February 12, 1:24 pm). FEI has also taken the opportunity to modify and update some of the language in certain clauses subsequently identified in the Application as being of concern to the City. The product of that review is attached – both clean and blackline.

In terms of the City’s original three points communicated by email on February 12:

1. Description of the work - FEI already agreed to revise the description to match the drawings.
2. Confidentiality (s. 11) – The City had identified a desire to include some specific language to acknowledge that the City is subject to FIPPA. FEI had agreed to this, and it is included in s. 11.3.
3. The liability and indemnity (s. 12) – The City’s request was two-fold: “delete the word ‘gross’ throughout this section (it is used 3 times). Fortis must be accountable for its own negligence” and “In the current wording the City is providing Fortis with an indemnity, but Fortis is not providing the City with any indemnity.” FEI has revised to section to use a negligence standard, rather than gross negligence. In other words, FEI bears the risk for its own negligence. FEI has not inserted a reciprocal indemnity because under the terms and conditions, FEI accepts responsibility for loss incurred by the Municipality or a third party to the extent that the loss is directly attributable to the negligence or wilful misconduct of FEI, its employees, contractors, subcontractors or agents (except incidental, special, punitive or consequential).

The additional changes made include:

4. The wording of the letter and Schedule A (s. 3) has been adjusted to reflect the fact that FEI does not require prepayment from City, and rather only requires the City to issue a purchase order (PO). This requirement for prepayment had been included in error in this instance, and is not normally used for municipalities. The correspondence suggests that both parties have since been proceeding as if a PO was sufficient in any event.
5. The terms related to the estimate and terms of payment (s. 7) have been adjusted to remove the language that FEI doesn’t warrant that the Estimate is a reasonable estimate, with which the City takes issue in the

Application. Instead, it sets out the basis for the Estimate and includes an acknowledgement from the City that the final costs may differ. This is a commercially reasonable approach.

6. The termination clause (s. 10) has been changed to make it reciprocal and set out the implications if a party terminates. FEI has drafted the clause now so that FEI will not be entitled to reimbursement if it terminates without cause, which should provide comfort to the City. (The City would also have recourse to the BCUC in the hypothetical circumstance where FEI took this approach but the work still needed to be done.)

7. The dispute resolution provision (s. 13.2) has been updated to reflect the BCUC's role (a role which both parties appear to acknowledge) and the new names of arbitration agencies and legislation.

FEI recognizes that the City identified some clauses (e.g. Force Majeure) as unnecessary. FEI's view is that clauses of this nature are commercially reasonable, even if they never end up being used.

FEI encourages the City to engage in the hope of resolving, or at least narrowing, the issues. I look forward to hearing from you.

Regards,

Matt

 Matthew Ghikas*, FCI Arb. ((he/him))
PARTNER

FASKEN

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Fasken has a COVID-19 management plan in place. We prioritize maintaining a safe workplace; encourage social distancing and uphold privacy and confidentiality for those we work with. We have reduced the need to attend our offices to necessary visits, and are minimizing in-person meetings. We have enhanced digital communications with you through telephone & web conferencing, secure email, Fasken Edge, etc.

Please do not visit our offices without an appointment in advance; and please excuse us if we do not shake your hand. In the event the risk of COVID-19 increases and affects our ability to provide legal services or representation, we will make the best arrangements within our power to obtain time extensions and/or adjournments. We appreciate your understanding.

> [COVID-19 Resource Centre for Businesses](#)

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Fasken dispose d'un plan de gestion de la situation en lien avec la COVID-19. Notre priorité est de maintenir un milieu de travail sécuritaire, d'encourager la distanciation sociale et d'assurer la protection des renseignements personnels et de la confidentialité au nom des personnes pour lesquelles nous travaillons. Nous



16705 Fraser Highway
Surrey, B.C.
V4N 0E8
Bus: 604-576-7000
Toll Free: 1-800-773-7001

May 4, 2021 [field set to today's date]

City of Richmond
6911 No. 3 Road
Richmond, BC
V6Y 2C1

Attention: _____

RE: [Address and Legal Description of Location of Municipal public place].
City of Richmond. (the "Municipality")
"Y" Municipal Project

FortisBC Job Reference: _____

Start date:

Validity of the Quote: This quote is valid for 90 days

Scope of work:

[INSERT SCOPE OF WORK]

("Work")

Assumptions:

[INSERT ASSUMPTIONS]

Estimated Cost: _____ (excluding taxes)

The Municipality agrees to the terms and conditions set out in this letter agreement ("Letter Agreement") and in FortisBC Energy Inc.'s ("FortisBC") terms and conditions set out in Schedule A attached, which terms and conditions form part of this Letter Agreement, to carry out above job reference # _____.

The Municipality must provide FortisBC with a purchase order for not less than the full amount of the Estimated Cost along with its acceptance of the Estimated Cost and the terms and conditions set out in Schedule A attached by signing and returning this Letter Agreement via mail or email at [insert email address]. FortisBC will not schedule the Work until it has received the signed Letter Agreement and a

purchase order for the full amount of the Estimated Cost. Scheduling of the Work will remain the responsibility of FortisBC taking into consideration the Municipality's project schedule.

Important: Estimated Cost is a estimate only. The Municipality will be billed on the basis of actual costs incurred. Please indicate your acceptance of these costs by signing and returning this letter agreement via mail or email.

Planning and Design Technologist:
Phone:
Email:

Yours Sincerely,

FortisBC Energy Inc.

THE ABOVE TERMS AND CONDITIONS ARE HEREBY AGREED TO:

FULL Legal name of Municipality
by its authorized signatory:

Signature

Date

Title

Purchase Order # _____

Amount of Purchase Order _____

SCHEDULE A
Terms and Conditions of Order - Construction

1. General

- 1.1. FortisBC Energy Inc. ("FortisBC") has provided the Municipality with an estimate of the cost (the "Estimate") to do certain work (the "Work") at location-----(the "Site") for the Municipality the details of which are attached to the Letter Agreement and in any addenda issued by FortisBC and these Terms and Conditions. The Municipality acknowledges and agrees that the Estimate is an estimate only, and that the Municipality shall be liable for payment for the Work in excess of the Estimate amount.
- 1.2. Letter Agreement, together with any addenda issued by FortisBC and these Terms and Conditions are collectively referred to as the "Letter Agreement".

2. Access

- 2.1. The Municipality shall provide FortisBC with full and unrestricted access to the Site to complete the Work pursuant to this Letter Agreement.
- 2.2. In the event the Municipality is the owner of the lands in the proximity of the Site (the "Lands"), the Municipality shall provide FortisBC with full and unrestricted access to the Site and the Lands to complete the Work pursuant to this Letter Agreement.
- 2.3. In the event the Municipality is not the owner of the Lands or any portion thereof, the Municipality shall obtain all necessary permissions and approvals from the owner(s) to provide FortisBC with full and unrestricted access to the Site and the Lands to complete the Work pursuant to this Letter Agreement.
- 2.4. FortisBC shall remove its vehicles, equipment and materials from the Lands upon completion of the Work, and leave the Site and the Lands in a neat and tidy condition and good state of repair considering the nature of the Work completed hereunder.

3. Commencement of the Work

FortisBC shall commence the Work as soon as reasonably practicable having regard to the availability of FortisBC personnel, equipment and materials, provided however, that FortisBC will not commence the Work until (i) the Municipality has delivered a purchase order in the amount of the Estimate to FortisBC ("Purchase Order"); (ii) the Municipality has provided confirmation that all permissions and approvals described in Clause 2 have been obtained; and (iii) FortisBC and the Municipality have obtained all permits and approvals described in Clause 9.

SCHEDULE A
Terms and Conditions of Order - Construction

4. Change Orders and Extra Work

- 4.1. FortisBC may at any time make written requests for changes to the Work, and these changes shall become part of the Letter Agreement upon being mutually agreed upon, and include a mutually acceptable increase or decrease in the Estimate.
- 4.2. The Municipality may request that FortisBC perform additional work (“Extra Work”) which is not within the Scope of Work as set out in the Letter Agreement. The details of the Extra Work shall be discussed, mutually agreed upon and paid at a mutually agreed upon rate prior to commencing the Extra Work.

5. Delay

If there is any delay in the Work caused or attributable to the Municipality then FortisBC may, without cost, suspend part or all of the Work under this Letter Agreement until the Work can again be performed efficiently, effectively and without delay.

6. Force Majeure

6.1. “Force Majeure” means any one or more of the following events:

- (a) war or hostilities;
- (b) riot or civil commotion;
- (c) earthquake, major flood not foreseeable in the area of the Site, forest fire or suspensions of work ordered by the Ministry of Forests, or other natural physical disaster preventing the performance of the Work;
- (d) governmental regulations or controls;
- (e) inability to obtain any material or services;
- (f) strike or lock-out or other industrial action; and
- (g) government embargo,

provided, however, that any such event is a major disabling event or circumstance in relation to the normal operations of the party concerned as a whole which is beyond the reasonable control of the party directly affected and results in a material delay, interruption or failure by such party in carrying out its duties, covenants or obligations under the Letter Agreement. Lack of money, financing or credit to resolve such contingencies will not be deemed an event of Force Majeure. .

SCHEDULE A
Terms and Conditions of Order - Construction

- 6.2. Lack of funds or other financial cause specific to the Municipality shall not be construed as Force Majeure. If either party to the Letter Agreement is prevented from, or delayed in, performing any of its obligations under the Letter Agreement by Force Majeure, then it shall within two (2) days of the commencement of such circumstances notify the other party of the circumstances constituting the Force Majeure and of the obligation and performance of which is thereby delayed or prevented, and the party giving the notice shall thereupon be excused the performance or punctual performance, as the case may be, of such obligation for so long as the circumstances of prevention or delay continue. The provision of written notice by the Municipality as aforesaid is a condition precedent to any claim for extra time or for delay in completion as a result of the Force Majeure.
- 6.3. Without limiting any other rights of FortisBC under any other provision of the Letter Agreement, if the suspension of Work exceeds a period of either fourteen (14) consecutive days or thirty (30) cumulative days as a result of Force Majeure, either party shall have the option to terminate the Letter Agreement on giving the other party written notice to that effect.
- 6.4. In the event of termination pursuant to Clause 6.3, the provisions of Clause 10.2 shall apply.

7. Estimate and Terms of Payment

- 7.1. The Estimate is based on the information provided to FortisBC by the Municipality, information obtained by FortisBC through the BC One Call process regarding the presence of foreign underground utilities, and other information readily available to FortisBC. The Municipality acknowledges that the cost of completing the Work (the "Cost") may differ from the Estimate and if the Cost differs from the Estimate, the Municipality shall pay the Cost. The Cost includes all costs directly or indirectly incurred by FortisBC in completing the Work, and includes, but is not limited to labour (including but not limited to design work), equipment, materials, overhead, necessary licenses and permits and any and all costs relating to access to the Site.
- 7.2. Following completion of the Work, FortisBC will send an invoice (the "Invoice") to the Municipality for the Cost and the Municipality shall pay the Invoice within thirty (30) days from the date of the Invoice.

8. FortisBC to Retain Ownership

The Municipality acknowledges and agrees that all vehicles, equipment, supplies and materials provided by FortisBC, contractor or subcontractor in the course of the Work; howsoever changed, incorporated or used in the Work, shall remain

SCHEDULE A
Terms and Conditions of Order - Construction

the property of FortisBC, and shall in no event become the property of the Municipality.

9. Permits and Approvals

FortisBC shall be responsible for obtaining any permits, certificates and approvals required in connection with the construction, gasification and operation of natural gas pipes, pipelines and associated works. The Municipality shall be responsible for obtaining all other permits required for the Work unless otherwise agreed in writing between FortisBC and the Municipality.

10. Termination

10.1. Either party may, at any time without cause and at its sole discretion, terminate this Letter Agreement by giving notice in writing to the other party. If:

a) FortisBC terminates this Letter Agreement pursuant to this Clause 10.1, the Municipality shall not be liable for any Cost. The Municipality shall have no cause of action or right against FortisBC in respect of the termination of this Letter Agreement.

b) If the Municipality terminates this Letter Agreement pursuant to this Clause 10.1, the Municipality shall reimburse FortisBC for (i) the Costs incurred by FortisBC up to the date of termination; (ii) costs and expenses incurred by FortisBC as a result of the early termination of any contractor or third party agreements related to the Work; and (iii) costs directly and indirectly related to work required to reinstate FortisBC's infrastructure to the state prior to the commencement of the Work (or equivalent). FortisBC shall have no further cause of action or right against the Municipality in respect of the termination of this Letter Agreement.

10.2. If FortisBC makes a request for changes to the Work in accordance with Clause 4.1, and FortisBC and the City, both acting reasonably, are unable to reach agreement on the requested changes, or the increase or decrease in the Estimate, FortisBC may terminate this Letter Agreement by giving written notice to the Municipality. If FortisBC terminates this Letter Agreement in accordance with this Clause 10.2, the Municipality shall reimburse FortisBC for (i) the Costs incurred up to the date of termination; (ii) costs and expenses incurred by FortisBC as a result of early termination of any contractor or third party agreements related to the Work, and (iii) costs directly and indirectly related to work required to reinstate FortisBC's infrastructure to the state prior to the commencement of the Work (or equivalent). The Municipality shall have no cause of action or right against FortisBC in respect of the termination of this Letter Agreement.

SCHEDULE A
Terms and Conditions of Order - Construction

11. Confidentiality

- 11.1. All information or documentation received by the Municipality pertaining to or arising from the Work or the business affairs or trade secrets of FortisBC, including but not limited to the Estimate and labour rates quoted in the Estimate, shall be deemed to be confidential and proprietary to FortisBC. Except as otherwise provided herein, the Municipality shall not directly or indirectly disclose any such confidential information or documentation to any third party without the prior written consent of FortisBC. Such consent is not required where the third party is another contractor or consultant retained by FortisBC for the purposes of the Letter Agreement and to the extent that such disclosure is necessary for the proper performance of this Letter Agreement or to the extent that such disclosure is required by law.
- 11.2. Notwithstanding the foregoing, the Municipality may use such confidential information or documentation pertaining to or arising from the Work in the preparation for and conduct of submissions to regulatory agencies.
- 11.3. The obligation of confidentiality set out above shall not apply to material, data or information which is known to the Municipality prior to their receipt thereof, which is generally available to the public or which has been obtained from a third party which has the right to disclose the same, or which is required to be disclosed in accordance with applicable laws (including without limitation, the *Freedom of Information and Protection of Privacy Act* (British Columbia)). The confidentiality covenants of the Municipality herein shall survive the termination of this Letter Agreement.

12. Limitation of Liability and Indemnity

FortisBC, its employees, contractors, subcontractors or agents are not responsible or liable for any claim, expense, loss, cost, or other liability incurred by the Municipality or any third party caused by or resulting directly or indirectly from the Work except and only to the extent that the claim, expense, loss, cost or other liability is directly attributable to the negligence or wilful misconduct of FortisBC, its employees, contractors, subcontractors or agents. Notwithstanding the foregoing in no event shall FortisBC, its employees, contractors, subcontractors and agents be liable for any incidental, special, punitive, or consequential damages of any kind (including, but without limitation, loss of income, loss of profits, or other pecuniary loss), arising directly or indirectly from the Work.

In no event shall FortisBC's aggregate liability to pay for any claim, expense, loss, cost, or other liability incurred by the Municipality resulting from the Work exceed the total amount paid to FortisBC by the Municipality for the Work except and only to the extent that such claim, expense loss, cost or other liability is directly attributable to the wilful misconduct for FortisBC, its employees, contractors, subcontractors or agents.

SCHEDULE A

Terms and Conditions of Order - Construction

The Municipality shall indemnify FortisBC and save it harmless from any claim, expense, loss, cost or other liability of any third parties arising out of Work except to the extent that such claim, expense, loss, cost or other liability is directly attributable to the negligence or wilful misconduct of FortisBC, its employees, contractors, subcontractor or agents.

13. Disputes

- 13.1. Except for applications for injunctions required to protect confidential information, where any dispute arises out of or in connection with this Letter Agreement, including failure of the parties to reach agreement hereunder:
- (a) If the parties have been unable to settle the dispute within thirty (30) days after receipt of notice of such dispute from the other party, a senior officer of each party's management shall meet within fifteen (15) days after that period in an attempt to resolve such dispute.
 - (b) If the senior officers of the parties are not able pursuant to sub-Clause 13.1(a) to resolve the dispute within the fifteen (15) day period stipulated in sub-Clause 13.1(a), the parties agree to promptly try to resolve the dispute by participating in a structured mediation conference with a mediator under the Arbitration Rules of the ADR Institute of Canada Inc.
- 13.2. If the parties fail to resolve the dispute through mediation within thirty (30) days after the end of the fifteen (15) day period stipulated in sub-Clause 13.1(a), the unresolved dispute shall be referred to the British Columbia Utilities Commission ("BCUC") if within its jurisdiction. If the matter is not within the jurisdiction of the BCUC, subject to sub-Section 13.3, either party at its sole option may pursue litigation to resolve such dispute in any court of competent jurisdiction in the Province of British Columbia. The parties hereto agree that the Courts of the Province of British Columbia shall have exclusive jurisdiction to resolve any and all disputes between the parties except those unresolved disputes within the jurisdiction of the BCUC.
- 13.3. By separate written agreement to arbitrate signed by all parties concerned, which agreement may be arbitrarily withheld, the particular unresolved disputes identified in the agreement to arbitrate shall be referred to and finally resolved or determined by arbitration under the Arbitration Rules of the ADR Institute of Canada Inc. In the absence of such rules, the rules shall be as agreed by the parties or, failing agreement, the rules as prescribed in such case by, as applicable, the *Arbitration Act* of the Province of British Columbia. Unless the parties agree otherwise the arbitration will be conducted by a single arbitrator.

SCHEDULE A
Terms and Conditions of Order - Construction

- 13.4. The arbitrator shall issue a written award that sets forth the essential findings and conclusions on which the award is based. The arbitrator will allow discovery as required by law in arbitration proceedings.
- 13.5. In addition to awarding monetary damages and interest on unpaid amounts, the arbitrator shall have the authority to provide injunctive relief, order specific performance and grant permanent relief.
- 13.6. Each party shall bear its own costs and expenses of the arbitration. The costs and expenses of the arbitration, but not those incurred by the parties, shall be shared equally, unless the arbitrator determines that a specific party prevailed on substantially all issues. In such case, the non-prevailing party shall pay all costs and expenses of the arbitration, but not those of the prevailing party.
- 13.7. The parties will continue to fulfill their respective obligations pursuant to this Letter Agreement during the resolution of any dispute in accordance with this Clause 13.

14. Subcontracting

FortisBC may retain the services of a qualified third party to perform some or all of its obligations under this Letter Agreement.

15. Assignment

The Municipality shall not assign its rights or obligations under this Letter Agreement without the prior written consent of FortisBC, which consent may be arbitrarily withheld.

16. Law

This Letter Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia.

17. Enurement

This Letter Agreement shall be for the benefit of and be binding upon FortisBC and the Municipality and their respective successors and permitted assigns.

18. Amendments

- 18.1. The Letter Agreement embodies the entire agreement between the parties and supersedes all communications, negotiations and agreements, either written or oral, relating to the Work that were made prior to the date of execution of the Letter Agreement. The Letter Agreement contains all the representations, warranties, covenants, agreements, conditions and

SCHEDULE A
Terms and Conditions of Order - Construction

understandings between the parties with respect to the subject matter of the Letter Agreement and there are no other representations, warranties, covenants, agreements, conditions or understandings with respect to the Letter Agreement that are not contained herein.

- 18.2. The Municipality hereby represents and warrants that in entering into the Letter Agreement it has not and does not rely upon any previous representation of FortisBC, consultant, or any employee, director, officer, servant, consultant or agent of FortisBC, whether express or implied, or upon any inducement or agreement of any kind or nature.
- 18.3. The Letter Agreement may only be amended by written agreement, signed by both parties.



16705 Fraser Highway
Surrey, B.C.
V4N 0E8
Bus: 604-576-7000
Toll Free: 1-800-773-7001

~~August 31, 2020~~ April 26, 2021 [field set to today's date]

City of Richmond
6911 No. 3 Road
Richmond, BC
V6Y 2C1

Attention: ~~Grant Hoffard~~ _____

RE: [Address and Legal Description of Location of Municipal public place].
City of Richmond. (the "Municipality")
"Y" Municipal Project

FortisBC Job Reference: 2800502944 _____

Start date: ~~4 weeks after City of Richmond approved gas main alteration drawing.~~

Validity of the Quote: This quote is valid for 90 days

Scope of work:

~~2800502944 Wellington Cre & L.W. of Handley Ave, Rmd Gas main alteration 60 ST (Vertical) x 1~~
[INSERT SCOPE OF WORK]

("Work")

Assumptions:

- ~~1. There is no underground water at the construction location.~~
- ~~2. There is no contaminated soil at the construction location.~~
- ~~3. FortisBC will not be responsible for repaving the road top pavement after alteration constructions. (Only back filled)~~
- ~~4. FortisBC to sawcut and open our own bellholes for the alteration construction for the above 2- locations (If they have not been opened).~~
- ~~5. City of Richmond to have surveyor on-site to confirm required depth of altered gas main & services to ensure there is no conflict with proposed utilities.~~

[INSERT ASSUMPTIONS]

Estimated Cost: ~~\$23,429.58~~ _____ (excluding taxes)

The ~~Customer~~Municipality agrees to the terms and conditions set out in this letter agreement (“Letter Agreement”) and in FortisBC Energy Inc.’s (“FortisBC”) ~~standard~~ terms and conditions set out in Schedule A attached, which terms and conditions form part of this Letter Agreement, to carry out above job reference # ~~2800502944~~._____.

The ~~Customer~~Municipality must provide FortisBC with ~~the full amount of the estimate as prepayment prior to the start of work~~a purchase order for not less than the full amount of the Estimated Cost along with its acceptance of the Estimated Cost and the terms and conditions set out in Schedule A attached by signing and returning this Letter Agreement via mail or email at [insert email address]. FortisBC will not schedule the ~~work~~Work until it has received the signed Letter Agreement and a purchase order for the full amount of the ~~prepayment~~Estimated Cost. Scheduling of ~~work~~the Work will remain the responsibility of FortisBC taking into consideration the ~~Development Project~~Municipality’s project schedule.

Important: This Estimated Cost is a ~~cost~~ estimate. ~~You only. The Municipality~~ will be billed on the basis of actual costs incurred. Please indicate your acceptance of these costs by signing and returning this letter agreement via mail or email.

Planning and Design Technologist: ~~Bobby Ho~~
Phone: ~~778-879-2035~~
Email: ~~bobby.ho@fortisbc.com~~

Yours Sincerely,

FortisBC Energy Inc.

THE ABOVE TERMS AND CONDITIONS ARE ~~HEREBY AGREED~~HEREBY AGREED TO:

FULL Legal name of ~~Customer~~Municipality
by its authorized signatory:

Signature _____ Date

Signature _____ Date

Title

Purchase Order # _____

Amount of Purchase Order _____

SCHEDULE A
Terms and Conditions of Order - Construction

1. General

- 1.1. FortisBC Energy Inc. ("FortisBC") has provided the ~~Customer~~Municipality with an estimate of the cost (the "Estimate") to do certain work (the "Work") at ~~_____~~Burkeville~~_____~~area~~_____~~_____(the "Site") for the ~~Customer~~Municipality the details of which are attached to the Letter Agreement and in any addenda issued by FortisBC and these Terms and Conditions. The ~~Customer~~Municipality acknowledges and agrees that the Estimate is an estimate only, and that the ~~Customer~~Municipality shall be liable for payment for the Work in excess of the Estimate amount.
- 1.2. Letter Agreement, together with any addenda issued by FortisBC and these Terms and Conditions are collectively referred to as the "Letter Agreement".

2. Access

- 2.1. ~~In the event the Customer is the owner of the Site and the land in the proximity of the Site (the "Lands"), the Customer~~The Municipality shall provide FortisBC with full and unrestricted access to the Site ~~and the Lands~~ to complete the Work pursuant to this Letter Agreement.
- 2.2. In the event the ~~Customer is not the owner of the Site and/or~~Municipality is the owner of the lands in the proximity of the Site (the "Lands"), the Municipality shall provide FortisBC with full and unrestricted access to the Site and the Lands to complete the Work pursuant to this Letter Agreement.
- 2.3. In the event the Municipality is not the owner of the Lands or any portion thereof, the ~~Customer~~Municipality shall obtain all necessary permissions and approvals from the owner(s) to provide FortisBC with full and unrestricted access to the Site and the Lands to complete the Work pursuant to this Letter Agreement.
- 2.4. ~~2.3.~~ FortisBC shall remove its vehicles, equipment and materials from the Lands upon completion of the Work, and leave the Site and the Lands in a neat and tidy condition and good state of repair considering the nature of the Work completed hereunder.

3. Commencement of the Work

FortisBC shall commence the Work as soon as reasonably practicable having regard to the availability of FortisBC personnel, equipment and materials, provided however, that FortisBC will not commence the Work until (i) the ~~Customer~~Municipality has delivered a ~~certified cheque and/or bank draft~~purchase order in the amount of the Estimate to FortisBC ~~as required~~

SCHEDULE A

Terms and Conditions of Order - Construction

~~pursuant to Clause 7 ("Purchase Order");~~ (ii) the ~~Customer~~Municipality has provided confirmation that all permissions and approvals described in Clause 2 have been obtained; and (iii) FortisBC and the ~~Customer~~Municipality have obtained all permits and approvals described in Clause 9. ~~FortisBC does not covenant to prosecute the Work diligently or by any scheduled dates, whether or not such scheduled dates for commencement or completion of the Work have been specified by the Customer or by FortisBC.~~

4. Change Orders and Extra Work

4.1. FortisBC may at any time make written requests for changes to the Work, and these changes shall become part of the Letter Agreement upon being mutually agreed upon, and include a mutually acceptable increase or decrease in the Estimate.

4.2. The ~~Customer~~Municipality may request that FortisBC perform additional work ("Extra Work") which is not within the Scope of Work as set out in the Letter Agreement. The details of the Extra Work shall be discussed, mutually agreed upon and paid at a mutually agreed upon rate prior to commencing the Extra Work.

5. Delay

If there is any delay in the Work caused or attributable to the ~~Customer~~Municipality then FortisBC may, without cost, suspend part or all of the Work under this Letter Agreement until the Work can again be performed efficiently, effectively and without delay.

6. Force Majeure

6.1. "Force Majeure" means any one or more of the following events:

- (a) war or hostilities;
- (b) riot or civil commotion;
- (c) earthquake, major flood not foreseeable in the area of the Site, forest fire or suspensions of work ordered by the Ministry of Forests, or other natural physical disaster preventing the performance of the Work;
- (d) governmental regulations or controls;
- (e) inability to obtain any material or services;
- (f) strike or lock-out or other industrial action; and
- (g) government embargo,

SCHEDULE A

Terms and Conditions of Order - Construction

provided, however, that any such event is a major disabling event or circumstance in relation to the normal operations of the party concerned as a whole which is beyond the reasonable control of the party directly affected and results in a material delay, interruption or failure by such party in carrying out its duties, covenants or obligations under the Letter Agreement. Lack of money, financing or credit to resolve such contingencies will not be deemed an event of Force Majeure.

- 6.2. Lack of funds or other financial cause specific to the ~~Customer~~Municipality shall not be construed as Force Majeure. If either party to the Letter Agreement is prevented from, or delayed in, performing any of its obligations under the Letter Agreement by Force Majeure, then it shall within two (2) days of the commencement of such circumstances notify the other party of the circumstances constituting the Force Majeure and of the obligation and performance of which is thereby delayed or prevented, and the party giving the notice shall thereupon be excused the performance or punctual performance, as the case may be, of such obligation for so long as the circumstances of prevention or delay continue. The provision of written notice by the ~~Customer~~Municipality as aforesaid is a condition precedent to any claim for extra time or for delay in completion as a result of the Force Majeure.
- 6.3. Without limiting any other rights of FortisBC under any other provision of the Letter Agreement, if the suspension of Work exceeds a period of either fourteen (14) consecutive days or thirty (30) cumulative days as a result of Force Majeure, either party shall have the option to terminate the Letter Agreement on giving the other party written notice to that effect.
- 6.4. In the event of termination pursuant to Clause ~~10, the Customer shall be liable to pay FortisBC for that portion of the Work completed or goods delivered to the date of termination as well as any costs reasonably incurred by FortisBC in relation to the Work after termination~~6.3, the provisions of Clause 10.2 shall apply.

7. Estimate and Terms of Payment

~~7.1. If required by FortisBC, City of Richmond shall provide P.O. # that has pre-approved amount of the Estimate (the "Prepayment") on or before 02nd October, 2020 towards payment for the Work.~~

~~7.2. While FortisBC has used care in arriving at the Estimate, FortisBC does not warrant that the Estimate is a reasonable estimate of~~The Estimate is based on the information provided to FortisBC by the Municipality, information obtained by FortisBC through the BC One Call process regarding the presence of foreign underground utilities, and other

SCHEDULE A
Terms and Conditions of Order - Construction

information readily available to FortisBC. The Municipality acknowledges that the cost of completing the Work (the "Cost") may differ from the Estimate and if the Cost differs from the Estimate, the Municipality shall pay the Cost. The Cost includes all costs directly or indirectly incurred by FortisBC in completing the Work, and includes, but is not limited to labour, (including but not limited to design work), equipment, materials, overhead, necessary licenses and permits and any and all costs relating to access to the Site. ~~Notwithstanding the foregoing, if the Cost is less than the Prepayment, FortisBC shall refund the difference to the Customer without interest; and if Cost of completing the work exceeds the Prepayment, the Customer agrees to and shall pay such deficiency (the "Deficiency Amount").~~

~~7.2.~~ ~~7.3.~~ Following completion of the Work, FortisBC ~~shall~~will send an invoice (the "Invoice") to the ~~Customer~~Municipality for the ~~Deficiency Amount, Cost~~ and ~~payment for the Deficiency Amount~~the Municipality shall be made by pay the Customer to FortisBC Invoice within thirty (30) days from the date of the invoice. ~~The Invoice is due thirty (30) days from the date of the invoice. Late payment charges will accrue interest at a rate of prime plus two (2) percent for the first thirty (30) days the payment remains unpaid, and prime plus five (5) percent thereafter until the invoice is paid in full.~~

~~7.4.~~ ~~In the event that the Work has not commenced by any scheduled date promised by FortisBC, for such reasons including, but not limited to, delay in acquiring required permissions, permits and approvals, force majeure and failure of the Customer to make payment pursuant to this Clause 7, this Letter Agreement shall be deemed to have expired, unless FortisBC and the Customer have agreed in writing to extend the Letter Agreement beyond that date. If the Customer has provided FortisBC with the Prepayment, prior to expiration of the Letter Agreement pursuant to this Clause 6.3, FortisBC shall return the Prepayment amount without interest to the Customer minus any expenses incurred by FortisBC to date.~~

8. FortisBC to Retain Ownership

The ~~Customer~~Municipality acknowledges and agrees that all vehicles, equipment, supplies and materials provided by FortisBC, contractor or subcontractor in the course of the Work; howsoever changed, incorporated or used in the Work, shall remain the property of FortisBC, and shall in no event become the property of the ~~Customer~~Municipality.

9. Permits and Approvals

FortisBC shall be responsible for obtaining any permits, certificates and approvals required in connection with the construction, gasification and operation of natural gas pipes, pipelines and associated works. The

SCHEDULE A
Terms and Conditions of Order - Construction

~~Customer~~Municipality shall be responsible for obtaining all other permits required for the Work unless otherwise agreed in writing between FortisBC and the ~~Customer~~Municipality.

10. Termination

10.1. ~~FortisBC~~Either party may, at any time without cause and at its sole discretion, terminate this Letter Agreement by giving notice in writing to the ~~Customer~~other party. If:

a) FortisBC terminates this Letter Agreement pursuant to this Clause 10.1, the Municipality shall not be liable for any Cost. The Municipality shall have no cause of action or right against FortisBC in respect of the termination of this Letter Agreement.

b) If the Municipality terminates this Letter Agreement pursuant to this Clause 10.1, the Municipality shall reimburse FortisBC for (i) the Costs incurred by FortisBC up to the date of termination; (ii) costs and expenses incurred by FortisBC as a result of the early termination of any contractor or third party agreements related to the Work; and (iii) costs directly and indirectly related to work required to reinstate FortisBC's infrastructure to the state prior to the commencement of the Work (or equivalent). FortisBC shall have no further cause of action or right against the Municipality in respect of the termination of this Letter Agreement.

10.2. If FortisBC makes a request for changes to the Work in accordance with Clause 4.1, and FortisBC and the City, both acting reasonably, are unable to reach agreement on the requested changes, or the increase or decrease in the Estimate, FortisBC may terminate this Letter Agreement by giving written notice to the Municipality. If FortisBC terminates this Letter Agreement in accordance with this Clause ~~10, FortisBC~~10.2, the Municipality shall reimburse ~~the Customer the Prepayment amount without any interest, minus any reasonable costs incurred by FortisBC in performing the Work~~FortisBC for (i) the Costs incurred up to ~~or after the date of termination. Such reasonable costs shall include but not be limited to costs to FortisBC for the work performed to date (including but not limited to materials purchased), expenses incurred~~the date of termination; (ii) costs and expenses incurred by FortisBC as a result of early termination of any contractor or third party, ~~and agreements related to the Work, and (iii) costs directly and indirectly related to work required to reinstate the facilities to their prior state (or equivalent). If FortisBC satisfies its obligations hereunder, the Customer~~FortisBC's infrastructure to the state prior to the commencement of the Work (or equivalent). The Municipality shall have no ~~further~~ cause ~~to of~~

SCHEDULE A

Terms and Conditions of Order - Construction

action or right against FortisBC in respect of the termination of this Letter Agreement ~~or otherwise~~.

11. Confidentiality

- 11.1. All information or documentation received by the ~~Customer~~Municipality pertaining to or arising from the Work or the business affairs or trade secrets of FortisBC, including but not limited to the Estimate and labour rates quoted in the Estimate, shall be deemed to be confidential and proprietary to FortisBC. Except as otherwise provided herein, the ~~Customer~~Municipality shall not directly or indirectly disclose any such confidential information or documentation to any third party without the prior written consent of FortisBC. Such consent is not required where the third party is another contractor or consultant retained by FortisBC for the purposes of the Letter Agreement and to the extent that such disclosure is necessary for the proper performance of this Letter Agreement or to the extent that such disclosure is required by law.
- 11.2. Notwithstanding the foregoing, the ~~Customer~~Municipality may use such confidential information or documentation pertaining to or arising from the Work in the preparation for and conduct of submissions to regulatory agencies.
- 11.3. The obligation of confidentiality set out above shall not apply to material, data or information which is known to the ~~Customer~~Municipality prior to their receipt thereof, which is generally available to the public or which has been obtained from a third party which has the right to disclose the same, or which is required to be disclosed in accordance with applicable laws (including without limitation, the Freedom of Information and Protection of Privacy Act (British Columbia)). The confidentiality covenants of the ~~Customer~~Municipality herein shall survive the termination of this Letter Agreement.

12. Limitation of Liability and Indemnity

FortisBC, its employees, contractors, subcontractors or agents are not responsible or liable for any claim, expense, loss, cost, or other liability incurred by the ~~Customer~~Municipality or any third party caused by or resulting directly or indirectly from the Work, ~~unless~~ except and only to the extent that the claim, expense, loss, cost or other liability is directly attributable to the ~~gross~~ negligence or wilful misconduct of FortisBC, its employees, contractors, subcontractors or agents. Notwithstanding the foregoing in no event shall FortisBC, its employees, contractors, subcontractors and agents ~~are in no event~~be liable for any incidental, special, punitive, or consequential damages of any kind (including, but without limitation, loss of income, loss of profits, or other pecuniary loss), ~~even if the loss~~

SCHEDULE A

Terms and Conditions of Order - Construction

~~is directly attributable to the gross negligence or wilful misconduct of FortisBC, its employees, contractors, subcontractor or agents~~ arising directly or indirectly from the Work.

In no event shall FortisBC's aggregate liability to pay for any claim, expense, loss, cost, or other liability incurred by the ~~Customer~~ Municipality resulting from the Work exceed the total amount paid to FortisBC by the ~~Customer for the Work~~ Municipality for the Work except and only to the extent that such claim, expense loss, cost or other liability is directly attributable to the wilful misconduct for FortisBC, its employees, contractors, subcontractors or agents.

The ~~Customer~~ Municipality shall indemnify FortisBC and save it harmless from any claim, expense, loss, cost or other liability of any third parties arising out of Work, ~~unless except to the extent that~~ such claim, expense, loss, cost or other liability is directly attributable to the ~~gross~~ negligence or wilful misconduct of FortisBC, its employees, contractors, subcontractor or agents.

13. Disputes

13.1. Except for applications for injunctions required to protect confidential information, where any dispute arises out of or in connection with this Letter Agreement, including failure of the parties to reach agreement hereunder:

- (a) If the parties have been unable to settle the dispute within thirty (30) days after receipt of notice of such dispute from the other party, a senior officer of each party's management shall meet within fifteen (15) days after that period in an attempt to resolve such dispute.
- (b) If the senior officers of the parties are not able pursuant to sub-Clause 13.1(a) to resolve the dispute within the fifteen (15) day period stipulated in sub-Clause 13.1(a), the parties agree to promptly try to resolve the dispute by participating in a structured mediation conference with a mediator under the ~~National~~ Arbitration Rules of the ADR Institute of Canada Inc.

13.2. If the parties fail to resolve the dispute through mediation within thirty (30) days after the end of the fifteen (15) day period stipulated in sub-Clause 13.1(a), the unresolved dispute shall be referred to the British Columbia Utilities Commission ("BCUC") if within its jurisdiction. If the matter is not within the jurisdiction of the BCUC, subject to sub-Section ~~13.3~~13.3, either party at its sole option may pursue litigation to resolve such dispute in any court of competent jurisdiction in the Province of British Columbia. The parties hereto agree that the Courts of the Province of British Columbia shall have exclusive jurisdiction to resolve any and all disputes between the parties except those unresolved disputes within the jurisdiction of the BCUC.

SCHEDULE A
Terms and Conditions of Order - Construction

- 13.3. By separate written agreement to arbitrate signed by all parties concerned, which agreement may be arbitrarily withheld, the particular unresolved disputes identified in the agreement to arbitrate shall be referred to and finally resolved or determined by arbitration under the ~~National~~ Arbitration Rules of the ADR Institute of Canada Inc. In the absence of such rules, the rules shall be as agreed by the parties or, failing agreement, the rules as prescribed in such case by, as applicable, the ~~Commercial Arbitration Act or International~~ Arbitration Act of the Province of British Columbia. Unless the parties agree otherwise the arbitration will be conducted by a single arbitrator.
- 13.4. The arbitrator shall issue a written award that sets forth the essential findings and conclusions on which the award is based. The arbitrator will allow discovery as required by law in arbitration proceedings.
- 13.5. In addition to awarding monetary damages and interest on unpaid amounts, the arbitrator shall have the authority to provide injunctive relief, order specific performance and grant permanent relief.
- 13.6. Each party shall bear its own costs and expenses of the arbitration. The costs and expenses of the arbitration, but not those incurred by the parties, shall be shared equally, unless the arbitrator determines that a specific party prevailed on substantially all issues. In such case, the non-prevailing party shall pay all costs and expenses of the arbitration, but not those of the prevailing party.
- 13.7. The parties will continue to fulfill their respective obligations pursuant to this Letter Agreement during the resolution of any dispute in accordance with this Clause 13.

14. Subcontracting

FortisBC may retain the services of a qualified third party to perform some or all of its obligations under this Letter Agreement.

15. Assignment

The ~~Customer~~ Municipality shall not assign its rights or obligations under this Letter Agreement without the prior written consent of FortisBC, which consent may be arbitrarily withheld.

16. Law

This Letter Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia.

SCHEDULE A
Terms and Conditions of Order - Construction

17. Enurement

This Letter Agreement shall be for the benefit of and be binding upon FortisBC and the ~~Customer~~[Municipality](#) and their respective successors and permitted assigns.

18. Amendments

- 18.1. The Letter Agreement embodies the entire agreement between the parties and supersedes all communications, negotiations and agreements, either written or oral, relating to the Work that were made prior to the date of execution of the Letter Agreement. The Letter Agreement contains all the representations, warranties, covenants, agreements, conditions and understandings between the parties with respect to the subject matter of the Letter Agreement and there are no other representations, warranties, covenants, agreements, conditions or understandings with respect to the Letter Agreement that are not contained herein.
- 18.2. The ~~Customer~~[Municipality](#) hereby represents and warrants that in entering into the Letter Agreement it has not and does not rely upon any previous representation of FortisBC, consultant, or any employee, director, officer, servant, consultant or agent of FortisBC, whether express or implied, or upon any inducement or agreement of any kind or nature.
- 18.3. The Letter Agreement may only be amended by written agreement, signed by both parties.

Document comparison by Workshare 9.5 on Tuesday, April 27, 2021 9:18:06 AM

Input:	
Document 1 ID	file://C:\Users\JBecket\Desktop\2800502944_Quote to Customer Terms and Conditions.doc
Description	2800502944_Quote to Customer Terms and Conditions
Document 2 ID	file://C:\Users\JBecket\Desktop\Proposed Richmond Quote Letter with TCs April 26.docx
Description	Proposed Richmond Quote Letter with TCs April 26
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	111
Deletions	109
Moved from	4
Moved to	4
Style change	0
Format changed	0
Total changes	228

Appendix C

From: Ian Webb <iwebb@lawsonlundell.com>
Sent: Tuesday, May 04, 2021 12:38 PM
To: Ghikas, Matt
Cc: Taylor, Alison; Capuccinello Iraci,Tony
Subject: [External Email] - RE: FortisBC/City of Richmond - Proposed Revisions to FEI Terms for Burkeville Relocations

CAUTION: This is an external email.
Do not respond, click on links or open attachments unless you recognize the sender.

Matt,

The City has reviewed FEI's revised document. On behalf of the City, we confirm that the City does not agree to the revised terms FEI has proposed for the offset project work.

As discussed by both parties at the procedural conference, for these three offset projects in Burkeville the parties are in agreement that FEI will undertake to offset its gas lines at the three locations, design drawings for the offset project work have been prepared by FEI and approved by the City's Engineering Department, the City has agreed to pay FEI's costs of its projects so long as the costs are reasonable and the work is completed by the end of June, and FEI has committed to completing the work by mid-June. As stated at the procedural conference, the City reiterates that its agreement to pay FEI's reasonable costs should not be construed as the City's agreement that as a matter of law it is responsible for such costs.

We understand that FEI is looking at revising its standard terms for general application, however, we think that this proceeding and these three projects should not be burdened by that effort, nor should this proceeding be unnecessarily expanded to invite opposing positions on terms FEI intends to use for general application.

The City is of the view that for these three projects (with the above matters already agreed to and given that FEI install its infrastructure within City owned highway without an operating agreement in place), no additional terms beyond what is in the draft order included with the application are required or appropriate under these circumstances.

Regards.

Ian Webb | Partner
Lawson Lundell LLP
D 604.631.9117 | F 604.694.2932

From: Matthew Ghikas <mghikas@fasken.com>
Sent: Tuesday, April 27, 2021 9:52 AM
To: Ian Webb (3117) - 14Flr <iwebb@lawsonlundell.com>
Cc: Alison Taylor (alison.taylor@fortisbcholdings.com) <alison.taylor@fortisbcholdings.com>
Subject: FortisBC/City of Richmond - Proposed Revisions to FEI Terms for Burkeville Relocations

[THIS MESSAGE ORIGINATED FROM OUTSIDE OUR FIRM]

Appendix D

PROPOSED REVISED QUOTE LETTER AND TERMS AND CONDITIONS WITH RATIONALE

	Key Terms in Revised Quote Letter and Terms and Conditions (changes from Quote Letter for FEI Job 2800502944)	Rationale for Revision between August 2020 Version and April 27, 2021 Version or No Revision
Letter		
Estimated Cost	<p>The Customer must sign and return this Letter Agreement to FortisBC via mail or email. The CustomerMunicipality must provide FortisBC with the full amount of the estimate as prepayment prior to the start of worka purchase order for not less than the full amount of the Estimated Cost along with its acceptance of the Estimated Cost and the terms and conditions set out in Schedule A attached by signing and returning this Letter Agreement via mail or email at [insert email address]. FortisBC will not schedule the workWork until it has received the signed Letter Agreement and a purchase order for the full amount of the prepaymentEstimated Cost. Scheduling of workthe Work will remain the responsibility of FortisBC taking into consideration the Development ProjectMunicipality's project schedule.</p>	<p>This change is attributable to the inadvertent use in August 2020 of a version intended for private developers, not municipalities.</p> <p>Revised to be consistent with FEI's standard practice of seeking agreement from a municipality on the terms and conditions and the municipality issuing a purchase order in the amount of FEI's estimated cost of performing the requested gas main alteration work. FEI does not require prepayment for the work when the requestor is a municipality.</p>
Acknowledgement	<p>THE ABOVE TERMS AND CONDITIONS ARE HEREBY AGREEDHEREBY AGREED</p> <p>TO:</p> <p>FULL Legal name of CustomerMunicipality by its authorized signatory:</p> <p><u>Purchase Order #</u> _____</p> <p><u>Amount of Purchase Order</u> _____</p>	<p>This change is attributable to the inadvertent use in August 2020 of a version intended for private developers, not municipalities.</p> <p>Revised to be consistent with FEI's standard practice of requiring a purchase order from a municipality.</p>
Schedule A – Terms and Conditions of Order – Construction		
2 Access 2.1	<p>In the event the Customer is the owner of the Site and the land in the proximity of the Site (the "Lands"), the CustomerThe Municipality shall provide FortisBC with full and unrestricted access to the Site and the Lands to complete the Work pursuant to this Letter Agreement.</p>	<p>Revised to take into account that while the Site is a municipal public space, the adjacent land may not be and FEI may require access to the adjacent lands to perform the requested work.</p>
New 2.2	<p>In the event the Customer is not the owner of the Site and/orMunicipality is the owner of the lands in the proximity of the Site (the "Lands"), the Municipality shall provide FortisBC with full and unrestricted access to the Site and the Lands to complete the Work pursuant to this Letter Agreement.</p>	

PROPOSED REVISED QUOTE LETTER AND TERMS AND CONDITIONS WITH RATIONALE

	Key Terms in Revised Quote Letter and Terms and Conditions (changes from Quote Letter for FEI Job 2800502944)	Rationale for Revision between August 2020 Version and April 27, 2021 Version or No Revision
3 Commencement of the Work	<p>FortisBC shall commence the Work as soon as reasonably practicable having regard to the availability of FortisBC personnel, equipment and materials, provided however, that FortisBC will not commence the Work until (i) the <u>CustomerMunicipality</u> has delivered a certified cheque and/or bank draft purchase order in the amount of the Estimate to FortisBC as required pursuant to Clause 7 (“Purchase Order”); (ii) the <u>CustomerMunicipality</u> has provided confirmation that all permissions and approvals described in Clause Error! Reference source not found. have been obtained; and (iii) FortisBC and the <u>CustomerMunicipality</u> have obtained all permits and approvals described in Clause Error! Reference source not found.. FortisBC does not covenant to prosecute the Work diligently or by any scheduled dates, whether or not such scheduled dates for commencement or completion of the Work have been specified by the Customer or by FortisBC.</p>	<p>Revised to be consistent with FEI’s standard practice of requiring a purchase order from a municipality. FEI does not require prepayment for the work when the requestor is a municipality.</p> <p>Revised to remove language that FEI does not covenant to perform the work diligently or by a scheduled date, which the City has identified in its Application as being of concern.</p>
4 Change Orders and Extra Work	<p><u>4.1</u> FortisBC may at any time make written requests for changes to the Work, and these changes shall become part of the Letter Agreement upon being mutually agreed upon, and include a mutually acceptable increase or decrease in the Estimate.</p> <p><u>4.2</u> The <u>CustomerMunicipality</u> may request that FortisBC perform additional work (“Extra Work”) which is not within the Scope of Work as set out in the Letter Agreement. The details of the Extra Work shall be discussed, mutually agreed upon and paid at a mutually agreed upon rate prior to commencing the Extra Work.</p>	<p>The City’s position is this clause is not needed because FEI’s detailed design drawings for the gas main alterations have already been approved.</p> <p>FEI did not revise this clause because it is commercially reasonable and addresses a potential circumstance that could conceivably arise in this or any project. Design drawings are created prior to the execution of the work and are based on information known at the time. On-site conditions may vary and this clause provides FEI with flexibility to respond to on-site conditions. The clause contemplates FEI requesting changes and mutual agreement on changes to the work and FEI’s cost estimate. It also allows for the City to request extra work.</p>

PROPOSED REVISED QUOTE LETTER AND TERMS AND CONDITIONS WITH RATIONALE

	Key Terms in Revised Quote Letter and Terms and Conditions (changes from Quote Letter for FEI Job 2800502944)	Rationale for Revision between August 2020 Version and April 27, 2021 Version or No Revision
5 Delay	<p>If there is any delay in the Work caused or attributable to the Customer<u>Municipality</u> then FortisBC may, without cost, suspend part or all of the Work under this Letter Agreement until the Work can again be performed efficiently, effectively and without delay.</p>	<p>The City’s position is that this clause is not applicable in the circumstances.</p> <p>FEI did not revise this clause because it is commercially reasonable and addresses a potential circumstance that could conceivably arise in this or any project. FEI should not bear the risk associated with delays attributable to the City.</p>
6 Force Majeure 6.1	<p>6.1. “Force Majeure” means any one or more of the following events:</p> <ul style="list-style-type: none"> (a) war or hostilities; (b) riot or civil commotion; (c) earthquake, major flood not foreseeable in the area of the Site, forest fire or suspensions of work ordered by the Ministry of Forests, or other natural physical disaster preventing the performance of the Work; (d) governmental regulations or controls; (e) inability to obtain any material or services; (f) strike or lock-out or other industrial action; and (g) government embargo, <p>provided, however, that any such event is a major disabling event or circumstance in relation to the normal operations of the party concerned as a whole which is beyond the reasonable control of the party directly affected and results in a material delay, interruption or failure by such party in carrying out its duties, covenants or obligations under the Letter Agreement. Lack of money, financing or credit to resolve such contingencies will not be deemed an event of Force Majeure.</p>	<p>The City’s position is that this clause is not applicable in the circumstances.</p> <p>Force majeure is a common provision in commercial and construction agreements and is potentially applicable in any case where work is being performed.</p>

PROPOSED REVISED QUOTE LETTER AND TERMS AND CONDITIONS WITH RATIONALE

	Key Terms in Revised Quote Letter and Terms and Conditions (changes from Quote Letter for FEI Job 2800502944)	Rationale for Revision between August 2020 Version and April 27, 2021 Version or No Revision
6.2	Lack of funds or other financial cause specific to the Customer <u>Municipality</u> shall not be construed as Force Majeure. If either party to the Letter Agreement is prevented from, or delayed in, performing any of its obligations under the Letter Agreement by Force Majeure, then it shall within two (2) days of the commencement of such circumstances notify the other party of the circumstances constituting the Force Majeure and of the obligation and performance of which is thereby delayed or prevented, and the party giving the notice shall thereupon be excused the performance or punctual performance, as the case may be, of such obligation for so long as the circumstances of prevention or delay continue. The provision of written notice by the Customer <u>Municipality</u> as aforesaid is a condition precedent to any claim for extra time or for delay in completion as a result of the Force Majeure.	
6.3	Without limiting any other rights of FortisBC under any other provision of the Letter Agreement, if the suspension of Work exceeds a period of either fourteen (14) consecutive days or thirty (30) cumulative days as a result of Force Majeure, either party shall have the option to terminate the Letter Agreement on giving the other party written notice to that effect.	
6.4	In the event of termination pursuant to Clause Error! Reference source not found. , the Customer shall be liable to pay FortisBC for that portion of the Work completed or goods delivered to the date of termination as well as any costs reasonably incurred by FortisBC in relation to the Work after termination <u>6.3, the provisions of Clause</u> Error! Reference source not found. <u>shall apply.</u>	
7 <u>Estimate and</u> Terms of Payment		Housekeeping change rather than a substantive change.

PROPOSED REVISED QUOTE LETTER AND TERMS AND CONDITIONS WITH RATIONALE

	<p align="center">Key Terms in Revised Quote Letter and Terms and Conditions (changes from Quote Letter for FEI Job 2800502944)</p>	<p align="center">Rationale for Revision between August 2020 Version and April 27, 2021 Version or No Revision</p>
	<p>7.1 If required by FortisBC, City of Richmond shall provide P.O. # that has pre-approved amount of the Estimate (the "Prepayment") on or before 02nd October, 2020 towards payment for the Work.</p> <p>7.2 While FortisBC has used care in arriving at the Estimate, FortisBC does not warrant that the Estimate is a reasonable estimate of<u>The Estimate is based on the information provided to FortisBC by the Municipality, information obtained by FortisBC through the BC One Call process regarding the presence of foreign underground utilities, and other information readily available to FortisBC. The Municipality acknowledges that</u> the cost of completing the Work (the "Cost") <u>may differ from the Estimate and if the Cost differs from the Estimate, the Municipality shall pay the Cost.</u> The Cost includes all costs directly or indirectly incurred by FortisBC in completing the Work, and includes, but is not limited to labour <u>(including but not limited to design work)</u>, equipment, materials, overhead, necessary licenses and permits and any and all costs relating to access to the Site. Notwithstanding the foregoing, if the Cost is less than the Prepayment, FortisBC shall refund the difference to the Customer without interest; and if Cost of completing the work exceeds the Prepayment, the Customer agrees to and shall pay such deficiency (the "Deficiency Amount").</p> <p>7.2.7.3 <u>Following completion of the Work,</u> FortisBC shall<u>will</u> send an invoice (the "Invoice") to the Customer<u>Municipality</u> for the Deficiency Amount, Cost and payment for the Deficiency Amount<u>the Municipality shall be made by pay the Customer to FortisBC</u><u>Invoice</u> within thirty (30) days from the date of the invoice.<u>til the invoice is paid in full.</u></p> <p>7.4 In the event that the Work has not commenced by any scheduled date promised by FortisBC, for such reasons including, but not limited to, delay in acquiring required permissions, permits and approvals, force majeure and failure of the Customer to make payment pursuant to this Clause 7, this Letter Agreement shall be deemed to have expired, unless FortisBC and the Customer have agreed in writing to extend the Letter Agreement beyond that date. If the Customer has provided FortisBC with the Prepayment, prior to expiration of the Letter Agreement pursuant to this Clause 6.3, FortisBC shall return the Prepayment amount without interest to the Customer minus any expenses incurred by FortisBC to date.</p>	

PROPOSED REVISED QUOTE LETTER AND TERMS AND CONDITIONS WITH RATIONALE

	Key Terms in Revised Quote Letter and Terms and Conditions (changes from Quote Letter for FEI Job 2800502944)	Rationale for Revision between August 2020 Version and April 27, 2021 Version or No Revision
10 Termination	<p>10.1 FortisBC<u>Either party</u> may, at any time without cause and at its sole discretion, terminate this Letter Agreement by giving notice in writing to the Customer<u>other party</u>. If:</p> <p><u>(a) FortisBC terminates this Letter Agreement pursuant to this Clause Error! Reference source not found., the Municipality shall not be liable for any Cost. The Municipality shall have no cause of action or right against FortisBC in respect of the termination of this Letter Agreement.</u></p> <p><u>(b) If the Municipality terminates this Letter Agreement pursuant to this Clause Error! Reference source not found., the Municipality shall reimburse FortisBC for (i) the Costs incurred by FortisBC up to the date of termination; (ii) costs and expenses incurred by FortisBC as a result of the early termination of any contractor or third party agreements related to the Work; and (iii) costs directly and indirectly related to work required to reinstate FortisBC's infrastructure to the state prior to the commencement of the Work (or equivalent). FortisBC shall have no further cause of action or right against the Municipality in respect of the termination of this Letter Agreement.</u></p> <p>10.2 <u>If FortisBC makes a request for changes to the Work in accordance with Clause Error! Reference source not found., and FortisBC and the City, both acting reasonably, are unable to reach agreement on the requested changes, or the increase or decrease in the Estimate, FortisBC may terminate this Letter Agreement by giving written notice to the Municipality.</u> If FortisBC terminates this Letter Agreement in accordance with this Clause 10, FortisBC<u>10.2, the Municipality shall reimburse the Customer the Prepayment amount without any interest, minus any reasonable costs incurred by FortisBC in performing the Work</u>FortisBC <u>for (i) the Costs incurred up to or after the date of termination. Such reasonable costs shall include but not be limited to costs to FortisBC for the work performed to date (including but not limited to materials purchased), expenses incurred the date of termination; (ii) costs and expenses incurred by FortisBC as a result of early termination of any contractor or third party, and agreements related to the Work, and (iii) costs directly and indirectly related to work required to reinstate the facilities to their prior state (or equivalent). If FortisBC satisfies its obligations hereunder, the Customer</u>FortisBC's infrastructure to the state prior to the commencement of the Work (or equivalent). The Municipality shall have no further cause to of action or right against FortisBC in respect of the termination of this Letter Agreement or otherwise.</p>	<p>Revised to be consistent with FEI's standard practice of requiring a purchase order from a municipality. FEI does not require prepayment for the work when the requestor is a municipality.</p> <p>Revised to provide context for the estimate, in particular, that it is based on information available to FEI at the time and FEI's actual costs may differ. FEI's actual costs will be a function of actual site conditions.</p> <p>The terms and conditions contemplate changes in the work and allow FEI to terminate in the event FEI and the City do not agree on additional work and increased costs.</p>

PROPOSED REVISED QUOTE LETTER AND TERMS AND CONDITIONS WITH RATIONALE

	Key Terms in Revised Quote Letter and Terms and Conditions (changes from Quote Letter for FEI Job 2800502944)	Rationale for Revision between August 2020 Version and April 27, 2021 Version or No Revision
11 Confidentiality		Revised to provide reciprocal termination rights, rather than FEI having unilateral rights. FEI is also now not entitled to recover its costs where it terminates for convenience, which should provide comfort to the City that FEI will act reasonably.
11.1	All information or documentation received by the Customer Municipality pertaining to or arising from the Work or the business affairs or trade secrets of FortisBC, including but not limited to the Estimate and labour rates quoted in the Estimate, shall be deemed to be confidential and proprietary to FortisBC. Except as otherwise provided herein, the Customer Municipality shall not directly or indirectly disclose any such confidential information or documentation to any third party without the prior written consent of FortisBC. Such consent is not required where the third party is another contractor or consultant retained by FortisBC for the purposes of the Letter Agreement and to the extent that such disclosure is necessary for the proper performance of this Letter Agreement or to the extent that such disclosure is required by law.	<p>The City's position is this clause is not needed in the circumstances.</p> <p>FEI believes it is reasonable for the City to keep confidential information that FEI may provide to the City pertaining to or arising from the Work including the Estimate.</p> <p>Clause 11.3 has been revised to address City's concern that they are subject to FOIPPA.</p>
11.2	Notwithstanding the foregoing, the Customer Municipality may use such confidential information or documentation pertaining to or arising from the Work in the preparation for and conduct of submissions to regulatory agencies.	
11.3	The obligation of confidentiality set out above shall not apply to material, data or information which is known to the Customer Municipality prior to their receipt thereof, which is generally available to the public or which has been obtained from a third party which has the right to disclose the same, <u>or which is required to be disclosed in accordance with applicable laws (including without limitation, the Freedom of Information and Protection of Privacy Act (British Columbia))</u> . The confidentiality covenants of the Customer Municipality herein shall survive the termination of this Letter Agreement.	

PROPOSED REVISED QUOTE LETTER AND TERMS AND CONDITIONS WITH RATIONALE

	Key Terms in Revised Quote Letter and Terms and Conditions (changes from Quote Letter for FEI Job 2800502944)	Rationale for Revision between August 2020 Version and April 27, 2021 Version or No Revision
<p>12 Limitation of Liability and Indemnity</p>	<p>FortisBC, its employees, contractors, subcontractors or agents are not responsible or liable for any claim, expense, loss, cost, or other liability incurred by the Customer<u>Municipality</u> or any third party caused by or resulting directly or indirectly from the Work, unless except and only to the extent that the claim, expense, loss, cost or other liability is directly attributable to the gross negligence or wilful misconduct of FortisBC, its employees, contractors, subcontractors or agents. Notwithstanding the foregoing <u>in no event shall</u> FortisBC, its employees, contractors, subcontractors and agents are in no event<u>be</u> liable for any incidental, special, punitive, or consequential damages of any kind (including, but without limitation, loss of income, loss of profits, or other pecuniary loss), even if the loss is directly attributable to the gross negligence or wilful misconduct of FortisBC, its employees, contractors, subcontractor or agents arising directly or indirectly from the Work.</p> <p>In no event shall FortisBC's aggregate liability to pay for any claim, expense, loss, cost, or other liability incurred by the Customer<u>Municipality</u> resulting from the Work exceed the total amount paid to FortisBC by the Customer for the Work<u>Municipality for the Work except and only to the extent that such claim, expense loss, cost or other liability is directly attributable to the wilful misconduct for FortisBC, its employees, contractors, subcontractors or agents.</u></p> <p>The Customer<u>Municipality</u> shall indemnify FortisBC and save it harmless from any claim, expense, loss, cost or other liability of any third parties arising out of Work, unless except to the extent that such claim, expense, loss, cost or other liability is directly attributable to the gross negligence or wilful misconduct of FortisBC, its employees, contractors, subcontractor or agents.</p>	

PROPOSED REVISED QUOTE LETTER AND TERMS AND CONDITIONS WITH RATIONALE

	Key Terms in Revised Quote Letter and Terms and Conditions (changes from Quote Letter for FEI Job 2800502944)	Rationale for Revision between August 2020 Version and April 27, 2021 Version or No Revision
13 Disputes		<p>Revised to address City’s concern that the terms used a gross negligence standard, rather than a negligence standard. FEI bears the risk for its own negligence.</p> <p>FEI has not inserted a reciprocal indemnity because under the terms and conditions, FEI accepts responsibility for loss incurred by the Municipality or a third party to the extent that the loss is directly attributable to the negligence or wilful misconduct of FEI, its employees, contractors, subcontractors or agents (except incidental, special, punitive or consequential).</p>
13.1(a)	Same – no change	The City’s position is this clause is not needed in the circumstances.
13.1(b)	(b) If the senior officers of the parties are not able pursuant to sub-Clause 13.1(a) to resolve the dispute within the fifteen (15) day period stipulated in sub-Clause 13.1(a), the parties agree to promptly try to resolve the dispute by participating in a structured mediation conference with a mediator under the National Arbitration Rules of the ADR Institute of Canada Inc.	FEI did not revise this clause because it is commercially reasonable even if it might not be used in particular circumstances. FEI did, however, revise section 13.2 to reflect the BCUC’s jurisdiction and the new names of arbitration agencies and legislation.
13.2	If the parties fail to resolve the dispute through mediation within thirty (30) days after the end of the fifteen (15) day period stipulated in sub-Clause 13.1(a), Province of British Columbia shall have exclusive jurisdiction to resolve any and all disputes between the parties <u>except those unresolved disputes within the jurisdiction of the BCUC.</u>	
13.3	By separate written agreement to arbitrate signed by all parties concerned, which agreement may be arbitrarily withheld, the particular unresolved disputes identified in the agreement to arbitrate shall be referred to and finally resolved or determined by arbitration under the National Arbitration Rules of the ADR Institute of Canada Inc. In the absence of such rules, the rules shall be as agreed by the parties or, failing agreement, the rules as prescribed in such case by, as applicable, the Commercial Arbitration Act or International Arbitration Act of the Province of British Columbia. Unless the parties agree otherwise the arbitration will be conducted by a single arbitrator.	

Appendix E

ORDER NUMBER

G-xx-xx

IN THE MATTER OF

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

and

City of Richmond

Application for an Order pursuant to Section 36 of the *Utilities Commission Act* (UCA)

BEFORE:

[Panel Chair]
Commissioner
Commissioner

on **Date**

ORDER

WHEREAS:

- A. By letter dated April 1, 2021, the City of Richmond (City) applied to the British Columbia Utilities Commission (BCUC) pursuant to section 36 of the *Utilities Commission Act* (UCA) regarding the relocation of FortisBC Energy Inc. (FEI) operating gas mains (FEI Offset Projects) that conflict with running lines and a manhole of the City's new storm sewer system in Burkeville (Application);
- B. Although the City has approved the detailed design drawings for the FEI Offset Projects, the City and FEI cannot come to an agreement on the terms upon which FEI will perform the FEI Offset Projects;
- C. In the Application, the City is requesting the following orders:
 1. FortisBC Energy Inc. (FEI) is directed to undertake the three projects to offset its distribution gas mains to accommodate the City's Project as specified on the design drawings prepared by FEI and approved by the City's Engineering Planning Department, as provided in Appendix "D" of the Application (Offset Projects), and in accordance with all applicable regulations.
 2. FEI is directed to complete the Offset Projects by June 30, 2021, or such later date as may be agreed to by the City.
 3. The City is directed to pay to FEI the reasonable costs incurred by FEI to undertake and complete the Offset Projects.
 4. FEI is directed to pay to the City the reasonable costs incurred by the City in relation to the Application.

5. If the City and FEI are unable to reach agreement on the amount of reasonable costs payable pursuant to directive 3 or directive 4 of this order, the City and FEI or either of them may apply to the BCUC for determination of the amount(s) payable;
- D. By Order G-121-21, the BCUC established a regulatory timetable including submissions from FEI and the City and a Streamlined Review Process;
- E. FEI filed proposed revised terms and conditions as part of its response filing (Exhibit C1-2, Appendix A), requesting that they be approved instead of the City's proposed terms;
- F. FEI indicated that it has scheduled the FEI Offset Projects to be completed in the second week of June 2021;
- G. The BCUC has reviewed the Application, evidence and submissions and has determined that it is in the public interest to determine the terms upon which FEI undertakes the FEI Offset Projects.

NOW THEREFORE pursuant to section 32 of the UCA, the BCUC orders as follows:

1. The City's Application is denied.
2. FEI's proposed revised terms and conditions for the FEI Offset Projects, as set out in Appendix A to Exhibit C1-2, are in the public interest and will apply to FEI Offset Projects.

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

BY ORDER

(X. X. last name)
Commissioner