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May 18, 2017

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

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

Dear Mr. Wruck:

**Re: FortisBC Energy Inc. (FEI)**

**Application for Approval of Operating Terms between the City of Surrey and FEI**

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As the Commission is aware, FEI and its predecessors have been operating a natural gas system in the City of Surrey (the Municipality or the City) since the 1950s under a Certificate of Public Convenience and Necessity (CPCN). FEI and the City are also parties to an operating agreement dating back to 1957 that outlines how the parties will interact. FEI and the City have been negotiating since 2013 with the aim of reaching a new operating agreement that would better meet the needs of both parties. The parties have settled many points, but there are four issues that remain outstanding and cannot be resolved through negotiation. FEI and the City agreed to seek a Commission determination on any outstanding issues, which is an avenue contemplated under the *Utilities Commission Act*.

This is FEI's application for an order from the Commission, pursuant to section 32 or alternatively section 33 of the *Utilities Commission Act* (the Act), for approval of operating terms that will facilitate the safe, efficient and cost-effective provision of natural gas service within the City (the Application). FEI submits for the reasons described in the Application, that its proposed terms on the disputed issues are fair to both the City and the customers of FEI who depend on FEI being able to provide timely and cost-effective service.

This Application should be heard in tandem with the City's application, as the two filings deal with the same issues. FEI will be contacting the City about potential process options and will advise the Commission of any procedural proposals in the near future.

If you require further information or have any questions regarding this submission, please contact Ilva Bevacqua at 604-592-7664.

Sincerely,

**FORTISBC ENERGY INC.**

***Original signed:***

Diane Roy

Attachments

cc (email only): Anthony Capuccinello, City of Surrey  
Ian Webb, Lawson Lundell LLP



# **FORTISBC ENERGY INC.**

## **Application for Approval of Operating Terms with the City of Surrey**

**May 18, 2017**

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## 1. INTRODUCTION AND OVERVIEW

FortisBC Energy Inc. (FEI or the Company) hereby applies (the Application) for an order from the British Columbia Utilities Commission (the Commission), pursuant to section 32 of the *Utilities Commission Act* (the Act), or alternatively section 33, for approval of new operating terms with the City of Surrey (the Municipality, Surrey, or the City) as set out in Appendix A (the Proposed Operating Terms).

Section 32 of the Act, in general terms, provides for a mechanism whereby the Commission can resolve disagreements between a public utility and a municipality regarding the use of municipal spaces. Section 32 applies if a public utility: (a) has the right to enter a municipality to place its distribution equipment<sup>1</sup> on, along, across, over or under a public street, lane, square, park, public place, bridge, viaduct, subway or watercourse, and (b) cannot come to an agreement with the municipality on the use of the street or other place or on the terms of the use.

Section 32 applies in the present circumstances. FEI has the right to construct and operate its system, and extensions to that system, under its Certificate of Public Convenience and Necessity (CPCN) and the provisions of the Act and the *Gas Utility Act*. There is an existing 1957 operating agreement with the City (1957 Agreement) that establishes protocols and addresses cost allocations. However, the parties disagree about the effect and scope of the 1957 Agreement. FEI and the City have been negotiating a replacement operating agreement since January 2013 in an effort to improve their operating relationship, modernize and clarify protocols, enhance the dispute resolution process, and settle the treatment of certain costs. The parties have settled many terms, which are reflected in the Proposed Operating Terms. There are four outstanding issues that require a Commission determination:

### **(1) The extent to which the City should be responsible for the cost of relocating FEI's facilities where the relocation is necessitated by the City's actions**

FEI is proposing that, although the City would pay all of FEI's Relocation Costs<sup>2</sup> for Gas Main<sup>3</sup> relocations, the City would only pay half of FEI's Relocation Costs when the affected Company Facilities<sup>4</sup> are High Pressure Pipelines.<sup>5</sup> FEI's concession regarding High Pressure Pipelines will place the City in a more favourable position

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<sup>1</sup> The UCA defines distribution equipment broadly: "distribution equipment" means posts, pipes, wires, transmission mains, distribution mains and other apparatus of a public utility used to supply service to the utility customers".

<sup>2</sup> Defined in the Proposed Operating Terms.

<sup>3</sup> Defined in the Proposed Operating Terms as being less than 700 kPa. This generally equates to distribution assets.

<sup>4</sup> Defined in the Proposed Operating Terms.

<sup>5</sup> Defined in the Proposed Operating Terms as being above 700 kPa. This generally equates to transmission assets.

1           than under the 1957 Agreement. The City will also be in a favourable position  
2           relative to most other municipalities with an FEI operating agreement.  
3

4           **(2) The amount of any annual Operating Fee to be collected from ratepayers in the**  
5           **Municipality and paid to the City**

6           FEI's proposed Operating Fees to be collected on behalf of the Municipality were  
7           derived with reference to the amount and nature of the work FEI performs within the  
8           Municipality and the permitting fees and other administrative costs levied by the City  
9           for similar work undertaken by non-utility third parties. Although FEI's proposed  
10          Operating Fee is lower than the negotiated fees under agreements with Inland and  
11          Vancouver Island municipalities, the City will be significantly better off than it is today  
12          (the 1957 Agreement does not provide for an Operating Fee and FEI disputes  
13          Surrey's ability to collect any permit and approval fees). Surrey will also be in a more  
14          favourable position than any other Lower Mainland municipality, since no Lower  
15          Mainland municipality currently obtains an Operating Fee.  
16

17          **(3) The extent to which the City should be responsible for the cost of**  
18          **improvements or betterments to Company Facilities which would not have**  
19          **been required but for relocation work requested by the City**

20          Relocation costs paid by the party requesting relocation should exclude the  
21          incremental value or incremental costs of any upgrading and/or betterment of the  
22          party's facilities or the facilities of third parties "beyond that which is required to  
23          comply with applicable Laws or sound engineering practices". FEI submits that the  
24          inclusion of the quoted caveat is fair, reasonable and reflects cost causation. FEI  
25          would not be incurring these costs but for the City's request to relocate facilities.  
26

27          **(4) The obligation of FEI to release its interest in statutory rights of way to**  
28          **accommodate highway dedications**

29          FEI understands that the City is seeking a blanket release of FEI's statutory rights of  
30          way for the purpose of road dedications. FEI is prepared to consider requests on a  
31          case by case basis, but is not prepared to provide a blanket waiver of its rights. It is  
32          important for FEI to consider the potential impacts of each road on the safety and  
33          security of the Company Facilities. In any event, statutory rights of way are FEI's  
34          private interests in land, and not public places of the nature addressed in section 32  
35          of the Act. FEI does not believe that the Commission has jurisdiction under section  
36          32 of the Act to order FEI to relinquish its property rights and give up its statutory  
37          protections and entitlement to compensation under the *Expropriation Act*.  
38

39          In short, the Commission should approve the Proposed Operating Terms as an overall package.  
40          The Proposed Operating Terms will facilitate the timely and cost-effective maintenance and

1 extension of the natural gas infrastructure. They will ensure that the City has access to  
2 necessary information about utility work and has an opportunity to provide feedback to FEI.  
3 They address costs and fees in a manner that is fair to both the City and the FEI customers  
4 from whom the fees and costs are ultimately recovered. In accomplishing these objectives, the  
5 Proposed Operating Terms will provide the basis for a more cooperative relationship between  
6 FEI and the City overall.

7  
8 This Application is organized as follows:

- 9 • Section 2 Background describes FEI's CPCN, its current operating agreement, FEI's  
10 day-to-day operations in Surrey and the impetus for negotiating a new operating  
11 agreement.
- 12 • Section 3 Settled Issues and Areas of Disagreement discusses the terms that FEI  
13 understands are settled, and the four outstanding matters.
- 14 • Section 4 Benefits of the Proposed Operating Terms outlines the benefits of the  
15 Proposed Operating Terms to FEI's customers and to the Municipality.
- 16 • Section 5 is a conclusion and references the orders sought.

## 17 **2. BACKGROUND**

18 This section addresses FEI's legal right to operate in the Municipality under a CPCN and its  
19 existing operating agreement with the City. It describes FEI's daily activities in the Municipality  
20 and explains why FEI wants to improve the parties' working relationship, update and clarify  
21 procedures, and resolve areas of disagreement.

### 22 **2.1 FEI'S CPCN AND 1957 OPERATING AGREEMENT**

23 On December 13, 1955, the Public Utilities Commission (predecessor of the Commission)  
24 issued a CPCN pursuant to section 12 of the *Public Utilities Act* (predecessor legislation to the  
25 *Utilities Commission Act*) to the British Columbia Electric Company Limited. The CPCN  
26 approved the construction and operation of a natural gas distribution system, and extensions  
27 thereto, to supply natural gas to the Fraser Valley area of the Lower Mainland of British  
28 Columbia. The area covered by the CPCN included the City of Surrey (previously the District of  
29 Surrey). A second CPCN was issued that year to British Columbia Electric Company Limited for  
30 the Greater Vancouver area of the Lower Mainland.<sup>6</sup>

31  
32 The British Columbia Electric Company Limited (later British Columbia Hydro and Power  
33 Authority) constructed and began operating a natural gas system in Surrey. In 1988, a

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<sup>6</sup> A CPCN was issued July 29, 1955 covering municipalities including the City of Vancouver and Burnaby, among others.



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predecessor company of FEI<sup>7</sup> purchased the Lower Mainland natural gas division from British Columbia Hydro and Power Authority.

FEI is deemed to have a CPCN pursuant to section 45(2) of the Act for the construction and operation of its natural gas system, and extensions thereto, in Surrey. Section 45(2) provides:

45 (2) For the purposes of subsection (1), a public utility that is operating a public utility plant or system on September 11, 1980 is deemed to have received a certificate of public convenience and necessity, authorizing it

(a) to operate the plant or system, and

(b) subject to subsection (5), to construct and operate extensions to the plant or system.

The *Gas Utility Act*<sup>8</sup> (GUA) affirms FEI's rights as a gas utility to operate within the Municipality under its CPCN. It contemplates a public utility agreeing with a municipality as to the conditions of use of public spaces:

Authority and power of gas utilities

2 (1) A gas utility that on April 14, 1954 was carrying on business as a gas utility in a municipality or rural area is authorized and empowered, subject to the Utilities Commission Act, to carry on its business as a gas utility in the municipality or rural area.

(2) A gas utility to which a certificate of public convenience and necessity is granted after April 14, 1954 under the Utilities Commission Act or the legislation that preceded it is authorized and empowered, subject to the Utilities Commission Act, to carry on its business as a gas utility in the municipality or rural area mentioned in the certificate.

(3) Without limiting subsection (1) or (2), a gas utility authorized under either of those subsections may do one or all of the following:

(a) produce, generate, store, mix, transmit, distribute, deliver, furnish, sell and take delivery of gas;

(b) construct, develop, renew, alter, repair, maintain, operate and use property for any of those purposes;

(c) place, construct, renew, alter, repair, maintain, operate and use its pipes and other equipment and appliances for mixing, transmitting,

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<sup>7</sup> BC Gas Inc. was a holding company of Inland Natural Gas Co. Ltd. which purchased the Lower Mainland natural gas assets. In 1989 Inland Natural Gas Co. Ltd. and a number of its other acquired gas distribution entities in the province of B.C. amalgamated under BC Gas Inc.

<sup>8</sup> R.S.B.C. 1996, c. 170.

1 distributing, delivering, furnishing and taking delivery of gas on, along,  
2 across, over or under any public street, lane, square, park, public place,  
3 bridge, viaduct, subway or watercourse

4 (i) in a municipality, on the conditions that the gas utility and the  
5 municipality agree to,

6 (ii) ...  
7

8 FEI is a party to an operating agreement entered into by the British Columbia Electric Company  
9 Limited and the City of Surrey (previously the Corporation of the District of Surrey) dated June  
10 13, 1957 (the 1957 Agreement). The 1957 Agreement sets out the day-to-day operating terms  
11 and conditions for the use of public spaces in the City. A copy of the 1957 Agreement is  
12 provided in Appendix B. The parties disagree about the status and scope of the 1957  
13 Agreement (FEI's position is that the 1957 Agreement remains valid and enforceable according  
14 to its terms.)<sup>9</sup> As described later, the parties have addressed this dispute by negotiating a new  
15 operating agreement, and referring unresolved matters to the Commission pursuant to the  
16 mechanism provided for in the Act.

## 17 **2.2 FEI'S DAY-TO-DAY OPERATIONS WITHIN THE CITY OF SURREY**

18 FEI's daily activities in the City of Surrey consist of three major activates – new construction,  
19 maintenance, and emergency response – for both High Pressure Pipelines and Gas Mains.

- 20 • New construction consists of customer attachment activities, such as installing new gas  
21 services and mains.
- 22 • Maintenance activities consist of leak surveys, in-line inspection, meter exchange, valve  
23 and station maintenance, and corrective repairs.
- 24 • Emergency response activities include responding to and repairing damages to FEI's  
25 facilities, investigating gas odour calls, and assisting with line locates.  
26

27 Currently, most of FEI's activities that involve interaction with the City relate to new construction.  
28 The City uses its approval and permitting processes for mains and new services to coordinate  
29 the installation of lines for new mains and to monitor and control traffic impacts. Changes to  
30 City bylaws in 2016 have increased the frequency of instances where Surrey is requesting FEI  
31 to apply for permits and pay fees. In circumstances where FEI crews are deployed to install gas  
32 services (as opposed to FEI's contractors), the City is requiring FEI to pay traffic obstruction  
33 fees. In circumstances where FEI has retained contractors to perform work, the City is requiring  
34 FEI's contractors to pay permit fees for FEI's gas installation activities.  
35

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<sup>9</sup> This disagreement is reflected in the recitals of the Interim Agreement that is included in Appendix C and discussed below.

FEI is of the view that it is not required to pay fees or obtain permits under the 1957 Agreement. Nevertheless, practical considerations – such as a desire to maintain a working relationship with the Municipality and a need to conduct work without delay – have necessitated that FEI and its contractors pay the fees and accede to the City’s permit and approval requirements in order to avoid disputes. As described below, a new operating agreement that, among other things, clarifies protocols, limits the grounds for the City to withhold permits and approvals, and eliminates individual permit fees in favour of a reasonable annual Operating Fee, is a practical solution to the current state of affairs.

## **2.3 NEGOTIATION OF A REPLACEMENT OPERATING AGREEMENT**

The relationship between FEI and the City became strained during the period between 1995 and 2012, when the parties were involved in a dispute and litigation over the matter of allocation of pipeline relocation costs. In 2013, in an effort to improve the working relationship between FEI and the City, the parties began an extensive engagement and negotiation process. The parties conducted negotiations on a “without prejudice” basis, meaning that the details cannot be disclosed to the Commission. FEI can, however, describe its own objectives and the current status of negotiations.

### **2.3.1 FEI’s Objectives**

FEI entered into discussions with Surrey with several objectives, including:

1. *Recognize overall value* - Develop an Operating Fee model based on the amount and nature of the work FEI performs within the Municipality and the permitting fees and other administrative costs that the City would levy for similar work undertaken by non-utility third parties. This approach would provide value to the City and to FEI’s customers relative to the current arrangements under the 1957 Agreement.
2. *Reduce administration* – FEI sees a potential benefit in reducing the amount of administration involved in dealing with the City on an ongoing basis, whether based on customer, third party or City requests or FEI’s own work requirements. FEI’s employees would be, for practical reasons (e.g., scheduling, avoidance of disputes with the City), applying for more than 2,100 permits annually based on new fees introduced in early 2017 and submitting fees that the City maintains are required.
3. *Reduce time to serve customers* – Currently, based on the City’s position regarding permitting, FEI would have to apply for a permit on every new construction job. Each permit application involves turnaround time and creates the potential for delays in FEI’s ability to do the necessary work to serve its customers. Under the Proposed Operating Terms, the City is agreeing not to require permits in a number of circumstances. Avoiding the permit process would save time associated with the preparation, submittal and processing of permit applications. With respect to the work for which the City would still require approvals and permits, the Proposed Operating Terms contemplate a maximum turnaround time with limited grounds for withholding approvals or permits. A

1 more timely response from the City offers FEI the ability to improve customer service by  
2 completing work faster than would otherwise be the case.

3 4. *Improve construction scheduling certainty for services* – The potential for delays to occur  
4 in obtaining responses from the City under the current process can result in scheduling  
5 uncertainty for FEI's work. This can result in missing customer commitment dates, and  
6 inefficient crew work scheduling with the potential for unproductive time for the crews  
7 and overall increased cost. By reducing the number of instances when a permit is  
8 required, and with the guaranteed 10 day turnaround time from the City, FEI will be in a  
9 much better position to execute the work as scheduled and avoid the inefficiencies  
10 associated with having to reschedule work with resulting delays .

11 5. *Create contractual certainty for operating issues which reduces the risk of disputes* –  
12 The parties disagree on, among other things, the scope, validity and enforceability of the  
13 1957 Agreement.<sup>10</sup> These differences of opinion have led to disputes in the past.  
14 Negotiating new operating terms provides an opportunity to resolve issues that may give  
15 rise to disagreements, without resorting to litigation.

16 6. *Improve relationships between the Company and the City* – The status quo creates the  
17 potential for friction because of disagreements regarding how the parties interact with  
18 each other. Resolving issues and improving the relationship between the parties has the  
19 potential to encourage efficiencies through cooperation generally. It also improves the  
20 prospects of pursuing future business opportunities.

21  
22 Customer impacts have remained top of mind for FEI. FEI has a right to operate in the  
23 Municipality by virtue of its CPCN, and believes it already has a valid and workable (albeit  
24 imperfect) operating agreement with Surrey that addresses relocation cost allocation and does  
25 not contemplate any payment of permit or approval fees or Operating Fees. FEI's objective was  
26 and is to improve its ability to operate and improve its relationship with Surrey in the manner  
27 described above without imposing an unreasonable burden on FEI customers in the form of  
28 costs and fees. FEI believes FEI's Proposed Operating Terms will yield benefits for FEI and its  
29 customers through additional predictability, timeliness and an improved relationship with Surrey.  
30 Benefits are described further in section 4 of this Application.

### 31 **2.3.2 Status of Negotiations**

32 FEI and the City of Surrey entered into an Interim Agreement, effective November 8, 2016. The  
33 Interim Agreement stated the parties' intention to continue negotiating in good faith. Failing  
34 complete agreement, the parties would apply to the Commission, jointly or separately, for  
35 approval of terms by May 31, 2017. A copy of the Interim Agreement is provided in Appendix C.  
36

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<sup>10</sup> This characterization of the nature of the disagreement is taken from Recital D of the Interim Agreement in Appendix C, discussed below.

1 Negotiations with Surrey concluded in mid-May 2017. The parties have settled most, but not all,  
2 of the terms in the Proposed Operating Terms. Consistent with the Interim Agreement, FEI is  
3 filing this Application. FEI is anticipating a similar filing by the City, setting out the City's view of  
4 the appropriate terms of a replacement operating agreement. Appendix D contains an email  
5 from FEI to the City confirming the status of negotiations as of May 12, 2017.

### 6 **3. SETTLED ISSUES AND AREAS OF DISAGREEMENT**

7 This section summarizes the terms that FEI understands are settled, and the remaining  
8 outstanding items. FEI understands that the parties are generally in agreement, with four  
9 exceptions. FEI submits that the operating terms on which there is agreement will improve the  
10 operating relationship and practices between the parties. On the four outstanding items, FEI  
11 has proposed reasonable provisions that are fair to both the City and FEI's customers from  
12 whom costs and fees are recovered.

#### 13 **3.1 SETTLED ISSUES TO DATE**

14 The settled terms include requirements on the Company to, among other things:

- 15 • Obtain and maintain insurance (section 3.3);
- 16 • In its use of public places, comply with all Federal and Provincial laws, regulations and  
17 codes as well as Municipal bylaws, standards and policies except to the extent that such  
18 Municipal bylaws, standards and policies conflict with the terms of the operating  
19 agreement or conflict with other legislation governing FEI (section 4.1);
- 20 • Provide the Municipality with emergency contact numbers (section 4.2);
- 21 • Obtain approvals and permits or provide the Municipality with notice for certain types of  
22 work in public places (section 5);
- 23 • Carry out restoration of the public places to municipal standards (section 6.3); and
- 24 • Remove abandoned piping that conflicts with future construction and fill abandoned pipe  
25 that is greater than 323mm with structural fill to prevent collapse (section 14).

26  
27 The Proposed Operating Terms require the Municipality to, among other things:

- 28 • Not charge fees or require any approvals or permits for work except as specifically set  
29 out in the Proposed Operating Terms (section 5.1);
- 30 • Grant approval to FEI for New Work (as defined in the Proposed Operating Terms)  
31 within ten (10) days (section 5.2 (c)) and issue permits within ten (10) days (section  
32 5.3(b));
- 33 • Not refuse to grant approval to FEI for New Work except for enumerated conditions  
34 (section 5.2 (d));

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- Provide notice to the Company when the Municipality undertakes construction or maintenance activities that are likely to affect a part of the Company's Facilities (section 8.2); and
- Assist the Company in its effort to reduce residences being built over Company Facilities (section 10.3).

The Proposed Operating Terms require both parties to, among other things:

- Carry out all work and operations with the due care and attention that is necessary to safeguard the interests of the public, their own employees, and the other party's employees (section 2.2 and section 10.1);
- Provide sufficient detail in estimates and invoicing to the other party when Company Facilities or Municipal Facilities are relocated at the request of the party (section 8);
- Cooperate to improve respective mapping systems so they are compatible and easily accessible by both the Company and Municipality (section 10.2); and
- Indemnify each other against all claims by third parties in relation to the each party's construction and maintenance of their respective facilities except to the extent contributed to by the other's negligence or default (section 11).

### **3.2 AREA OF DISAGREEMENT – ISSUE NO. 1: APPORTIONMENT OF RELOCATION COSTS**

One of the main areas of dispute is the extent to which the City should be responsible for the cost of relocating Gas Mains and High Pressure Pipelines, where the relocation is necessitated by the City's actions. As described below, relocations are an important issue in this rapidly developing municipality. FEI has made a reasonable proposal that will bring welcome certainty.

#### **3.2.1 Relocation Costs are an Important Issue in Surrey**

Relocations are an important issue in Surrey. FEI serves approximately 608,000 customers in the Lower Mainland municipalities, of which approximately 113 thousand or 18.6 percent are in the City of Surrey. Close to 20 percent of FEI's high pressure pipelines and gas mains are located in the City. There is a significant amount of construction and redevelopment activity in the Municipality, which has the potential to impact the Company's Facilities and operations in the Municipality. As a result, Surrey has the potential to require more relocations than other Lower Mainland municipalities. For instance:

- High pressure pipelines have recently been relocated due to road widenings or upgrades. Over the past several years high pressure pipelines have been relocated on the Fraser Highway, 152<sup>nd</sup> Street, 168<sup>th</sup> Street and 192<sup>nd</sup> Street to accommodate municipal infrastructure and meet the regulations enforced by the BC Oil & Gas Commission.



- Gas main relocations are frequently required in Surrey because over 1,000 people move into Surrey each month, resulting in a large amount of construction of municipal infrastructure and roads which interfere with existing gas mains.

In such circumstances, it is important for FEI and its customers to have operating terms that provide certainty on relocation protocols and the issue of cost allocation. FEI's proposal, discussed next, will provide greater certainty.

### **3.2.2 FEI's Proposal Regarding Apportionment of Relocation Costs**

In the Proposed Operating Terms, as set out in Appendix A, FEI proposes the following terms with respect to relocation costs:

- Section 1.1 Definitions – provides the definition for Relocation Costs;
- Section 8.2(c) Changes to Company Facilities, sets out the apportionment of Relocation Costs between the Company and the City, which provides for the City paying 100% of the relocation costs when the affected Company Facilities are Gas Mains, and 50% of the relocation costs when the affected Company Facilities are High Pressure Pipelines;
- Section 8.3 Estimation of Costs – addresses the requirements for FEI to provide sufficient detail regarding the scope of work required, which allows the City to determine whether to proceed with the relocation request; and
- Section 8.4 Notification of Costs, Invoicing and Payment, - contemplates FEI providing notice and options if Relocation Costs will exceed the estimate, and provides for invoice details, payment obligations and dispute obligations.

The outstanding issue between the parties with respect to Relocation Costs relates to apportionment (the second bullet above). The following is the specific wording of the terms FEI proposes with respect to apportionment of Relocation Costs:

#### **8.2 Changes to Company Facilities**

- (c) Despite the cost allocation provisions of the Pipeline Crossings Regulation (B.C. Reg. 147/2012), the Municipality shall reimburse FortisBC for the Relocation Costs in the following amounts:
  - (i) 100% of the Relocation Costs when the affected Company Facilities are Gas Mains;
  - (ii) 50% of the Relocation Costs when the affected Company Facilities are High Pressure Pipelines.
- (d) This section 8.2 is an agreement between the Municipality and FortisBC for the purpose of section 3(6) of the Pipeline Crossings Regulation.

As the proposed section 8.2 treats Gas Mains differently from High Pressure Pipelines when it comes to apportionment, FEI deals with each scenario separately below.

### 3.2.3 Cost Apportionment re: High Pressure Pipelines

FEI's proposal to move to a 50/50 cost allocation for high pressure pipeline relocations creates certainty that will reduce the potential for disputes to arise between the parties. It accords with the default allocation in the *Pipeline Crossings Regulations* made pursuant to the *Oil & Gas Activities Act*.

The *Oil and Gas Activities Act* prohibits a party from crossing a high pressure pipeline except when authorized, and allows the Lieutenant Governor in Council to address cost allocation by regulation. The Lieutenant Governor in Council has addressed cost allocation in the *Pipeline Crossing Regulation* by providing a default allocation that can be varied by agreement. The specific sections of the *Pipeline Crossings Regulation* are set out below:

*(3) Subject to an order issued under section 76 (6) of the Act and to subsections (4) to (6) of this section, a specified enabled person is not responsible for any costs incurred by a pipeline permit holder as a result of the carrying out of an enabled action.*

*(4) The costs referred to in subsection (3) must be shared equally between the specified enabled person and the pipeline permit holder if*

*(a) the specified enabled person is a municipality, and*

*(b) the enabled action is the construction of a new highway within the boundaries of that municipality on either an existing right of way or a newly dedicated right of way.*

*(5) The costs incurred by a pipeline permit holder as the result of the carrying out of an enabled action must be shared equally between the enabled person and the pipeline permit holder if the enabled action is the construction of a new road for a subdivision within a municipality.*

*(6) The cost allocation rules set out in subsections (2) to (5) may be varied by agreement between the parties.*

All of FEI's operating agreements – including the 1957 Agreement, agreements with other Lower Mainland municipalities, and the more recently approved agreements with Vancouver Island and Interior municipalities – contain allocation provisions that differ from the allocation proposed for the City.

Under FEI's Proposed Operating Terms, Surrey will be better off than any other Inland or Vancouver Island municipality with an FEI operating agreement. The Interior and Vancouver Island operating agreement terms state that, with respect to apportionment of costs, where the City requires changes to the Company's facilities, the City is responsible for and agrees to pay 100 percent of the costs related to such changes. The Interior operating agreement terms related to relocation costs are covered in Section 8, which states:



1           8.       FACILITY CHANGES REQUIRED

2           8.1      By FortisBC

3           FortisBC may provide Notice to the Municipality that it requires Municipal Facilities to be  
4           altered, changed, temporarily shut-down, temporarily by-passed, or relocated to  
5           accommodate its requirements. The Municipality will comply with FortisBC's requests to  
6           the extent it is reasonably able to do so and with reasonable speed and dispatch after  
7           receipt of written request. FortisBC agrees to pay for all of the costs for changes to the  
8           affected Municipal Facilities.

9           8.2      By the Municipality

10          The Municipality may provide Notice to FortisBC that it requires Company Facilities to be  
11          altered, changed or relocated to accommodate its requirements. FortisBC will comply  
12          with the Municipality's requests to the extent it is reasonably able to do so and with  
13          reasonable speed and dispatch after receipt of written request. The Municipality agrees  
14          to pay for all of the costs for changes to the affected Company Facilities. This section  
15          8.2 is an agreement between the Municipality and FortisBC for the purpose of section  
16          76(1)(c) of the Oil and Gas Activities Act.

17          The Municipality agrees to pay for all of the costs for changes to the affected Company  
18          Facilities. This section 8.2 is an agreement between the Municipality and FortisBC for  
19          the purpose of section 76(1)(c) of the Oil and Gas Activities Act.

20  
21          The City will also be better off than relative to its position under the 1957 Agreement. The 1957  
22          Agreement does not distinguish between high pressure pipe and gas main relocations, and  
23          departs from the default allocation for high pressure pipe relocations in the *Pipeline Crossing*  
24          *Regulation*. The 1957 Agreement in section 5 sets out three scenarios for cost allocation. At a  
25          high level:

- 26           1. If a change is being requested by the Municipality, and the original installation was in  
27           accordance with the approval or instructions of the City, then the Municipality shall bear  
28           and pay to the Company the entire cost of the change with adjustments based on the  
29           age of assets;
- 30           2. However, if the change required by the Municipality is only to alter the elevation to  
31           facilitate storm or sanitary sewer pipes, and the elevation change is within certain  
32           parameters, then the Municipality shall only bear and pay to the Company 50 percent of  
33           the cost of the change less an adjustment for the age of the assets; and
- 34           3. If a change is required because a part of the works was not installed in the manner  
35           specified by the City, the cost of such change shall be borne by the Company.

36  
37          In terms of how the proposed terms compare with other Lower Mainland agreements: FEI's  
38          1957 agreement with Coquitlam has a similar provision to the 1957 Agreement with Surrey.

1 The 1926 Burnaby agreement is silent, and the 1956 City of Vancouver agreement requires  
2 Vancouver to cover 50 percent of labour and trucking costs.

3  
4 FEI was willing to make concessions on the High Pressure Pipeline relocation cost  
5 apportionment as part of an overall negotiated package with Surrey.

### 6 **3.2.4 Cost Apportionment re: Gas Mains**

7 Unlike the case of High Pressure Pipelines, there are no default allocation provisions in  
8 regulation for distribution pipeline relocation costs. FEI's proposal to collect 100 percent of  
9 costs from the City for Gas Main relocations is clear and is consistent with the Interior and  
10 Vancouver Island operating agreements. Those agreements make no distinction between High  
11 Pressure Pipelines or Gas Mains for the purpose of cost allocation.

### 12 **3.2.5 FEI's Proposal on Apportionment of Relocation Costs is Reasonable**

13 FEI's proposed provisions regarding apportionment of relocation costs are fair to Surrey and  
14 FEI's customers who will bear any costs that are not recovered from the City. FEI is proposing  
15 terms for High Pressure Pipelines that are more favourable to Surrey than the current provisions  
16 in the 1957 Agreement, and those in place under the Commission-approved agreements with  
17 other municipalities. FEI and its customers are making a concession on this point in the interest  
18 of obtaining greater certainty and goodwill in its dealings with Surrey overall.

## 19 **3.3 AREA OF DISAGREEMENT – ISSUE NO. 2: OPERATING FEE**

20 The Operating Fee being requested by Surrey is a second disputed issue. An Operating Fee is  
21 a fee collected by the Company from its customers within a municipality and remitted to the  
22 municipality in consideration of covenants made by the municipality contained in an operating  
23 agreement and costs incurred by the municipality as a result of the Company's operations in the  
24 municipality's streets. In the case of Surrey, FEI believes an Operating Fee, if the quantum is  
25 reasonable, may be appropriate as part of an overall agreement. However, an excessive  
26 Operating Fee would be punitive to FEI's customers, and effectively represent a hidden  
27 municipal tax that is unrelated to the impact of FEI's operations on the Municipality. FEI's  
28 proposed Operating Fee is fair to the City and fair to FEI's customers from whom costs and fees  
29 are recovered.

### 30 **3.3.1 1957 Agreement and Other Lower Mainland Agreements Do Not Provide for an** 31 **Operating Fee**

32 The 1957 Agreement does not provide for Operating Fees. In this respect, Surrey is similarly  
33 situated with all of the other Lower Mainland municipalities that entered into operating  
34 agreements with FEI's predecessor gas utility in the Lower Mainland between 1926 and 1961.  
35 None of these Lower Mainland operating agreements contemplates an Operating Fee.  
36

While it is an option for the Commission to maintain the approach under the 1957 Agreement, the City currently takes the position that it is entitled to charge permit fees to FEI and its contractors. FEI and its contractors are, in many instances, having to pay the fees in order to avoid disputes and complete the work efficiently and in a timely manner. FEI also accepts there are benefits associated with a good working relationship with municipalities and believes introducing a fee of some form will improve the working relationship with Surrey and thus facilitate FEI's day-to-day operations. Operating Fees may make sense for Surrey, provided the fees are proportional to the nature of the work being done, and not unduly onerous to FEI customers who ultimately bear the cost of the fees.

### **3.3.2 FEI's Proposal Regarding Operating Fee**

FEI's proposal is to base the Operating Fee on 0.7% of Delivery Margin. FEI's proposed terms regarding the Operating Fee are as follows:

#### **12. OPERATING FEE**

##### **12.1 Fee Calculation**

Provided that FortisBC is permitted to collect the Operating Fee from customers within the Boundary Limits and effective commencing from the date established by the BCUC, FortisBC agrees to pay to the Municipality on an annual basis, a fee (the "Operating Fee") of 0.70 % of the delivery revenue (excluding taxes) received by FortisBC from its customers for the distribution of gas consumed within the Boundary Limits (the "Delivery Revenue"), but excluding compressed natural gas distributed from fueling stations and the delivery of liquefied natural gas. Delivery Revenue further does not include (i) any gas commodity revenue, or (ii) any delivery revenue from customers from whom the BCUC has not allowed FortisBC to collect the Operating Fee.

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

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

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

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

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

If a decision by the BCUC, other than periodic rate changes as a result of delivery or margin increases or decreases, or new legislation by the Provincial Government, impacts the Operating Fee being paid to the Municipality by more

1 than +/- 5% annually, the parties shall negotiate a new Operating Fee formula  
2 which best reflects the amount paid to the Municipality under this Agreement.

### 3 **3.3.3 Rationale for FEI's Proposal Regarding Operating Fee**

#### 4 **3.3.3.1 Principled Basis for the Operating Fee**

5 The quantum of FEI's Operating Fee has been calculated based on the following components:

- 6 • *Estimated permit and pavement cut fees* – Under the premise that this amount should be  
7 reflective of the activity level within the City in recognition of the impact of our activities  
8 on Surrey, FEI has estimated this based on fees in effect in Surrey as at January 2017  
9 using 2016 FEI construction activities as a multiplier (despite FEI's view such fees are  
10 not applicable to FEI and the fact that the City has never charged these fees to FEI;  
11 these fees would be chargeable to a non-utility), calculated as follows:
  - 12 ○ Road Use Permit Calculation: New Services (1,151) + New Mains (91) +  
13 Abandonments (461) X \$60 per Permit = \$102,180
  - 14 ○ Traffic Obstruction Permit Calculation: 305 road repairs X \$170 per Permit =  
15 \$51,850
  - 16 ○ Pavement Cut Fees and Degradation Permit Calculation: 305 bell holes X \$345 =  
17 \$164,700
  - 18 ○ Pavement Cut Fees and Degradation Permit Calculations: 500 metres of  
19 pavement cut X \$80 per square metres of pavement cuts = \$40,000
  - 20 ○ TOTAL: \$350,000
- 21
- 22 • *Operating efficiencies* - An amount reflecting operating efficiencies brought about by the  
23 new operating terms, based on reduced staff time and resources to process permits and  
24 expedite service to customers as compared to a situation where FEI is held to the  
25 processes proposed by Surrey. This has been estimated by FEI as equal to  
26 approximately 1.5 FTEs that would otherwise have to be hired; and
- 27
- 28 • *Avoidance of disputes and litigation* - The certainty of having agreed upon terms and  
29 conditions may have the following benefits:
  - 30 1. Differences will be resolved through a cost and time effective dispute resolution  
31 process that does not result in litigation unless other mechanisms have first been  
32 exhausted, such as mediation and arbitration;
  - 33 2. Clear allocation of costs for the relocation of high pressure gas lines will provide  
34 certainty of what pressures of gas lines are covered in the operating agreement;;  
35 while prior this there was disagreement between the parties that resulted in legal  
36 fees and litigation, and

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3. Clearly defined terms and conditions will reduce the risk of disputes around permitting and approval requirements, construction of Company Facilities and the determination of Relocation Costs.

While it is not possible to predict legal costs, reflecting some amount of avoided legal costs in the Operating Fee as part of an overall agreement to maintain a strong working relationship with the City can be justified as being in the overall interest of FEI customers. FEI included \$100,000 as a notional amount to recognize this benefit.

FEI proposal for the Operating Fee has been calculated as the total of these three amounts, divided by FEI's Delivery Margin revenue attributable to the Municipality for 2016. The calculation yields the percentage that will be applied in future years to calculate the quantum of the Operating Fee.

The following amounts are estimated for 2016 for each of the three above described components.

Component	2016 Estimate
Permit and Cut Fees	\$350,000
Operating Efficiencies	\$150,000
Avoidance of Potential Litigation	\$100,000
<b>Total:</b>	<b>\$600,000</b>

The Delivery Margin revenue for the most recent calendar year of 2016 for Surrey was \$82.5 million<sup>11</sup>. Based on the calculation set out above, the Operating Fee for Surrey is estimated at 0.7 percent of Delivery Margin. FEI believes that this calculation results in a fair, just, and reasonable Operating Fee which is calculated on a principled basis derived from information specific to Surrey.

FEI believes the foregoing principled approach provides a reasonable basis for an Operating Fee that is fair to both the City and FEI's customers who ultimately pay the cost.

**3.3.3.2 *Surrey's Operating Fees Should Not Be Based On Agreements with Inland and Vancouver Island Municipalities that Have Different Historical Context***

All of FEI's operating agreements that provide for Operating Fees are with municipalities located in the former service territories of Centra Gas (Vancouver Island) and Inland Natural Gas (Interior). The Operating Fee for those municipalities, which are currently set at 3 percent of gross revenues, reflect the circumstances in which those fees were determined. The current

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<sup>11</sup> Normalized 2016 Delivery revenue for Residentail and Commercial Rate Schedules and actual Delivery revenues for all other Rate Schedules, all before Delivery rate riders.

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1 circumstances with Surrey differ in important respects from those of other municipalities, and  
2 the Commission should implement an Operating Fee with Surrey that is established on a more  
3 principled and relevant basis.

4  
5 The Operating Fee rate for Vancouver Island and Inland municipalities with operating  
6 agreements is 3 percent of gross revenues (delivery charges + commodity charges + Operating  
7 Fee, excluding taxes) received by the Company for the provision and distribution of gas  
8 consumed within the municipality. The adoption of this amount was the product of the historical  
9 context in those two operating areas.

10  
11 Inland Natural Gas (one of FEI's predecessors) began collecting an Operating Fee on behalf of  
12 municipalities in the Interior region in 1957, when natural gas was first introduced. The  
13 Operating Fee rate since inception in the Interior region has been set at 3 percent of gross  
14 revenues received by the Company for the provision and distribution of gas consumed within  
15 the municipality. FEI is not aware of any information setting out the basis or methodology used  
16 to determine the 3 percent amount, or any supporting information identifying how this amount  
17 was determined or derived.

18  
19 The operating agreements on Vancouver Island post-dated the Inland agreements. The Pro-  
20 Forma Interim Municipal Gas Operating Agreement (the Interim Vancouver Island Agreement)  
21 between 19 municipalities and the Company's predecessors<sup>12</sup> had contemplated that the utility  
22 would collect an Operating Fee on behalf of municipalities equal to 3 percent of gross revenues,  
23 provided that the fee was authorized by the Legislature. The authorization had been anticipated  
24 to occur following repayment of the grants made by the Province related to the Vancouver  
25 Island Natural Gas Pipeline Project. The Commission by Order G-13-91, dated February 8,  
26 1991, had approved the Interim Vancouver Island Agreement with the 19 Vancouver Island  
27 Municipalities for a term of 21 years on this basis. However, Section 7(5) of the *Vancouver*  
28 *Island Natural Gas Pipeline Act* (VINGPA) had then legislatively precluded municipalities from  
29 levying an Operating Fee.

30  
31 On November 25, 2014, Bill 4-2014 was enacted, amending the VINGPA by repealing Section  
32 7(5). In 2015, the Commission approved 26 executed operating agreements with Vancouver  
33 Island municipalities, which included the provision for collection and remittance of Operating  
34 Fees based on 3 percent of gross revenues.

35 **3.3.3.3 Proposed Basis for Calculating Any Operating Fee Will Bring Stability and**  
36 **Predictability**

37 An Operating Fee based on Delivery Margin revenue will result in more stability and  
38 predictability for customers and a municipality. It will not be influenced by variable factors such  
39 as cost of gas, commodity market supply issues, and commodity market pricing.

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<sup>12</sup> Victoria Gas Company (1988) Ltd. then subsequently Centra Gas Victoria Inc., and the Vancouver Island Gas Company Ltd. then subsequently Centra Gas Vancouver Island Inc.



1  
2 In Order C-7-03 dated September 2, 2003, in the matter of an Application by FEI (then Terasen  
3 Gas) for *Approval of Operating Agreement and Addendum with the Corporation of the District of*  
4 *Salmon Arm*, with respect to the Operating Fee calculation, the Commission directed as follows:

5  
6 ...the Commission considers that the inclusion of the gas commodity cost in the  
7 calculation of fees for Sales Service customers has led to considerable volatility  
8 in recent years. The Commission directs Terasen to seek a method in future  
9 agreements to convert the fee to a charge on Utility Margin, so as to stabilize the  
10 costs to utility customers.<sup>13</sup>

11  
12 Neither of the two opportunities that have arisen since that order have been conducive to  
13 adopting a different methodology. The two opportunities are described below.

14  
15 Renegotiation of Interior Operating Fees

16 The first opportunity to review the Operating Fee was in 2006. After protracted negotiations with  
17 10 Interior municipalities whose existing operating agreements were expiring, the Company  
18 brought forward an application to approve 10 Interior operating agreements (the 2006  
19 Application). The expiring operating agreements all contained the provision for the collection of  
20 the 3 percent Operating Fee, so these municipalities were already receiving the Operating Fee  
21 being collected by the Company on their behalf. In order to address the Commission's directive  
22 in Order C-7-03, during negotiations the Company proposed five alternative cost stabilization  
23 formulas for a new Operating Fee based on a Delivery Margin approach, all of which were  
24 reviewed and rejected by the Union of British Columbia Municipalities (UBCM) representing the  
25 10 municipalities<sup>14</sup>. As a result, in order to obtain unanimous agreement on all operating terms,  
26 the parties agreed to maintain the 3 percent Operating Fee at status quo. The 2006 Application  
27 requested approval of 10 executed operating agreements with the municipalities containing the  
28 3 percent Operating Fee, which the parties submitted were a package deal resulting from  
29 considerable negotiation and compromise. On August 10, 2006, the Commission accepted the  
30 executed operating agreements and issued CPCNs for each of the 10 municipalities by Orders  
31 C-7-06 through C-16-06.

32  
33 Implementation of Operating Fees on Vancouver Island

34 In 2015, after an extended period of several years of negotiations with Vancouver Island  
35 municipalities, including participation by the Association of Vancouver Island and Coastal  
36 Communities (AVICC), the Company brought forward an application for approval of executed  
37 operating agreements with 26 Vancouver Island municipalities. The Vancouver Island  
38 municipalities were anticipating implementation of an Operating Fee of 3 percent, as set out in  
39 existing and prior operating agreements. During the course of negotiations, the municipalities

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<sup>13</sup> Order C-7-03, Appendix A, page 5.

<sup>14</sup> Response to Commission Information Request (IR) No. 1.1.1, dated January 12, 2006.

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1 were simultaneously working with the Province to amend the VINGPA to enable Operating Fees  
2 to be collected, and in November of 2014, the VINGPA was amended, repealing the section  
3 preventing the collection of Operating Fees on Vancouver Island. At the time negotiations  
4 commenced, nine existing operating agreements were set to expire and 17 municipalities either  
5 had operating agreements that had already expired or did not have prior operating agreements.  
6 In addition to reaching mutually agreeable operating terms, another primary objective of these  
7 negotiations was to improve business and operating relationships between the Company and  
8 some of the municipalities.

9  
10 Prior to agreeing to a 3 percent Operating Fee, the Company considered four key factors that  
11 made the circumstances of the negotiations with the Vancouver Island municipalities unique.

- 12 1. 26 Vancouver Island municipalities were in need of new operating agreements (9 were  
13 expiring and 17 had expired or did not have prior agreements;
- 14 2. Existing and expired operating agreement terms already included a provision for the  
15 collection of an Operating Fee at 3 percent of gross revenue;
- 16 3. AVICC and the Municipalities were working with government to achieve an amendment  
17 to the VINGPA to enable them to collect Operating Fees and were firm in their intent to  
18 levy an Operating Fee of 3 percent on gross revenue; and
- 19 4. Implementation of an Operating Fee was being contemplated in the context of the  
20 amalgamation of the gas utilities and the three-year phase in to common rates. In that  
21 circumstance, implementing a 3 percent Operating Fee for Vancouver Island customers  
22 in order to reach agreement on all other operating terms would not negatively impact  
23 customers' bills. The 3 percent Operating Fee would be more than fully offset by the  
24 rate reduction for Vancouver Island customers due to amalgamation (approximately a 25  
25 percent rate reduction once fully phased in).

26  
27 Given those unique circumstances and in order to achieve unanimous agreement on all  
28 operating terms with all the parties, the Company agreed to the Operating Fee at 3 percent of  
29 gross revenues for the 26 Vancouver Island municipalities. The Commission accepted the  
30 executed operating agreements for the 26 Vancouver Island municipalities by Orders C-6-15  
31 dated June 11, 2015, C-7-15 dated June 18, 2015, and C-8-15 dated June 25, 2015.

32  
33 In the present circumstances with Surrey, it is appropriate to re-examine the approach of using  
34 Delivery Margin to set the Operating Fee.

35  
36 The methodology FEI is proposing is principled, as it is based on costs and activities that are  
37 relevant in the context of Surrey. The implementation of an Operating Fee in Surrey based on 3  
38 percent of gross revenues would result in a 3.09 percent bill increase for all of FEI's customers  
39 within the Municipality. Calculating the Operating Fee based on 3.09% of total revenues for  
40 2016 results in a fee of \$3.8 million paid to the City, which is in excess of any reasonable  
41 amount that should be paid for the services provided. In addition, the variable factors in the



1 formula for gross revenues (commodity costs) have no association or connection with the costs  
2 incurred by the Municipality for the Company's facilities and operations to serve customers in  
3 the Municipality.

4  
5 The 3 percent of gross revenues calculation also results in double-counting, or circularity, with  
6 the Operating Fee being calculated on the Operating Fee. The Operating Fee is part of the  
7 calculation of gross revenue on a customer's bill (gross revenue = delivery charges +  
8 commodity charges + Operating Fee). The current 3 percent Operating Fee, based on how it is  
9 calculated, results in a charge of 3.09 percent on customers' bills.

10  
11 As a result, FEI believes that now is the appropriate time to consider a more principled  
12 approach to the basis for an Operating Fee and the methodology for its calculation. .

13  
14 In this way, FEI can address the Commission's directive in 2003 to seek a method in future  
15 agreements to convert the fee to a charge on Delivery Margin, in order to stabilize costs to utility  
16 customers by excluding commodity costs from the fee.

### 17 **3.4 AREA OF DISAGREEMENT – ISSUE NO. 3: RESPONSIBILITY FOR UPGRADE /** 18 **BETTERMENT COSTS**

19 Another outstanding issue is the treatment of costs for any improvements or upgrades made to  
20 a party's facilities during the course of relocation work requested by the other party. FEI's  
21 position is that relocation costs paid by the party requesting relocation should exclude the value  
22 or incremental costs of any upgrading and/or betterment of the party's facilities or the facilities of  
23 third parties "*beyond that which is required to comply with applicable Laws or sound engineering*  
24 *practices*". FEI submits that the inclusion of the quoted caveat is fair, reasonable and reflects  
25 cost causation.

26  
27 While the intention is to provide "like for like" replacement of materials, that objective is not  
28 always practical, prudent or possible. Over the course of a long-term contract, such things as  
29 technological advancements, changes in laws, enhanced risk mitigation measures, improved  
30 business practices, etc. may make materials, processes, practices and other components of  
31 work obsolete, inappropriate, non-conforming or unavailable. While the replacement material,  
32 process or other component may be better than its predecessor, the cost of that replacement  
33 should be borne by the party requesting the relocation when there is no viable or practical  
34 alternative to the party undertaking the relocation work.

35  
36 When a replacement component (whether the same/similar or a measurable improvement to the  
37 original component) has a neutral cost impact, the use of that new component would be unlikely  
38 to result in a cost dispute. FEI's position is that, regardless of the cost impact of the  
39 replacement component, and despite that component being an improvement from its  
40 predecessor, it is appropriate and reasonable for the actual cost of that component to be  
41 included in Relocation Costs and recoverable from the party requesting the relocation (based on

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1 the cost allocation provisions of sections 8.1(e) or 8.2(c), as the case may be), particularly if that  
2 cost would not have been incurred or arise but for the relocation request.

3  
4 FEI's proposed wording with respect to Relocation Costs is as follows:

5 (s) "Relocation Costs" means the costs of a party to:

- 6 (i) realign, raise, lower, by-pass, relocate or protect the party's facilities to  
7 accommodate the work of the other party;
- 8 (ii) excavate material from around the facilities as needed to complete the  
9 work in (i);
- 10 (iii) backfill the material referred to in (ii) and restore the surface; and
- 11 (iv) flush water mains, shut down customer gas supply and customer relights  
12 as needed,

13 and includes administration and overhead charges at rates consistent with the  
14 party's policy, or standard rates, for such charges, which rates must be  
15 reasonable, on the costs of labour, equipment and materials in items (i), (ii), (iii)  
16 and (iv), above, and applicable taxes, but excludes the value or incremental  
17 costs of any upgrading and/or betterment of the party's facilities or the facilities of  
18 third parties beyond that which is required to comply with applicable Laws or  
19 sound engineering practices;

20  
21 FEI's proposed wording recognizes the possibility of necessary improvements without extending  
22 the recoverability of costs beyond those costs associated with improvements required by law or  
23 sound engineering practices. FEI submits that this wording provides the appropriate recognition  
24 of actual, unavoidable costs and ensures the burden of the costs is appropriately allocated to  
25 the party that caused the costs.

26  
27 The definition above must also be considered in the context of other Proposed Operating  
28 Terms, which provide several mechanisms for the parties to manage the relocation process and  
29 determine and identify costs and expenses, including:

- 30 • The obligation to provide an estimate of Relocation Costs prior to commencing  
31 relocation work (sections 8.1(b) and 8.2(b)(i)), which estimate must contain sufficient  
32 detail to enable the other party to assess the reasonableness of the estimate (section  
33 8.3);
- 34 • Notification if the cost of the work is expected to exceed the estimate (section 8.4(a));  
35 and
- 36 • Referral to dispute resolution if the parties are unable to come to an agreement  
37 regarding costs (section 8.4(e)).

### 3.5 AREA OF DISAGREEMENT – ISSUE NO. 4: RELEASE OF STATUTORY RIGHTS OF WAY

Another area of dispute is with respect to the release of FEI's statutory rights of way for road dedications. In addition to FEI's authority and power, in accordance with and subject to the GUA, the Act, and other applicable Laws, to operate Company Facilities on, along, across, over or under municipal highways, FEI also holds statutory rights of way (i.e., a property right) to operate Company Facilities on titled lands. FEI understands that the City is seeking a blanket release of FEI's statutory rights of way for the purpose of road dedications. FEI is prepared to consider requests on a case by case basis, but is not prepared to provide a blanket waiver of its rights. In instances where FEI agrees to release its statutory right of way interest without requiring the Municipality to exercise its rights of expropriation, it will effect that process in a timely manner and without expectation of compensation from the City.

Circumstances surrounding road construction or widening can vary. It is important for FEI to consider the potential impacts of the road on the safety and security of the Company Facilities. The location and size of the affected right of way area can differ. None of these facts can be predicted in advance.

The Municipality already has rights of expropriation pursuant to the *Expropriation Act* [RSBC 1996] Chapter 125. FEI acknowledges that the expropriation process is more involved for the Municipality, but the expropriation framework also provides procedural safeguards for FEI and a right to compensation. FEI believes that convenience and cost savings to the Municipality associated with avoiding the expropriation process in all instances do not themselves warrant or justify FEI relinquishing its interests without understanding the specific circumstances of each case. Agreeing to the City's proposal is not in the interest of FEI or its customers.

Neither the Vancouver Island or Inland operating agreements contain such a provision, and only deal with the use of public spaces. The 1957 Operating Agreement only deals with the use of public spaces.

In any event, FEI does not believe that the Commission has jurisdiction under section 32 of the Act to order FEI to waive its statutory rights of way and give up its statutory protections under the *Expropriation Act*. Statutory rights of way are FEI's private interests in land, and not public places of the nature addressed in section 32.

FEI's proposed wording is as follows:

#### 9. HIGHWAY DEDICATION FOR CROSSINGS

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

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

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

## 16 **4. BENEFITS OF THE PROPOSED OPERATING TERMS**

17 The Proposed Operating Terms provide benefits to FEI customers within the City of Surrey and  
18 the City itself.

### 19 **4.1 *BENEFITS TO FEI'S CUSTOMERS WITHIN THE CITY OF SURREY***

20 Benefits for customers in Surrey under the Proposed Operating Terms include:

- 21 • Reduced time for new customers to receive gas service. Surrey must issue approvals  
22 and permits within 10 days for new Gas Mains and High Pressure Pipelines. Under the  
23 1957 Agreement, the Municipality is not held to a specific number of days, and often  
24 takes longer than 10 days;
- 25 • Improved reliability to meet service scheduling for new customers because the  
26 Municipality has limited ability to refuse granting approval; and
- 27 • Streamlined and more efficient operating practices between the Company and the  
28 Municipality, which will result in the Company being able to serve customers in the City  
29 in a more responsive and cost-effective manner, and will ensure that customer rates for  
30 gas service remain as economic as possible. Examples of more efficient practices  
31 include:
  - 32 ○ The number of Municipal permit applications required by Surrey under recently  
33 introduced requirements will be reduced, thus:
    - 34 ■ increasing Company planning efficiencies, and
    - 35 ■ Improving scheduling certainty for new customers;

- The Company will be able to make minor changes to a job scope while working in the field, rather than having to abandon the site and reapply to the Municipality for a revised permit. This will reduce inconvenience to the travelling public by restoring ground surface more quickly, reduce delays in completing installation requests, and reduce costs by increasing field crew efficiencies;
- The Company and Municipality will cooperate to improve respective mapping systems so they are compatible and easily accessible by both the Company and Municipality;
- Clearly defined operating practices between the Municipality and the Company will reduce conflict around permit requirements; and.
- The Proposed Operating Terms provide clarification, and thereby certainty of operating conditions. Certainty reduces the risk of needing to resolve conflicts through litigation, which could be long and costly.

## **4.2 BENEFITS TO THE MUNICIPALITY**

Benefits for the Municipality of the Proposed Operating Terms include:

- Improved planning and coordination of municipal public work and gas installations to be undertaken at the same time will likely result in fewer public complaints;
- Public complaints about length of time a gas excavation is open will likely be reduced because the Company can make scope changes in the field, if needed, rather than seeking municipal approvals;
- Clearly defined operating practices between the Municipality and the Company will reduce conflict around permit requirements;
- The Municipality can improve operating efficiencies by working toward compatible mapping systems with the Company;
- The number of Municipal permit applications will be reduced and streamlined, which will reduce administration for the Municipality;
- The Municipality will receive more detailed information regarding estimates and invoices received from FEI;
- Joint planning, construction and safety meetings between the Company and the Municipality will ensure optimal coordination of work to minimize traffic disruption, align and harmonize work activities where possible, and also demonstrate cooperation, resulting in a more positive relationship between the Company and Municipality;
- The Municipality may require the Company to remove abandoned piping that conflicts with future construction and fill abandoned pipe that is greater than 323mm with structural fill to prevent collapse;

- Reduced legal costs associated with expropriation of FEI's statutory rights of way with respect to highway dedication; and
- Mitigated future relocation cost of FEI Company Facilities by requiring FEI to install Company Facilities at a greater depth when future road widening is planned.

## **5. CONCLUSION AND ORDERS SOUGHT**

Section 32 of the Act, and alternatively section 33, provides the Commission with the jurisdiction to implement the Proposed Operating Terms as provided in Appendix A. A Commission-approved agreement based on FEI's Proposed Operating Terms will facilitate day-to-day operations, provide the parties with greater cost and operational certainty, and establish a better dispute resolution process. The proposed approach to Pipeline Relocation Cost allocation is a reasonable compromise, and places the City in a better position than it is today as well as in a superior position relative to most municipalities. The contemplated Operating Fees payable to the Municipality are fair to the City and the FEI customers from whom the fees are recovered. FEI has taken a reasonable position regarding the other outstanding issues.

In terms of the Order sought:

- The Proposed Operating Terms should be approved as contemplated in the Draft form of Order sought provided in Appendix E.
- If the Commission determines that an Operating Fee should be implemented, and accepts FEI's proposed new basis and methodology for calculating such Operating Fee, FEI will require an implementation period prior to the collection of Operating Fees from customers. FEI requests the Commission allow a four to six month period following a Commission decision in order to allow for planning and communication to customers by Surrey and FEI, to allow for FEI to implement and test the required changes to the customer information system, and for FEI to coordinate scheduling of changes in consideration of the timing of rate changes resulting from Commission decisions in other regulatory processes.

FEI submits that the Commission's determinations should explicitly recognize that the settled terms, and even FEI's proposals, are the product of negotiation and compromise between the parties that reflect the different objectives of the parties in attempting to reach an agreement. The Proposed Operating Terms should thus be treated as a package, with only the disputed items to be determined. Moreover, some or all of the operating terms are not necessarily terms that FEI would agree to with any other municipality.

**Appendix A**

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**FEI'S PROPOSED CITY OF SURREY  
OPERATING AGREEMENT TERMS**

## OPERATING AGREEMENT

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

BETWEEN:

**CITY OF SURREY**, a municipal corporation incorporated under the laws of the Province of British Columbia

(the “**Municipality**”)

AND:

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

(“**FortisBC**”)

### RECITALS:

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



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

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

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

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

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

and includes administration and overhead charges at rates consistent with the party’s policy, or standard rates, for such charges, which rates must be reasonable, on the costs of labour, equipment and materials in items (i), (ii), (iii) and (iv), above, and applicable taxes, but excludes the value or incremental costs of any upgrading and/or betterment of the party’s facilities or the facilities of third parties beyond that which is required to comply with applicable Laws or sound engineering practices;

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

## 1.2 Interpretation

For the purposes of interpreting this Agreement:

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

that could reasonably fall within the broadest possible scope of the general term or statement.

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

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

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

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

**3.1 Occupancy and Use of Public Places**

- (a) This Agreement governs the rights and obligations of the parties with respect to Company Facilities located or proposed to be located on, along, across, over or under Public Places and the conduct of Work by FortisBC in Public Places.
- (b) This Agreement does not apply to or specify rights or obligations of the parties with respect to:
  - (i) privately owned lands, titled lands of the Municipality not identified in Schedule A or which are not Highways, and Unopened Road Allowances;
  - (ii) lands of the Municipality over which FortisBC holds a statutory right of way granted by the Municipality, except to the extent provided in section 9 (*Highway Dedication for Crossings*); and
  - (iii) the occupancy and use of Public Places by FortisBC with respect to equipment and appliances used or intended to be used to convey, test, monitor, distribute, mix, store, compress, measure and deliver (i) liquefied natural gas, and (ii) natural gas at, or in excess of, 20 MPa for vehicle use.
- (c) The Municipality hereby acknowledges FortisBC's authority and power, in accordance with and subject to the *Gas Utility Act*, *Utilities Commission Act*, and other applicable Laws, to:
  - (i) operate Company Facilities on, along, across, over or under Public Places;
  - (ii) conduct Work on, along, across, over or under Public Places;
  - (iii) enter on Public Places from time to time as may be reasonably necessary for the purpose of conducting Work and operating the Company Facilities; and
  - (iv) place Pipeline Markers where required;subject to terms and conditions set out in this Agreement.
- (d) FortisBC's occupancy and use of Public Places pursuant to this Agreement shall not unduly interfere with the public use and enjoyment of such Public Places.
- (e) Except to the extent specifically provided in this Agreement, nothing herein contained creates or grants any ownership or property rights in or to the Public Places to FortisBC or in or to the Company Facilities to the Municipality.

### **3.2 Taxes and Utilities**

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

### **3.3 Insurance**

- (a) FortisBC shall obtain and maintain throughout the term of this Agreement, the following insurance, from insurers registered in and licensed to underwrite insurance in British Columbia, and provide proof of coverage to the Municipality upon request from time to time:
  - (i) Workers' Compensation Insurance in accordance with the statutory requirements in British Columbia;
  - (ii) For motor vehicles owned and operated by FortisBC and used in the performance of Work in Public Places, motor vehicle insurance coverage providing third party liability and accident benefits insurance with minimum inclusive limits for bodily injury and property damage (third party) of not less than \$2,000,000.00; and
  - (iii) Comprehensive General Liability Insurance against claims for bodily injury, death and property damage in the amount of not less than \$5,000,000 per occurrence.
- (b) All such policies shall, to the extent attainable, provide that the insurance shall not be cancelled without the insurer giving at least thirty (30) calendar days' written notice to the Municipality.

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

### **4.1 Laws and Standards**

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

### **4.2 Provide emergency contacts**

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

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

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

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

#### **5.1 General Rule**

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

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

#### **5.2 Approval for New Work**

- (a) FortisBC shall be required to apply for and obtain approval from the Municipality for New Work, and not for Emergency Work, Maintenance Work, including vertical relocations, or Service Line Work.
- (b) FortisBC shall submit an application to the Municipality's Engineering Department for approval when FortisBC intends to undertake New Work. The application shall include:
  - (i) a plan and specifications showing:
    - 1. the size and dimensions of the Company Facilities and the proposed location of the Company Facilities, or, in the event of removal, the location of the Company Facilities to be removed, relative to property lines and/or edge of pavement;
    - 2. the proposed location and offsets of the Company Facilities where the Company Facilities cross existing Utilities of the Municipality, provided such locations and offsets are made available to FortisBC by the Municipality;

3. the proposed elevations and clearances of Utilities for Gas Mains having a nominal diameter greater than 219 mm (8 inches), and for all High Pressure Pipelines, provided such locations are made available to FortisBC by the Municipality or owner of such Utilities;
  4. the location of any trees greater than 0.3 meters in diameter at approximately 1.4 meters above the ground level, wetlands, water bodies or other areas of special environmental sensitivity, or areas designated by the Province of British Columbia or by the Municipality as heritage sites, which will likely be impacted by the New Work; and
  5. boundaries and civic addresses of any private lands abutting the New Work;
- (ii) FortisBC's plans for the restoration of the Public Places affected by the New Work, including the material that will be used to backfill the trench, if different from those set out in the applicable of section 6.3 (*Restoration and Maintenance*) and section 6.4 (*Depth of Cover*);
  - (iii) the name of a FortisBC representative who may be contacted for more information;
  - (iv) projected commencement and completion dates; and
  - (v) such other information relevant to the New Work as the Municipality may reasonably request from time to time.
- (c) Subject to subsection (d) below, the Municipality shall use commercially reasonable efforts to grant approval to FortisBC for the New Work within ten (10) days of receipt of FortisBC's application, except that in the case of large and complex New Work, the Municipality may, by notice to FortisBC extend the time for response by a maximum of ten (10) days.
- (d) The Municipality will not refuse to grant approval, except on the following grounds:
- (i) the proposed location or design of the Company Facilities or the New Work:
    1. conflicts with existing Utilities, Municipal Facilities, existing third party facilities or Planned Facilities; or
    2. unduly interferes with the public's existing use and enjoyment of those properties identified in Schedule A, where the proposed New Work is within the specific portions of the properties identified in Schedule A; or
    3. conflicts with trees greater than 0.3 meters in diameter at approximately 1.4 meters above the ground level, wetlands, water bodies or other areas of special environmental sensitivity, or areas designated by the Province of British Columbia or by the Municipality as heritage sites; or
    4. is likely to compromise public safety; or
    5. does not conform with applicable Laws provided such Laws exclude any by-laws, orders, standards and policies of the Municipality, including Municipal Specifications, that conflict with terms of this Agreement; or

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

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

- (e) The Municipality may:
  - (i) require FortisBC to provide the public with reasonable notice of the New Work; and
  - (ii) include conditions in its approval that,
    - 1. address the matters set out in subsection (d) above; and
    - 2. require a greater depth of cover and alternate backfill material to accommodate Planned Facilities, when FortisBC has applied for approval to install or relocate a Gas Main or High Pressure Pipeline in the location of Planned Facilities,

provided that any such conditions shall be of no force and effect to the extent such conditions are inconsistent with the terms of this Agreement.

### **5.3 Permits for Work**

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

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

  - (i) a City Road and Right-of-Way Use Permit under City of Surrey By-law No. 13007;
  - (ii) a Traffic Obstruction Permit under City of Surrey By-law No. 13007;
  - (iii) an Erosion and Sediment Control Permit under City of Surrey By-law No. 16138; and
  - (iv) a Building Permit under City of Surrey By-law No. 17850.
- (b) The Municipality shall use commercially reasonable efforts to issue the applicable permit(s) to FortisBC within ten (10) days of receipt of FortisBC's application and shall not refuse to grant the applicable permit(s) provided FortisBC has provided the Municipality with the information required by the respective City of Surrey By-law.
- (c) Where FortisBC performs Work for which a Traffic Obstruction Permit is not required or has been waived by the Municipality, FortisBC will, to the extent practicable, comply



with the Ministry of Transportation's Traffic Control Manual for Work on Roadways, as amended, while undertaking the Work.

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

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

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

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

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

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

If the Municipality:

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

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

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

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

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

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

- (a) FortisBC shall perform its Work, and maintain Company Facilities located on, along, across, over or under Public Places, in a manner that does not unreasonably interfere with or damage other pre-existing support structures, Utilities, Municipal Facilities, equipment, facilities or improvements located within or abutting Public Places.

- (b) FortisBC shall not leave any part of the Company Facilities located on, along, across, over or under Public Places in such a state as to constitute a nuisance or a danger to the public through neglect, non-use and want of repair.
- (c) FortisBC shall keep its Work sites clean and tidy. FortisBC shall remove all rubbish and surplus material from Public Places upon completion of the Work.

## **6.2 Pavement Cuts**

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

## **6.3 Restoration and Maintenance**

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

## **6.4 Depth of Cover**

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

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

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

## **6.6 Conformity Requirement**

- (a) FortisBC shall carry out Work in conformity with the applicable permit or approval.
- (b) FortisBC may make in-field design changes when carrying out New Work to accommodate field conditions which could not have been reasonably foreseen by FortisBC. If such in-field conditions materially impact FortisBC's plans for restoration or

materially change the impact of the New Work on Municipal Facilities and/or Utilities relative to the information FortisBC submitted to the Municipality pursuant to sections 5.2(b) (*Approval for New Work*) or 5.3(a) (*Permits for Work*), as applicable, other than in respect of projected commencement and completion dates, FortisBC shall notify the Municipality of the proposed changes to the New Work and the reasons for them, and obtain written consent of the Municipality to the proposed changes prior to continuing the New Work. The Municipality shall not refuse to grant consent or condition its consent, except on the grounds set out in section 5.2(d)(i) (*Approval for New Work*).

- (c) If Company Facilities installed on, along, across, over or under Public Places are later found not to be located in compliance with, or within 0.3 metres of the alignment set out in, the applicable approval obtained pursuant to section 5.2 (*Approval for New Work*), as may be modified during the course of New Work pursuant to subsection (b) above, then FortisBC will be responsible for any alteration or upgrading required to bring such Company Facilities into compliance. FortisBC shall not be responsible for non-compliance which arose subsequent to FortisBC's completion of New Work.

#### **6.7 Prime Contractor**

- (a) FortisBC shall act as the prime contractor for all Work, or designate in writing its contractor to act as the prime contractor, within the meaning of section 118 of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, unless otherwise designated in writing by the Municipality or a third party working in the applicable Public Place.
- (b) If FortisBC intends to undertake Work in a Public Place and a third party or third parties are working at the location of FortisBC's intended workplace, FortisBC shall not proceed with its Work until it has a written agreement with the third party or third parties designating the prime contractor for the workplace and ensuring the activities of all parties relating to occupational health and safety are coordinated in compliance with Part 5 of the *Workers Compensation Act* and regulations thereunder.

#### **6.8 Responsibility for Work**

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

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

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

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

#### **7.2 Expropriation**

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

## **8. CHANGES TO FACILITIES**

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

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

### **8.2 Changes to Company Facilities**

- (a) If the Municipality requests that FortisBC realign, raise, lower, protect, by-pass, or relocate Company Facilities to accommodate a Third Party Project, FortisBC shall use commercially reasonable efforts to apply to the Municipality for approval pursuant to section 5.2 (*Approval for New Work*) and permit(s) pursuant to section 5.3 (*Permits for Work*), if applicable, in a timely manner, and upon receipt of such approval and permit(s) shall make such changes to the affected Company Facilities in coordination with the work schedule of the Third Party Project. The recoverability or allocation of FortisBC costs will be determined in accordance with applicable Laws or as otherwise negotiated between FortisBC and the third party or parties undertaking the Third Party Project.
- (b) If the Municipality plans to undertake a Municipal Project that might require Company Facilities to be realigned, raised, lowered, protected, by-passed, or relocated to accommodate the work, the Municipality may submit details of its planned work and request that FortisBC provide an estimate of its Relocation Costs to accommodate the Municipality's work, and,
  - (i) FortisBC shall provide the requested Relocation Costs estimate and a detailed description of the required changes to the affected Company Facilities to the extent it is reasonably able to do so and with reasonable speed and dispatch after receipt of such request;
  - (ii) FortisBC shall not proceed with such changes to Company Facilities until: (A) FortisBC has received written confirmation from the Municipality that the Municipality has received an FEI Permit pursuant to section 14.1(b) or approval

of the Oil and Gas Commission, as applicable, for the construction of the Municipal Project contemplated in subsection (b) above and confirmation in the form of a purchase order from the Municipality that the Municipal Project will be proceeding, and (B) FortisBC has received applicable approval(s) and permit(s) from the Municipality pursuant to sections 5.2 (*Approval for New Work*) and 5.3 (*Permits for Work*);

- (iii) if the Municipality provides written confirmation pursuant to subsection (ii) above, FortisBC shall use commercially reasonable efforts to promptly apply to the Municipality for applicable approval(s) and permit(s) under this Agreement and, upon receipt of such approval(s) and permit(s), shall make such changes to the affected Company Facilities with reasonable speed and dispatch.
- (c) Despite the cost allocation provisions of the Pipeline Crossings Regulation (B.C. Reg. 147/2012), the Municipality shall reimburse FortisBC for the Relocation Costs in the following amounts:
  - (i) 100% of the Relocation Costs when the affected Company Facilities are Gas Mains;
  - (ii) 50% of the Relocation Costs when the affected Company Facilities are High Pressure Pipelines.
- (d) This section 8.2 is an agreement between the Municipality and FortisBC for the purpose of section 3(6) of the Pipeline Crossings Regulation.

### **8.3 Estimation of Costs**

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

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

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

- (a) If, during the course of undertaking requested changes to its facilities pursuant to this section 8 (*Change to Facilities*), a party determines that the actual Relocation Costs to make such changes will exceed the Relocation Costs estimate provided pursuant to section 8.1(b) (*Changes to Municipal Facilities*) or section 8.2(i) (*Changes to Company Facilities*), as applicable, by more than the greater of \$5,000.00 or ten (10%) percent, such party shall:
  - (i) promptly notify the other party and provide a revised Relocation Costs estimate and a detailed description of the facts giving rise to the increase in costs;
  - (ii) not proceed with further work on the requested changes until the other party has provided written confirmation to proceed;

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

## 9. HIGHWAY DEDICATION FOR CROSSINGS

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

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

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

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

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

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

### **10.2 Mapping Information**

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

### **10.3 Other Assistance**

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

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

### **11.1 Indemnity by FortisBC**

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

except to the extent contributed by negligence or default of the Municipality or the Municipality's Representatives.

- (b) This indemnity expressly extends to all acts and omissions of FortisBC's Representatives.

## **11.2 Indemnity by Municipality**

- (a) The Municipality indemnifies and protects and saves FortisBC harmless from and against all claims by third parties in respect to loss of life, personal injury (including, in all cases, personal discomfort and illness), loss or damage to property to the extent caused by the Municipality in:

- (i) placing, constructing, renewing, altering, repairing, maintaining, removing, extending, operating or using the Municipal Facilities on, along, across, over or under any Public Places;

- (ii) any breach of this Agreement by the Municipality,

except to the extent contributed by the negligence or default of FortisBC or FortisBC's Representatives.

- (b) This indemnity expressly extends to all acts and omissions of the Municipality's Representatives.

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

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

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

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

## **11.5 Limitation of Liability**

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

## **12. OPERATING FEE**

### **12.1 Fee Calculation**

Provided that FortisBC is permitted to collect the Operating Fee from customers within the Boundary Limits and effective commencing from the date established by the BCUC, FortisBC agrees to pay to the Municipality on an annual basis, a fee (the "**Operating Fee**") of 0.70 % of the delivery revenue (excluding taxes) received by FortisBC from its customers for the distribution of gas consumed within the Boundary Limits (the "**Delivery Revenue**"), but excluding compressed natural gas distributed from fueling stations and the delivery of liquefied natural gas. Delivery Revenue further does not include (i) any gas commodity revenue, or (ii)



any delivery revenue from customers from whom the BCUC has not allowed FortisBC to collect the Operating Fee.

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

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

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

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

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

If a decision by the BCUC, other than periodic rate changes as a result of delivery or margin increases or decreases, or new legislation by the Provincial Government, impacts the Operating Fee being paid to the Municipality by more than +/- 5% annually, the parties shall negotiate a new Operating Fee formula which best reflects the amount paid to the Municipality under this Agreement.

### **13. MUNICIPAL WORK**

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

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

### **14.1 Removal or Abandonment**

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

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

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

- (a) FortisBC shall fill any pipes forming part of Company Facilities left in place which have a nominal diameter greater than 323 mm (12 inches) with sand, controlled density fill or similar material to prevent their collapse.
- (b) If the Municipality reasonably determines that Company Facilities left in place must be removed to accommodate Municipal Projects, Third Party Projects or Utilities, the Municipality may by written notice to FortisBC require FortisBC to remove such Company Facilities, provided that:
  - (i) FortisBC shall coordinate the removal of such Company Facilities with the Municipality;
  - (ii) FortisBC shall obtain the applicable approvals and permits under this Agreement; and
  - (iii) FortisBC shall be responsible for the costs of removing and disposing the Company Facilities, but excluding the costs of excavation, backfilling and surface restoration.
- (c) FortisBC shall continue to own and be responsible for any Company Facilities left in place. This section 14 (*Cessation of Use of Company Facilities*) does not relieve FortisBC of its responsibilities under all applicable Laws with respect to Company Facilities left in place.

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

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

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

### **15.2 Term of Agreement**

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

### **15.3 Termination of Agreement**

- (a) Either party may terminate this Agreement by providing the other party with at least ninety (90) days written notice of termination if the BCUC orders that FortisBC is not authorized to recover the Operating Fee from its customers.
- (b) The Municipality may terminate this Agreement by providing FortisBC with at least twenty-four (24) hours written notice of termination if FortisBC becomes insolvent, makes an assignment for the benefit of its creditors, has a liquidator, receiver or trustee in bankruptcy appointed for it or becomes voluntarily subject as a debtor to the provisions of the *Companies' Creditors Arrangement Act* or the *Bankruptcy and Insolvency Act*.
- (c) Either party may terminate this Agreement by providing the other party with written notice of termination if the other party breaches any term, provision or obligation hereunder and such breach is a material breach and has not been cured within sixty (60) days of receipt of notice of such breach. A party will not be considered to be in material breach if the party has sought resolution of such matter through the Dispute Resolution process under section 17 (*Dispute Resolution*) and the outcome of which is pending.
- (d) Either party may terminate this Agreement in accordance with section 16.2(b) (*Changes to Laws*).
- (e) After the initial twenty (20) year term of this Agreement, either party may terminate this Agreement by giving the other party not less than one (1) year's written notice of termination.

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

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

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

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

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

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

- (a) its contracts for such infrastructure management contain provisions that will allow the Municipality to meet its obligations under and to comply with the terms and conditions of, this Agreement, and

- (b) FortisBC will accept the appointment of such third party as the Municipality's agent or subcontractor to enable such third party to deal directly with FortisBC so as to enable the Municipality to comply with the terms, obligations and conditions of this Agreement.

## **16.2 Changes to Laws**

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

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

## **17. DISPUTE RESOLUTION**

### **17.1 Mediation**

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

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

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

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

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

### **17.4 Appointment of Arbitrator**

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

British Columbia Supreme Court to appoint an arbitrator and the arbitrator so appointed shall proceed to determine the matter mutatis mutandis in accordance with the provisions of this Section.

**17.5 Award of Arbitrator**

The arbitrator shall have the authority to award:

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

**17.6 Cost of Arbitration**

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

**17.7 Continuation of Obligations**

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

**18. GENERAL TERMS AND CONDITIONS**

**18.1 Rights Reserved**

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

**18.2 No Liens**

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

**18.3 Authority to Enter into Agreement**

- (a) FortisBC now warrants, represents and acknowledges that:
  - (i) it has the full right, power and authority to enter into this Agreement;

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

#### **18.4 Representations**

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

#### **18.5 Amendments and Waivers**

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

#### **18.6 Assignments and Enurement**

This Agreement and any rights or obligations under it are not assignable by either party, without the prior written consent of the other party hereto, such consent not to be unreasonably withheld. This Agreement shall be binding upon, enure to the benefit of, and be enforceable by, the successors and permitted assigns of the parties hereto.

#### **18.7 Governing Law**

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

#### **18.8 Time**

Time is of the essence in this Agreement.

#### **18.9 Confidentiality**

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

**18.10 Entire Agreement**

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

**18.11 Severability**

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

**18.12 Force Majeure**

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

**18.13 Notice**

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

If to FortisBC:

If to the Municipality:

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

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

For all other matters:

For all other matters:

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

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

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

If to FortisBC:

Regional Manager

With a copy to Legal Department

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

If to the Municipality:

City Clerk

With a copy to both of:

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

#### **18.14 Execution**

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

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

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

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

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Authorized Signatory

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Authorized Signatory

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Authorized Signatory

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Authorized Signatory



## **Schedule A**

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

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

**Appendix B**

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**1957 AGREEMENT BETWEEN THE CORPORATION OF THE  
DISTRICT OF SURREY AND BRITISH COLUMBIA ELECTRIC  
COMPANY LIMITED**

The 13th day of June, 1957

BETWEEN:

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

OF THE ONE PART,

AND

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

OF THE OTHER PART.

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AGREEMENT

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15/11/57

THIS AGREEMENT is made the 13th day of June,

1957

SCHEDULE "A"



BETWEEN:

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

OF THE ONE PART,

AND

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

OF THE OTHER PART.

WHEREAS:

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

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

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

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

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

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

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

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

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

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

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

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in the Municipality for 1957.

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

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

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

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

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

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

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

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

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

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

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

9. In the placing, construction, renewal,

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

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

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

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

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struction or damage shall be borne by the Company.

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

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

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

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

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

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

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

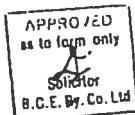
17. This agreement shall enure to the benefit of and be binding upon the parties hereto, their successors and assigns.

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

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

*R. M. Nesbitt*

*A. M. Chester*



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

*A. J. J. J.*

VICE-PRESIDENT

*G. L. Woodward*

SECRETARY

**Appendix C**

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**INTERIM AGREEMENT BETWEEN  
THE CITY OF SURREY AND FEI**

## INTERIM AGREEMENT

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

BETWEEN:

**THE CITY OF SURREY** (the “**City of Surrey**”)

AND:

**FORTISBC ENERGY INC.** (“**FortisBC**”)

WHEREAS:

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

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

### 1. NEGOTIATION OF OPERATING AGREEMENT

- 1.1 *Termination of Prior Agreements* - The Parties agree the 1957 Agreement and any amendments thereto shall terminate under the following circumstances:
  - (a) Upon application being made to the British Columbia Utilities Commission (the “**BCUC**”) under section 1.2, the 1957 Agreement and any amendments thereto

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

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

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

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

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

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

## 2. COASTAL TRANSMISSION SYSTEM PROJECT


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



**3. COUNTERPARTS**

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

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

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

*Attachments:*  
*Schedule A – 1957 Agreement*

## **SCHEDULE A**

The 13th day of June, 1957

BETWEEN:

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

OF THE ONE PART,

AND

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

OF THE OTHER PART.

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AGREEMENT

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THIS AGREEMENT is made the 13th day of June,

1957

SCHEDULE "A"



BETWEEN:

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

OF THE ONE PART,

AND

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

OF THE OTHER PART.

WHEREAS:

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

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

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

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

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

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

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

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

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

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

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

in the Municipality for 1957.

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

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

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

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

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

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

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

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

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

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

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

9. In the placing, construction, renewal,

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

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

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

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

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struction or damage shall be borne by the Company.

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

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

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

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

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

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

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

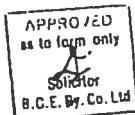
17. This agreement shall enure to the benefit of and be binding upon the parties hereto, their successors and assigns.

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

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

*R. M. Nesbitt*

*A. M. Chester*



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

*A. J. J. J.*

VICE-PRESIDENT

*G. L. Woodward*

SECRETARY

**Appendix D**

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**EMAIL BETWEEN FEI AND CITY OF SURREY  
DATED MAY 12, 2017**

**From:** North, Al  
**Sent:** May 12, 2017 12:40 PM  
**To:** Neuman, Scott ([SNeuman@surrey.ca](mailto:SNeuman@surrey.ca))  
**Cc:** Schoberg, Gord  
**Subject:** Operating Agreement Revisions

**Attachments:** Surrey Operating Agreement - May 11 - redlined.pdf

Hi Scott

Attached is a copy of the revised Operating Agreement that has the changes we discussed yesterday. Donna has already sent the changes to Ian with the narratives explaining the rationale.

I believe that over the past months we have made considerable progress towards a new workable operating agreement that will benefit both the City and FEI. As the negotiations are concluding with a few issues unresolved, and both parties anticipate filing alternative versions of the draft agreement with the Commission next week, we felt it would be appropriate to formally summarize the position on the outstanding issues that will be articulated in our filing.

## **1. Changes to Company Facilities**

- a. Changes to Company Facilities:
  - i. Cost apportionment for High Pressure Pipelines is 50 / 50 between FEI and the City
  - ii. The City pays 100% for Gas Mains

## **2. Operating Fee**

- a. The formula for calculating the fee is based on the delivery margin approved by the BCUC
- b. The quantum of the fee is 0.7%

In addition to these two items, there are two additional items that FEI has recently raised and is waiting to hear back from the City. These are:

- 1. The Relocation definition wording related to upgrades/betterment.
- 2. The SRW extinguishment revision.

In terms of process, we will include this letter in our filing simply as confirmation that FEI and the City are unable to reach full agreement on all issues and to demonstrate that we have communicated our position on those issues to you. However, since our respective communications and negotiations to this point have been "off the record / without prejudice", we will not be filing any information or documents concerning the details of our negotiations to date. It would be our expectation that the City will take the same approach.

We look forward to maintaining our cooperative relationship throughout the regulatory process. It may be worthwhile exploring whether we can prepare a joint proposal for how the Commission process will unfold to include in our respective filings. Perhaps Ian Webb can reach out to our regulatory counsel, Matthew Ghikas, in that regard.

Regard,

Al North  
Regional Manager, Fraser Valley  
Phone: (604) 576-7267  
E-mail: [al.north@fortisbc.com](mailto:al.north@fortisbc.com)









**ORDER NUMBER**

**G-xx-xx**

IN THE MATTER OF  
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

FortisBC Energy Inc.  
Application for Approval of Operating Terms between the City of Surrey and FortisBC Energy Inc.

**BEFORE:**

**Panel Chair/Commissioner**  
**Commissioner**  
**Commissioner**

on **Date**

**ORDER**

**WHEREAS:**

- A. On May 18, 2017, FortisBC Energy Inc. (FEI) applied to the Commission, pursuant to section 32 of the *Utilities Commission Act* (the Act), or alternatively section 33, for approval of new operating terms (the Proposed Operating Terms) with the City of Surrey (Municipality) that would, among other things, establish new protocols for interaction between the parties, address the allocation of costs when the Municipality requires FEI to relocate its facilities, and provide for FEI to collect operating fees on behalf of the Municipality from FEI customers in the Municipality in the amount of 0.7 percent of delivery margin (the Application);
- B. FEI and its predecessors have been operating in the Municipality since the 1950s, pursuant to a Certificate of Public Convenience and Necessity (CPCN) dated July 29, 1955, issued by the Public Utilities Commission, and section 45(2) of the *Utilities Commission Act* (the Act);
- C. The Municipality and FEI are currently parties to an operating agreement dated June 13, 1957, which does not expire;
- D. FEI's Application describes how, in an effort to improve the working relationship between FEI and the Municipality, the parties have been engaged since 2013 in negotiations for replacement operating terms;
- E. On November 8, 2016, the parties entered into an interim agreement that contemplated the parties would seek Commission approval for terms that were still unresolved by May 31, 2017;
- F. FEI and the Municipality have settled most of the new operating terms; but the parties disagree over four issues that are described in the Application;
- G. FEI filed the Proposed Operating Terms as Appendix A to its Application, which include all settled operating terms and FEI's proposals for the outstanding items;

- H. FEI emphasizes in its Application that the Proposed Operating Terms are the product of negotiation and compromise on the part of both parties, and that they should not be considered to be a precedent for other operating agreements;
- I. The Commission has reviewed and considered the Application and considers approval of the Proposed Operating Terms as proposed by FEI is warranted.

**NOW THEREFORE** pursuant to section 32 of the *Utilities Commission Act*, the British Columbia Utilities Commission orders as follows:

1. The operating terms, as proposed by FortisBC Energy Inc. (FEI) and set out in Appendix A to this Order are approved as an Operating Agreement between FEI and the City of Surrey (the Municipality), effective [date], 2017.
2. The Operating Agreement between FEI and the Municipality approved herein shall remain in effect for twenty years from the effective date of [date], 2017.
3. FEI and the Municipality are to file with the Commission an endorsed Operating Agreement in accordance with the terms approved by this Order, and consistent with Appendix A.

**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