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September 29, 2020

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

Attention: Ms. Marija Tresoglavic, Acting Commission Secretary

Dear Ms. Tresoglavic:

**Re: City of Coquitlam (City) Application for Reconsideration and Variance of Order G-80-19 in the matter of the FortisBC Energy Inc. (FEI) Application for Use of Lands under Sections 32 and 33 of the *Utilities Commission Act* (UCA) in the City of Coquitlam for the Lower Mainland Intermediate Pressure System Upgrade Projects (Reconsideration)**

**FEI Evidence**

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FEI respectfully submits its Evidence in accordance with the British Columbia Utilities Commission Order G-202-20A.

If further information is required, please contact the undersigned.

Sincerely,

**FORTISBC ENERGY INC.**

*Original signed:*

Diane Roy

Attachments

cc (email only): Registered Parties

**City of Coquitlam Application for Reconsideration and Variance of Order G-80-19 in the  
matter of the FortisBC Energy Inc. Application for Use of Lands under Sections 32 and 33  
of the *Utilities Commission Act* in the City of Coquitlam for the Lower Mainland  
Intermediate Pressure System Upgrade Projects**

**Evidence  
of  
FortisBC Energy Inc.**

**September 29, 2020**

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## 1    1.0    Introduction

### 2    Q1:    What is the purpose of this Evidence?

3    A1:    The purpose of this Evidence is to respond to the evidence filed by the City of Coquitlam  
4    (the City) in Exhibit B-12.<sup>1</sup> FEI believes that the cost sharing ordered by the BCUC  
5    represents a compromise that provides appropriate incentives on the City to act  
6    reasonably in making a request to remove the Nominal Pipe Size (NPS) 20 intermediate  
7    pressure (IP) gas line, while at the same time having FEI contribute to the removal cost.

### 8    Q2:    How is this Evidence organized?

9    A2:    This Evidence is organized according to the following topics:

- 10      • Section 1 describes FEI's assessment of the implications of the cost sharing direction  
11     in paragraph 2 of Order G-80-19. FEI believes that the cost sharing ordered by the  
12     BCUC represents a compromise that provides appropriate incentives. The BCUC's  
13     determination, which deals with the allocation of costs, will not give rise to the types of  
14     operational or regulatory challenges that the City has identified in its evidence.
- 15      • Section 2 explains that for the Lower Mainland Intermediate Pressure System Upgrade  
16     Projects (LMIPSU Project), FEI and the City of Burnaby entered into an agreement  
17     that contemplates the City of Burnaby bearing the cost of excavation, backfilling and  
18     surface restoration for a municipal project, third party project or utilities necessitating  
19     the removal of the abandoned NPS 20 IP gas line, except to the extent that such costs  
20     are greater as a result of the presence of the NPS 20 IP gas line.
- 21      • Section 3 addresses the City's reliance on relocation cost allocation as an analogy,  
22     where the City cites examples from other jurisdictions. (FEI will leave the merits of the  
23     analogy and the relevance of the City's examples for the final submissions of legal  
24     counsel.) The City's own operating agreement, which allocates most of any relocation  
25     costs to the City, was filed in the original proceeding as Exhibit B-1, Appendix B. FEI  
26     also has many BCUC-approved operating agreements with municipalities that allocate  
27     all relocation costs to the municipality, consistent with the model operating agreement  
28     that FEI developed in conjunction with the Union of British Columbia Municipalities  
29     (UBCM).
- 30      • Section 4 responds to the City's expressed concern about how to manage future third-  
31     party utility infrastructure. FEI explains its own experience regarding what happens  
32     when it asks another utility to move infrastructure or *vice versa*. In both cases, the  
33     requesting party generally pays to relocate existing infrastructure.

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<sup>1</sup> FEI also relies on the other evidence in this proceeding and the original proceeding.

## 1    2.0    FEI's Understanding of Order G-80-19

2    Q3: In the covering letter for its evidence (Exhibit B-12) the City states: "The enclosed  
3    evidence is filed by the City in support of its position that there is no need to require  
4    the City to pay a portion of FEI's removal costs ... it is not fair to require the City to  
5    pay 50% of such costs." Does FEI share the City's view with respect to the fairness  
6    of paragraph 2 of Order G-80-19?

7    A3: No, FEI believes that the cost sharing ordered by the BCUC represents a compromise  
8    that provides appropriate incentives on the City to act reasonably in making a request to  
9    remove the NPS 20 IP gas line. As described below in this Evidence, FEI's modern  
10   municipal operating agreements generally provide that the municipality pay for *all* of the  
11   costs for relocations of FEI facilities done at the municipality's request. An equal sharing  
12   of costs for removal of the NPS 20 IP gas line at the City's request provides a more  
13   generous treatment for the City than the cost allocation for relocation that is generally  
14   found in FEI's modern municipal operating agreements. The requirement for the City to  
15   be responsible for half of FEI's removal costs also mitigates a potential moral hazard, i.e.,  
16   it gives the City an incentive to consider the overall cost of work relating to the NPS 20 IP  
17   gas line (and avoid costs to ratepayers).

18   If the party initiating the construction project is not incented to consider the whole of the  
19   project cost (that is the cost being borne by other parties), it may make choices that are  
20   overall more expensive to the public. For example, if a municipality is not incented to  
21   consider the overall cost of a project, it may require FEI to move its infrastructure even  
22   though the municipality may have had other options not requiring the alteration of FEI's  
23   infrastructure which may be more expensive for the municipality if it is only required to  
24   bear the costs of its own construction, but much less expensive when the overall cost (that  
25   is, the cost to both FEI's ratepayers and the municipality) is considered. As another  
26   example, where the municipality is not incented to reduce FEI's costs in accommodating  
27   the municipality's construction project, the municipality may require FEI to carry out its  
28   work on weekends or at night. Although this minimizes that impact of the construction on  
29   road users, it also significantly increases FEI's costs. If the municipality, that is, the party  
30   that initiates the construction project, has to bear some of these increased costs, it may  
31   decide that the cost to the public of such night or weekend work outweighs the  
32   inconvenience to the public.

33   Q4: At page 151 of its evidence, the City states: "A requirement for a BCUC process to  
34   review and approve each request for FEI to remove portions of its decommissioned  
35   NPS 20 pipes creates uncertainty around the procedure, timing, and cost of work  
36   that the City needs to perform... The City is also concerned about the time required  
37   for a BCUC review and decision on such matters." Does FEI share the City's  
38   understanding of this requirement in Order G-80-19?

1      A4: No, FEI has a different understanding of the requirement. FEI sees this part of the order  
2      as addressing cost allocation only. FEI does not read paragraph 2 of Order G-80-19 as  
3      requiring a further BCUC approval to remove a portion of the decommissioned NPS 20 IP  
4      gas line at the City's request. Although the BCUC always retains jurisdiction in the event  
5      of disputes, FEI does not interpret the order as requiring further approval from the BCUC  
6      if the parties are in agreement on the removal of the portion of the NPS 20 IP gas line.  
7      Though FEI does not believe such a clarification is required, FEI would not oppose a  
8      clarification to paragraph 2 of Order G-80-19 to that effect.

9      **Q5:** At page 152 of its evidence, the City states: “in an emergency situation (such as a  
10     failed water main), the City is required to act quickly and would not have time to  
11     prepare an application to the BCUC for approval to commence emergency work.  
12     The existing practice for emergency work in proximity to FEI gas mains it to contact  
13     FEI inspectors so that they can assist with the emergency work, but there would  
14     not be time to obtain the approval of the BCUC.” Does FEI share the City’s  
15     understanding of this requirement in Order G-80-19?

16     A5: No. FEI sees this part of the order as addressing cost allocation only. FEI does not  
17     compromise employee and public safety, and strives for excellence in safety performance.  
18     FEI would not impede the City’s work in an emergency situation in the vicinity of the  
19     decommissioned NPS 20 IP gas line, and would assist as appropriate with emergency  
20     work. To the extent that cost sharing for such work was an issue, it could be addressed  
21     after the fact.

22     Though FEI does not believe such a clarification is required, FEI would not oppose a  
23     clarification to paragraph 2 of Order G-80-19 to that effect.

### 24      **3.0 The City of Burnaby Agreed to Share NPS 20 IP Gas Line 25      Removal Costs**

26      **Q6: Did FEI enter into an agreement with the City of Burnaby to address LMIPSU Project  
27      matters?**

28     A6: Yes. In 2018, FEI entered into an agreement with the City of Burnaby for the LMIPSU  
29     Project referred to as the “Terms of Reference”. The Terms of Reference were the result  
30     of collaborative discussions with the City of Burnaby and were intended to allow FEI to  
31     proceed with construction of the new NPS 30 IP gas line and decommissioning of the NPS  
32     20 IP gas line. A copy of the Terms of References is included as Appendix A to this  
33     Evidence.

34      **Q7: Do the Terms of Reference with the City of Burnaby require that the NPS 20 IP gas  
35      line be removed within Burnaby’s municipal boundaries?**

1      A7: No, they do not. However, the Terms of Reference do address the removal of the NPS  
2      20 IP gas line to accommodate a municipal project, third party project or utilities at the  
3      municipality's request.

4      **Q8: How are costs for the removal of the NPS 20 IP gas line, if required by the City of  
5      Burnaby, dealt with in the Terms of Reference with the City of Burnaby?**

6      A8: Section 2(e) of the Burnaby Terms of Reference address this situation. The Terms of  
7      Reference provide:

8               If the City reasonably determines that the 20 inch gas line must be removed to  
9      accommodate a municipal project, third party project or utilities, the City may by  
10     written notice to FortisBC require FortisBC to remove such portion of the 20 inch  
11     gas line, provided that:

- 12               i. FortisBC will coordinate the removal of such portion of the 20 inch gas  
13     line with the City;
- 14               ii. FortisBC will obtain all applicable approvals and permits required to  
15     remove such portion of the 20 inch gas line outlined in (i) above; and
- 16               iii. FortisBC will be responsible for costs of removing and disposing of that  
17     portion of the 20 inch gas line outlined in (i) above and the City will be  
18     responsible for the costs of excavation, backfilling and surface  
19     restoration except to the extent that such costs are greater as a result  
20     of the removal of the 20 inch gas line than they have would been for  
21     the excavation, backfilling and surface restoration for the municipal  
22     project, third party project or utilities.

## 23      **4.0 Municipalities are Responsible for Alteration and Relocation 24      Costs under FEI's Model Operating Agreement and Modern 25      Operating Agreements**

26      **Q9: The City has cited several examples of provisions in agreements from other  
27      jurisdictions that relate to the allocation of relocation costs, drawing an analogy  
28      between relocation and removal of decommissioned pipe. Does FEI have a BCUC-  
29      approved model operating agreement with municipalities that deals with the  
30      allocation of alteration and relocation costs?**

31      A9: Yes. In 2005, as a result of the impending expiry of a number of municipal operating  
32      agreements, FEI (then Terasen Gas Inc.) undertook negotiations with the UBCM  
33      Operating Agreement Committee and successfully negotiated terms to a new form of  
34      operating agreement (UBCM Terms).

1       The provision dealing with cost allocation between FEI and municipalities for facility  
2       changes stated:

3           8.     FACILITY CHANGES REQUIRED

4           8.1    By Terasen Gas

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

11       8.2    By the Municipality

12       The Municipality may provide Notice to Terasen Gas that it requires Company  
13       Facilities to be altered, changed or relocated to accommodate its requirements.  
14       Terasen Gas will comply with the Municipality's requests to the extent it is  
15       reasonably able to do so and with reasonable speed and dispatch after receipt of  
16       written request. The Municipality agrees to pay for all of the costs for changes to  
17      the affected Company Facilities.

18      **Q10: Were the UBCM Terms used for FEI's operating agreements?**

19      A10: Yes.

20       On January 12, 2006, FEI applied for approval of ten Operating Agreements between FEI  
21       and municipalities based on the UBCM Terms, which were subsequently approved by  
22       BCUC Orders C-7-06 through to C-16-06, dated August 10, 2006. These orders are  
23       included collectively in Appendix B to this Evidence. The term regarding cost allocation in  
24       each of these agreements was the same as that quoted above from the UBCM Terms.

25       On May 27, 2014, FEI applied for approval of a new operating agreement with the Village  
26       of Keremeos (Keremeos). The terms to the Keremeos Operating Agreement (Keremeos  
27       Terms) were largely consistent with the UBCM Terms, along with changes previously  
28       approved by the BCUC in Order G-113-12, which addressed FEI's operating terms for the  
29       District of Coldstream. Order G-113-12 is included as Appendix C to this Evidence.

30       In the Keremeos application, FEI also requested approval to use the Keremeos Terms as  
31       the operating agreement terms that would become the basis for comparison for future  
32       operating agreement applications. On July 10, 2014, the BCUC issued Order C-7-14  
33       approving the Operating Agreement between FEI and Keremeos and on July 24, 2014,  
34       the BCUC issued Order C-8-14 approving the Keremeos Terms as the basis for  
35       comparison for future operating agreement applications. These two orders are included in  
36       Appendices D and E, respectively, to this Evidence.

37       Since that time, the BCUC has approved over 40 operating agreements that follow, albeit  
38       sometimes with minor variations, the Keremeos Terms.

1      **Q11: What does the Keremeos model agreement, and those agreements approved based**  
2      **on it, provide with respect to facility changes at the request of the municipality?**

3      A11: Section 8.2 of the Keremeos Terms provides as follows:

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

12         The City of Campbell River Operating Agreement approved by Order C-8-15 (included in  
13          Appendix F) is an example of an agreement that was based on the Keremeos Terms.  
14          While there were some changes in the wording of the applicable section, the allocation  
15          approach remained the same. Section 9.2 states:

16            The Municipality may provide Notice to FortisBC that it requires Company Facilities  
17            to be altered, changed, temporarily shut-down, temporarily by-passed, or relocated  
18            to accommodate its requirements. FortisBC will comply with the Municipality's  
19            requests to the extent it is reasonably able to do so and with reasonable speed  
20            and dispatch after receipt of written request. The Municipality agrees to pay for all  
21            of the Costs for changes to the affected Company Facilities except where such  
22            Company Facilities were not installed in conformity with Section 7.7 of this  
23            Agreement. FortisBC shall provide estimates and invoices to the Municipality in  
24            respect of such work in accordance with Section 15 of this Agreement.

25         This Section 9.2 is an agreement between the Municipality and FortisBC for the  
26          purpose of section 76(1)(c) of the *Oil and Gas Activities Act*. [Emphasis added]

27      **Q12: Do all of FEI's operating agreements contain a similar provision regarding cost**  
28      **allocation?**

29      A12: No. FEI currently has over 100 operating agreements with municipalities. These  
30          operating agreements were approved over the course of decades, and have varying  
31          terms. Some of the oldest agreements with Lower Mainland municipalities, for instance,  
32          have cost allocation methodologies similar in principle to how the City of Coquitlam  
33          Operating Agreement addresses relocation costs. With the exception of the City of  
34          Surrey's new agreement discussed below, all of FEI's over 60 municipal operating  
35          agreements approved since 2006 include a similar cost allocation to that found in Section  
36          8.2 of the Keremeos Terms.

37         The City of Surrey Operating Agreement (included in Appendix G), although it also post-  
38          dates the approval of the Keremeos Terms, is an exception. It contains more detailed  
39          relocation provisions and provides:

- 1     • That the recoverability or allocation of FEI's costs resulting from municipal requests  
2       for changes to FEI facilities will be determined in accordance with applicable laws or  
3       as otherwise negotiated between FEI and the third party undertaking the third party  
4       project (Section 8.2(a)).
- 5     • That for a municipal project, the municipality will reimburse FEI for its relocation costs  
6       as follows (Section 8.2(c)):
  - 7           ○ when the affected FEI facilities are gas mains, 100 percent of the relocation costs;
  - 8           ○ when the affected FEI facilities are high pressure pipelines, in accordance with the  
9           *Pipeline Crossing Regulation*.

10   The City of Surrey Operating Agreement also includes a provision dealing with cost  
11   allocation for underground infrastructure that is abandoned in place. Abandonment is the  
12   subject matter of Section 14. Section 14.2(b) provides as follows:

13   If the Municipality reasonably determines that Company Facilities left in place must  
14   be removed to accommodate Municipal Projects, Third Party Projects or Utilities,  
15   the Municipality may by written notice to FortisBC require FortisBC to remove such  
16   Company Facilities, provided that:

- 17       i) FortisBC shall coordinate the removal of such Company Facilities with the  
18           Municipality;
- 19       ii) FortisBC shall obtain the applicable approvals and permits under this  
20           Agreement; and
- 21       iii) FortisBC shall be responsible for the costs of removing and disposing the  
22           Company Facilities, but excluding the costs of excavation, backfilling and  
23           surface restoration.

24   As such, it achieves a similar result to the City of Burnaby Terms of Reference in the case  
25   of removal of pipe that had been abandoned in place.

## 26   **5.0   FEI's Processes for Third Party Utilities**

27   **Q13: Please explain FEI's general process when existing third party utilities are in  
28       proximity to planned FEI construction activities.**

29   A13: The presence of existing utilities is a consideration and challenge for most utility operators,  
30       including FEI.

31   Before FEI designs new infrastructure, it first identifies what is already in the ground and  
32       considers if it is more efficient to plan around existing infrastructure. It is common for FEI  
33       to plan around existing infrastructure. As an example, FEI absorbs the additional cost of  
34       installing new mains at greater depth to keep distance from sewers.

If it is not more efficient to plan around existing infrastructure, FEI works with third party utilities to minimize potential disruptions and provides reimbursement for costs that may be incurred by the third party utility as a result of FEI's work, as further described below.

When FEI undertakes construction activities (including installation, maintenance and repair work) in proximity to third party utility infrastructure, FEI works with the third party utility owners to obtain the necessary permits and approvals required to undertake the work. This includes establishing the permit conditions and requirements to mitigate potential disruptions to third party utility service as much as practicable. If required, FEI would seek approval to temporarily disrupt the utility service, or relocate the utility service (temporarily or permanently) in order to complete the required construction activity while minimizing service disruptions.

**Q14: Please provide recent examples.**

A14: One recent example is with respect to FEI's Coastal Transmission System (CTS) Project. In order for the project to proceed, FEI asked BC Hydro to relocate approximately 2 kilometres of 69kV electrical lines in Coquitlam. FEI entered into a Transmission Line Relocation Agreement with BC Hydro under which FEI was required to pay the full cost including design and construction for BC Hydro's relocation work. The estimated cost of the construction work alone was \$4.8 million.

In the course of construction of the CTS and LMIPSU Projects in Surrey, Coquitlam, Burnaby and Vancouver, FEI and its contractors encountered dozens of abandoned utilities. FEI was responsible for all costs of identifying and removing abandoned utilities that conflicted with construction of the new gas mains.

FEI also compensated Translink for review of work in proximity to SkyTrain guideways.

**Q15: What is the general process when the process when a third party encounters FEI infrastructure when constructing new infrastructure?**

A15: Generally speaking, the third party follows FEI's permitting process and usually pays FEI's costs.

For example:

- If developer requires a municipal road to be aligned, requiring the gas main to be replaced, the developer pays FEI the full cost.
- If another utility (e.g., TELUS, Shaw, BC Hydro) performs work requiring relocation of FEI infrastructure, FEI charges the other utility for the full cost of the relocation work.

**Q16: Does this complete your Evidence?**

A16: Yes.

**Appendix A**

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**CITY OF BURNABY REVISED TERMS OF REFERENCE,  
APRIL 9, 2018**

## Terms of Reference

**Project Name:** FortisBC Lower Mainland Intermediate Pressure System Upgrade ("LMIPSU Project")

**Project Details:** Construction of approximately 10 kilometres of 30 inch NPS intermediate pressure gas line within the City of Burnaby ("new 30 inch gas line")

**Project Proponent:** FortisBC Energy Inc.  
16705 Fraser Highway  
Surrey, B.C. V4N 0E8

**City of Burnaby:** City of Burnaby  
4949 Canada Way  
Burnaby, B.C. V5G 1M2

**Purpose:** To document:

- (i) A complete and finalized list of the City of Burnaby's preconditions for municipal approval of the construction and route for the new 30 inch NPS gas line ("30 inch gas line") and issuance of the approvals and permits under applicable bylaws in order for FortisBC to proceed with construction of the new 30 inch gas line and decommissioning of the old 20 inch gas line; and
- (ii) FortisBC's requests with respect to certain municipal permits and approvals in order to complete the Burnaby portion of the Project scope of work.

WHEREAS:

- A. FortisBC has operated an existing 20 inch NPS intermediate pressure gas line ("20 inch gas line") located within City of Burnaby ("City") since 1957;
- B. The 20 inch gas line is reaching the end of its useful life and requires replacement;
- C. On October 16, 2015, FortisBC obtained approval from the British Columbia Utilities Commission ("BCUC") in the form of a Certificate of Public Convenience and Necessity ("CPCN") to construct and operate the LMIPSU Project including the construction of the new 30 inch gas line and the abandonment of the 20 inch gas line within the City of Burnaby (BCUC Order C-11-15). In granting the CPCN, the BCUC determined that the LMIPSU Project was in the public interest;
- D. FortisBC consulted the City in advance of the regulatory process and the City provided input into the LMIPSU Project prior to the BCUC issuing the CPCN ;

- E. FortisBC's right to construct and operate the new 30 inch gas line comes from its CPCN and the provisions of the *Utilities Commission Act* RSBC 1996 c. 473 and the *Gas Utility Act* RSBC 1996, c. 170. In addition, there is an existing 1926 operating agreement ("Operating Agreement") with the City that sets out the agreed terms on which FortisBC constructs and operates its natural gas pipelines in public places within City boundaries;
- F. FortisBC and the City have a long history of working collaboratively and, consistent with that history, FortisBC has engaged in discussions with the City for over three years in order to:
  - (i) obtain approval as contemplated in the Operating Agreement for the proposed route of the new 30 inch gas line (hereinafter referred to as "the Utility Permit");
  - (ii) identify the approvals and permits under applicable bylaws required in order for FortisBC to proceed with construction of the new 30 inch gas line ;
  - (iii) identify FortisBC's specific needs with respect to specific construction related permits and land use; and
  - (iv) identify the City's preconditions for issuing the Utility Permit and specific construction related permits;
- G. FortisBC's objective for the LMIPSU Project is to reach a negotiated agreement with the City on terms that will allow FortisBC to proceed with the LMIPSU Project work within the boundaries of the City in accordance with the CPCN; and
- H. The City acknowledges that it has had sufficient time to consider the LMIPSU Project work within the City's boundaries and to identify the City's concerns and pre-conditions, and the City does not anticipate imposing additional conditions or requirements on FortisBC with the exception of specific permit conditions referred to below.

**THEREFORE:**

- 1. Subject to FortisBC's commitment as outlined in paragraph 2 below and, Council approval where necessary for the land transfer to FortisBC described in paragraphs 1(h) and 1(j) below the City agrees to:
  - a. Issue the complete set of Utility Permits on or before March 16, 2018;
  - b. Approve in Principal the Traffic Management Plans, shown in Appendix "A", as of the date of this agreement;

- c. Accept the Construction Services Agreement, shown in Appendix "B", as of the date of this agreement. The City and FortisBC agree that this document will be considered a living document, to be updated to reflect changes in personnel, from time to time;
- d. Process construction permit applications within five (5) business days of receipt of a complete submission to the City (including, but not limited to, lane closure, fire hydrant use, hoarding and shoring, noise variance, truck route exception, tree cutting permit, soil deposition and removal, wastewater discharge, erosion and sediment control) and ten (10) business days if traffic permit applications do not comply with Traffic Management Plans and longer if third party coordination is required. After meeting all permit requirements, such permits will be issued with reasonable conditions imposed and delineated at the time of permit issuance;
- e. Issue noise variance permits at specific intersections for the limited periods of time required to complete construction of open cut crossings in the evenings and weekends, subject to reasonable conditions imposed and delineated at the time of permit issuance. Normal construction hours will be six (6) days per week, ten (10) hours per day, Monday to Friday from 7am to 5pm and Saturday from 9am to 7pm;
- f. Design the Burnaby Mountain Urban Trail ("Trail") from Underhill Avenue to Production Way, and assume liability for any loss or damage by the City or third parties arising out of the use of the Trail following completion of the construction of the Trail and inspection by the City, acting reasonably; *'Suffered'*
- g. Design of Broadway road and utility upgrades between Bainbridge and Underhill to full urban standard including curb, gutter, sidewalk, street lighting, street trees, boulevard and storm sewer;
- h. With respect to the Graveley pit stations, to provide a Utility Permit per the date specified in 1 (a). The City will work with FortisBC to close the portion of Graveley Road, as shown on attached Appendix "C", then appropriately zone and transfer ownership of the parcel of land to FortisBC, in fee simple, to be completed in the future. The value of the parcel of land is included in the contribution by FortisBC described in paragraph 2(a) below. FortisBC acknowledges that off-site works for the building permit will be required, and will include upgrades to curb and gutter along Boundary. In the event that the rezoning of the land is not approved, the City will ensure, at no cost of FortisBC, that FortisBC has appropriate authorizations from the City to construct and operate its infrastructure, in the location shown in Appendix "C" and as per the design shown in Appendix "D". The City will work with FortisBC to address any future uses of the property so as not to interfere with FortisBC infrastructure;

- i. With respect to the Graveley main line block valve (MLBV), to provide a Utility Permit per the date specified in 1(a). FortisBC will install adequate vehicle impact protection measures. The City will work with FortisBC to address any future uses of the property so as not to interfere with FortisBC infrastructure; and
  - j. With respect to the Bainbridge Ave main line block valve (MLBV), to provide a Utility Permit per the date specified in 1 (a). The City will work with FortisBC to close the portion of Bainbridge Ave, as shown on attached Appendix "E", then appropriately zone and transfer ownership of the parcel of land to FortisBC in fee simple, to be completed in the future. The value of the parcel of land is included in the contribution by FortisBC described in paragraph 2(a) below. In the event that the rezoning of the land is not approved, the City will ensure, at no cost to FortisBC, that FortisBC has appropriate authorizations from the City to construct and operate its infrastructure, in the location shown in Appendix "E" and as per the design shown in Appendix "F". The City will work with FortisBC to address any future uses of the property so as not to interfere with FortisBC infrastructure;
  - k. Provided FortisBC has obtained prior approval from the City as contemplated in paragraph 2(c), in the event that FortisBC's total costs of completing the work described in paragraph 2(a) and the costs described in 2(b) are more than \$4.0 million, then the City will provide a financial contribution in an amount equal to the difference, payable to FortisBC, upon completion of the LMIPSU project.
2. Subject to the City's commitment as outlined in paragraph 1 above, FortisBC agrees to:
- a. Undertake the following work, up to a value of \$4.0 million, as follows:
    - i. Construct and pave of Burnaby Mountain Urban Trail, from Underhill Avenue to Production Way, in accordance with the design provided by the City, previously discussed as a \$100,000 community benefit;
    - ii. Replace the twin Eagle Creek culverts on Broadway in advance of the pipeline replacement, so long as prior to May 15, 2018, the City provides the engineering drawings and design to FortisBC and the City obtains all regulatory permits and approvals required for the replacement, and these permits and approvals authorize FortisBC to perform the work in August and September 2018; and
    - iii. Construct the Broadway road and utility upgrades between Bainbridge and Underhill to full urban standard including curb, gutter, sidewalk, street lighting, street trees, boulevard and storm sewer, so long as prior to May 15, 2018 the City provides the engineering drawings and design to FortisBC and the City obtains all regulatory permits and approvals required for the roadway to be constructed in conjunction with the pipeline. In the event that FortisBC does not perform this

work, FortisBC will temporarily pave the trench width, and the City will perform this work following the completion of the Project. The City will have the option to instruct FortisBC to pave full lane width, and any incremental expense will be deducted from the amount described in paragraph 2 (a);

- b. The contribution described in paragraph 2(a), includes the value of the land as described in paragraph 1(h) and 1(j) above;
- c. FortisBC will provide costs estimates for the work described in paragraph 2 (a) for the City's approval, prior to FortisBC undertaking the work;
- d. In the event that FortisBC's total costs of completing the work described in paragraph 2(a) and the costs described in 2(b) are less than \$4.0 million, then FortisBC will provide a financial contribution in an amount equal to the difference, payable to the City, upon completion of the LMIPSU project;
- e. With the intention of limiting cost exposure to City taxpayers, accept the following obligation and responsibility for the abandoned 20 inch gas line, separate from the obligations described in paragraph 2(a) to 2(e), inclusive: .

If the City reasonably determines that the 20 inch gas line must be removed to accommodate a municipal project, third party project or utilities, the City may by written notice to FortisBC require FortisBC to remove such portion of the 20 inch gas line, provided that:

- i. FortisBC will coordinate the removal of such portion of the 20 inch gas line with the City;
- ii. FortisBC will obtain all applicable approvals and permits required to remove such portion of the 20 inch gas line outlined in (i) above; and
- iii. FortisBC will be responsible for costs of removing and disposing of that portion of the 20 inch gas line outlined in (i) above and the City will be responsible for the costs of excavation, backfilling and surface restoration except to the extent that such costs are greater as a result of the removal of the 20 inch gas line than they have would been for the excavation, backfilling and surface restoration for the municipal project, third party project or utilities.

March 15, 2018

- f. Proceed with construction of the 30 inch gas line in 2018 and 2019, in a manner which avoids conflict with other third party works to the extent possible, and facilitates the timing of work to be performed by the City; and
  - g. Work collaboratively with the City to respond to reasonable requests from the City relating to minimization of construction impacts to residents and businesses.
3. The parties mutually agree that this agreement may be amended from time to time to address changes that may arise during the course of construction.

AGREED TO ON THE 16 DAY OF March, 2018 BY:



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FortisBC Energy Inc.

G. ARTHUR KANBAKI  
PROJECT DIRECTOR

  
City of Burnaby

**Appendix B**

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**C-7-06 TO C-16-06 - 2006 OPERATING AGREEMENTS  
(UBCM TERMS)**

## OPERATING AGREEMENT

THIS OPERATING AGREEMENT (the "Agreement") made this 1<sup>st</sup> day of November, 2005. AJ

BETWEEN:

**TOWN OF OLIVER**  
PO Box 638  
Oliver, British Columbia  
V0H 1T0

(hereinafter called the "**Municipality**")

OF THE FIRST PART

AND:

**TERASEN GAS 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

(hereinafter called "**Terasen Gas**")

OF THE SECOND PART

### **RECITALS:**

- A. Whereas by a certificate of public convenience and necessity (CPCN), Terasen Gas was granted the right to construct and operate gas distribution facilities within the Municipality;
- B. And whereas pursuant to the Community Charter, S.B.C. 2003, a Municipal council may, by resolution adopt and enter into a licensing and operating agreement;
- C. And whereas Terasen Gas and the Municipality are the parties to a Franchise or Operating Agreement dated the 14 day of January, 1977 and subsequently renewed by various amending agreements, which will expire on December 31, 2005;
- D. And whereas Terasen Gas and the Municipality wish to enter into this Agreement to clarify and settle the terms and conditions under which Terasen Gas shall exercise its rights to use Public Places in conducting its business of distributing Gas within the Municipality.

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

## **1. DEFINITIONS**

For the purposes of this Agreement:

- (a) “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;
- (b) “BCUC” means the British Columbia Utilities Commission or successor having regulatory jurisdiction over natural gas distribution utilities in British Columbia;
- (c) “CPCN” means a Certificate of Public Convenience and Necessity granted by the BCUC which allows Terasen Gas to operate, maintain and install Company Facilities for the distribution of Gas within the Municipality;
- (d) “Company Design” means the installation and design specifications which meet all applicable Provincial and Federal codes, standards and safety requirements for the gas services in the province of British Columbia, as they relate to approved gas works, system improvements, upgrades, connections and system extensions;
- (e) “Company Facilities” means Terasen Gas’ facilities, including pipes, buildings, structures, valves, signage, storage facilities, machinery, vehicles and other equipment used to maintain, operate, renew, repair, construct and monitor a natural Gas Distribution and transmission system;
- (f) “Distribution Pipelines” means pipelines operating at a pressure less than 2071 kilopascals (300 psi);
- (g) “Gas” means natural gas, propane, methane, synthetic gas, liquefied petroleum in a gaseous form or any mixture thereof;
- (h) “Gas Distribution” means fixed equipment, structures, plastic and metal lines and pipe, valves, fittings, appliances and related facilities used or intended for the purpose of conveying, testing, monitoring, distributing, mixing, storing, measuring and delivering Gas and making it available for use with the Municipality;
- (i) “Highway” means street, road, lane, bridge or viaduct controlled by the Municipality or Provincial Government of British Columbia;
- (j) “Losses” means direct and indirect losses, damages, costs and expenses (including without limitation, interest, penalties and amounts paid in settlement but does not include legal and professional fees and disbursements);

- (k) “Mains” means pipes used by Terasen Gas to carry gas for general or collective use for the purposes of Gas Distribution;
- (l) “Municipal Employees” means personnel employed by or engaged by the municipality, including officers, employees, directors, contractors and agents;
- (m) “Municipal Facilities” means any facilities, including highways, sidewalks, conduits, manholes, equipment, machinery, pipes, wires, valves, buildings, structures, signage, bridges, viaducts and other equipment within the Public Places used by the Municipality for the purposes of its public works or municipal operations;
- (n) “Municipal Supervisor” means the Municipal Engineer or other such person designated by the Municipality to receive notices and issue approval as set out in this Agreement;
- (o) “New Work” means any installation, construction, repair, maintenance, alteration, extension or removal work of the Company Facilities in Public Places except:
  - (i) routine maintenance and repair of the Company Facilities that does not involve any cutting of asphalted road surface;
  - (ii) installation or repair of Service Lines whether or not such installation or repair involves cutting of asphalted road service; or
  - (iii) emergency work;but notwithstanding such exceptions, New Work shall include any installation, construction or removal of the Company Facilities in Public Places that are planned to disturb underground Municipal Facilities;
- (p) “Pipeline Markers” means post, signage or any similar means of identification used to show the general location of Transmission Pipelines and distribution pipelines or Terasen Gas Rights of Way;
- (q) “Planned Facilities” means those facilities not yet constructed but which have been identified by way of documented plans for the works of the Municipality, for works of third parties, where such works are identified by documented plans approved by the Municipality, or for works of Terasen Gas submitted to the Municipality subject to Municipal approval;
- (r) “Public Places” means any public thoroughfare, highway, road, street, lane, alley, trail, square, park, bridge, right of way, viaduct, subway, watercourse or other public place in the Municipality;
- (s) “Service Line” means that portion of Terasen Gas’ gas distribution system extending from a Main to the inlet of a meter set and, for the purposes of this Agreement, includes a service header and service stubs;

- (t) "Terasen Gas Employees" means personnel employed by or engaged by Terasen Gas including officers, employees, directors, contractors, and agents;
- (u) "Transmission Pipeline" means a pipeline of Terasen Gas having an operating pressure in excess of 2071 kilopascals (300 psi); and
- (v) "Utilities" means the facilities or operations of any water, waste water, sewer, telecommunications, energy, cable service or similar service provider located in Public Places within the Municipality.

## **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) words in the singular include the plural, words importing a corporate entity include individuals, and vice versa;
- (c) in calculating time where the agreement refers to "at least" or "not less than" 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" a number of days, Saturdays, Sundays and holidays must be excluded;
- (d) 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.

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

Terasen Gas 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.

Terasen Gas 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.

## **4. TERASEN GAS RIGHTS TO ACCESS & USE PUBLIC PLACES**

The Municipality hereby acknowledges Terasen Gas' rights to:

- (a) develop, construct, install, maintain or remove Company Facilities on, over, in and under Public Places in the Municipality;
- (b) enter on Public Places from time to time as may be reasonably necessary for the purpose of maintaining, repairing, or operating the Company's Facilities;
- (c) place pipeline identification markers within Public Places where a Transmission Pipeline or Distribution Pipeline crosses or is otherwise within a Public Place;

subject to terms and conditions defined in this Agreement.

## **5. TERASEN GAS COMPLIANCE WITH STANDARDS FOR USE OF PUBLIC PLACES**

### **5.1 Non-discriminatory Standards for Terasen Gas**

In its use of Public Places, Terasen Gas shall comply with all Federal and Provincial laws, regulations and codes and shall comply with all Municipal bylaws, standards and policies except that Terasen Gas shall not have to comply with such Municipal bylaws, standards and policies that:

- (a) conflict with terms of this Agreement or limit any rights or concessions granted to Terasen Gas by the Municipality under this Agreement; or
- (b) conflict with other legislation governing Terasen Gas.

Further, where the Municipality has established requirements and standards for work in Public Places, the Municipality shall apply them in a fair, reasonable and non-discriminatory manner consistent with the manner that the Municipality establishes requirements on other Utilities.

### **5.2 Provide emergency contacts.**

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

### **5.3 Assist with facility locates**

Terasen Gas 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 unless the reason for the request is the result of an emergency; in which case the information shall be provided forthwith. Terasen Gas shall provide gas locations from Terasen Gas records. Terasen Gas shall perform on site facility locates in accordance with the *Safety Standards Act – Gas Safety Regulations Section 39*.

## **6. TERASEN GAS WORK OBLIGATIONS:**

### **6.1 Notices - General Requirements**

#### **6.1.1. Notice for New Work**

For New Work, if required by the Municipality, Terasen Gas shall give notice to the Municipality or such officer or official thereof who has been designated from time to time by the Municipality that it intends to perform such New Work. The Notice shall include:

- (a) a plan and specifications showing the proposed location and dimensions of the New Work;
- (b) Terasen Gas' plans for the restoration of the Public Place affected by the New Work if Terasen Gas' restoration plans are different from those set out in Section 6.4.2 of this Agreement;
- (c) the name of a Terasen Gas representative who may be contacted for more information;
- (d) projected commencement and completion dates; and
- (e) such other information relevant to the New Work as the Municipality may reasonably request from time to time.

#### **6.1.2. Exception for Emergency**

Where Terasen Gas is required to carry out work urgently in the interests of public safety or health or to preserve the safety of property and Company Facilities, Terasen Gas shall not be required to give prior notice but shall do so as soon as possible thereafter.

#### **6.1.3. Municipal Approval for New Work**

The Municipality may object to the New Work on the following grounds:

- (a) the proposed location of the New Work conflicts with Planned Facilities; or
- (b) the proposed location or design of the New Work is likely to compromise public safety or does not conform with Municipal bylaws, standards or policies; or
- (c) in instances where Terasen Gas can delay the New Work without compromising the supply, capacity or safety of its Gas Distribution System or its customers' need for gas service and the Municipality intends within the next 3 months to undertake work in the same location and wishes to co-ordinate both work;

by providing Terasen Gas with notice of its objections, provided such objections are reasonable, no more than 10 days after receiving Terasen Gas' notice of New Work. If the Municipality has not provided such notice of its objections to Terasen Gas, or in the case of large and complex New Work, the Municipality has not provided Terasen Gas with a notice to extend the time to reply to Terasen Gas until a stated time, the Municipality shall be deemed to have granted its approval of the New Work. The Municipality shall not otherwise withhold or delay its approval.

In addition, the Municipality may request Terasen Gas to provide the public with notice of the New Work.

#### **6.1.4. Work Not to Proceed**

If the Municipality has notified Terasen Gas of its objections or has requested a time extension, no more than 10 days after receiving Terasen Gas' notice of New Work, Terasen Gas shall not proceed with the New Work until Terasen Gas and the Municipality have agreed upon a resolution to the Municipality's objections. If the Municipality and Terasen Gas are unable to agree, then the matter shall be resolved in accordance with Section 17 (Resolution of Disputes).

### **6.2 Notice of Service Lines**

Terasen Gas, if required by the Municipality, shall provide the Municipality with notice of its intent to install, remove or repair Service Lines no less than three (3) days prior to commencement of such work. Terasen Gas' request for the location of the Municipality's utilities shall be deemed to be a notice of Terasen's intent to install, remove or repair Service Lines. The Municipality may object to such work on the same grounds as set out in Subsection 6.1.3 (a) and (b) above by providing Terasen Gas with notice of its objections within two (2) days of receiving Terasen Gas' notice. If the Municipality has not provided such notice of its objections to Terasen Gas, the Municipality shall be deemed to have granted its approval of the installation, removal or repair of the Service Lines. The Municipality shall not otherwise withhold or delay its approval.

### **6.3 Terasen Gas to Secure Locate Information**

Prior to conducting any New Work, Terasen Gas shall locate other Utilities and satisfy itself that it is clear to proceed.

### **6.4 Work Standards**

#### **6.4.1. Specific Work Requirements Remove Materials**

Terasen Gas shall keep its work sites clean and tidy. Terasen Gas shall remove all rubbish and surplus material from Public Places upon completion of its work.

#### **6.4.2. Restore Surface and Subsurface**

Where Terasen Gas has performed any operations or New Work in a Public Place, Terasen Gas shall restore without unreasonable delay and return such Public Place, as much as reasonably practical, to the condition and use which existed prior to such activity. The restoration will be in accordance with the specifications set out by the Municipality. Such specifications may include the degree and nature of compaction, subsurface structure, surface finish and landscaping required.

Without limiting the generality of this section and by way of example only, the Municipality may require Terasen Gas to restore asphalt and concrete surfaces with a permanent repair or a temporary repair. Should a temporary repair be directed, Terasen Gas or the Municipality at its discretion will subsequently construct a permanent repair in accordance to its usual maintenance/replacement schedule for that area. The cost of permanent and temporary repairs to remediate Highway surfaces will be at the expense of Terasen Gas proportional to the surface area affected by the New Work.

Where Terasen Gas is required to cut pavement on a Public Place such cuts and restoration will be limited to less than 1.5 meters unless at the discretion of Terasen Gas a larger excavation is warranted due to the depth or size of the pipe or requirements of the Workers' Compensation Board or other relevant Provincial or Federal regulations. Terasen Gas will be responsible for any repairs and maintenance of the surface repair for a period of three (3) years. However, where pavement restoration has been conducted by the Municipality, whether or not such work was undertaken to repair cuts on Terasen Gas' behalf, Terasen Gas shall not be responsible for the repairs or maintenance of the surface repair.

#### **6.4.3. Repair Damage to Municipal Facilities**

To the extent that any of the work being done by Terasen Gas 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 Terasen Gas

shall restore in accordance with Section 6.4.2 above, Terasen Gas will report such damage and reimburse the Municipality for its costs arising from such damage calculated in accordance with Section 14.1 below. Where such damage results directly from inaccurate or incomplete information supplied by Municipality, and Terasen Gas has complied with all applicable laws and regulations, and with instructions supplied by the Municipality, then the cost of repairing damaged Municipal Facilities or Public Places will be at the expense of the Municipality.

### **6.5 Conformity Requirement**

The New Work must be carried out in conformity with Terasen Gas' notice of New Work except that Terasen Gas may make in-field design changes when carrying out the New Work to accommodate field conditions which could not have been reasonably foreseen by Terasen Gas. If such in-field conditions materially impact Terasen Gas' plans for restoration or materially change the impact of Terasen Gas' work on Municipal Facilities, other than in respect of projected commencement and completion dates, Terasen Gas shall notify the Municipality.

### **6.6 Non-Compliance**

If Company Facilities located in Public Places are later found not to be located in compliance with Terasen Gas' notice of New Work provided in accordance with Section 6.1 and 6.5, then any alteration or upgrading required to bring them into compliance with such notice will be at the expense of Terasen Gas provided that the work has not been altered, damaged or modified by the Municipality or a third party.

## **7. COMPANY FACILITY CHANGES REQUIRED BY THE MUNICIPALITY**

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

Before any Public Places containing Company Facilities may be legally closed or alienated by the Municipality, the Municipality shall promptly notify Terasen Gas of its intent to close or alienate such Public Places and either:

- (a) grant Terasen Gas a registered statutory right of way in a form satisfactory to Terasen Gas so as to maintain Terasen Gas' right to use the land; or
- (b) request Terasen Gas to remove and (if possible and practicable) relocate those Company Facilities affected by such closure or alienation at the sole cost of the Municipality.

If the Public Places are expropriated by an expropriating authority and Terasen Gas is required to remove its facilities then the Municipality shall use reasonable efforts to seek compensation from such expropriating authority to compensate Terasen Gas for its relocation costs. If the Municipality is unable to obtain such compensation despite its reasonable efforts, then the Municipality shall have no further liability to Terasen Gas.

The Municipality shall not be required to incur any legal expenses without the approval and reimbursement by Terasen Gas in order to obtain such compensation for Terasen Gas.

## **8. FACILITY CHANGES REQUIRED**

### **8.1 By Terasen Gas**

Terasen Gas may provide Notice to the Municipality that it requires Municipal Facilities to be altered, changed or relocated to accommodate its requirements. The Municipality will comply with Terasen Gas's requests to the extent it is reasonably able to do so and with reasonable speed and dispatch after receipt of written request. Terasen Gas agrees to pay for all of the costs for changes to the affected Municipal Facilities.

### **8.2 By the Municipality**

The Municipality may provide Notice to Terasen Gas that it requires Company Facilities to be altered, changed or relocated to accommodate its requirements. Terasen Gas will comply with the Municipality's requests to the extent it is reasonably able to do so and with reasonable speed and dispatch after receipt of written request. The Municipality agrees to pay for all of the costs for changes to the affected Company Facilities.

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

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

The Municipality and Terasen Gas agree to use reasonable efforts in carrying out their construction and maintenance activities in a manner that is responsive to the affect that it may have on the other party, as well as other users of Public Places. Such reasonable efforts include attending the planning meetings described in Section 9.2 below 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.

### **9.2 Communication and Coordination Activities**

At the initiation of the Municipality, representatives of the Municipality, Terasen Gas and other affected Utilities and third parties will meet each year, prior to the construction season, to discuss the parties' anticipated construction activities for that year. Such discussions will include

- (a) the use of common trenching, common utility access facilities and such other common facilities as may be commercially reasonable and comply with operating and safety standards; and
- (b) the consolidation of planned maintenance work where pavement must be cut in order to avoid multiple excavations.

### **9.3 Municipal Planning Lead**

During such annual planning meetings, the Municipality shall lead the planning process for all Utilities and third parties with Planned Facilities in Public Places.

## **10. MUTUAL INDEMNITY**

### **10.1 Indemnity by Terasen Gas**

**10.1.1.** Terasen Gas 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 Terasen Gas in:

- (a) placing, constructing, renewing, altering, repairing, maintaining, removing, extending, operating or using the Company's Facilities on or under any Public Places;
- (b) any breach of this Agreement by Terasen Gas;

except to the extent contributed by negligence or default of the Municipality or the Municipal Employees.

**10.1.2.** This indemnity expressly extends to all acts and omissions of Terasen Gas Employees.

### **10.2 Indemnity by the Municipality**

**10.2.1.** The Municipality indemnifies and protects and saves Terasen Gas 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:

- (a) placing, constructing, renewing, altering, repairing, maintaining, removing, extending, operating or using the Municipal Facilities on or under any Public Places;
- (b) any breach of this Agreement by the Municipality;

except to the extent contributed by the negligence or default of Terasen Gas or Terasen Gas Employees.

**10.2.2.** This indemnity expressly extends to all acts and omissions of Municipal Employees.

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

All property of Terasen Gas kept or stored on the Public Places will be kept or stored at the risk of Terasen Gas. For further certainty, Terasen Gas 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. Terasen Gas accepts its use of Public Places on an "as is" basis.

## **11. OPERATING FEE**

### **11.1 Fee Calculation**

- 11.1.1.** Terasen Gas agrees to pay to the Municipality a fee of three percent (3%) of the amount received by Terasen Gas for provision and distribution of all gas consumed within the Boundary Limits of the Municipality. Such amount will not include any amount received by Terasen Gas for gas supplied or sold for resale.
- 11.1.2.** The Municipality will notify Terasen Gas in writing of any boundary expansion so that new customers can be included as a part of the annual payment fee.
- 11.1.3.** Terasen Gas will be responsible for adding those new customers within the new Municipal boundary upon receipt of such notice from the Municipality and the revised calculation of the fee will commence at that point.

### **11.2 Payment Date and Period**

Payments by Terasen Gas to the Municipality will be made on the first day of March of each year of the Agreement in respect of the amount received by Terasen Gas during that portion of the term of this Agreement which is in the immediately preceding calendar year. By way of example only, payment made on March 1, 2006 will be the amount received during the 2005 calendar year.

### **11.3 BCUC Decision or Provincial Legislation**

In the event that a decision by the BCUC, other than periodic rate changes as a result of commodity, delivery or margin increases or decreases, or new legislation by the Provincial Government, impacts the operating fee being paid to the Municipality so as to increase it or decrease it by more than 5% annually at the time of the decision or in subsequent years, the parties shall negotiate a new operating fee formula which best reflects the revenue stream received by the Municipality under this Agreement. For greater certainty, the parties acknowledge that a change to the BCUC's decision that Terasen Gas shall provide the agency billing and collections service for marketers on a mandatory basis, as set out in the "Business Rules for Commodity Unbundling dated June

5, 2003 as set out in Appendix A to Letter No. L-25-03, may impact the operating fee being paid to the Municipality.

## **12. OTHER APPROVALS, PERMITS OR LICENSES**

Except as specifically provided in this Agreement, the Municipality will not require Terasen Gas to seek or obtain approvals, permits or licenses. The Municipality will not charge or levy against Terasen Gas any approval, license, inspection or permit fee, or charge of any other type, that in any manner is related to or associated with Terasen Gas constructing, installing, renewing, altering, repairing, maintaining or operating Company Facilities on any Public Places or in any manner related to or associated with Terasen Gas exercising the powers and rights granted to it by this Agreement.

If the Municipality does charge or levy fees or costs against Terasen Gas (other than for repair of damage to the Municipal Facilities or Public Places in accordance with Section 14) then Terasen Gas may reduce the annual operating fee payable to the Municipality under Section 11 by an amount equal to such charges, fees or costs.

## **13. MUNICIPAL OBLIGATIONS**

### **13.1 Municipal Work**

**13.1.1.** Before the Municipality undertakes any construction or maintenance activity which is likely to affect a part of the Company Facilities, it must give Terasen Gas notice not less than 10 days before commencing such construction or maintenance activity.

**13.1.2.** Where the Municipality is required to carry out work urgently in the interests of public safety or health or to preserve the safety of property and Municipal Facilities, the Municipality shall not be required to give prior notice but shall do so as soon as possible thereafter.

**13.1.3.** Terasen Gas will be entitled to appoint at its cost a representative to inspect any construction or maintenance activity undertaken by the Municipality. The provisions of this section do not relieve the Municipality of its responsibilities under the *Gas Safety Act*, *Pipeline Act*, and successor legislation, regulations thereunder, or the requirements of the BC Workers' Compensation Board.

**13.1.4.** In addition, the Municipality shall provide Notice to Terasen Gas of any work planned that will be adjacent to, across, over or under a Transmission Pipeline or within a right-of-way for a Transmission Pipeline. To the extent that Terasen Gas requires that permit be issued for construction or other activities within a Transmission Pipeline right-of-way, the Municipality will submit

an application for such a permit in sufficient time for the application to be reviewed and approved by Terasen Gas prior to the commencement of the construction or other activity.

- 13.1.5. The Municipality shall assist Terasen Gas in Terasen Gas' efforts to reduce instances of residences being built over gas lines and other similarly unsafe building practices by third parties.
- 13.1.6. The Municipality shall not interfere with Transmission Pipeline markers.
- 13.1.7. The Municipality shall provide notice to Terasen Gas of any damage caused by the Municipality to Company Facilities or Transmission Pipeline Markers as soon as reasonably possible. To the extent that any of the work being done by the Municipality results in damage to the Company Facilities, the Municipality will report such damage and pay Terasen Gas its costs arising from such damage in accordance with Section 14.1 below. Where such damage results directly from inaccurate or incomplete information supplied by Terasen Gas, and the Municipality has complied with all applicable laws and regulations, and with instructions supplied by Terasen Gas, then the cost of repairing the damaged Company Facilities will be at the expense of Terasen Gas.
- 13.1.8. The Municipality shall notify Terasen Gas of any new bylaws, standards or policies adopted or passed by the Municipality that are likely to affect Terasen Gas' operations in Public Places.

## **14. COSTS AND PAYMENT PROCEDURES**

### **14.1 Definition of Costs**

Wherever one party is required to pay the other party Costs as a result of damage caused by one party to the other's property, the Costs shall be:

- (a) all direct expenses and disbursements incurred to restore such property to as good a state of repair as had existed prior to the damage;
- (b) reasonable administration and overhead charges on labour, equipment and materials;
- (c) such taxes as may be required in the appropriate jurisdiction;
- (d) in the case of loss of gas or re-lights, the cost of the commodity as determined by the length of time that the gas is leaking, size of pipe and hole and the pressure; and

- (e) in the case of water, electrical or sewer, cost of supplying alternate service.

## **14.2 Cost Claim Procedures**

**14.2.1.** Wherever one party is claiming Costs of the other party in regard to any work or issue arising under this Agreement the claiming party shall:

- (a) provide an invoice to the other party no later than one year after incurring Costs;
- (b) provide detailed descriptions of the cost items;
- (c) provide the time period the invoice covers;
- (d) provide a minimum of 21 day terms for payment of the invoice; and
- (e) provide for late payment interest at the rate consistent with the party's policy for charging for late payments, which rate must be reasonable;

**14.2.2.** The party claiming Costs shall have no right of set off for these invoices against any amounts otherwise payable to the other party, except to the extent so approved in writing by the other party.

## **14.3 Cost Verification Procedures**

**14.3.1.** Wherever either party is the recipient of or is claiming Costs and or fees that party may at its own discretion request from the other party:

- (a) Certification by an officer or designated representative verifying the calculations and computations of the Costs and or fees,
- (b) An internal review or audit of the calculations and computations of the Costs and or fees, with the internal review or audit to be carried out by a person appointed by the party being asked to provide the review;
- (c) An independent external audit of the calculations and computations of the costs and fees, with the independent external auditor being a Chartered or a Certified General Accountant in British Columbia appointed by the party requesting the external audit;

**14.3.2.** The costs of this cost verification process shall be borne by the party who is required to supply the information except as otherwise specified providing the frequency of such requests does not exceed once per calendar year. For all future cases which occur in that

calendar year, the costs of such further verifications shall be at the expense of the requester.

Where the independent external audit finds and establishes errors representing a variance greater than 2% of the originally calculated value in favour of the party claiming Costs, the costs shall be at the expense of the party supplying the information. Once an error has been verified, payment or refund of the amount found to be in error will be made within 21 days.

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

### **15.1 Agreement Not Binding Until Approved**

**15.1.1.** This Agreement will not come into effect and does not bind the parties until the following conditions have been fulfilled:

- (a) Terasen Gas has obtained such approvals of this Agreement, or its terms, as may be required under the *Utilities Commission Act*; and
- (b) the Municipality 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.

**15.1.2.** Upon executing this Agreement the parties shall make reasonable efforts to fulfill the conditions set out in this section. If the conditions are not fulfilled or waived within one (1) year of the execution of this Agreement, then the obligation on the parties to make reasonable efforts to fulfill the conditions will terminate, and neither party will have any further obligation to the other under this Agreement.

### **15.2 Termination of Franchise Agreement**

If not already terminated or expired, any franchise and operating agreement between the Municipality and Terasen Gas is terminated upon the effective date of this Agreement.

### **15.3 Term of Agreement**

This Agreement will have a term of 20 years from the date that it comes into effect and after the initial term shall continue indefinitely unless terminated in accordance with Section 15.4 below.

### **15.4 Termination of Agreement**

**15.4.1.** This Agreement may be terminated by the Municipality upon the occurrence of any of the following events:

- (a) Terasen Gas admits its inability to pay its debts generally as they become due or otherwise acknowledges its insolvency;
- (b) Terasen Gas starts proceedings or takes any action to commence or executes an agreement to authorize its participation in any proceeding:
  - (i) seeking to adjudicate it bankrupt or insolvent;
  - (ii) seeking liquidation, reorganization, arrangement, protection, relief or composition of it or any of its property or debt or making a proposal with respect to it under any law relating to bankruptcy, insolvency, reorganization or compromise of debts or other similar laws; or
  - (iii) seeking the appointment of a receiver, trustee, agent, custodian or other similar official for it or for any substantial part of its assets or if a creditor seeks the appointment of a receiver, trustee, agent, custodian or other similar official for any substantial part of its assets; and such proceeding is not dismissed, discharged, stayed or restrained within 20 days of the Municipality becoming aware of it.

**15.4.2.** Either party may terminate if other breaches any term, provision, obligation hereunder and such breach, is a material major 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 default if such matter is in dispute or has been referred to commercial arbitration, the outcome of which is pending, or is being resolved in good faith compliance with the dispute resolution and arbitration processes of this Agreement.

**15.4.3.** After the initial twenty (20) year term of this Agreement, either party may terminate this Agreement by giving the other not less than one (1) year's notice of termination.

## **15.5 Amendments and Waivers**

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 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.

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

Upon one party giving Notice to the other of termination of this Agreement, the parties shall negotiate in good faith to enter into a new agreement with respect to the terms and conditions under which Terasen Gas may use the Public Places. In the event that such negotiations break down and in the opinion of one or other of the parties acting in good faith that settlement is unlikely, either party may give Notice to the other of its intention to apply to the BCUC to seek resolution of the terms and conditions applicable to Terasen Gas' continued operations and construction activities within the Municipality.

#### **15.7 Continuity In The Event No Agreement Is Settled**

Upon the expiry or termination of this Agreement, if a new agreement has not been ratified or if the BCUC has not imposed the terms and conditions under which Terasen Gas may use the Public Places, the following provisions will apply:

- (a) The Company Facilities within the boundary limits of the Municipality both before and after the date of this Agreement, shall remain Terasen Gas' property and shall remain in the Public Places.
- (b) The Company Facilities may continue to be used by Terasen Gas for the purposes of its business, or removed from Public Places in whole or in part at Terasen Gas' sole discretion.
- (c) Terasen Gas may continue to use Public Places within the Municipality for the purposes of its business. Terasen Gas' employees, may enter upon all the Public Places within the Boundary Limits of the Municipality to maintain, operate, install, construct, renew, alter, or place Company Facilities; provided that Terasen Gas continues to operate in a manner consistent with the terms and conditions of this Agreement as if the term had been extended except with respect to the payment of the Operating Fee.
- (d) Terasen Gas will with the support of the Municipality take such steps necessary to seek BCUC approvals of the extension of terms and conditions including payment of the operating fee under the expiring agreement during negotiations of a new agreement.
- (e) Should Terasen Gas no longer be authorized or required to pay the operating fee under any Agreement between it and the Municipality or by any order of the BCUC, the Municipality shall be free 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

In the event that 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) Terasen Gas will accept the appointment of such third party as the Municipality's agent or subcontractor to enable such third party to deal directly with Terasen Gas so as to enable the Municipality to comply with the terms, obligations and conditions of this Agreement.

### 16.2 Changes to the Community Charter

In the event that the provisions of the *Community Charter* or other legislation affecting the rights and powers of municipalities change in such a way as to materially, in the opinion of the Municipality, affect municipal powers in respect to matters dealt with in this Agreement,

- (a) the Municipality may within one year of the change coming into effect propose new agreement terms with respect to only those specific changes and Terasen Gas agrees to negotiate such terms; and
- (b) failing satisfactory resolution either of the parties will seek resolution through the Dispute Resolution Process, Section 17.

### 16.3 Changes to the Utilities Commission Act

In the event that the provisions of the *Utilities Commission Act* or other legislation affecting the rights and powers of regulated Utilities change in such a way as to materially, in Terasen Gas' opinion, affect Terasen Gas' powers in respect to matters dealt with in this Agreement,

- (a) Terasen Gas may within one year of the change coming into effect propose new agreement terms with respect to only those specific changes and the Municipality agrees to negotiate such terms; and
- (b) failing satisfactory resolution either of the parties will seek resolution through the Dispute Resolution Process, Section 17.

## 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, 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 or Arbitration**

If the parties fail to resolve the dispute through mediation, the unresolved dispute shall be referred to the BCUC if within its jurisdiction. If the matter is not within the jurisdiction of the BCUC, 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 will allow discovery as required by law in arbitration proceedings.

### **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.

## **18. GENERAL TERMS & CONDITIONS**

### **18.1 No Liens**

Terasen Gas will do its best to not allow, suffer or permit any liens to be registered against the Company Facilities located in Public Places as a result of the conduct of Terasen Gas. If any such liens are registered, Terasen Gas will start action to clear any lien so registered to the Public Place within ten (10) days of being made aware such lien has been registered. Terasen Gas will keep the Municipality advised as to the status of the lien on a regular basis. In the event that such liens are not removed within ninety (90) days of the registration of such lien, Terasen Gas will pay them in full or post sufficient security to ensure they are discharged from title.

### **18.2 Corporate Authority**

Terasen Gas now warrants, represents and acknowledges that:

- (a) it has the full right, power and authority to enter into this Agreement;
- (b) it is a corporation, duly organized, legally existing and in good standing under the laws of its jurisdiction of incorporation or continuance and is lawfully registered and licensed to do business in British Columbia.

### **18.3 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 venture 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.

### **18.4 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.

### **18.5 Governing Law**

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

### **18.6 General**

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.

### **18.7 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.

### **18.8 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. To the extent permitted by applicable law, the parties hereby waive any provision of law that renders any provision hereof prohibitive or unenforceable in any respect.

### **18.9 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.

### **18.10 Notice**

Any notice or other written communication required, or permitted to be made or given pursuant to this Agreement (the "Notice") 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:

- A) if to the Municipality:

**TOWN OF OLIVER**  
PO Box 638  
Oliver, British Columbia V0H 1T0

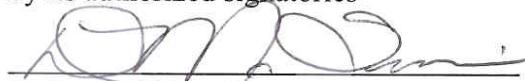
(B) If to Terasen Gas:

**TERASEN GAS INC.**

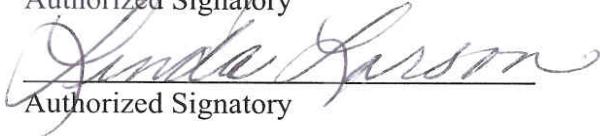
16705 Fraser Highway  
Surrey, British Columbia V3S 2X7  
Attention: Vice President, Regulatory Affairs

**TOWN OF OLIVER**

by its authorized signatories



Authorized Signatory

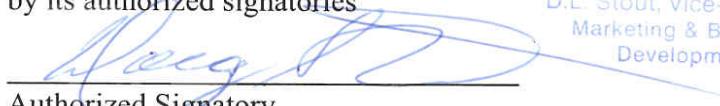


Authorized Signatory

**TERASEN GAS INC.**

by its authorized signatories

D.L. Stout, Vice-President  
Marketing & Business  
Development

  
\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Authorized Signatory

SIXTH FLOOR, 900 HOWE STREET, BOX 250  
VANCOUVER, B.C. V6Z 2N3 CANADA  
web site: <http://www.bcuc.com>



**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER** C-7-06

TELEPHONE: (604) 660-4700  
BC TOLL FREE: 1-800-663-1385  
FACSIMILE: (604) 660-1102

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

and

An Application by Terasen Gas Inc.  
for Approval of an Operating Agreement  
with the Town of Oliver

**BEFORE:**      L.F. Kelsey, Commissioner      )  
                  L.A. Zaozirny, Commissioner      )      August 10, 2006

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

**WHEREAS:**

- A. On January 12, 2006, Terasen Gas Inc. ("Terasen Gas") applied to the British Columbia Utilities Commission ("the Commission") for approval of an Operating Agreement with the Town of Oliver ("the Municipality") ("the Application"); and
- B. The Franchise Agreement approved by Commission Order No. C-2-77 expired on March 31, 1977; and
- C. By way of successive extension agreements, the Franchise Agreement was amended and the term extended to December 31, 2005; and
- D. In its Application, Terasen Gas advised that it undertook negotiations with the Union of British Columbia Municipalities ("UBCM") Operating Agreement Committee to establish the terms of a new form of Operating Agreement. In 2005 Terasen Gas successfully negotiated a pro-forma Operating Agreement with the UBCM and using this agreement as a template, negotiated new Operating Agreements with those municipalities with Operating Agreements which expired on December 31, 2005 (collectively the "Municipalities"); and
- E. The Application requests approval of a 20-year Operating Agreement between Terasen Gas and the Municipality from January 1, 2006 to December 31, 2025 that sets out the terms and conditions, including a

**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER**      C-7-06

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3 percent operating fee, under which Terasen Gas shall exercise its rights to use the public places of the Municipality in conducting its business of distributing gas within the Municipality; and

- F. Commission Order No. C-7-03, which approved a District of Salmon Arm and Terasen Gas Operating Agreement and Addendum, directed Terasen Gas to seek a method in future agreements to convert the operating fee to a charge on utility margin; and
- G. The Commission issued Information Request No. 1 to Terasen Gas on February 20, 2006, including questions related to the impacts of the proposed operating fee on rate stability and requesting an explanation of how such a fee based on Terasen Gas revenue fairly compensates the Municipalities for the costs incurred as a result of Terasen Gas' use of the streets and other public places within the Municipalities; and
- H. Terasen Gas responded to the Commission's Information Request No. 1 on March 9, 2006. Terasen Gas provided historical franchise fee information and discussed five operating fee options (Option 1-5) which were all rejected by the Municipalities; and
- I. The Commission issued Information Request No. 2 on March 28, 2006 and Terasen Gas responded on April 13, 2006. In IR No. 2, Terasen Gas analyzed an operating fee calculation using a base year methodology and provided additional information as to why Options 2, 4 and 5 in IR No. 1 were rejected; and
- J. In a letter dated May 9, 2006, the Commission sought further submissions from Terasen Gas, the UBCM and the Municipalities to support or justify how the public interest is better served through an operating fee, as proposed, compared to Option 5, described as a "Hybrid Approach" whereby customers in Rate Classes 1-3 would pay a margin based fee and all other customers would continue to pay a franchise fee based on revenue of 3.09 percent; and

**BRITISH COLUMBIA  
UTILITIES COMMISSION**

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NUMBER**      C-7-06

- K. From May 17, 2006 to May 26, 2006 the Commission received submissions from Terasen Gas, the City of Rossland, the District of Hudson's Hope, the City of Kimberley, the City of Fernie, the City of Grand Forks, the Town of Oliver and the City of Cranbrook. Other interested parties such as the City of Kelowna, the City of Nelson and Mr. Greg McCormick also provided submissions to the Commission. Among other things, Terasen Gas and the Municipalities stated that the agreements are "package deals" with a considerable amount of compromise involved, including the fees agreed to within the package, and outlined their significant concerns to the added complexity, costs, communication and need to renegotiate if a margin fee were imposed; and
- L. The Commission has reviewed the Application and the related submissions presented to it and has determined that the Operating Agreement with the Town of Oliver should be approved.

**NOW THEREFORE** the Commission, pursuant to Section 45 of the Utilities Commission Act the Commission approves the Operating Agreement as filed.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 29<sup>th</sup> of August 2006.

BY ORDER

*Original signed by*

L.F. Kelsey  
Commissioner



# District of 100 Mile House

385 South Birch Avenue, P.O. Box 340, 100 Mile House, British Columbia Canada V0K 2E0  
T: 250.395.2434 • F: 250.395.3625 • E: district@dist100milehouse.bc.ca

November 23, 2005

Terasen Gas  
444 Okanagan Ave. E  
Penticton, BC V2A 3K3

**Attn: Mr. Rob Greno, Manager Community & Aboriginal Affairs**

Dear Mr. Greno:

Council of the District of 100 Mile House, at their Regular Council Meeting of November 22<sup>nd</sup>, 2005, passed a resolution to approve the Operating Agreement between the District of 100 Mile House and Terasen Gas Inc. and authorized execution of the Agreement.

Kindly find enclosed two (2) signed copies of the Operating Agreement for signatures from Terasen Gas. We look forward to receiving a signed copy back to our office for our records.

Trusting the above is in order.

Sincerely,

  
Carollyne Evans  
District Manager

/dl  
encl.

File No. 2240

*HANDCRAFTED LOG HOME CAPITAL OF NORTH AMERICA*

## **OPERATING AGREEMENT**

**THIS OPERATING AGREEMENT** (the "Agreement") made this 1st day of JANUARY, 2005. *[Signature]*

BETWEEN:

**DISTRICT OF 100 MILE HOUSE**  
Box 340  
100 Mile House, British Columbia  
V0K 2E0

(hereinafter called the "**Municipality**")

OF THE FIRST PART

AND:

**TERASEN GAS 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

(hereinafter called "**Terasen Gas**")

OF THE SECOND PART

### **RECITALS:**

- A. Whereas by a certificate of public convenience and necessity (CPCN), Terasen Gas was granted the right to construct and operate gas distribution facilities within the Municipality;
- B. And whereas pursuant to the Community Charter, S.B.C. 2003, a Municipal council may, by resolution adopt and enter into a licensing and operating agreement;
- C. And whereas Terasen Gas operates in the Municipality under British Columbia Utilities Commission Order Number C-10-05 dated May 10, 2005, which will expire on December 31, 2005;
- D. And whereas Terasen Gas and the Municipality wish to enter into this Agreement to clarify and settle the terms and conditions under which Terasen Gas shall exercise its rights to use Public Places in conducting its business of distributing Gas within the Municipality.

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

## **1. DEFINITIONS**

For the purposes of this Agreement:

- (a) “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;
- (b) “BCUC” means the British Columbia Utilities Commission or successor having regulatory jurisdiction over natural gas distribution utilities in British Columbia;
- (c) “CPCN” means a Certificate of Public Convenience and Necessity granted by the BCUC which allows Terasen Gas to operate, maintain and install Company Facilities for the distribution of Gas within the Municipality;
- (d) “Company Design” means the installation and design specifications which meet all applicable Provincial and Federal codes, standards and safety requirements for the gas services in the province of British Columbia, as they relate to approved gas works, system improvements, upgrades, connections and system extensions;
- (e) “Company Facilities” means Terasen Gas’ facilities, including pipes, buildings, structures, valves, signage, storage facilities, machinery, vehicles and other equipment used to maintain, operate, renew, repair, construct and monitor a natural Gas Distribution and transmission system;
- (f) “Distribution Pipelines” means pipelines operating at a pressure less than 2071 kilopascals (300 psi);
- (g) “Gas” means natural gas, propane, methane, synthetic gas, liquefied petroleum in a gaseous form or any mixture thereof;
- (h) “Gas Distribution” means fixed equipment, structures, plastic and metal lines and pipe, valves, fittings, appliances and related facilities used or intended for the purpose of conveying, testing, monitoring, distributing, mixing, storing, measuring and delivering Gas and making it available for use with the Municipality;
- (i) “Highway” means street, road, lane, bridge or viaduct controlled by the Municipality or Provincial Government of British Columbia;
- (j) “Losses” means direct and indirect losses, damages, costs and expenses (including without limitation, interest, penalties and amounts paid in settlement but does not include legal and professional fees and disbursements);

- (k) “Mains” means pipes used by Terasen Gas to carry gas for general or collective use for the purposes of Gas Distribution;
- (l) “Municipal Employees” means personnel employed by or engaged by the municipality, including officers, employees, directors, contractors and agents;
- (m) “Municipal Facilities” means any facilities, including highways, sidewalks, conduits, manholes, equipment, machinery, pipes, wires, valves, buildings, structures, signage, bridges, viaducts and other equipment within the Public Places used by the Municipality for the purposes of its public works or municipal operations;
- (n) “Municipal Supervisor” means the Municipal Engineer or other such person designated by the Municipality to receive notices and issue approval as set out in this Agreement;
- (o) “New Work” means any installation, construction, repair, maintenance, alteration, extension or removal work of the Company Facilities in Public Places except;
  - (i) routine maintenance and repair of the Company Facilities that does not involve any cutting of asphalted road surface;
  - (ii) installation or repair of Service Lines whether or not such installation or repair involves cutting of asphalted road service; or
  - (iii) emergency work;but notwithstanding such exceptions, New Work shall include any installation, construction or removal of the Company Facilities in Public Places that are planned to disturb underground Municipal Facilities;
- (p) “Pipeline Markers” means post, signage or any similar means of identification used to show the general location of Transmission Pipelines and distribution pipelines or Terasen Gas Rights of Way;
- (q) “Planned Facilities” means those facilities not yet constructed but which have been identified by way of documented plans for the works of the Municipality, for works of third parties, where such works are identified by documented plans approved by the Municipality, or for works of Terasen Gas submitted to the Municipality subject to Municipal approval;
- (r) “Public Places” means any public thoroughfare, highway, road, street, lane, alley, trail, square, park, bridge, right of way, viaduct, subway, watercourse or other public place in the Municipality;
- (s) “Service Line” means that portion of Terasen Gas’ gas distribution system extending from a Main to the inlet of a meter set and, for the purposes of this Agreement, includes a service header and service stubs;

- (t) "Terasen Gas Employees" means personnel employed by or engaged by Terasen Gas including officers, employees, directors, contractors, and agents;
- (u) "Transmission Pipeline" means a pipeline of Terasen Gas having an operating pressure in excess of 2071 kilopascals (300 psi); and
- (v) "Utilities" means the facilities or operations of any water, waste water, sewer, telecommunications, energy, cable service or similar service provider located in Public Places within the Municipality.

## **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) words in the singular include the plural, words importing a corporate entity include individuals, and vice versa;
- (c) in calculating time where the agreement refers to "at least" or "not less than" 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" a number of days, Saturdays, Sundays and holidays must be excluded;
- (d) 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.

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

Terasen Gas 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.

Terasen Gas 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.

## **4. TERASEN GAS RIGHTS TO ACCESS & USE PUBLIC PLACES**

The Municipality hereby acknowledges Terasen Gas' rights to:

- (a) develop, construct, install, maintain or remove Company Facilities on, over, in and under Public Places in the Municipality;
- (b) enter on Public Places from time to time as may be reasonably necessary for the purpose of maintaining, repairing, or operating the Company's Facilities;
- (c) place pipeline identification markers within Public Places where a Transmission Pipeline or Distribution Pipeline crosses or is otherwise within a Public Place;

subject to terms and conditions defined in this Agreement.

## **5. TERASEN GAS COMPLIANCE WITH STANDARDS FOR USE OF PUBLIC PLACES**

### **5.1 Non-discriminatory Standards for Terasen Gas**

In its use of Public Places, Terasen Gas shall comply with all Federal and Provincial laws, regulations and codes and shall comply with all Municipal bylaws, standards and policies except that Terasen Gas shall not have to comply with such Municipal bylaws, standards and policies that:

- (a) conflict with terms of this Agreement or limit any rights or concessions granted to Terasen Gas by the Municipality under this Agreement; or
- (b) conflict with other legislation governing Terasen Gas.

Further, where the Municipality has established requirements and standards for work in Public Places, the Municipality shall apply them in a fair, reasonable and non-discriminatory manner consistent with the manner that the Municipality establishes requirements on other Utilities.

### **5.2 Provide emergency contacts.**

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

### **5.3 Assist with facility locates**

Terasen Gas 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 unless the reason for the request is the result of an emergency; in which case the information shall be provided forthwith. Terasen Gas shall provide gas locations from Terasen Gas records. Terasen Gas shall perform on site facility locates in accordance with the *Safety Standards Act – Gas Safety Regulations Section 39*.

## **6. TERASEN GAS WORK OBLIGATIONS:**

### **6.1 Notices - General Requirements**

#### **6.1.1. Notice for New Work**

For New Work, if required by the Municipality, Terasen Gas shall give notice to the Municipality or such officer or official thereof who has been designated from time to time by the Municipality that it intends to perform such New Work. The Notice shall include:

- (a) a plan and specifications showing the proposed location and dimensions of the New Work;
- (b) Terasen Gas' plans for the restoration of the Public Place affected by the New Work if Terasen Gas' restoration plans are different from those set out in Section 6.4.2 of this Agreement;
- (c) the name of a Terasen Gas representative who may be contacted for more information;
- (d) projected commencement and completion dates; and
- (e) such other information relevant to the New Work as the Municipality may reasonably request from time to time.

#### **6.1.2. Exception for Emergency**

Where Terasen Gas is required to carry out work urgently in the interests of public safety or health or to preserve the safety of property and Company Facilities, Terasen Gas shall not be required to give prior notice but shall do so as soon as possible thereafter.

#### **6.1.3. Municipal Approval for New Work**

The Municipality may object to the New Work on the following grounds:

- (a) the proposed location of the New Work conflicts with Planned Facilities; or
- (b) the proposed location or design of the New Work is likely to compromise public safety or does not conform with Municipal bylaws, standards or policies; or
- (c) in instances where Terasen Gas can delay the New Work without compromising the supply, capacity or safety of its Gas Distribution System or its customers' need for gas service and the Municipality intends within the next 3 months to undertake work in the same location and wishes to co-ordinate both work;

by providing Terasen Gas with notice of its objections, provided such objections are reasonable, no more than 10 days after receiving Terasen Gas' notice of New Work. If the Municipality has not provided such notice of its objections to Terasen Gas, or in the case of large and complex New Work, the Municipality has not provided Terasen Gas with a notice to extend the time to reply to Terasen Gas until a stated time, the Municipality shall be deemed to have granted its approval of the New Work. The Municipality shall not otherwise withhold or delay its approval.

In addition, the Municipality may request Terasen Gas to provide the public with notice of the New Work.

#### **6.1.4. Work Not to Proceed**

If the Municipality has notified Terasen Gas of its objections or has requested a time extension, no more than 10 days after receiving Terasen Gas' notice of New Work, Terasen Gas shall not proceed with the New Work until Terasen Gas and the Municipality have agreed upon a resolution to the Municipality's objections. If the Municipality and Terasen Gas are unable to agree, then the matter shall be resolved in accordance with Section 17 (Resolution of Disputes).

### **6.2 Notice of Service Lines**

Terasen Gas, if required by the Municipality, shall provide the Municipality with notice of its intent to install, remove or repair Service Lines no less than three (3) days prior to commencement of such work. Terasen Gas' request for the location of the Municipality's utilities shall be deemed to be a notice of Terasen's intent to install, remove or repair Service Lines. The Municipality may object to such work on the same grounds as set out in Subsection 6.1.3 (a) and (b) above by providing Terasen Gas with notice of its objections within two (2) days of receiving Terasen Gas' notice. If the Municipality has not provided such notice of its objections to Terasen Gas, the Municipality shall be deemed to have granted its approval of the installation, removal or repair of the Service Lines. The Municipality shall not otherwise withhold or delay its approval.

### **6.3 Terasen Gas to Secure Locate Information**

Prior to conducting any New Work, Terasen Gas shall locate other Utilities and satisfy itself that it is clear to proceed.

### **6.4 Work Standards**

#### **6.4.1. Specific Work Requirements Remove Materials**

Terasen Gas shall keep its work sites clean and tidy. Terasen Gas shall remove all rubbish and surplus material from Public Places upon completion of its work.

#### **6.4.2. Restore Surface and Subsurface**

Where Terasen Gas has performed any operations or New Work in a Public Place, Terasen Gas shall restore without unreasonable delay and return such Public Place, as much as reasonably practical, to the condition and use which existed prior to such activity. The restoration will be in accordance with the specifications set out by the Municipality. Such specifications may include the degree and nature of compaction, subsurface structure, surface finish and landscaping required.

Without limiting the generality of this section and by way of example only, the Municipality may require Terasen Gas to restore asphalt and concrete surfaces with a permanent repair or a temporary repair. Should a temporary repair be directed, Terasen Gas or the Municipality at its discretion will subsequently construct a permanent repair in accordance to its usual maintenance/replacement schedule for that area. The cost of permanent and temporary repairs to remediate Highway surfaces will be at the expense of Terasen Gas proportional to the surface area affected by the New Work.

Where Terasen Gas is required to cut pavement on a Public Place such cuts and restoration will be limited to less than 1.5 meters unless at the discretion of Terasen Gas a larger excavation is warranted due to the depth or size of the pipe or requirements of the Workers' Compensation Board or other relevant Provincial or Federal regulations. Terasen Gas will be responsible for any repairs and maintenance of the surface repair for a period of three (3) years. However, where pavement restoration has been conducted by the Municipality, whether or not such work was undertaken to repair cuts on Terasen Gas' behalf, Terasen Gas shall not be responsible for the repairs or maintenance of the surface repair.

#### **6.4.3. Repair Damage to Municipal Facilities**

To the extent that any of the work being done by Terasen Gas 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 Terasen Gas shall restore in accordance with Section 6.4.2 above, Terasen Gas will report such damage and reimburse the Municipality for its costs arising from such damage calculated in accordance with Section 14.1 below. Where such damage results directly from inaccurate or incomplete information supplied by Municipality, and Terasen Gas has complied with all applicable laws and regulations, and with instructions supplied by the Municipality, then the cost of repairing damaged Municipal Facilities or Public Places will be at the expense of the Municipality.

### **6.5 Conformity Requirement**

The New Work must be carried out in conformity with Terasen Gas' notice of New Work except that Terasen Gas may make in-field design changes when carrying out the New

Work to accommodate field conditions which could not have been reasonably foreseen by Terasen Gas. If such in-field conditions materially impact Terasen Gas' plans for restoration or materially change the impact of Terasen Gas' work on Municipal Facilities, other than in respect of projected commencement and completion dates, Terasen Gas shall notify the Municipality.

### **6.6 Non-Compliance**

If Company Facilities located in Public Places are later found not to be located in compliance with Terasen Gas' notice of New Work provided in accordance with Section 6.1 and 6.5, then any alteration or upgrading required to bring them into compliance with such notice will be at the expense of Terasen Gas provided that the work has not been altered, damaged or modified by the Municipality or a third party.

## **7. COMPANY FACILITY CHANGES REQUIRED BY THE MUNICIPALITY**

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

Before any Public Places containing Company Facilities may be legally closed or alienated by the Municipality, the Municipality shall promptly notify Terasen Gas of its intent to close or alienate such Public Places and either:

- (a) grant Terasen Gas a registered statutory right of way in a form satisfactory to Terasen Gas so as to maintain Terasen Gas' right to use the land; or
- (b) request Terasen Gas to remove and (if possible and practicable) relocate those Company Facilities affected by such closure or alienation at the sole cost of the Municipality.

If the Public Places are expropriated by an expropriating authority and Terasen Gas is required to remove its facilities then the Municipality shall use reasonable efforts to seek compensation from such expropriating authority to compensate Terasen Gas for its relocation costs. If the Municipality is unable to obtain such compensation despite its reasonable efforts, then the Municipality shall have no further liability to Terasen Gas. The Municipality shall not be required to incur any legal expenses without the approval and reimbursement by Terasen Gas in order to obtain such compensation for Terasen Gas.

## **8. FACILITY CHANGES REQUIRED**

### **8.1 By Terasen Gas**

Terasen Gas may provide Notice to the Municipality that it requires Municipal Facilities to be altered, changed or relocated to accommodate its requirements. The Municipality will comply with Terasen Gas's requests to the extent it is reasonably able to do so and

with reasonable speed and dispatch after receipt of written request. Terasen Gas agrees to pay for all of the costs for changes to the affected Municipal Facilities.

### **8.2 By the Municipality**

The Municipality may provide Notice to Terasen Gas that it requires Company Facilities to be altered, changed or relocated to accommodate its requirements. Terasen Gas will comply with the Municipality's requests to the extent it is reasonably able to do so and with reasonable speed and dispatch after receipt of written request. The Municipality agrees to pay for all of the costs for changes to the affected Company Facilities.

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

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

The Municipality and Terasen Gas agree to use reasonable efforts in carrying out their construction and maintenance activities in a manner that is responsive to the affect that it may have on the other party, as well as other users of Public Places. Such reasonable efforts include attending the planning meetings described in Section 9.2 below 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.

### **9.2 Communication and Coordination Activities**

At the initiation of the Municipality, representatives of the Municipality, Terasen Gas and other affected Utilities and third parties will meet each year, prior to the construction season, to discuss the parties' anticipated construction activities for that year. Such discussions will include

- (a) the use of common trenching, common utility access facilities and such other common facilities as may be commercially reasonable and comply with operating and safety standards; and
- (b) the consolidation of planned maintenance work where pavement must be cut in order to avoid multiple excavations.

### **9.3 Municipal Planning Lead**

During such annual planning meetings, the Municipality shall lead the planning process for all Utilities and third parties with Planned Facilities in Public Places.

## **10. MUTUAL INDEMNITY**

### **10.1 Indemnity by Terasen Gas**

**10.1.1.** Terasen Gas 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 Terasen Gas in:

- (a) placing, constructing, renewing, altering, repairing, maintaining, removing, extending, operating or using the Company's Facilities on or under any Public Places;
- (b) any breach of this Agreement by Terasen Gas;

except to the extent contributed by negligence or default of the Municipality or the Municipal Employees.

**10.1.2.** This indemnity expressly extends to all acts and omissions of Terasen Gas Employees.

## **10.2 Indemnity by the Municipality**

**10.2.1.** The Municipality indemnifies and protects and saves Terasen Gas 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:

- (a) placing, constructing, renewing, altering, repairing, maintaining, removing, extending, operating or using the Municipal Facilities on or under any Public Places;
- (b) any breach of this Agreement by the Municipality;

except to the extent contributed by the negligence or default of Terasen Gas or Terasen Gas Employees.

**10.2.2.** This indemnity expressly extends to all acts and omissions of Municipal Employees.

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

All property of Terasen Gas kept or stored on the Public Places will be kept or stored at the risk of Terasen Gas. For further certainty, Terasen Gas 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. Terasen Gas accepts its use of Public Places on an "as is" basis.

# **11. OPERATING FEE**

## **11.1 Fee Calculation**

**11.1.1.** Terasen Gas agrees to pay to the Municipality a fee of three percent (3%) of the amount received by Terasen Gas for provision

and distribution of all gas consumed within the Boundary Limits of the Municipality. Such amount will not include any amount received by Terasen Gas for gas supplied or sold for resale.

**11.1.2.** The Municipality will notify Terasen Gas in writing of any boundary expansion so that new customers can be included as a part of the annual payment fee.

**11.1.3.** Terasen Gas will be responsible for adding those new customers within the new Municipal boundary upon receipt of such notice from the Municipality and the revised calculation of the fee will commence at that point.

## **11.2 Payment Date and Period**

Payments by Terasen Gas to the Municipality will be made on the first day of March of each year of the Agreement in respect of the amount received by Terasen Gas during that portion of the term of this Agreement which is in the immediately preceding calendar year. By way of example only, payment made on March 1, 2006 will be the amount received during the 2005 calendar year.

## **11.3 BCUC Decision or Provincial Legislation**

In the event that a decision by the BCUC, other than periodic rate changes as a result of commodity, delivery or margin increases or decreases, or new legislation by the Provincial Government, impacts the operating fee being paid to the Municipality so as to increase it or decrease it by more than 5% annually at the time of the decision or in subsequent years, the parties shall negotiate a new operating fee formula which best reflects the revenue stream received by the Municipality under this Agreement. For greater certainty, the parties acknowledge that a change to the BCUC's decision that Terasen Gas shall provide the agency billing and collections service for marketers on a mandatory basis, as set out in the "Business Rules for Commodity Unbundling dated June 5, 2003 as set out in Appendix A to Letter No. L-25-03, may impact the operating fee being paid to the Municipality.

## **12. OTHER APPROVALS, PERMITS OR LICENSES**

Except as specifically provided in this Agreement, the Municipality will not require Terasen Gas to seek or obtain approvals, permits or licenses. The Municipality will not charge or levy against Terasen Gas any approval, license, inspection or permit fee, or charge of any other type, that in any manner is related to or associated with Terasen Gas constructing, installing, renewing, altering, repairing, maintaining or operating Company Facilities on any Public Places or in any manner related to or associated with Terasen Gas exercising the powers and rights granted to it by this Agreement.

If the Municipality does charge or levy fees or costs against Terasen Gas (other than for repair of damage to the Municipal Facilities or Public Places in accordance with Section

14) then Terasen Gas may reduce the annual operating fee payable to the Municipality under Section 11 by an amount equal to such charges, fees or costs.

## **13. MUNICIPAL OBLIGATIONS**

### **13.1 Municipal Work**

- 13.1.1.** Before the Municipality undertakes any construction or maintenance activity which is likely to affect a part of the Company Facilities, it must give Terasen Gas notice not less than 10 days before commencing such construction or maintenance activity.
- 13.1.2.** Where the Municipality is required to carry out work urgently in the interests of public safety or health or to preserve the safety of property and Municipal Facilities, the Municipality shall not be required to give prior notice but shall do so as soon as possible thereafter.
- 13.1.3.** Terasen Gas will be entitled to appoint at its cost a representative to inspect any construction or maintenance activity undertaken by the Municipality. The provisions of this section do not relieve the Municipality of its responsibilities under the *Gas Safety Act*, *Pipeline Act*, and successor legislation, regulations thereunder, or the requirements of the BC Workers' Compensation Board.
- 13.1.4.** In addition, the Municipality shall provide Notice to Terasen Gas of any work planned that will be adjacent to, across, over or under a Transmission Pipeline or within a right-of-way for a Transmission Pipeline. To the extent that Terasen Gas requires that permit be issued for construction or other activities within a Transmission Pipeline right-of-way, the Municipality will submit an application for such a permit in sufficient time for the application to be reviewed and approved by Terasen Gas prior to the commencement of the construction or other activity.
- 13.1.5.** The Municipality shall assist Terasen Gas in Terasen Gas' efforts to reduce instances of residences being built over gas lines and other similarly unsafe building practices by third parties.
- 13.1.6.** The Municipality shall not interfere with Transmission Pipeline markers.
- 13.1.7.** The Municipality shall provide notice to Terasen Gas of any damage caused by the Municipality to Company Facilities or Transmission Pipeline Markers as soon as reasonably possible. To the extent that any of the work being done by the Municipality results in damage to the Company Facilities, the Municipality will

report such damage and pay Terasen Gas its costs arising from such damage in accordance with Section 14.1 below. Where such damage results directly from inaccurate or incomplete information supplied by Terasen Gas, and the Municipality has complied with all applicable laws and regulations, and with instructions supplied by Terasen Gas, then the cost of repairing the damaged Company Facilities will be at the expense of Terasen Gas.

- 13.1.8.** The Municipality shall notify Terasen Gas of any new bylaws, standards or policies adopted or passed by the Municipality that are likely to affect Terasen Gas' operations in Public Places.

## **14. COSTS AND PAYMENT PROCEDURES**

### **14.1 Definition of Costs**

Wherever one party is required to pay the other party Costs as a result of damage caused by one party to the other's property, the Costs shall be:

- (a) all direct expenses and disbursements incurred to restore such property to as good a state of repair as had existed prior to the damage;
- (b) reasonable administration and overhead charges on labour, equipment and materials;
- (c) such taxes as may be required in the appropriate jurisdiction;
- (d) in the case of loss of gas or re-lights, the cost of the commodity as determined by the length of time that the gas is leaking, size of pipe and hole and the pressure; and
- (e) in the case of water, electrical or sewer, cost of supplying alternate service.

### **14.2 Cost Claim Procedures**

- 14.2.1.** Wherever one party is claiming Costs of the other party in regard to any work or issue arising under this Agreement the claiming party shall:

- (a) provide an invoice to the other party no later than one year after incurring Costs;
- (b) provide detailed descriptions of the cost items;
- (c) provide the time period the invoice covers;
- (d) provide a minimum of 21 day terms for payment of the invoice; and

- (e) provide for late payment interest at the rate consistent with the party's policy for charging for late payments, which rate must be reasonable;

**14.2.2.** The party claiming Costs shall have no right of set off for these invoices against any amounts otherwise payable to the other party, except to the extent so approved in writing by the other party.

### **14.3 Cost Verification Procedures**

**14.3.1.** Wherever either party is the recipient of or is claiming Costs and or fees that party may at its own discretion request from the other party:

- (a) Certification by an officer or designated representative verifying the calculations and computations of the Costs and or fees,
- (b) An internal review or audit of the calculations and computations of the Costs and or fees, with the internal review or audit to be carried out by a person appointed by the party being asked to provide the review;
- (c) An independent external audit of the calculations and computations of the costs and fees, with the independent external auditor being a Chartered or a Certified General Accountant in British Columbia appointed by the party requesting the external audit;

**14.3.2.** The costs of this cost verification process shall be borne by the party who is required to supply the information except as otherwise specified providing the frequency of such requests does not exceed once per calendar year. For all future cases which occur in that calendar year, the costs of such further verifications shall be at the expense of the requester.

Where the independent external audit finds and establishes errors representing a variance greater than 2% of the originally calculated value in favour of the party claiming Costs, the costs shall be at the expense of the party supplying the information. Once an error has been verified, payment or refund of the amount found to be in error will be made within 21 days.

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

### **15.1 Agreement Not Binding Until Approved**

**15.1.1.** This Agreement will not come into effect and does not bind the parties until the following conditions have been fulfilled:

- (a) Terasen Gas has obtained such approvals of this Agreement, or its terms, as may be required under the *Utilities Commission Act*; and
- (b) the Municipality 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.

**15.1.2.** Upon executing this Agreement the parties shall make reasonable efforts to fulfill the conditions set out in this section. If the conditions are not fulfilled or waived within one (1) year of the execution of this Agreement, then the obligation on the parties to make reasonable efforts to fulfill the conditions will terminate, and neither party will have any further obligation to the other under this Agreement.

## **15.2 Termination of Franchise Agreement**

If not already terminated or expired, any franchise and operating agreement between the Municipality and Terasen Gas is terminated upon the effective date of this Agreement.

## **15.3 Term of Agreement**

This Agreement will have a term of 20 years from the date that it comes into effect and after the initial term shall continue indefinitely unless terminated in accordance with Section 15.4 below.

## **15.4 Termination of Agreement**

**15.4.1.** This Agreement may be terminated by the Municipality upon the occurrence of any of the following events:

- (a) Terasen Gas admits its inability to pay its debts generally as they become due or otherwise acknowledges its insolvency;
- (b) Terasen Gas starts proceedings or takes any action to commence or executes an agreement to authorize its participation in any proceeding:
  - (i) seeking to adjudicate it bankrupt or insolvent;
  - (ii) seeking liquidation, reorganization, arrangement, protection, relief or composition of it or any of its property or debt or making a proposal with respect to it under any law relating to bankruptcy, insolvency, reorganization or compromise of debts or other similar laws; or
  - (iii) seeking the appointment of a receiver, trustee, agent, custodian or other similar official for it or for any

substantial part of its assets or if a creditor seeks the appointment of a receiver, trustee, agent, custodian or other similar official for any substantial part of its assets; and such proceeding is not dismissed, discharged, stayed or restrained within 20 days of the Municipality becoming aware of it.

**15.4.2.** Either party may terminate if other breaches any term, provision, obligation hereunder and such breach, is a material major 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 default if such matter is in dispute or has been referred to commercial arbitration, the outcome of which is pending, or is being resolved in good faith compliance with the dispute resolution and arbitration processes of this Agreement.

**15.4.3.** After the initial twenty (20) year term of this Agreement, either party may terminate this Agreement by giving the other not less than one (1) year's notice of termination.

## **15.5 Amendments and Waivers**

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 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.

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

Upon one party giving Notice to the other of termination of this Agreement, the parties shall negotiate in good faith to enter into a new agreement with respect to the terms and conditions under which Terasen Gas may use the Public Places. In the event that such negotiations break down and in the opinion of one or other of the parties acting in good faith that settlement is unlikely, either party may give Notice to the other of its intention to apply to the BCUC to seek resolution of the terms and conditions applicable to Terasen Gas' continued operations and construction activities within the Municipality.

### **15.7 Continuity In The Event No Agreement Is Settled**

Upon the expiry or termination of this Agreement, if a new agreement has not been ratified or if the BCUC has not imposed the terms and conditions under which Terasen Gas may use the Public Places, the following provisions will apply:

- (a) The Company Facilities within the boundary limits of the Municipality both before and after the date of this Agreement, shall remain Terasen Gas' property and shall remain in the Public Places.
- (b) The Company Facilities may continue to be used by Terasen Gas for the purposes of its business, or removed from Public Places in whole or in part at Terasen Gas' sole discretion.
- (c) Terasen Gas may continue to use Public Places within the Municipality for the purposes of its business. Terasen Gas' employees, may enter upon all the Public Places within the Boundary Limits of the Municipality to maintain, operate, install, construct, renew, alter, or place Company Facilities; provided that Terasen Gas continues to operate in a manner consistent with the terms and conditions of this Agreement as if the term had been extended except with respect to the payment of the Operating Fee.
- (d) Terasen Gas will with the support of the Municipality take such steps necessary to seek BCUC approvals of the extension of terms and conditions including payment of the operating fee under the expiring agreement during negotiations of a new agreement.
- (e) Should Terasen Gas no longer be authorized or required to pay the operating fee under any Agreement between it and the Municipality or by any order of the BCUC, the Municipality shall be free 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**

In the event that 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) Terasen Gas will accept the appointment of such third party as the Municipality's agent or subcontractor to enable such third party to deal directly with Terasen Gas so as to enable the Municipality to comply with the terms, obligations and conditions of this Agreement.

## **16.2 Changes to the Community Charter**

In the event that the provisions of the *Community Charter* or other legislation affecting the rights and powers of municipalities change in such a way as to materially, in the opinion of the Municipality, affect municipal powers in respect to matters dealt with in this Agreement,

- (a) the Municipality may within one year of the change coming into effect propose new agreement terms with respect to only those specific changes and Terasen Gas agrees to negotiate such terms; and
- (b) failing satisfactory resolution either of the parties will seek resolution through the Dispute Resolution Process, Section 17.

## **16.3 Changes to the Utilities Commission Act**

In the event that the provisions of the *Utilities Commission Act* or other legislation affecting the rights and powers of regulated Utilities change in such a way as to materially, in Terasen Gas' opinion, affect Terasen Gas' powers in respect to matters dealt with in this Agreement,

- (a) Terasen Gas may within one year of the change coming into effect propose new agreement terms with respect to only those specific changes and the Municipality agrees to negotiate such terms; and
- (b) failing satisfactory resolution either of the parties will seek resolution through the Dispute Resolution Process, Section 17.

# **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, 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 or Arbitration**

If the parties fail to resolve the dispute through mediation, the unresolved dispute shall be referred to the BCUC if within its jurisdiction. If the matter is not within the jurisdiction of the BCUC, 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 will allow discovery as required by law in arbitration proceedings.

### **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.

## **18. GENERAL TERMS & CONDITIONS**

### **18.1 No Liens**

Terasen Gas will do its best to not allow, suffer or permit any liens to be registered against the Company Facilities located in Public Places as a result of the conduct of Terasen Gas. If any such liens are registered, Terasen Gas will start action to clear any lien so registered to the Public Place within ten (10) days of being made aware such lien has been registered. Terasen Gas will keep the Municipality advised as to the status of the lien on a regular basis. In the event that such liens are not removed within ninety (90) days of the registration of such lien, Terasen Gas will pay them in full or post sufficient security to ensure they are discharged from title.

### **18.2 Corporate Authority**

Terasen Gas now warrants, represents and acknowledges that:

- (a) it has the full right, power and authority to enter into this Agreement;
- (b) it is a corporation, duly organized, legally existing and in good standing under the laws of its jurisdiction of incorporation or continuance and is lawfully registered and licensed to do business in British Columbia.

### **18.3 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 venture 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.

### **18.4 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.

### **18.5 Governing Law**

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

## **18.6 General**

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.

## **18.7 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.

## **18.8 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. To the extent permitted by applicable law, the parties hereby waive any provision of law that renders any provision hereof prohibitive or unenforceable in any respect.

## **18.9 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.

## **18.10 Notice**

Any notice or other written communication required, or permitted to be made or given pursuant to this Agreement (the "Notice") 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:

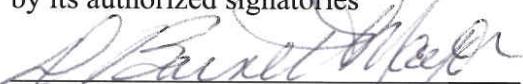
- (A) if to the Municipality:

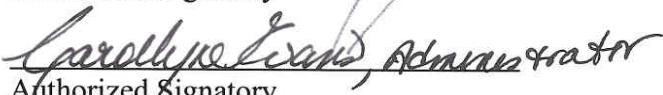
**DISTRICT OF 100 MILE HOUSE**  
Box 340  
100 Mile House, British Columbia  
V0K 2E0

(B) If to Terasen Gas:

**TERASEN GAS INC.**  
16705 Fraser Highway  
Surrey, British Columbia  
V3S 2X7  
Attention: Vice President, Regulatory Affairs

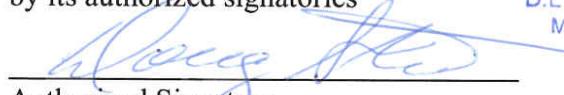
**DISTRICT OF 100 MILE HOUSE**  
by its authorized signatories

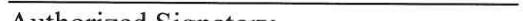
  
Authorized Signatory

  
Authorized Signatory

**TERASEN GAS INC.**  
by its authorized signatories

  
D.L. Stout, Vice-President  
Marketing & Business  
Development

  
Authorized Signatory

  
Authorized Signatory

SIXTH FLOOR, 900 HOWE STREET, BOX 250  
VANCOUVER, B.C. V6Z 2N3 CANADA  
web site: <http://www.bcuc.com>



**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER** C-8-06

TELEPHONE: (604) 660-4700  
BC TOLL FREE: 1-800-663-1385  
FACSIMILE: (604) 660-1102

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

and

An Application by Terasen Gas Inc.  
for Approval of an Operating Agreement  
with the District of 100 Mile House

**BEFORE:**      L.F. Kelsey, Commissioner                )  
                        L.A. Zaozirny, Commissioner        )      August 10, 2006

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

**WHEREAS:**

- A. On January 12, 2006, Terasen Gas Inc. ("Terasen Gas") applied to the British Columbia Utilities Commission ("the Commission") for approval of an Operating Agreement with the District of 100 Mile House ("the Municipality") ("the Application"); and
- B. The Franchise Agreement approved by Commission Order No. C-5-83 expired on June 30, 2001; and
- C. By way of successive amending agreements, the Franchise Agreement was amended and the term extended to December 31, 2005; and
- D. In its Application, Terasen Gas advised that it undertook negotiations with the Union of British Columbia Municipalities ("UBCM") Operating Agreement Committee to establish the terms of a new form of Operating Agreement. In 2005 Terasen Gas successfully negotiated a pro-forma Operating Agreement with the UBCM and using this agreement as a template, negotiated new Operating Agreements with those municipalities with Operating Agreements which expired on December 31, 2005 (collectively the "Municipalities"); and
- E. The Application requests approval of a 20-year Operating Agreement between Terasen Gas and the Municipality from January 1, 2006 to December 31, 2025 that sets out the terms and conditions, including a

**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER**      C-8-06

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3 percent operating fee, under which Terasen Gas shall exercise its rights to use the public places of the Municipality in conducting its business of distributing gas within the Municipality; and

- F. Commission Order No. C-7-03, which approved a District of Salmon Arm and Terasen Gas Operating Agreement and Addendum, directed Terasen Gas to seek a method in future agreements to convert the operating fee to a charge on utility margin; and
- G. The Commission issued Information Request No. 1 to Terasen Gas on February 20, 2006, including questions related to the impacts of the proposed operating fee on rate stability and requesting an explanation of how such a fee based on Terasen Gas revenue fairly compensates the Municipalities for the costs incurred as a result of Terasen Gas' use of the streets and other public places within the Municipalities; and
- H. Terasen Gas responded to the Commission's Information Request No. 1 on March 9, 2006. Terasen Gas provided historical franchise fee information and discussed five operating fee options (Option 1-5) which were all rejected by the Municipalities; and
- I. The Commission issued Information Request No. 2 on March 28, 2006 and Terasen Gas responded on April 13, 2006. In IR No. 2, Terasen Gas analyzed an operating fee calculation using a base year methodology and provided additional information as to why Options 2, 4 and 5 in IR No. 1 were rejected; and
- J. In a letter dated May 9, 2006, the Commission sought further submissions from Terasen Gas, the UBCM and the Municipalities to support or justify how the public interest is better served through an operating fee, as proposed, compared to Option 5, described as a "Hybrid Approach" whereby customers in Rate Classes 1-3 would pay a margin based fee and all other customers would continue to pay a franchise fee based on revenue of 3.09 percent; and

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NUMBER**      C-8-06

- K. From May 17, 2006 to May 26, 2006 the Commission received submissions from Terasen Gas, the City of Rossland, the District of Hudson's Hope, the City of Kimberley, the City of Fernie, the City of Grand Forks, the Town of Oliver and the City of Cranbrook. Other interested parties such as the City of Kelowna, the City of Nelson and Mr. Greg McCormick also provided submissions to the Commission. Among other things, Terasen Gas and the Municipalities stated that the agreements are "package deals" with a considerable amount of compromise involved, including the fees agreed to within the package, and outlined their significant concerns to the added complexity, costs, communication and need to renegotiate if a margin fee were imposed; and
- L. The Commission has reviewed the Application and the related submissions presented to it and has determined that the Operating Agreement with the District of 100 Mile House should be approved.

**NOW THEREFORE** the Commission, pursuant to Section 45 of the Utilities Commission Act the Commission approves the Operating Agreement as filed.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 29<sup>th</sup> of August 2006.

BY ORDER

*Original signed by*

L.F. Kelsey  
Commissioner



December 20, 2005

File No.: V 0510.12

Robert Greno  
Manager, Community and Aboriginal  
Affairs, Southern Interior  
Terasen Gas  
444 Okanagan Ave. E  
Penticton, BC  
V2A 3K3

Dear Mr. Greno:

**Re: Terasen Gas. Inc. Operating Agreement**

Council at its Regular Council Meeting on December 19, 2005 resolved to approve the 20 year Operating Agreement between Terasen Gas Inc. and the City from January 1, 2006, to December 31, 2025.

Accordingly, enclosed are four (4) copies of the Agreement that have been signed and sealed by the City of Cranbrook.

Sincerely,

S.E. Beck  
A/ Municipal Clerk

:seb

cc: W. Pearce, City Administrator  
W. Staudt, Director of Finance and Computer Services  
R. Hales, Director of Corporate Services

## OPERATING AGREEMENT

THIS OPERATING AGREEMENT (the "Agreement") made this 1st day of  
JANUARY, 2005.<sup>16</sup> *PL*

BETWEEN:

**CITY OF CRANBROOK**  
40 10<sup>th</sup> Avenue, South  
Cranbrook, British Columbia  
V1C 2M8

(hereinafter called the "**Municipality**")

OF THE FIRST PART

AND:

**TERASEN GAS 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

(hereinafter called "**Terasen Gas**")

OF THE SECOND PART

### RECITALS:

A. Whereas by a certificate of public convenience and necessity (CPCN), Terasen Gas was granted the right to construct and operate gas distribution facilities within the Municipality;

B. And whereas pursuant to the Community Charter, S.B.C. 2003, a Municipal council may, by resolution adopt and enter into a licensing and operating agreement;

C. And whereas Terasen Gas and the Municipality are the parties to a Franchise or Operating Agreement dated the 12 day of September, 1983 and subsequently renewed by various amending agreements, which will expire on December 31, 2005;

D. And whereas Terasen Gas and the Municipality wish to enter into this Agreement to clarify and settle the terms and conditions under which Terasen Gas shall exercise its rights to use Public Places in conducting its business of distributing Gas within the Municipality.

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

## 1. DEFINITIONS

For the purposes of this Agreement:

- (a) “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;
- (b) “BCUC” means the British Columbia Utilities Commission or successor having regulatory jurisdiction over natural gas distribution utilities in British Columbia;
- (c) “CPCN” means a Certificate of Public Convenience and Necessity granted by the BCUC which allows Terasen Gas to operate, maintain and install Company Facilities for the distribution of Gas within the Municipality;
- (d) “Company Design” means the installation and design specifications which meet all applicable Provincial and Federal codes, standards and safety requirements for the gas services in the province of British Columbia, as they relate to approved gas works, system improvements, upgrades, connections and system extensions;
- (e) “Company Facilities” means Terasen Gas’ facilities, including pipes, buildings, structures, valves, signage, storage facilities, machinery, vehicles and other equipment used to maintain, operate, renew, repair, construct and monitor a natural Gas Distribution and transmission system;
- (f) “Distribution Pipelines” means pipelines operating at a pressure less than 2071 kilopascals (300 psi);
- (g) “Gas” means natural gas, propane, methane, synthetic gas, liquefied petroleum in a gaseous form or any mixture thereof;
- (h) “Gas Distribution” means fixed equipment, structures, plastic and metal lines and pipe, valves, fittings, appliances and related facilities used or intended for the purpose of conveying, testing, monitoring, distributing, mixing, storing, measuring and delivering Gas and making it available for use with the Municipality;
- (i) “Highway” means street, road, lane, bridge or viaduct controlled by the Municipality or Provincial Government of British Columbia;
- (j) “Losses” means direct and indirect losses, damages, costs and expenses (including without limitation, interest, penalties and amounts paid in settlement but does not include legal and professional fees and disbursements);

- (k) "Mains" means pipes used by Terasen Gas to carry gas for general or collective use for the purposes of Gas Distribution;
- (l) "Municipal Employees" means personnel employed by or engaged by the municipality, including officers, employees, directors, contractors and agents;
- (m) "Municipal Facilities" means any facilities, including highways, sidewalks, conduits, manholes, equipment, machinery, pipes, wires, valves, buildings, structures, signage, bridges, viaducts and other equipment within the Public Places used by the Municipality for the purposes of its public works or municipal operations;
- (n) "Municipal Supervisor" means the Municipal Engineer or other such person designated by the Municipality to receive notices and issue approval as set out in this Agreement;
- (o) "New Work" means any installation, construction, repair, maintenance, alteration, extension or removal work of the Company Facilities in Public Places except;
  - (i) routine maintenance and repair of the Company Facilities that does not involve any cutting of asphalted road surface;
  - (ii) installation or repair of Service Lines whether or not such installation or repair involves cutting of asphalted road service; or
  - (iii) emergency work;but notwithstanding such exceptions, New Work shall include any installation, construction or removal of the Company Facilities in Public Places that are planned to disturb underground Municipal Facilities;
- (p) "Pipeline Markers" means post, signage or any similar means of identification used to show the general location of Transmission Pipelines and distribution pipelines or Terasen Gas Rights of Way;
- (q) "Planned Facilities" means those facilities not yet constructed but which have been identified by way of documented plans for the works of the Municipality, for works of third parties, where such works are identified by documented plans approved by the Municipality, or for works of Terasen Gas submitted to the Municipality subject to Municipal approval;
- (r) "Public Places" means any public thoroughfare, highway, road, street, lane, alley, trail, square, park, bridge, right of way, viaduct, subway, watercourse or other public place in the Municipality;
- (s) "Service Line" means that portion of Terasen Gas' gas distribution system extending from a Main to the inlet of a meter set and, for the purposes of this Agreement, includes a service header and service stubs;

- (t) "Terasen Gas Employees" means personnel employed by or engaged by Terasen Gas including officers, employees, directors, contractors, and agents;
- (u) "Transmission Pipeline" means a pipeline of Terasen Gas having an operating pressure in excess of 2071 kilopascals (300 psi); and
- (v) "Utilities" means the facilities or operations of any water, waste water, sewer, telecommunications, energy, cable service or similar service provider located in Public Places within the Municipality.

## **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) words in the singular include the plural, words importing a corporate entity include individuals, and vice versa;
- (c) in calculating time where the agreement refers to "at least" or "not less than" 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" a number of days, Saturdays, Sundays and holidays must be excluded;
- (d) 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.

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

Terasen Gas 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.

Terasen Gas 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.

## **4. TERASEN GAS RIGHTS TO ACCESS & USE PUBLIC PLACES**

The Municipality hereby acknowledges Terasen Gas' rights to:

- (a) develop, construct, install, maintain or remove Company Facilities on, over, in and under Public Places in the Municipality;
- (b) enter on Public Places from time to time as may be reasonably necessary for the purpose of maintaining, repairing, or operating the Company's Facilities;
- (c) place pipeline identification markers within Public Places where a Transmission Pipeline or Distribution Pipeline crosses or is otherwise within a Public Place;

subject to terms and conditions defined in this Agreement.

## **5. TERASEN GAS COMPLIANCE WITH STANDARDS FOR USE OF PUBLIC PLACES**

### **5.1 Non-discriminatory Standards for Terasen Gas**

In its use of Public Places, Terasen Gas shall comply with all Federal and Provincial laws, regulations and codes and shall comply with all Municipal bylaws, standards and policies except that Terasen Gas shall not have to comply with such Municipal bylaws, standards and policies that:

- (a) conflict with terms of this Agreement or limit any rights or concessions granted to Terasen Gas by the Municipality under this Agreement; or
- (b) conflict with other legislation governing Terasen Gas.

Further, where the Municipality has established requirements and standards for work in Public Places, the Municipality shall apply them in a fair, reasonable and non-discriminatory manner consistent with the manner that the Municipality establishes requirements on other Utilities.

### **5.2 Provide emergency contacts.**

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

### **5.3 Assist with facility locates**

Terasen Gas 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 unless the reason for the request is the result of an emergency; in which case the information shall be provided forthwith. Terasen Gas shall provide gas locations from Terasen Gas records. Terasen Gas shall perform on site facility locates in accordance with the *Safety Standards Act – Gas Safety Regulations Section 39*.

## 6. TERASEN GAS WORK OBLIGATIONS:

### 6.1 Notices - General Requirements

#### 6.1.1. Notice for New Work

For New Work, if required by the Municipality, Terasen Gas shall give notice to the Municipality or such officer or official thereof who has been designated from time to time by the Municipality that it intends to perform such New Work. The Notice shall include:

- (a) a plan and specifications showing the proposed location and dimensions of the New Work;
- (b) Terasen Gas' plans for the restoration of the Public Place affected by the New Work if Terasen Gas' restoration plans are different from those set out in Section 6.4.2 of this Agreement;
- (c) the name of a Terasen Gas representative who may be contacted for more information;
- (d) projected commencement and completion dates; and
- (e) such other information relevant to the New Work as the Municipality may reasonably request from time to time.

#### 6.1.2. Exception for Emergency

Where Terasen Gas is required to carry out work urgently in the interests of public safety or health or to preserve the safety of property and Company Facilities, Terasen Gas shall not be required to give prior notice but shall do so as soon as possible thereafter.

#### 6.1.3. Municipal Approval for New Work

The Municipality may object to the New Work on the following grounds:

- (a) the proposed location of the New Work conflicts with Planned Facilities; or
- (b) the proposed location or design of the New Work is likely to compromise public safety or does not conform with Municipal bylaws, standards or policies; or
- (c) in instances where Terasen Gas can delay the New Work without compromising the supply, capacity or safety of its Gas Distribution System or its customers' need for gas service and the Municipality intends within the next 3 months to undertake work in the same location and wishes to co-ordinate both work;

by providing Terasen Gas with notice of its objections, provided such objections are reasonable, no more than 10 days after receiving Terasen Gas' notice of New Work. If the Municipality has not provided such notice of its objections to Terasen Gas, or in the case of large and complex New Work, the Municipality has not provided Terasen Gas with a notice to extend the time to reply to Terasen Gas until a stated time, the Municipality shall be deemed to have granted its approval of the New Work. The Municipality shall not otherwise withhold or delay its approval.

In addition, the Municipality may request Terasen Gas to provide the public with notice of the New Work.

#### **6.1.4. Work Not to Proceed**

If the Municipality has notified Terasen Gas of its objections or has requested a time extension, no more than 10 days after receiving Terasen Gas' notice of New Work, Terasen Gas shall not proceed with the New Work until Terasen Gas and the Municipality have agreed upon a resolution to the Municipality's objections. If the Municipality and Terasen Gas are unable to agree, then the matter shall be resolved in accordance with Section 17 (Resolution of Disputes).

### **6.2 Notice of Service Lines**

Terasen Gas, if required by the Municipality, shall provide the Municipality with notice of its intent to install, remove or repair Service Lines no less than three (3) days prior to commencement of such work. Terasen Gas' request for the location of the Municipality's utilities shall be deemed to be a notice of Terasen's intent to install, remove or repair Service Lines. The Municipality may object to such work on the same grounds as set out in Subsection 6.1.3 (a) and (b) above by providing Terasen Gas with notice of its objections within two (2) days of receiving Terasen Gas' notice. If the Municipality has not provided such notice of its objections to Terasen Gas, the Municipality shall be deemed to have granted its approval of the installation, removal or repair of the Service Lines. The Municipality shall not otherwise withhold or delay its approval.

### **6.3 Terasen Gas to Secure Locate Information**

Prior to conducting any New Work, Terasen Gas shall locate other Utilities and satisfy itself that it is clear to proceed.

### **6.4 Work Standards**

#### **6.4.1. Specific Work Requirements Remove Materials**

Terasen Gas shall keep its work sites clean and tidy. Terasen Gas shall remove all rubbish and surplus material from Public Places upon completion of its work.

#### **6.4.2. Restore Surface and Subsurface**

Where Terasen Gas has performed any operations or New Work in a Public Place, Terasen Gas shall restore without unreasonable delay and return such Public Place, as much as reasonably practical, to the condition and use which existed prior to such activity. The restoration will be in accordance with the specifications set out by the Municipality. Such specifications may include the degree and nature of compaction, subsurface structure, surface finish and landscaping required.

Without limiting the generality of this section and by way of example only, the Municipality may require Terasen Gas to restore asphalt and concrete surfaces with a permanent repair or a temporary repair. Should a temporary repair be directed, Terasen Gas or the Municipality at its discretion will subsequently construct a permanent repair in accordance to its usual maintenance/replacement schedule for that area. The cost of permanent and temporary repairs to remediate Highway surfaces will be at the expense of Terasen Gas proportional to the surface area affected by the New Work.

Where Terasen Gas is required to cut pavement on a Public Place such cuts and restoration will be limited to less than 1.5 meters unless at the discretion of Terasen Gas a larger excavation is warranted due to the depth or size of the pipe or requirements of the Workers' Compensation Board or other relevant Provincial or Federal regulations. Terasen Gas will be responsible for any repairs and maintenance of the surface repair for a period of three (3) years. However, where pavement restoration has been conducted by the Municipality, whether or not such work was undertaken to repair cuts on Terasen Gas' behalf, Terasen Gas shall not be responsible for the repairs or maintenance of the surface repair.

#### **6.4.3. Repair Damage to Municipal Facilities**

To the extent that any of the work being done by Terasen Gas 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 Terasen Gas shall restore in accordance with Section 6.4.2 above, Terasen Gas will report such damage and reimburse the Municipality for its costs arising from such damage calculated in accordance with Section 14.1 below. Where such damage results directly from inaccurate or incomplete information supplied by Municipality, and Terasen Gas has complied with all applicable laws and regulations, and with instructions supplied by the Municipality, then the cost of repairing damaged Municipal Facilities or Public Places will be at the expense of the Municipality.

### **6.5 Conformity Requirement**

The New Work must be carried out in conformity with Terasen Gas' notice of New Work except that Terasen Gas may make in-field design changes when carrying out the New Work to accommodate field conditions which could not have been reasonably foreseen by Terasen Gas. If such in-field conditions materially impact Terasen Gas' plans for restoration or materially change the impact of Terasen Gas' work on Municipal Facilities, other than in respect of projected commencement and completion dates, Terasen Gas shall notify the Municipality.

#### **6.6 Non-Compliance**

If Company Facilities located in Public Places are later found not to be located in compliance with Terasen Gas' notice of New Work provided in accordance with Section 6.1 and 6.5, then any alteration or upgrading required to bring them into compliance with such notice will be at the expense of Terasen Gas provided that the work has not been altered, damaged or modified by the Municipality or a third party.

### **7. COMPANY FACILITY CHANGES REQUIRED BY THE MUNICIPALITY**

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

Before any Public Places containing Company Facilities may be legally closed or alienated by the Municipality, the Municipality shall promptly notify Terasen Gas of its intent to close or alienate such Public Places and either:

- (a) grant Terasen Gas a registered statutory right of way in a form satisfactory to Terasen Gas so as to maintain Terasen Gas' right to use the land; or
- (b) request Terasen Gas to remove and (if possible and practicable) relocate those Company Facilities affected by such closure or alienation at the sole cost of the Municipality.

If the Public Places are expropriated by an expropriating authority and Terasen Gas is required to remove its facilities then the Municipality shall use reasonable efforts to seek compensation from such expropriating authority to compensate Terasen Gas for its relocation costs. If the Municipality is unable to obtain such compensation despite its reasonable efforts, then the Municipality shall have no further liability to Terasen Gas. The Municipality shall not be required to incur any legal expenses without the approval and reimbursement by Terasen Gas in order to obtain such compensation for Terasen Gas.

### **8. FACILITY CHANGES REQUIRED**

#### **8.1 By Terasen Gas**

Terasen Gas may provide Notice to the Municipality that it requires Municipal Facilities to be altered, changed or relocated to accommodate its requirements. The Municipality

will comply with Terasen Gas's requests to the extent it is reasonably able to do so and with reasonable speed and dispatch after receipt of written request. Terasen Gas agrees to pay for all of the costs for changes to the affected Municipal Facilities.

## **8.2 By the Municipality**

The Municipality may provide Notice to Terasen Gas that it requires Company Facilities to be altered, changed or relocated to accommodate its requirements. Terasen Gas will comply with the Municipality's requests to the extent it is reasonably able to do so and with reasonable speed and dispatch after receipt of written request. The Municipality agrees to pay for all of the costs for changes to the affected Company Facilities.

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

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

The Municipality and Terasen Gas agree to use reasonable efforts in carrying out their construction and maintenance activities in a manner that is responsive to the affect that it may have on the other party, as well as other users of Public Places. Such reasonable efforts include attending the planning meetings described in Section 9.2 below 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.

## **9.2 Communication and Coordination Activities**

At the initiation of the Municipality, representatives of the Municipality, Terasen Gas and other affected Utilities and third parties will meet each year, prior to the construction season, to discuss the parties' anticipated construction activities for that year. Such discussions will include

- (a) the use of common trenching, common utility access facilities and such other common facilities as may be commercially reasonable and comply with operating and safety standards; and
- (b) the consolidation of planned maintenance work where pavement must be cut in order to avoid multiple excavations.

## **9.3 Municipal Planning Lead**

During such annual planning meetings, the Municipality shall lead the planning process for all Utilities and third parties with Planned Facilities in Public Places.

# **10. MUTUAL INDEMNITY**

## **10.1 Indemnity by Terasen Gas**

- 10.1.1.** Terasen Gas 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 Terasen Gas in:

- (a) placing, constructing, renewing, altering, repairing, maintaining, removing, extending, operating or using the Company's Facilities on or under any Public Places;
- (b) any breach of this Agreement by Terasen Gas;

except to the extent contributed by negligence or default of the Municipality or the Municipal Employees.

**10.1.2.** This indemnity expressly extends to all acts and omissions of Terasen Gas Employees.

## **10.2 Indemnity by the Municipality**

**10.2.1.** The Municipality indemnifies and protects and saves Terasen Gas 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:

- (a) placing, constructing, renewing, altering, repairing, maintaining, removing, extending, operating or using the Municipal Facilities on or under any Public Places;
- (b) any breach of this Agreement by the Municipality;

except to the extent contributed by the negligence or default of Terasen Gas or Terasen Gas Employees.

**10.2.2.** This indemnity expressly extends to all acts and omissions of Municipal Employees.

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

All property of Terasen Gas kept or stored on the Public Places will be kept or stored at the risk of Terasen Gas. For further certainty, Terasen Gas 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. Terasen Gas accepts its use of Public Places on an "as is" basis.

# **11. OPERATING FEE**

## **11.1 Fee Calculation**

- 11.1.1.** Terasen Gas agrees to pay to the Municipality a fee of three percent (3%) of the amount received by Terasen Gas for provision and distribution of all gas consumed within the Boundary Limits of the Municipality. Such amount will not include any amount received by Terasen Gas for gas supplied or sold for resale.
- 11.1.2.** The Municipality will notify Terasen Gas in writing of any boundary expansion so that new customers can be included as a part of the annual payment fee.
- 11.1.3.** Terasen Gas will be responsible for adding those new customers within the new Municipal boundary upon receipt of such notice from the Municipality and the revised calculation of the fee will commence at that point.

## **11.2 Payment Date and Period**

Payments by Terasen Gas to the Municipality will be made on the first day of March of each year of the Agreement in respect of the amount received by Terasen Gas during that portion of the term of this Agreement which is in the immediately preceding calendar year. By way of example only, payment made on March 1, 2006 will be the amount received during the 2005 calendar year.

## **11.3 BCUC Decision or Provincial Legislation**

In the event that a decision by the BCUC, other than periodic rate changes as a result of commodity, delivery or margin increases or decreases, or new legislation by the Provincial Government, impacts the operating fee being paid to the Municipality so as to increase it or decrease it by more than 5% annually at the time of the decision or in subsequent years, the parties shall negotiate a new operating fee formula which best reflects the revenue stream received by the Municipality under this Agreement. For greater certainty, the parties acknowledge that a change to the BCUC's decision that Terasen Gas shall provide the agency billing and collections service for marketers on a mandatory basis, as set out in the "Business Rules for Commodity Unbundling dated June 5, 2003 as set out in Appendix A to Letter No. L-25-03, may impact the operating fee being paid to the Municipality.

## 12. OTHER APPROVALS, PERMITS OR LICENSES

Except as specifically provided in this Agreement, the Municipality will not require Terasen Gas to seek or obtain approvals, permits or licenses. The Municipality will not charge or levy against Terasen Gas any approval, license, inspection or permit fee, or charge of any other type, that in any manner is related to or associated with Terasen Gas constructing, installing, renewing, altering, repairing, maintaining or operating Company Facilities on any Public Places or in any manner related to or associated with Terasen Gas exercising the powers and rights granted to it by this Agreement.

If the Municipality does charge or levy fees or costs against Terasen Gas (other than for repair of damage to the Municipal Facilities or Public Places in accordance with Section 14) then Terasen Gas may reduce the annual operating fee payable to the Municipality under Section 11 by an amount equal to such charges, fees or costs.

## 13. MUNICIPAL OBLIGATIONS

### 13.1 Municipal Work

- 13.1.1. Before the Municipality undertakes any construction or maintenance activity which is likely to affect a part of the Company Facilities, it must give Terasen Gas notice not less than 10 days before commencing such construction or maintenance activity.
- 13.1.2. Where the Municipality is required to carry out work urgently in the interests of public safety or health or to preserve the safety of property and Municipal Facilities, the Municipality shall not be required to give prior notice but shall do so as soon as possible thereafter.
- 13.1.3. Terasen Gas will be entitled to appoint at its cost a representative to inspect any construction or maintenance activity undertaken by the Municipality. The provisions of this section do not relieve the Municipality of its responsibilities under the *Gas Safety Act*, *Pipeline Act*, and successor legislation, regulations thereunder, or the requirements of the BC Workers' Compensation Board.
- 13.1.4. In addition, the Municipality shall provide Notice to Terasen Gas of any work planned that will be adjacent to, across, over or under a Transmission Pipeline or within a right-of-way for a Transmission Pipeline. To the extent that Terasen Gas requires that permit be issued for construction or other activities within a Transmission Pipeline right-of-way, the Municipality will submit an application for such a permit in sufficient time for the application to be reviewed and approved by Terasen Gas prior to the commencement of the construction or other activity.

**13.1.5.** The Municipality shall assist Terasen Gas in Terasen Gas' efforts to reduce instances of residences being built over gas lines and other similarly unsafe building practices by third parties.

**13.1.6.** The Municipality shall not interfere with Transmission Pipeline markers.

**13.1.7.** The Municipality shall provide notice to Terasen Gas of any damage caused by the Municipality to Company Facilities or Transmission Pipeline Markers as soon as reasonably possible. To the extent that any of the work being done by the Municipality results in damage to the Company Facilities, the Municipality will report such damage and pay Terasen Gas its costs arising from such damage in accordance with Section 14.1 below. Where such damage results directly from inaccurate or incomplete information supplied by Terasen Gas, and the Municipality has complied with all applicable laws and regulations, and with instructions supplied by Terasen Gas, then the cost of repairing the damaged Company Facilities will be at the expense of Terasen Gas.

**13.1.8.** The Municipality shall notify Terasen Gas of any new bylaws, standards or policies adopted or passed by the Municipality that are likely to affect Terasen Gas' operations in Public Places.

## **14. COSTS AND PAYMENT PROCEDURES**

### **14.1 Definition of Costs**

Wherever one party is required to pay the other party Costs as a result of damage caused by one party to the other's property, the Costs shall be:

- (a) all direct expenses and disbursements incurred to restore such property to as good a state of repair as had existed prior to the damage;
- (b) reasonable administration and overhead charges on labour, equipment and materials;
- (c) such taxes as may be required in the appropriate jurisdiction;
- (d) in the case of loss of gas or re-lights, the cost of the commodity as determined by the length of time that the gas is leaking, size of pipe and hole and the pressure; and

- (e) in the case of water, electrical or sewer, cost of supplying alternate service.

## **14.2 Cost Claim Procedures**

**14.2.1.** Wherever one party is claiming Costs of the other party in regard to any work or issue arising under this Agreement the claiming party shall:

- (a) provide an invoice to the other party no later than one year after incurring Costs;
- (b) provide detailed descriptions of the cost items;
- (c) provide the time period the invoice covers;
- (d) provide a minimum of 21 day terms for payment of the invoice; and
- (e) provide for late payment interest at the rate consistent with the party's policy for charging for late payments, which rate must be reasonable;

**14.2.2.** The party claiming Costs shall have no right of set off for these invoices against any amounts otherwise payable to the other party, except to the extent so approved in writing by the other party.

## **14.3 Cost Verification Procedures**

**14.3.1.** Wherever either party is the recipient of or is claiming Costs and or fees that party may at its own discretion request from the other party:

- (a) Certification by an officer or designated representative verifying the calculations and computations of the Costs and or fees,
- (b) An internal review or audit of the calculations and computations of the Costs and or fees, with the internal review or audit to be carried out by a person appointed by the party being asked to provide the review;
- (c) An independent external audit of the calculations and computations of the costs and fees, with the independent external auditor being a Chartered or a Certified General Accountant in British Columbia appointed by the party requesting the external audit;

**14.3.2.** The costs of this cost verification process shall be borne by the party who is required to supply the information except as otherwise specified providing the frequency of such requests does not exceed once per calendar year. For all future cases which occur in that

calendar year, the costs of such further verifications shall be at the expense of the requester.

Where the independent external audit finds and establishes errors representing a variance greater than 2% of the originally calculated value in favour of the party claiming Costs, the costs shall be at the expense of the party supplying the information. Once an error has been verified, payment or refund of the amount found to be in error will be made within 21 days.

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

### **15.1 Agreement Not Binding Until Approved**

**15.1.1.** This Agreement will not come into effect and does not bind the parties until the following conditions have been fulfilled:

- (a) Terasen Gas has obtained such approvals of this Agreement, or its terms, as may be required under the *Utilities Commission Act*; and
- (b) the Municipality 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.

**15.1.2.** Upon executing this Agreement the parties shall make reasonable efforts to fulfill the conditions set out in this section. If the conditions are not fulfilled or waived within one (1) year of the execution of this Agreement, then the obligation on the parties to make reasonable efforts to fulfill the conditions will terminate, and neither party will have any further obligation to the other under this Agreement.

### **15.2 Termination of Franchise Agreement**

If not already terminated or expired, any franchise and operating agreement between the Municipality and Terasen Gas is terminated upon the effective date of this Agreement.

### **15.3 Term of Agreement**

This Agreement will have a term of 20 years from the date that it comes into effect and after the initial term shall continue indefinitely unless terminated in accordance with Section 15.4 below.

### **15.4 Termination of Agreement**

**15.4.1.** This Agreement may be terminated by the Municipality upon the occurrence of any of the following events:

- (a) Terasen Gas admits its inability to pay its debts generally as they become due or otherwise acknowledges its insolvency;
- (b) Terasen Gas starts proceedings or takes any action to commence or executes an agreement to authorize its participation in any proceeding:
  - (i) seeking to adjudicate it bankrupt or insolvent;
  - (ii) seeking liquidation, reorganization, arrangement, protection, relief or composition of it or any of its property or debt or making a proposal with respect to it under any law relating to bankruptcy, insolvency, reorganization or compromise of debts or other similar laws; or
  - (iii) seeking the appointment of a receiver, trustee, agent, custodian or other similar official for it or for any substantial part of its assets or if a creditor seeks the appointment of a receiver, trustee, agent, custodian or other similar official for any substantial part of its assets; and such proceeding is not dismissed, discharged, stayed or restrained within 20 days of the Municipality becoming aware of it.

**15.4.2.** Either party may terminate if other breaches any term, provision, obligation hereunder and such breach, is a material major 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 default if such matter is in dispute or has been referred to commercial arbitration, the outcome of which is pending, or is being resolved in good faith compliance with the dispute resolution and arbitration processes of this Agreement.

**15.4.3.** After the initial twenty (20) year term of this Agreement, either party may terminate this Agreement by giving the other not less than one (1) year's notice of termination.

## **15.5 Amendments and Waivers**

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 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.

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

Upon one party giving Notice to the other of termination of this Agreement, the parties shall negotiate in good faith to enter into a new agreement with respect to the terms and conditions under which Terasen Gas may use the Public Places. In the event that such negotiations break down and in the opinion of one or other of the parties acting in good faith that settlement is unlikely, either party may give Notice to the other of its intention to apply to the BCUC to seek resolution of the terms and conditions applicable to Terasen Gas' continued operations and construction activities within the Municipality.

#### **15.7 Continuity In The Event No Agreement Is Settled**

Upon the expiry or termination of this Agreement, if a new agreement has not been ratified or if the BCUC has not imposed the terms and conditions under which Terasen Gas may use the Public Places, the following provisions will apply:

- (a) The Company Facilities within the boundary limits of the Municipality both before and after the date of this Agreement, shall remain Terasen Gas' property and shall remain in the Public Places.
- (b) The Company Facilities may continue to be used by Terasen Gas for the purposes of its business, or removed from Public Places in whole or in part at Terasen Gas' sole discretion.
- (c) Terasen Gas may continue to use Public Places within the Municipality for the purposes of its business. Terasen Gas' employees, may enter upon all the Public Places within the Boundary Limits of the Municipality to maintain, operate, install, construct, renew, alter, or place Company Facilities; provided that Terasen Gas continues to operate in a manner consistent with the terms and conditions of this Agreement as if the term had been extended except with respect to the payment of the Operating Fee.
- (d) Terasen Gas will with the support of the Municipality take such steps necessary to seek BCUC approvals of the extension of terms and conditions including payment of the operating fee under the expiring agreement during negotiations of a new agreement.
- (e) Should Terasen Gas no longer be authorized or required to pay the operating fee under any Agreement between it and the Municipality or by any order of the BCUC, the Municipality shall be free 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

In the event that 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) Terasen Gas will accept the appointment of such third party as the Municipality's agent or subcontractor to enable such third party to deal directly with Terasen Gas so as to enable the Municipality to comply with the terms, obligations and conditions of this Agreement.

### 16.2 Changes to the Community Charter

In the event that the provisions of the *Community Charter* or other legislation affecting the rights and powers of municipalities change in such a way as to materially, in the opinion of the Municipality, affect municipal powers in respect to matters dealt with in this Agreement,

- (a) the Municipality may within one year of the change coming into effect propose new agreement terms with respect to only those specific changes and Terasen Gas agrees to negotiate such terms; and
- (b) failing satisfactory resolution either of the parties will seek resolution through the Dispute Resolution Process, Section 17.

### 16.3 Changes to the Utilities Commission Act

In the event that the provisions of the *Utilities Commission Act* or other legislation affecting the rights and powers of regulated Utilities change in such a way as to materially, in Terasen Gas' opinion, affect Terasen Gas' powers in respect to matters dealt with in this Agreement,

- (a) Terasen Gas may within one year of the change coming into effect propose new agreement terms with respect to only those specific changes and the Municipality agrees to negotiate such terms; and
- (b) failing satisfactory resolution either of the parties will seek resolution through the Dispute Resolution Process, Section 17.

## 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, 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 or Arbitration**

If the parties fail to resolve the dispute through mediation, the unresolved dispute shall be referred to the BCUC if within its jurisdiction. If the matter is not within the jurisdiction of the BCUC, 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 will allow discovery as required by law in arbitration proceedings.

### **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.

# **18. GENERAL TERMS & CONDITIONS**

## **18.1 No Liens**

Terasen Gas will do its best to not allow, suffer or permit any liens to be registered against the Company Facilities located in Public Places as a result of the conduct of Terasen Gas. If any such liens are registered, Terasen Gas will start action to clear any lien so registered to the Public Place within ten (10) days of being made aware such lien has been registered. Terasen Gas will keep the Municipality advised as to the status of the lien on a regular basis. In the event that such liens are not removed within ninety (90) days of the registration of such lien, Terasen Gas will pay them in full or post sufficient security to ensure they are discharged from title.

## **18.2 Corporate Authority**

Terasen Gas now warrants, represents and acknowledges that:

- (a) it has the full right, power and authority to enter into this Agreement;
- (b) it is a corporation, duly organized, legally existing and in good standing under the laws of its jurisdiction of incorporation or continuance and is lawfully registered and licensed to do business in British Columbia.

## **18.3 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 venture 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.

## **18.4 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.

## **18.5 Governing Law**

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

#### **18.6 General**

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.

#### **18.7 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.

#### **18.8 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. To the extent permitted by applicable law, the parties hereby waive any provision of law that renders any provision hereof prohibitive or unenforceable in any respect.

#### **18.9 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.

#### **18.10 Notice**

Any notice or other written communication required, or permitted to be made or given pursuant to this Agreement (the "Notice") 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:

- A) if to the Municipality:

**CITY OF CRANBROOK**  
40 10<sup>th</sup> Avenue, South  
Cranbrook, British Columbia  
V1C 2M8

(B) If to Terasen Gas:

**TERASEN GAS INC.**  
16705 Fraser Highway  
Surrey, British Columbia  
V3S 2X7  
Attention: Vice President, Regulatory Affairs

**CITY OF CRANBROOK**  
by its authorized signatories

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Authorized Signatory

**TERASEN GAS INC.**  
by its authorized signatories

D.L. Stout, Vice-President  
Marketing & Business  
Development

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Authorized Signatory

SIXTH FLOOR, 900 HOWE STREET, BOX 250  
VANCOUVER, B.C. V6Z 2N3 CANADA  
web site: <http://www.bcuc.com>



**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER** C-9-06

TELEPHONE: (604) 660-4700  
BC TOLL FREE: 1-800-663-1385  
FACSIMILE: (604) 660-1102

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

and

An Application by Terasen Gas Inc.  
for Approval of an Operating Agreement  
with the City of Cranbrook

**BEFORE:**      L.F. Kelsey, Commissioner                )  
                        L.A. Zaozirny, Commissioner        )      August 10, 2006

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

**WHEREAS:**

- A. On January 12, 2006, Terasen Gas Inc. ("Terasen Gas") applied to the British Columbia Utilities Commission ("the Commission") for approval of an Operating Agreement with the City of Cranbrook ("the Municipality") ("the Application"); and
- B. The Franchise Agreement approved by Commission Order No. C-5-83 expired on June 20, 2004; and
- C. By Commission Order No. C-4-05, the term of the Franchise Agreement was extended to December 31, 2005; and
- D. In its Application, Terasen Gas advised that it undertook negotiations with the Union of British Columbia Municipalities ("UBCM") Operating Agreement Committee to establish the terms of a new form of Operating Agreement. In 2005 Terasen Gas successfully negotiated a pro-forma Operating Agreement with the UBCM and using this agreement as a template, negotiated new Operating Agreements with those municipalities with Operating Agreements which expired on December 31, 2005 (collectively the "Municipalities"); and
- E. The Application requests approval of a 20-year Operating Agreement between Terasen Gas and the Municipality from January 1, 2006 to December 31, 2025 that sets out the terms and conditions, including a

**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER**      C-9-06

2

3 percent operating fee, under which Terasen Gas shall exercise its rights to use the public places of the Municipality in conducting its business of distributing gas within the Municipality; and

- F. Commission Order No. C-7-03, which approved a District of Salmon Arm and Terasen Gas Operating Agreement and Addendum, directed Terasen Gas to seek a method in future agreements to convert the operating fee to a charge on utility margin; and
- G. The Commission issued Information Request No. 1 to Terasen Gas on February 20, 2006, including questions related to the impacts of the proposed operating fee on rate stability and requesting an explanation of how such a fee based on Terasen Gas revenue fairly compensates the Municipalities for the costs incurred as a result of Terasen Gas' use of the streets and other public places within the Municipalities; and
- H. Terasen Gas responded to the Commission's Information Request No. 1 on March 9, 2006. Terasen Gas provided historical franchise fee information and discussed five operating fee options (Option 1-5) which were all rejected by the Municipalities; and
- I. The Commission issued Information Request No. 2 on March 28, 2006 and Terasen Gas responded on April 13, 2006. In IR No. 2, Terasen Gas analyzed an operating fee calculation using a base year methodology and provided additional information as to why Options 2, 4 and 5 in IR No. 1 were rejected; and
- J. In a letter dated May 9, 2006, the Commission sought further submissions from Terasen Gas, the UBCM and the Municipalities to support or justify how the public interest is better served through an operating fee, as proposed, compared to Option 5, described as a "Hybrid Approach" whereby customers in Rate Classes 1-3 would pay a margin based fee and all other customers would continue to pay a franchise fee based on revenue of 3.09 percent; and

**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER**      C-9-06

- K. From May 17, 2006 to May 26, 2006 the Commission received submissions from Terasen Gas, the City of Rossland, the District of Hudson's Hope, the City of Kimberley, the City of Fernie, the City of Grand Forks, the Town of Oliver and the City of Cranbrook. Other interested parties such as the City of Kelowna, the City of Nelson and Mr. Greg McCormick also provided submissions to the Commission. Among other things, Terasen Gas and the Municipalities stated that the agreements are "package deals" with a considerable amount of compromise involved, including the fees agreed to within the package, and outlined their significant concerns to the added complexity, costs, communication and need to renegotiate if a margin fee were imposed; and
- L. The Commission has reviewed the Application and the related submissions presented to it and has determined that the Operating Agreement with the City of Cranbrook should be approved.

**NOW THEREFORE** the Commission, pursuant to Section 45 of the Utilities Commission Act the Commission approves the Operating Agreement as filed.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 29<sup>th</sup> of August 2006.

BY ORDER

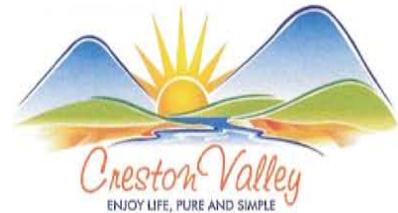
*Original signed by*

L.F. Kelsey  
Commissioner



## TOWN OF CRESTON

PO Box 1339, 238-10th Avenue North, Creston, BC V0B 1G0  
Phone: (250) 428-2214 • Fax: (250) 428-9164  
email: aa@townofcreston.com



File: 0510.20.T4

December 1<sup>st</sup>, 2005

Terasen Gas Inc.  
16705 Fraser Highway  
Surrey, BC V3S 2X7

**ATTENTION: Mr. Rob Greno, Community Relations Manager**

Dear Mr. Greno:

**Re: Operating Agreement (Town of Creston)**

Please find attached, two copies of the Operating Agreement between the Town of Creston and Terasen Gas Inc., with respect to terms and conditions under which Terasen Gas shall exercise its rights to use public places in conducting its business of distributing gas within the municipality, duly signed by the Town of Creston.

We look forward to receiving a copy of the document, following execution by Terasen Gas Inc., for our files.

Thank you for your assistance, it has been a long process, however I have enjoyed working with you in this regard.

Yours truly,

Wm. F. Hutchinson, A.Sc.T.  
Chief Administrative Officer

/bjc  
Attach.

## OPERATING AGREEMENT

THIS OPERATING AGREEMENT (the "Agreement") made this 1st day of  
JANUARY, 2005. *RS*

BETWEEN:

**TOWN OF CRESTON**  
238-10<sup>th</sup> Avenue North  
Creston, B.C. V0B 1G0

(hereinafter called the "Municipality")

OF THE FIRST PART

AND

**TERASEN GAS 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

(hereinafter called "Terasen Gas")

OF THE SECOND PART

### RECITALS:

- A. Whereas by a certificate of public convenience and necessity (CPCN), Terasen Gas was granted the right to construct and operate gas distribution facilities within the Municipality;
- B. And whereas pursuant to the Community Charter, S.B.C. 2003, a Municipal council may, by resolution adopt and enter into a licensing and operating agreement;
- C. And whereas Terasen Gas and the Municipality are the parties to a Franchise or Operating Agreement dated the 11 day of September, 1984 and subsequently renewed by various amending agreements, which will expire on December 31, 2005;
- D. And whereas Terasen Gas and the Municipality wish to enter into this Agreement to clarify and settle the terms and conditions under which Terasen Gas shall exercise its rights to use Public Places in conducting its business of distributing Gas within the Municipality.

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

## 1. DEFINITIONS

For the purposes of this Agreement:

- (a) "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;
- (b) "BCUC" means the British Columbia Utilities Commission or successor having regulatory jurisdiction over natural gas distribution utilities in British Columbia;
- (c) "CPCN" means a Certificate of Public Convenience and Necessity granted by the BCUC which allows Terasen Gas to operate, maintain and install Company Facilities for the distribution of Gas within the Municipality;
- (d) "Company Design" means the installation and design specifications which meet all applicable Provincial and Federal codes, standards and safety requirements for the gas services in the province of British Columbia, as they relate to approved gas works, system improvements, upgrades, connections and system extensions;
- (e) "Company Facilities" means Terasen Gas' facilities, including pipes, buildings, structures, valves, signage, storage facilities, machinery, vehicles and other equipment used to maintain, operate, renew, repair, construct and monitor a natural Gas Distribution and transmission system;
- (f) "Distribution Pipelines" means pipelines operating at a pressure less than 2071 kilopascals (300 psi);
- (g) "Gas" means natural gas, propane, methane, synthetic gas, liquefied petroleum in a gaseous form or any mixture thereof;
- (h) "Gas Distribution" means fixed equipment, structures, plastic and metal lines and pipe, valves, fittings, appliances and related facilities used or intended for the purpose of conveying, testing, monitoring, distributing, mixing, storing, measuring and delivering Gas and making it available for use within the Municipality;
- (i) "Highway" means street, road, lane, bridge or viaduct controlled by the Municipality or Provincial Government of British Columbia;
- (j) "Losses" means direct and indirect losses, damages, costs and expenses (including without limitation, interest, penalties and amounts paid in

settlement but does not include legal and professional fees and disbursements);

- (k) "Mains" means pipes used by Terasen Gas to carry gas for general or collective use for the purposes of Gas Distribution;
- (l) "Municipal Employees" means personnel employed by or engaged by the municipality, including officers, employees, directors, contractors and agents;
- (m) "Municipal Facilities" means any facilities, including highways, sidewalks, conduits, manholes, equipment, machinery, pipes, wires, valves, buildings, structures, signage, bridges, viaducts and other equipment within the Public Places used by the Municipality for the purposes of its public works or municipal operations;
- (n) "Municipal Supervisor" means the Municipal Engineer or other such person designated by the Municipality to receive notices and issue approval as set out in this Agreement;
- (o) "New Work" means any installation, construction, repair, maintenance, alteration, extension or removal work of the Company Facilities in Public Places except;
  - (i) routine maintenance and repair of the Company Facilities that does not involve any cutting of asphalted road surface;
  - (ii) installation or repair of Service Lines whether or not such installation or repair involves cutting of asphalted road service; or
  - (iii) emergency work;but notwithstanding such exceptions, New Work shall include any installation, construction or removal of the Company Facilities in Public Places that are planned to disturb underground Municipal Facilities;
- (p) "Pipeline Markers" means post, signage or any similar means of identification used to show the general location of Transmission Pipelines and distribution pipelines or Terasen Gas Rights of Way;
- (q) "Planned Facilities" means those facilities not yet constructed but which have been identified by way of documented plans for the works of the Municipality, for works of third parties, where such works are identified by documented plans approved by the Municipality, or for works of Terasen Gas submitted to the Municipality subject to Municipal approval;
- (r) "Public Places" means any public thoroughfare, highway, road, street, lane, alley, trail, square, park, bridge, right of way, viaduct, subway, watercourse or other public place in the Municipality;

- (s) "Service Line" means that portion of Terasen Gas' gas distribution system extending from a Main to the inlet of a meter set and, for the purposes of this Agreement, includes a service header and service stubs;
- (t) "Terasen Gas Employees" means personnel employed by or engaged by Terasen Gas including officers, employees, directors, contractors, and agents;
- (u) "Transmission Pipeline" means a pipeline of Terasen Gas having an operating pressure in excess of 2071 kilopascals (300 psi); and
- (v) "Utilities" means the facilities or operations of any water, waste water, sewer, telecommunications, energy, cable service or similar service provider located in Public Places within the Municipality.

## **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) words in the singular include the plural, words importing a corporate entity include individuals, and vice versa;
- (c) in calculating time where the agreement refers to "at least" or "not less than" 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" a number of days, Saturdays, Sundays and holidays must be excluded;
- (d) 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.

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

Terasen Gas 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.

Terasen Gas 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.

#### **4. TERASEN GAS RIGHTS TO ACCESS & USE PUBLIC PLACES**

The Municipality hereby acknowledges Terasen Gas' rights to:

- (a) develop, construct, install, maintain or remove Company Facilities on, over, in and under Public Places in the Municipality;
- (b) enter on Public Places from time to time as may be reasonably necessary for the purpose of maintaining, repairing, or operating the Company's Facilities;
- (c) place pipeline identification markers within Public Places where a Transmission Pipeline or Distribution Pipeline crosses or is otherwise within a Public Place;

subject to terms and conditions defined in this Agreement.

#### **5. TERASEN GAS COMPLIANCE WITH STANDARDS FOR USE OF PUBLIC PLACES**

##### **5.1 Non-discriminatory Standards for Terasen Gas**

In its use of Public Places, Terasen Gas shall comply with all Federal and Provincial laws, regulations and codes and shall comply with all Municipal bylaws, standards and policies except that Terasen Gas shall not have to comply with such Municipal bylaws, standards and policies that:

- (a) conflict with terms of this Agreement or limit any rights or concessions granted to Terasen Gas by the Municipality under this Agreement; or
- (b) conflict with other legislation governing Terasen Gas.

Further, where the Municipality has established requirements and standards for work in Public Places, the Municipality shall apply them in a fair, reasonable and non-discriminatory manner consistent with the manner that the Municipality establishes requirements on other Utilities.

##### **5.2 Provide emergency contacts.**

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

##### **5.3 Assist with facility locates**

Terasen Gas 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 unless

the reason for the request is the result of an emergency; in which case the information shall be provided forthwith. Terasen Gas shall provide gas locations from Terasen Gas records. Terasen Gas shall perform on site facility locates in accordance with the *Safety Standards Act – Gas Safety Regulations* Section 39.

## **6. TERASEN GAS WORK OBLIGATIONS:**

### **6.1 Notices - General Requirements**

#### **6.1.1. Notice for New Work**

For New Work, if required by the Municipality, Terasen Gas shall give notice to the Municipality or such officer or official thereof who has been designated from time to time by the Municipality that it intends to perform such New Work. The Notice shall include:

- (a) a plan and specifications showing the proposed location and dimensions of the New Work;
- (b) Terasen Gas' plans for the restoration of the Public Place affected by the New Work if Terasen Gas' restoration plans are different from those set out in Section 6.4.2 of this Agreement;
- (c) the name of a Terasen Gas representative who may be contacted for more information;
- (d) projected commencement and completion dates; and
- (e) such other information relevant to the New Work as the Municipality may reasonably request from time to time.

#### **6.1.2. Exception for Emergency**

Where Terasen Gas is required to carry out work urgently in the interests of public safety or health or to preserve the safety of property and Company Facilities, Terasen Gas shall not be required to give prior notice but shall do so as soon as possible thereafter.

#### **6.1.3. Municipal Approval for New Work**

The Municipality may object to the New Work on the following grounds:

- (a) the proposed location of the New Work conflicts with Planned Facilities; or
- (b) the proposed location or design of the New Work is likely to compromise public safety or does not conform with Municipal bylaws, standards or policies; or

- (c) in instances where Terasen Gas can delay the New Work without compromising the supply, capacity or safety of its Gas Distribution System or its customers' need for gas service and the Municipality intends within the next 3 months to undertake work in the same location and wishes to co-ordinate both work;

by providing Terasen Gas with notice of its objections, provided such objections are reasonable, no more than 10 days after receiving Terasen Gas' notice of New Work. If the Municipality has not provided such notice of its objections to Terasen Gas, or in the case of large and complex New Work, the Municipality has not provided Terasen Gas with a notice to extend the time to reply to Terasen Gas until a stated time, the Municipality shall be deemed to have granted its approval of the New Work. The Municipality shall not otherwise withhold or delay its approval.

In addition, the Municipality may request Terasen Gas to provide the public with notice of the New Work.

#### **6.1.4. Work Not to Proceed**

If the Municipality has notified Terasen Gas of its objections or has requested a time extension, no more than 10 days after receiving Terasen Gas' notice of New Work, Terasen Gas shall not proceed with the New Work until Terasen Gas and the Municipality have agreed upon a resolution to the Municipality's objections. If the Municipality and Terasen Gas are unable to agree, then the matter shall be resolved in accordance with Section 17 (Resolution of Disputes).

### **6.2 Notice of Service Lines**

Terasen Gas, if required by the Municipality, shall provide the Municipality with notice of its intent to install, remove or repair Service Lines no less than three (3) days prior to commencement of such work. Terasen Gas' request for the location of the Municipality's utilities shall be deemed to be a notice of Terasen's intent to install, remove or repair Service Lines. The Municipality may object to such work on the same grounds as set out in Subsection 6.1.3 (a) and (b) above by providing Terasen Gas with notice of its objections within two (2) days of receiving Terasen Gas' notice. If the Municipality has not provided such notice of its objections to Terasen Gas, the Municipality shall be deemed to have granted its approval of the installation, removal or repair of the Service Lines. The Municipality shall not otherwise withhold or delay its approval.

### **6.3 Terasen Gas to Secure Locate Information**

Prior to conducting any New Work, Terasen Gas shall locate other Utilities and satisfy itself that it is clear to proceed.

### **6.4 Work Standards**

#### **6.4.1. Specific Work Requirements Remove Materials**

Terasen Gas shall keep its work sites clean and tidy. Terasen Gas shall remove all rubbish and surplus material from Public Places upon completion of its work.

#### **6.4.2. Restore Surface and Subsurface**

Where Terasen Gas has performed any operations or New Work in a Public Place, Terasen Gas shall restore without unreasonable delay and return such Public Place, as much as reasonably practical, to the condition and use which existed prior to such activity. The restoration will be in accordance with the specifications set out by the Municipality. Such specifications may include the degree and nature of compaction, subsurface structure, surface finish and landscaping required.

Without limiting the generality of this section and by way of example only, the Municipality may require Terasen Gas to restore asphalt and concrete surfaces with a permanent repair or a temporary repair. Should a temporary repair be directed, Terasen Gas or the Municipality at its discretion will subsequently construct a permanent repair in accordance to its usual maintenance/replacement schedule for that area. The cost of permanent and temporary repairs to remediate Highway surfaces will be at the expense of Terasen Gas proportional to the surface area affected by the New Work.

Where Terasen Gas is required to cut pavement on a Public Place such cuts and restoration will be limited to less than 1.5 meters unless at the discretion of Terasen Gas a larger excavation is warranted due to the depth or size of the pipe or requirements of the Workers' Compensation Board or other relevant Provincial or Federal regulations. Terasen Gas will be responsible for any repairs and maintenance of the surface repair for a period of three (3) years. However, where pavement restoration has been conducted by the Municipality, whether or not such work was undertaken to repair cuts on Terasen Gas' behalf, Terasen Gas shall not be responsible for the repairs or maintenance of the surface repair.

#### **6.4.3. Repair Damage to Municipal Facilities**

To the extent that any of the work being done by Terasen Gas 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 Terasen Gas shall restore in accordance with Section 6.4.2 above, Terasen Gas will report such damage and reimburse the Municipality for its costs arising from such damage calculated in accordance with Section 14.1 below. Where such damage results directly from inaccurate or incomplete information supplied by Municipality, and Terasen Gas has complied with all applicable laws and regulations, and with instructions supplied by the Municipality, then the cost of repairing damaged Municipal Facilities or Public Places will be at the expense of the Municipality.

## **6.5 Conformity Requirement**

The New Work must be carried out in conformity with Terasen Gas' notice of New Work except that Terasen Gas may make in-field design changes when carrying out the New Work to accommodate field conditions which could not have been reasonably foreseen by Terasen Gas. If such in-field conditions materially impact Terasen Gas' plans for restoration or materially change the impact of Terasen Gas' work on Municipal Facilities, other than in respect of projected commencement and completion dates, Terasen Gas shall notify the Municipality.

## **6.6 Non-Compliance**

If Company Facilities located in Public Places are later found not to be located in compliance with Terasen Gas' notice of New Work provided in accordance with Section 6.1 and 6.5, then any alteration or upgrading required to bring them into compliance with such notice will be at the expense of Terasen Gas provided that the work has not been altered, damaged or modified by the Municipality or a third party.

# **7. COMPANY FACILITY CHANGES REQUIRED BY THE MUNICIPALITY**

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

Before any Public Places containing Company Facilities may be legally closed or alienated by the Municipality, the Municipality shall promptly notify Terasen Gas of its intent to close or alienate such Public Places and either:

- (a) grant Terasen Gas a registered statutory right of way in a form satisfactory to Terasen Gas so as to maintain Terasen Gas' right to use the land; or
- (b) request Terasen Gas to remove and (if possible and practicable) relocate those Company Facilities affected by such closure or alienation at the sole cost of the Municipality.

If the Public Places are expropriated by an expropriating authority and Terasen Gas is required to remove its facilities then the Municipality shall use reasonable efforts to seek compensation from such expropriating authority to compensate Terasen Gas for its relocation costs. If the Municipality is unable to obtain such compensation despite its reasonable efforts, then the Municipality shall have no further liability to Terasen Gas. The Municipality shall not be required to incur any legal expenses without the approval and reimbursement by Terasen Gas in order to obtain such compensation for Terasen Gas.

# **8. FACILITY CHANGES REQUIRED**

## **8.1 By Terasen Gas**

Terasen Gas may provide Notice to the Municipality that it requires Municipal Facilities to be altered, changed or relocated to accommodate its requirements. The Municipality will comply with Terasen Gas's requests to the extent it is reasonably able to do so and with reasonable speed and dispatch after receipt of written request. Terasen Gas agrees to pay for all of the costs for changes to the affected Municipal Facilities.

## **8.2 By the Municipality**

The Municipality may provide Notice to Terasen Gas that it requires Company Facilities to be altered, changed or relocated to accommodate its requirements. Terasen Gas will comply with the Municipality's requests to the extent it is reasonably able to do so and with reasonable speed and dispatch after receipt of written request. The Municipality agrees to pay for all of the costs for changes to the affected Company Facilities.

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

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

The Municipality and Terasen Gas agree to use reasonable efforts in carrying out their construction and maintenance activities in a manner that is responsive to the affect that it may have on the other party, as well as other users of Public Places. Such reasonable efforts include attending the planning meetings described in Section 9.2 below 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.

## **9.2 Communication and Coordination Activities**

At the initiation of the Municipality, representatives of the Municipality, Terasen Gas and other affected Utilities and third parties will meet each year, prior to the construction season, to discuss the parties' anticipated construction activities for that year. Such discussions will include

- (a) the use of common trenching, common utility access facilities and such other common facilities as may be commercially reasonable and comply with operating and safety standards; and
- (b) the consolidation of planned maintenance work where pavement must be cut in order to avoid multiple excavations.

## **9.3 Municipal Planning Lead**

During such annual planning meetings, the Municipality shall lead the planning process for all Utilities and third parties with Planned Facilities in Public Places.

# **10. MUTUAL INDEMNITY**

## **10.1 Indemnity by Terasen Gas**

**10.1.1.** Terasen Gas 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 Terasen Gas in:

- (a) placing, constructing, renewing, altering, repairing, maintaining, removing, extending, operating or using the Company's Facilities on or under any Public Places;
- (b) any breach of this Agreement by Terasen Gas;

except to the extent contributed by negligence or default of the Municipality or the Municipal Employees.

**10.1.2.** This indemnity expressly extends to all acts and omissions of Terasen Gas Employees.

#### **by the Municipality**

**10.2.1.** The Municipality indemnifies and protects and saves Terasen Gas 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:

- (a) placing, constructing, renewing, altering, repairing, maintaining, removing, extending, operating or using the Municipal Facilities on or under any Public Places;
- (b) any breach of this Agreement by the Municipality;

except to the extent contributed by the negligence or default of Terasen Gas or Terasen Gas Employees.

**10.2.2.** This indemnity expressly extends to all acts and omissions of Municipal Employees.

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

All property of Terasen Gas kept or stored on the Public Places will be kept or stored at the risk of Terasen Gas. For further certainty, Terasen Gas 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. Terasen Gas accepts its use of Public Places on an "as is" basis.

## **11. OPERATING FEE**

### **11.1 Fee Calculation**

- 11.1.1. Terasen Gas agrees to pay to the Municipality a fee of three percent (3%) of the amount received by Terasen Gas for provision and distribution of all gas consumed within the Boundary Limits of the Municipality. Such amount will not include any amount received by Terasen Gas for gas supplied or sold for resale.
- 11.1.2. The Municipality will notify Terasen Gas in writing of any boundary expansion so that new customers can be included as a part of the annual payment fee.
- 11.1.3. Terasen Gas will be responsible for adding those new customers within the new Municipal boundary upon receipt of such notice from the Municipality and the revised calculation of the fee will commence at that point.

## **11.2 Payment Date and Period**

Payments by Terasen Gas to the Municipality will be made on the first day of March of each year of the Agreement in respect of the amount received by Terasen Gas during that portion of the term of this Agreement which is in the immediately preceding calendar year. By way of example only, payment made on March 1, 2006 will be the amount received during the 2005 calendar year.

## **11.3 BCUC Decision or Provincial Legislation**

In the event that a decision by the BCUC, other than periodic rate changes as a result of commodity, delivery or margin increases or decreases, or new legislation by the Provincial Government, impacts the operating fee being paid to the Municipality so as to increase it or decrease it by more than 5% annually at the time of the decision or in subsequent years, the parties shall negotiate a new operating fee formula which best reflects the revenue stream received by the Municipality under this Agreement. For greater certainty, the parties acknowledge that a change to the BCUC's decision that Terasen Gas shall provide the agency billing and collections service for marketers on a mandatory basis, as set out in the "Business Rules for Commodity Unbundling dated June 5, 2003 as set out in Appendix A to Letter No. L-25-03, may impact the operating fee being paid to the Municipality.

## 12. OTHER APPROVALS, PERMITS OR LICENSES

Except as specifically provided in this Agreement, the Municipality will not require Terasen Gas to seek or obtain approvals, permits or licenses. The Municipality will not charge or levy against Terasen Gas any approval, license, inspection or permit fee, or charge of any other type, that in any manner is related to or associated with Terasen Gas constructing, installing, renewing, altering, repairing, maintaining or operating Company Facilities on any Public Places or in any manner related to or associated with Terasen Gas exercising the powers and rights granted to it by this Agreement.

If the Municipality does charge or levy fees or costs against Terasen Gas (other than for repair of damage to the Municipal Facilities or Public Places in accordance with Section 14) then Terasen Gas may reduce the annual operating fee payable to the Municipality under Section 11 by an amount equal to such charges, fees or costs.

## 13. MUNICIPAL OBLIGATIONS

- 13.1.1. Before the Municipality undertakes any construction or maintenance activity which is likely to affect a part of the Company Facilities, it must give Terasen Gas notice not less than 10 days before commencing such construction or maintenance activity.
- 13.1.2. Where the Municipality is required to carry out work urgently in the interests of public safety or health or to preserve the safety of property and Municipal Facilities, the Municipality shall not be required to give prior notice but shall do so as soon as possible thereafter.
- 13.1.3. Terasen Gas will be entitled to appoint at its cost a representative to inspect any construction or maintenance activity undertaken by the Municipality. The provisions of this section do not relieve the Municipality of its responsibilities under the *Gas Safety Act*, *Pipeline Act*, and successor legislation, regulations thereunder, or the requirements of the BC Workers' Compensation Board.
- 13.1.4. In addition, the Municipality shall provide Notice to Terasen Gas of any work planned that will be adjacent to, across, over or under a Transmission Pipeline or within a right-of-way for a Transmission Pipeline. To the extent that Terasen Gas requires that permit be issued for construction or other activities within a Transmission Pipeline right-of-way, the Municipality will submit an application for such a permit in sufficient time for the application to be reviewed and approved by Terasen Gas prior to the commencement of the construction or other activity.

**13.1.5.** The Municipality shall assist Terasen Gas in Terasen Gas' efforts to reduce instances of residences being built over gas lines and other similarly unsafe building practices by third parties.

**13.1.6.** The Municipality shall not interfere with Transmission Pipeline markers.

**13.1.7.** The Municipality shall provide notice to Terasen Gas of any damage caused by the Municipality to Company Facilities or Transmission Pipeline Markers as soon as reasonably possible. To the extent that any of the work being done by the Municipality results in damage to the Company Facilities, the Municipality will report such damage and pay Terasen Gas its costs arising from such damage in accordance with Section 14.1 below. Where such damage results directly from inaccurate or incomplete information supplied by Terasen Gas, and the Municipality has complied with all applicable laws and regulations, and with instructions supplied by Terasen Gas, then the cost of repairing the damaged Company Facilities will be at the expense of Terasen Gas.

**13.1.8.** The Municipality shall notify Terasen Gas of any new bylaws, standards or policies adopted or passed by the Municipality that are likely to affect Terasen Gas' operations in Public Places.

## **14. COSTS AND PAYMENT PROCEDURES**

### **14.1 Definition of Costs**

Wherever one party is required to pay the other party Costs as a result of damage caused by one party to the other's property, the Costs shall be:

- (a) all direct expenses and disbursements incurred to restore such property to as good a state of repair as had existed prior to the damage;
- (b) reasonable administration and overhead charges on labour, equipment and materials;
- (c) such taxes as may be required in the appropriate jurisdiction;
- (d) in the case of loss of gas or re-lights, the cost of the commodity as determined by the length of time that the gas is leaking, size of pipe and hole and the pressure; and
- (e) in the case of water, electrical or sewer, cost of supplying alternate service.

## 14.2 Cost Claim Procedures

**14.2.1.** Wherever one party is claiming Costs of the other party in regard to any work or issue arising under this Agreement the claiming party shall:

- (a) provide an invoice to the other party no later than one year after incurring Costs;
- (b) provide detailed descriptions of the cost items;
- (c) provide the time period the invoice covers;
- (d) provide a minimum of 21 day terms for payment of the invoice; and
- (e) provide for late payment interest at the rate consistent with the party's policy for charging for late payments, which rate must be reasonable;

**14.2.2.** The party claiming Costs shall have no right of set off for these invoices against any amounts otherwise payable to the other party, except to the extent so approved in writing by the other party.

## 14.3 Cost Verification Procedures

**14.3.1.** Wherever either party is the recipient of or is claiming Costs and or fees that party may at its own discretion request from the other party:

- (a) Certification by an officer or designated representative verifying the calculations and computations of the Costs and or fees;
- (b) An internal review or audit of the calculations and computations of the Costs and or fees, with the internal review or audit to be carried out by a person appointed by the party being asked to provide the review;
- (c) An independent external audit of the calculations and computations of the costs and fees, with the independent external auditor being a Chartered or a Certified General Accountant in British Columbia appointed by the party requesting the external audit;

**14.3.2.** The costs of this cost verification process shall be borne by the party who is required to supply the information except as otherwise specified providing the frequency of such requests does not exceed once per calendar year. For all future cases which occur in that calendar year, the costs of such further verifications shall be at the expense of the requester.

Where the independent external audit finds and establishes errors representing a variance greater than 2% of the originally calculated value in favour of the party claiming Costs, the costs shall be at the expense of the party supplying the information. Once an error has been verified, payment or refund of the amount found to be in error will be made within 21 days.

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

### **15.1 Agreement Not Binding Until Approved**

**15.1.1.** This Agreement will not come into effect and does not bind the parties until the following conditions have been fulfilled:

- (a) Terasen Gas has obtained such approvals of this Agreement, or its terms, as may be required under the *Utilities Commission Act*; and
- (b) the Municipality 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.

**15.1.2.** Upon executing this Agreement the parties shall make reasonable efforts to fulfill the conditions set out in this section. If the conditions are not fulfilled or waived within one (1) year of the execution of this Agreement, then the obligation on the parties to make reasonable efforts to fulfill the conditions will terminate, and neither party will have any further obligation to the other under this Agreement.

### **15.2 Termination of Franchise Agreement**

If not already terminated or expired, any franchise and operating agreement between the Municipality and Terasen Gas is terminated upon the effective date of this Agreement.

### **15.3 Term of Agreement**

This Agreement will have a term of 20 years from the date that it comes into effect and after the initial term shall continue indefinitely unless terminated in accordance with Section 15.4 below.

### **15.4 Termination of Agreement**

**15.4.1.** This Agreement may be terminated by the Municipality upon the occurrence of any of the following events:

- (a) Terasen Gas admits its inability to pay its debts generally as they become due or otherwise acknowledges its insolvency;

- (b) Terasen Gas starts proceedings or takes any action to commence or executes an agreement to authorize its participation in any proceeding:
- (i) seeking to adjudicate it bankrupt or insolvent;
  - (ii) seeking liquidation, reorganization, arrangement, protection, relief or composition of it or any of its property or debt or making a proposal with respect to it under any law relating to bankruptcy, insolvency, reorganization or compromise of debts or other similar laws; or
  - (iii) seeking the appointment of a receiver, trustee, agent, custodian or other similar official for it or for any substantial part of its assets or if a creditor seeks the appointment of a receiver, trustee, agent, custodian or other similar official for any substantial part of its assets; and such proceeding is not dismissed, discharged, stayed or restrained within 20 days of the Municipality becoming aware of it.

**15.4.2.** Either party may terminate if other breaches any term, provision, obligation hereunder and such breach, is a material major 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 default if such matter is in dispute or has been referred to commercial arbitration, the outcome of which is pending, or is being resolved in good faith compliance with the dispute resolution and arbitration processes set forth in this Agreement.

**15.4.3.** After the initial twenty (20) year term of this Agreement, either party may terminate this Agreement by giving the other not less than one (1) year's notice of termination.

## **15.5 Amendments and Waivers**

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 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.

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

Upon one party giving Notice to the other of termination of this Agreement, the parties shall negotiate in good faith to enter into a new agreement with respect to the terms and conditions under which Terasen Gas may use the Public Places. In the event that such negotiations break down and in the opinion of one or other of the parties acting in good faith that settlement is unlikely, either party may give Notice to the other of its intention to apply to the BCUC to seek resolution of the terms and conditions applicable to Terasen Gas' continued operations and construction activities within the Municipality.

### **15.7 Continuity In The Event No Agreement Is Settled**

Upon the expiry or termination of this Agreement, if a new agreement has not been ratified or if the BCUC has not imposed the terms and conditions under which Terasen Gas may use the Public Places, the following provisions will apply:

(a) The Company Facilities within the boundary limits of the Municipality both before and after the date of this Agreement, Terasen Gas' property and shall remain in the Public Places.

(b) The Company Facilities may continue to be used by Terasen Gas for the purposes of its business, or removed from Public Places in whole or in part at Terasen Gas' sole discretion.

(c) Terasen Gas may continue to use Public Places within the Municipality for the purposes of its business. Terasen Gas' employees, may enter upon all the Public Places within the Boundary Limits of the Municipality to maintain, operate, install, construct, renew, alter, or place Company Facilities; provided that Terasen Gas continues to operate in a manner consistent with the terms and conditions of this Agreement as if the term had been extended except with respect to the payment of the Operating Fee.

(d) Terasen Gas will with the support of the Municipality take such steps necessary to seek BCUC approvals of the extension of terms and conditions including payment of the operating fee under the expiring agreement during negotiations of a new agreement.

(e) Should Terasen Gas no longer be authorized or required to pay the operating fee under any Agreement between it and the Municipality or by any order of the BCUC, the Municipality shall be free 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**

In the event that 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) Terasen Gas will accept the appointment of such third party as the Municipality's agent or subcontractor to enable such third party to deal directly with Terasen Gas so as to enable the Municipality to comply with the terms, obligations and conditions of this Agreement.

## **16.2 Changes to the Community Charter**

In the event that the provisions of the *Community Charter* or other legislation affecting the rights and powers of municipalities change in such a way as to materially, in the opinion of the Municipality, affect municipal powers in respect to matters dealt with in this Agreement,

- (a) the Municipality may within one year of the change coming into effect propose new agreement terms with respect to only those specific changes and Terasen Gas agrees to negotiate such terms; and
- (b) failing satisfactory resolution either of the parties will seek resolution through the Dispute Resolution Process, Section 17.

## **16.3 Changes to the Utilities Commission Act**

In the event that the provisions of the *Utilities Commission Act* or other legislation affecting the rights and powers of regulated Utilities change in such a way as to materially, in Terasen Gas' opinion, affect Terasen Gas' powers in respect to matters dealt with in this Agreement,

- (a) Terasen Gas may within one year of the change coming into effect propose new agreement terms with respect to only those specific changes and the Municipality agrees to negotiate such terms; and
- (b) failing satisfactory resolution either of the parties will seek resolution through the Dispute Resolution Process, Section 17.

# **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, 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 or Arbitration**

If the parties fail to resolve the dispute through mediation, the unresolved dispute shall be referred to the BCUC if within its jurisdiction. If the matter is not within the jurisdiction of the BCUC, 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 will allow discovery as required by law in arbitration proceedings.

### **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.

## **18. GENERAL TERMS & CONDITIONS**

### **18.1 No Liens**

Terasen Gas will do its best to not allow, suffer or permit any liens to be registered against the Company Facilities located in Public Places as a result of the conduct of Terasen Gas. If any such liens are registered, Terasen Gas will start action to clear any lien so registered to the Public Place within ten (10) days of being made aware such lien has been registered. Terasen Gas will keep the Municipality advised as to the status of the lien on a regular basis. In the event that such liens are not removed within ninety (90) days of the registration of such lien, Terasen Gas will pay them in full or post sufficient security to ensure they are discharged from title.

### **18.2 Corporate Authority**

Terasen Gas now warrants, represents and acknowledges that:

- (a) it has the full right, power and authority to enter into this Agreement;
- (b) it is a corporation, duly organized, legally existing and in good standing under the laws of its jurisdiction of incorporation or continuance and is lawfully registered and licensed to do business in British Columbia.

### **18.3 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 venture 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.

### **18.4 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.

### **18.5 Governing Law**

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

#### **18.6 General**

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.

#### **18.7 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.

#### **18.8 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. To the extent permitted by applicable law, the parties hereby waive any provision of law that renders any provision hereof prohibitive or unenforceable in any respect.

#### **18.9 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.

#### **18.10 Notice**

Any notice or other written communication required, or permitted to be made or given pursuant to this Agreement (the "Notice") 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:

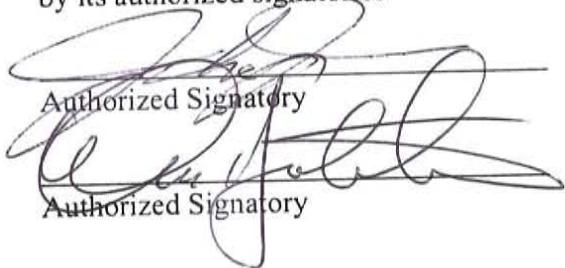
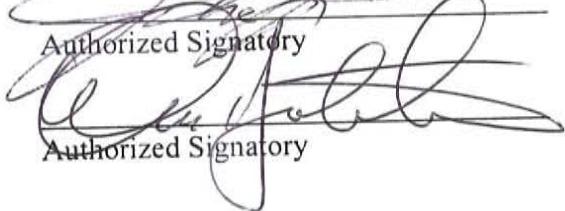
- A) if to the Municipality:

**TOWN OF CRESTON**  
38-10<sup>th</sup> Avenue North  
Creston, B.C. V0B 1G0

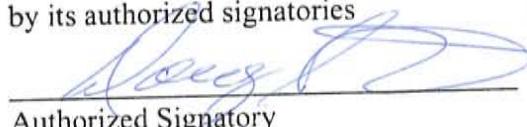
(B) If to Terasen Gas:

**TERASEN GAS INC.**  
16705 Fraser Highway  
Surrey, British Columbia, V3S 2X7  
Attention: Vice President, Regulatory Affairs

**TOWN OF CRESTON**  
by its authorized signatories

  
Authorized Signatory  
  
Authorized Signatory

**TERASEN GAS INC.**  
by its authorized signatories

  
D.L. Stout, Vice-President  
Marketing & Business  
Development  
Authorized Signatory

\_\_\_\_\_  
Authorized Signatory

SIXTH FLOOR, 900 HOWE STREET, BOX 250  
VANCOUVER, B.C. V6Z 2N3 CANADA  
web site: <http://www.bcuc.com>



**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER** C-10-06

TELEPHONE: (604) 660-4700  
BC TOLL FREE: 1-800-663-1385  
FACSIMILE: (604) 660-1102

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

and

An Application by Terasen Gas Inc.  
for Approval of an Operating Agreement  
with the Town of Creston

**BEFORE:**      L.F. Kelsey, Commissioner      )  
                  L.A. Zaozirny, Commissioner      )      August 10, 2006

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

**WHEREAS:**

- A. On January 12, 2006, Terasen Gas Inc. ("Terasen Gas") applied to the British Columbia Utilities Commission ("the Commission") for approval of an Operating Agreement with the Town of Creston ("the Municipality") ("the Application"); and
- B. The Franchise Agreement between Terasen Gas and the Municipality, dated July 1, 1988, expired on June 30, 2004; and
- C. By Commission Order No. C-9-05, the term of the Franchise Agreement was extended to December 31, 2005; and
- D. In its Application, Terasen Gas advised that it undertook negotiations with the Union of British Columbia Municipalities ("UBCM") Operating Agreement Committee to establish the terms of a new form of Operating Agreement. In 2005 Terasen Gas successfully negotiated a pro-forma Operating Agreement with the UBCM and using this agreement as a template, negotiated new Operating Agreements with those municipalities with Operating Agreements which expired on December 31, 2005 (collectively the "Municipalities"); and
- E. The Application requests approval of a 20-year Operating Agreement between Terasen Gas and the Municipality from January 1, 2006 to December 31, 2025 that sets out the terms and conditions, including a

**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
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3 percent operating fee, under which Terasen Gas shall exercise its rights to use the public places of the Municipality in conducting its business of distributing gas within the Municipality; and

- F. Commission Order No. C-7-03, which approved a District of Salmon Arm and Terasen Gas Operating Agreement and Addendum, directed Terasen Gas to seek a method in future agreements to convert the operating fee to a charge on utility margin; and
- G. The Commission issued Information Request No. 1 to Terasen Gas on February 20, 2006, including questions related to the impacts of the proposed operating fee on rate stability and requesting an explanation of how such a fee based on Terasen Gas revenue fairly compensates the Municipalities for the costs incurred as a result of Terasen Gas' use of the streets and other public places within the Municipalities; and
- H. Terasen Gas responded to the Commission's Information Request No. 1 on March 9, 2006. Terasen Gas provided historical franchise fee information and discussed five operating fee options (Option 1-5) which were all rejected by the Municipalities; and
- I. The Commission issued Information Request No. 2 on March 28, 2006 and Terasen Gas responded on April 13, 2006. In IR No. 2, Terasen Gas analyzed an operating fee calculation using a base year methodology and provided additional information as to why Options 2, 4 and 5 in IR No. 1 were rejected; and
- J. In a letter dated May 9, 2006, the Commission sought further submissions from Terasen Gas, the UBCM and the Municipalities to support or justify how the public interest is better served through an operating fee, as proposed, compared to Option 5, described as a "Hybrid Approach" whereby customers in Rate Classes 1-3 would pay a margin based fee and all other customers would continue to pay a franchise fee based on revenue of 3.09 percent; and

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- K. From May 17, 2006 to May 26, 2006 the Commission received submissions from Terasen Gas, the City of Rossland, the District of Hudson's Hope, the City of Kimberley, the City of Fernie, the City of Grand Forks, the Town of Oliver and the City of Cranbrook. Other interested parties such as the City of Kelowna, the City of Nelson and Mr. Greg McCormick also provided submissions to the Commission. Among other things, Terasen Gas and the Municipalities stated that the agreements are "package deals" with a considerable amount of compromise involved, including the fees agreed to within the package, and outlined their significant concerns to the added complexity, costs, communication and need to renegotiate if a margin fee were imposed; and
- L. The Commission has reviewed the Application and the related submissions presented to it and has determined that the Operating Agreement with the Town of Creston should be approved.

**NOW THEREFORE** the Commission, pursuant to Section 45 of the Utilities Commission Act the Commission approves the Operating Agreement as filed.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 29<sup>th</sup> of August 2006.

BY ORDER

*Original signed by*

L.F. Kelsey  
Commissioner

## OPERATING AGREEMENT

THIS OPERATING AGREEMENT (the "Agreement") made this 1st day of  
JANUARY, 2005.<sup>16</sup> *[Signature]*

BETWEEN:

**CITY OF FERNIE**  
Box 190  
Fernie, British Columbia  
V0B 1M0

(hereinafter called the "Municipality")

OF THE FIRST PART

AND:

**TERASEN GAS 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

(hereinafter called "Terasen Gas")

OF THE SECOND PART

### RECITALS:

- A. Whereas by a certificate of public convenience and necessity (CPCN), Terasen Gas was granted the right to construct and operate gas distribution facilities within the Municipality;
- B. And whereas pursuant to the Community Charter, S.B.C. 2003, a Municipal council may, by resolution adopt and enter into a licensing and operating agreement;
- C. And whereas Terasen Gas and the Municipality are the parties to a Franchise or Operating Agreement dated the 12 day of September, 1983 and subsequently renewed by various amending agreements, which will expire on December 31, 2005;
- D. And whereas Terasen Gas and the Municipality wish to enter into this Agreement to clarify and settle the terms and conditions under which Terasen Gas shall exercise its rights to use Public Places in conducting its business of distributing Gas within the Municipality.

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

**1. DEFINITIONS**

For the purposes of this Agreement:

- (a) “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;
- (b) “BCUC” means the British Columbia Utilities Commission or successor having regulatory jurisdiction over natural gas distribution utilities in British Columbia;
- (c) “CPCN” means a Certificate of Public Convenience and Necessity granted by the BCUC which allows Terasen Gas to operate, maintain and install Company Facilities for the distribution of Gas within the Municipality;
- (d) “Company Design” means the installation and design specifications which meet all applicable Provincial and Federal codes, standards and safety requirements for the gas services in the province of British Columbia, as they relate to approved gas works, system improvements, upgrades, connections and system extensions;
- (e) “Company Facilities” means Terasen Gas’ facilities, including pipes, buildings, structures, valves, signage, storage facilities, machinery, vehicles and other equipment used to maintain, operate, renew, repair, construct and monitor a natural Gas Distribution and transmission system;
- (f) “Distribution Pipelines” means pipelines operating at a pressure less than 2071 kilopascals (300 psi);
- (g) “Gas” means natural gas, propane, methane, synthetic gas, liquefied petroleum in a gaseous form or any mixture thereof;
- (h) “Gas Distribution” means fixed equipment, structures, plastic and metal lines and pipe, valves, fittings, appliances and related facilities used or intended for the purpose of conveying, testing, monitoring, distributing, mixing, storing, measuring and delivering Gas and making it available for use within the Municipality;
- (i) “Highway” means street, road, lane, bridge or viaduct controlled by the Municipality or Provincial Government of British Columbia;
- (j) “Losses” means direct and indirect losses, damages, costs and expenses (including without limitation, interest, penalties and amounts paid in

- settlement but does not include legal and professional fees and disbursements);
- (k) “Mains” means pipes used by Terasen Gas to carry gas for general or collective use for the purposes of Gas Distribution;
- (l) “Municipal Employees” means personnel employed by or engaged by the municipality, including officers, employees, directors, contractors and agents;
- (m) “Municipal Facilities” means any facilities, including highways, sidewalks, conduits, manholes, equipment, machinery, pipes, wires, valves, buildings, structures, signage, bridges, viaducts and other equipment within the Public Places used by the Municipality for the purposes of its public works or municipal operations;
- (n) “Municipal Supervisor” means the Municipal Engineer or other such person designated by the Municipality to receive notices and issue approval as set out in this Agreement;
- (o) “New Work” means any installation, construction, repair, maintenance, alteration, extension or removal work of the Company Facilities in Public Places except;
- (i) routine maintenance and repair of the Company Facilities that does not involve any cutting of asphalted road surface;
  - (ii) installation or repair of Service Lines whether or not such installation or repair involves cutting of asphalted road service; or
  - (iii) emergency work;
- but notwithstanding such exceptions, New Work shall include any installation, construction or removal of the Company Facilities in Public Places that are planned to disturb underground Municipal Facilities;
- (p) “Pipeline Markers” means post, signage or any similar means of identification used to show the general location of Transmission Pipelines and distribution pipelines or Terasen Gas Rights of Way;
- (q) “Planned Facilities” means those facilities not yet constructed but which have been identified by way of documented plans for the works of the Municipality, for works of third parties, where such works are identified by documented plans approved by the Municipality, or for works of Terasen Gas submitted to the Municipality subject to Municipal approval;
- (r) “Public Places” means any public thoroughfare, highway, road, street, lane, alley, trail, square, park, bridge, right of way, viaduct, subway, watercourse or other public place in the Municipality;

- (s) "Service Line" means that portion of Terasen Gas' gas distribution system extending from a Main to the inlet of a meter set and, for the purposes of this Agreement, includes a service header and service stubs;
- (t) "Terasen Gas Employees" means personnel employed by or engaged by Terasen Gas including officers, employees, directors, contractors, and agents;
- (u) "Transmission Pipeline" means a pipeline of Terasen Gas having an operating pressure in excess of 2071 kilopascals (300 psi); and
- (v) "Utilities" means the facilities or operations of any water, waste water, sewer, telecommunications, energy, cable service or similar service provider located in Public Places within the Municipality.

## **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) words in the singular include the plural, words importing a corporate entity include individuals, and vice versa;
- (c) in calculating time where the agreement refers to "at least" or "not less than" 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" a number of days, Saturdays, Sundays and holidays must be excluded;
- (d) 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.

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

Terasen Gas 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.

Terasen Gas 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.

#### **4. TERASEN GAS RIGHTS TO ACCESS & USE PUBLIC PLACES**

The Municipality hereby acknowledges Terasen Gas' rights to:

- (a) develop, construct, install, maintain or remove Company Facilities on, over, in and under Public Places in the Municipality;
- (b) enter on Public Places from time to time as may be reasonably necessary for the purpose of maintaining, repairing, or operating the Company's Facilities;
- (c) place pipeline identification markers within Public Places where a Transmission Pipeline or Distribution Pipeline crosses or is otherwise within a Public Place;

subject to terms and conditions defined in this Agreement.

#### **5. TERASEN GAS COMPLIANCE WITH STANDARDS FOR USE OF PUBLIC PLACES**

##### **5.1 Non-discriminatory Standards for Terasen Gas**

In its use of Public Places, Terasen Gas shall comply with all Federal and Provincial laws, regulations and codes and shall comply with all Municipal bylaws, standards and policies except that Terasen Gas shall not have to comply with such Municipal bylaws, standards and policies that:

- (a) conflict with terms of this Agreement or limit any rights or concessions granted to Terasen Gas by the Municipality under this Agreement; or
- (b) conflict with other legislation governing Terasen Gas.

Further, where the Municipality has established requirements and standards for work in Public Places, the Municipality shall apply them in a fair, reasonable and non-discriminatory manner consistent with the manner that the Municipality establishes requirements on other Utilities.

##### **5.2 Provide emergency contacts.**

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

##### **5.3 Assist with facility locates**

Terasen Gas 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 unless

the reason for the request is the result of an emergency; in which case the information shall be provided forthwith. Terasen Gas shall provide gas locations from Terasen Gas records. Terasen Gas shall perform on site facility locates in accordance with the *Safety Standards Act – Gas Safety Regulations* Section 39.

## **6. TERASEN GAS WORK OBLIGATIONS:**

### **6.1 Notices - General Requirements**

#### **6.1.1. Notice for New Work**

For New Work, if required by the Municipality, Terasen Gas shall give notice to the Municipality or such officer or official thereof who has been designated from time to time by the Municipality that it intends to perform such New Work. The Notice shall include:

- (a) a plan and specifications showing the proposed location and dimensions of the New Work;
- (b) Terasen Gas' plans for the restoration of the Public Place affected by the New Work if Terasen Gas' restoration plans are different from those set out in Section 6.4.2 of this Agreement;
- (c) the name of a Terasen Gas representative who may be contacted for more information;
- (d) projected commencement and completion dates; and
- (e) such other information relevant to the New Work as the Municipality may reasonably request from time to time.

#### **6.1.2. Exception for Emergency**

Where Terasen Gas is required to carry out work urgently in the interests of public safety or health or to preserve the safety of property and Company Facilities, Terasen Gas shall not be required to give prior notice but shall do so as soon as possible thereafter.

#### **6.1.3. Municipal Approval for New Work**

The Municipality may object to the New Work on the following grounds:

- (a) the proposed location of the New Work conflicts with Planned Facilities; or
- (b) the proposed location or design of the New Work is likely to compromise public safety or does not conform with Municipal bylaws, standards or policies; or

- (c) in instances where Terasen Gas can delay the New Work without compromising the supply, capacity or safety of its Gas Distribution System or its customers' need for gas service and the Municipality intends within the next 3 months to undertake work in the same location and wishes to co-ordinate both work;

by providing Terasen Gas with notice of its objections, provided such objections are reasonable, no more than 10 days after receiving Terasen Gas' notice of New Work. If the Municipality has not provided such notice of its objections to Terasen Gas, or in the case of large and complex New Work, the Municipality has not provided Terasen Gas with a notice to extend the time to reply to Terasen Gas until a stated time, the Municipality shall be deemed to have granted its approval of the New Work. The Municipality shall not otherwise withhold or delay its approval.

In addition, the Municipality may request Terasen Gas to provide the public with notice of the New Work.

#### **6.1.4. Work Not to Proceed**

If the Municipality has notified Terasen Gas of its objections or has requested a time extension, no more than 10 days after receiving Terasen Gas' notice of New Work, Terasen Gas shall not proceed with the New Work until Terasen Gas and the Municipality have agreed upon a resolution to the Municipality's objections. If the Municipality and Terasen Gas are unable to agree, then the matter shall be resolved in accordance with Section 17 (Resolution of Disputes).

#### **6.2 Notice of Service Lines**

Terasen Gas, if required by the Municipality, shall provide the Municipality with notice of its intent to install, remove or repair Service Lines no less than three (3) days prior to commencement of such work. Terasen Gas' request for the location of the Municipality's utilities shall be deemed to be a notice of Terasen's intent to install, remove or repair Service Lines. The Municipality may object to such work on the same grounds as set out in Subsection 6.1.3 (a) and (b) above by providing Terasen Gas with notice of its objections within two (2) days of receiving Terasen Gas' notice. If the Municipality has not provided such notice of its objections to Terasen Gas, the Municipality shall be deemed to have granted its approval of the installation, removal or repair of the Service Lines. The Municipality shall not otherwise withhold or delay its approval.

### **6.3 Terasen Gas to Secure Locate Information**

Prior to conducting any New Work, Terasen Gas shall locate other Utilities and satisfy itself that it is clear to proceed.

### **6.4 Work Standards**

#### **6.4.1. Specific Work Requirements Remove Materials**

Terasen Gas shall keep its work sites clean and tidy. Terasen Gas shall remove all rubbish and surplus material from Public Places upon completion of its work.

#### **6.4.2. Restore Surface and Subsurface**

Where Terasen Gas has performed any operations or New Work in a Public Place, Terasen Gas shall restore without unreasonable delay and return such Public Place, as much as reasonably practical, to the condition and use which existed prior to such activity. The restoration will be in accordance with the specifications set out by the Municipality. Such specifications may include the degree and nature of compaction, subsurface structure, surface finish and landscaping required.

Without limiting the generality of this section and by way of example only, the Municipality may require Terasen Gas to restore asphalt and concrete surfaces with a permanent repair or a temporary repair. Should a temporary repair be directed, Terasen Gas or the Municipality at its discretion will subsequently construct a permanent repair in accordance to its usual maintenance/replacement schedule for that area. The cost of permanent and temporary repairs to remediate Highway surfaces will be at the expense of Terasen Gas proportional to the surface area affected by the New Work.

Where Terasen Gas is required to cut pavement on a Public Place such cuts and restoration will be limited to less than 1.5 meters unless at the discretion of Terasen Gas a larger excavation is warranted due to the depth or size of the pipe or requirements of the Workers' Compensation Board or other relevant Provincial or Federal regulations. Terasen Gas will be responsible for any repairs and maintenance of the surface repair for a period of three (3) years. However, where pavement restoration has been conducted by the Municipality, whether or not such work was undertaken to repair cuts on Terasen Gas' behalf, Terasen Gas shall not be responsible for the repairs or maintenance of the surface repair.

#### **6.4.3. Repair Damage to Municipal Facilities**

To the extent that any of the work being done by Terasen Gas 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 Terasen Gas

shall restore in accordance with Section 6.4.2 above, Terasen Gas will report such damage and reimburse the Municipality for its costs arising from such damage calculated in accordance with Section 14.1 below. Where such damage results directly from inaccurate or incomplete information supplied by Municipality, and Terasen Gas has complied with all applicable laws and regulations, and with instructions supplied by the Municipality, then the cost of repairing damaged Municipal Facilities or Public Places will be at the expense of the Municipality.

### **6.5 Conformity Requirement**

The New Work must be carried out in conformity with Terasen Gas' notice of New Work except that Terasen Gas may make in-field design changes when carrying out the New Work to accommodate field conditions which could not have been reasonably foreseen by Terasen Gas. If such in-field conditions materially impact Terasen Gas' plans for restoration or materially change the impact of Terasen Gas' work on Municipal Facilities, other than in respect of projected commencement and completion dates, Terasen Gas shall notify the Municipality.

### **6.6 Non-Compliance**

If Company Facilities located in Public Places are later found not to be located in compliance with Terasen Gas' notice of New Work provided in accordance with Section 6.1 and 6.5, then any alteration or upgrading required to bring them into compliance with such notice will be at the expense of Terasen Gas provided that the work has not been altered, damaged or modified by the Municipality or a third party.

## **7. COMPANY FACILITY CHANGES REQUIRED BY THE MUNICIPALITY**

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

Before any Public Places containing Company Facilities may be legally closed or alienated by the Municipality, the Municipality shall promptly notify Terasen Gas of its intent to close or alienate such Public Places and either:

- (a) grant Terasen Gas a registered statutory right of way in a form satisfactory to Terasen Gas so as to maintain Terasen Gas' right to use the land; or
- (b) request Terasen Gas to remove and (if possible and practicable) relocate those Company Facilities affected by such closure or alienation at the sole cost of the Municipality.

If the Public Places are expropriated by an expropriating authority and Terasen Gas is required to remove its facilities then the Municipality shall use reasonable efforts to seek compensation from such expropriating authority to compensate Terasen Gas for its relocation costs. If the Municipality is unable to obtain such compensation despite its reasonable efforts, then the Municipality shall have no further liability to Terasen Gas.

The Municipality shall not be required to incur any legal expenses without the approval and reimbursement by Terasen Gas in order to obtain such compensation for Terasen Gas.

## **8. FACILITY CHANGES REQUIRED**

### **8.1 By Terasen Gas**

Terasen Gas may provide Notice to the Municipality that it requires Municipal Facilities to be altered, changed or relocated to accommodate its requirements. The Municipality will comply with Terasen Gas's requests to the extent it is reasonably able to do so and with reasonable speed and dispatch after receipt of written request. Terasen Gas agrees to pay for all of the costs for changes to the affected Municipal Facilities.

### **8.2 By the Municipality**

The Municipality may provide Notice to Terasen Gas that it requires Company Facilities to be altered, changed or relocated to accommodate its requirements. Terasen Gas will comply with the Municipality's requests to the extent it is reasonably able to do so and with reasonable speed and dispatch after receipt of written request. The Municipality agrees to pay for all of the costs for changes to the affected Company Facilities.

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

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

The Municipality and Terasen Gas agree to use reasonable efforts in carrying out their construction and maintenance activities in a manner that is responsive to the affect that it may have on the other party, as well as other users of Public Places. Such reasonable efforts include attending the planning meetings described in Section 9.2 below 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.

### **9.2 Communication and Coordination Activities**

At the initiation of the Municipality, representatives of the Municipality, Terasen Gas and other affected Utilities and third parties will meet each year, prior to the construction season, to discuss the parties' anticipated construction activities for that year. Such discussions will include

- (a) the use of common trenching, common utility access facilities and such other common facilities as may be commercially reasonable and comply with operating and safety standards; and
- (b) the consolidation of planned maintenance work where pavement must be cut in order to avoid multiple excavations.

### **9.3 Municipal Planning Lead**

During such annual planning meetings, the Municipality shall lead the planning process for all Utilities and third parties with Planned Facilities in Public Places.

## **10. MUTUAL INDEMNITY**

### **10.1 Indemnity by Terasen Gas**

**10.1.1.** Terasen Gas 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 Terasen Gas in:

- (a) placing, constructing, renewing, altering, repairing, maintaining, removing, extending, operating or using the Company's Facilities on or under any Public Places;
- (b) any breach of this Agreement by Terasen Gas;

except to the extent contributed by negligence or default of the Municipality or the Municipal Employees.

**10.1.2.** This indemnity expressly extends to all acts and omissions of Terasen Gas Employees.

### **10.2 Indemnity by the Municipality**

**10.2.1.** The Municipality indemnifies and protects and saves Terasen Gas 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:

- (a) placing, constructing, renewing, altering, repairing, maintaining, removing, extending, operating or using the Municipal Facilities on or under any Public Places;
- (b) any breach of this Agreement by the Municipality;

except to the extent contributed by the negligence or default of Terasen Gas or Terasen Gas Employees.

**10.2.2.** This indemnity expressly extends to all acts and omissions of Municipal Employees.

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

All property of Terasen Gas kept or stored on the Public Places will be kept or stored at the risk of Terasen Gas. For further certainty, Terasen Gas 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. Terasen Gas accepts its use of Public Places on an "as is" basis.

## **11. OPERATING FEE**

### **11.1 Fee Calculation**

- 11.1.1.** Terasen Gas agrees to pay to the Municipality a fee of three percent (3%) of the amount received by Terasen Gas for provision and distribution of all gas consumed within the Boundary Limits of the Municipality. Such amount will not include any amount received by Terasen Gas for gas supplied or sold for resale.
- 11.1.2.** The Municipality will notify Terasen Gas in writing of any boundary expansion so that new customers can be included as a part of the annual payment fee.
- 11.1.3.** Terasen Gas will be responsible for adding those new customers within the new Municipal boundary upon receipt of such notice from the Municipality and the revised calculation of the fee will commence at that point.

### **11.2 Payment Date and Period**

Payments by Terasen Gas to the Municipality will be made on the first day of March of each year of the Agreement in respect of the amount received by Terasen Gas during that portion of the term of this Agreement which is in the immediately preceding calendar year. By way of example only, payment made on March 1, 2006 will be the amount received during the 2005 calendar year.

### **11.3 BCUC Decision or Provincial Legislation**

In the event that a decision by the BCUC, other than periodic rate changes as a result of commodity, delivery or margin increases or decreases, or new legislation by the Provincial Government, impacts the operating fee being paid to the Municipality so as to increase it or decrease it by more than 5% annually at the time of the decision or in subsequent years, the parties shall negotiate a new operating fee formula which best reflects the revenue stream received by the Municipality under this Agreement. For greater certainty, the parties acknowledge that a change to the BCUC's decision that Terasen Gas shall provide the agency billing and collections service for marketers on a mandatory basis, as set out in the "Business Rules for Commodity Unbundling dated June

5, 2003 as set out in Appendix A to Letter No. L-25-03, may impact the operating fee being paid to the Municipality.

## **12. OTHER APPROVALS, PERMITS OR LICENSES**

Except as specifically provided in this Agreement, the Municipality will not require Terasen Gas to seek or obtain approvals, permits or licenses. The Municipality will not charge or levy against Terasen Gas any approval, license, inspection or permit fee, or charge of any other type, that in any manner is related to or associated with Terasen Gas constructing, installing, renewing, altering, repairing, maintaining or operating Company Facilities on any Public Places or in any manner related to or associated with Terasen Gas exercising the powers and rights granted to it by this Agreement.

If the Municipality does charge or levy fees or costs against Terasen Gas (other than for repair of damage to the Municipal Facilities or Public Places in accordance with Section 14) then Terasen Gas may reduce the annual operating fee payable to the Municipality under Section 11 by an amount equal to such charges, fees or costs.

## **13. MUNICIPAL OBLIGATIONS**

### **13.1 Municipal Work**

- 13.1.1.** Before the Municipality undertakes any construction or maintenance activity which is likely to affect a part of the Company Facilities, it must give Terasen Gas notice not less than 10 days before commencing such construction or maintenance activity.
- 13.1.2.** Where the Municipality is required to carry out work urgently in the interests of public safety or health or to preserve the safety of property and Municipal Facilities, the Municipality shall not be required to give prior notice but shall do so as soon as possible thereafter.
- 13.1.3.** Terasen Gas will be entitled to appoint at its cost a representative to inspect any construction or maintenance activity undertaken by the Municipality. The provisions of this section do not relieve the Municipality of its responsibilities under the *Gas Safety Act*, *Pipeline Act*, and successor legislation, regulations thereunder, or the requirements of the BC Workers' Compensation Board.
- 13.1.4.** In addition, the Municipality shall provide Notice to Terasen Gas of any work planned that will be adjacent to, across, over or under a Transmission Pipeline or within a right-of-way for a Transmission Pipeline. To the extent that Terasen Gas requires that permit be issued for construction or other activities within a Transmission Pipeline right-of-way, the Municipality will submit

an application for such a permit in sufficient time for the application to be reviewed and approved by Terasen Gas prior to the commencement of the construction or other activity.

**13.1.5.** The Municipality shall assist Terasen Gas in Terasen Gas' efforts to reduce instances of residences being built over gas lines and other similarly unsafe building practices by third parties.

**13.1.6.** The Municipality shall not interfere with Transmission Pipeline markers.

**13.1.7.** The Municipality shall provide notice to Terasen Gas of any damage caused by the Municipality to Company Facilities or Transmission Pipeline Markers as soon as reasonably possible. To the extent that any of the work being done by the Municipality results in damage to the Company Facilities, the Municipality will report such damage and pay Terasen Gas its costs arising from such damage in accordance with Section 14.1 below. Where such damage results directly from inaccurate or incomplete information supplied by Terasen Gas, and the Municipality has complied with all applicable laws and regulations, and with instructions supplied by Terasen Gas, then the cost of repairing the damaged Company Facilities will be at the expense of Terasen Gas.

**13.1.8.** The Municipality shall notify Terasen Gas of any new bylaws, standards or policies adopted or passed by the Municipality that are likely to affect Terasen Gas' operations in Public Places.

## **14. COSTS AND PAYMENT PROCEDURES**

### **14.1 Definition of Costs**

Wherever one party is required to pay the other party Costs as a result of damage caused by one party to the other's property, the Costs shall be:

- (a) all direct expenses and disbursements incurred to restore such property to as good a state of repair as had existed prior to the damage;
- (b) reasonable administration and overhead charges on labour, equipment and materials;
- (c) such taxes as may be required in the appropriate jurisdiction;
- (d) in the case of loss of gas or re-lights, the cost of the commodity as determined by the length of time that the gas is leaking, size of pipe and hole and the pressure; and

- (e) in the case of water, electrical or sewer, cost of supplying alternate service.

## 14.2 Cost Claim Procedures

**14.2.1.** Wherever one party is claiming Costs of the other party in regard to any work or issue arising under this Agreement the claiming party shall:

- (a) provide an invoice to the other party no later than one year after incurring Costs;
- (b) provide detailed descriptions of the cost items;
- (c) provide the time period the invoice covers;
- (d) provide a minimum of 21 day terms for payment of the invoice; and
- (e) provide for late payment interest at the rate consistent with the party's policy for charging for late payments, which rate must be reasonable;

**14.2.2.** The party claiming Costs shall have no right of set off for these invoices against any amounts otherwise payable to the other party, except to the extent so approved in writing by the other party.

## 14.3 Cost Verification Procedures

**14.3.1.** Wherever either party is the recipient of or is claiming Costs and or fees that party may at its own discretion request from the other party:

- (a) Certification by an officer or designated representative verifying the calculations and computations of the Costs and or fees,
- (b) An internal review or audit of the calculations and computations of the Costs and or fees, with the internal review or audit to be carried out by a person appointed by the party being asked to provide the review;
- (c) An independent external audit of the calculations and computations of the costs and fees, with the independent external auditor being a Chartered or a Certified General Accountant in British Columbia appointed by the party requesting the external audit;

**14.3.2.** The costs of this cost verification process shall be borne by the party who is required to supply the information except as otherwise specified providing the frequency of such requests does not exceed once per calendar year. For all future cases which occur in that

calendar year, the costs of such further verifications shall be at the expense of the requester.

Where the independent external audit finds and establishes errors representing a variance greater than 2% of the originally calculated value in favour of the party claiming Costs, the costs shall be at the expense of the party supplying the information. Once an error has been verified, payment or refund of the amount found to be in error will be made within 21 days.

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

### **15.1 Agreement Not Binding Until Approved**

**15.1.1.** This Agreement will not come into effect and does not bind the parties until the following conditions have been fulfilled:

- (a) Terasen Gas has obtained such approvals of this Agreement, or its terms, as may be required under the *Utilities Commission Act*; and
- (b) the Municipality 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.

**15.1.2.** Upon executing this Agreement the parties shall make reasonable efforts to fulfill the conditions set out in this section. If the conditions are not fulfilled or waived within one (1) year of the execution of this Agreement, then the obligation on the parties to make reasonable efforts to fulfill the conditions will terminate, and neither party will have any further obligation to the other under this Agreement.

### **15.2 Termination of Franchise Agreement**

If not already terminated or expired, any franchise and operating agreement between the Municipality and Terasen Gas is terminated upon the effective date of this Agreement.

### **15.3 Term of Agreement**

This Agreement will have a term of 20 years from the date that it comes into effect and after the initial term shall continue indefinitely unless terminated in accordance with Section 15.4 below.

### **15.4 Termination of Agreement**

**15.4.1.** This Agreement may be terminated by the Municipality upon the occurrence of any of the following events:

- (a) Terasen Gas admits its inability to pay its debts generally as they become due or otherwise acknowledges its insolvency;
- (b) Terasen Gas starts proceedings or takes any action to commence or executes an agreement to authorize its participation in any proceeding:
  - (i) seeking to adjudicate it bankrupt or insolvent;
  - (ii) seeking liquidation, reorganization, arrangement, protection, relief or composition of it or any of its property or debt or making a proposal with respect to it under any law relating to bankruptcy, insolvency, reorganization or compromise of debts or other similar laws; or
  - (iii) seeking the appointment of a receiver, trustee, agent, custodian or other similar official for it or for any substantial part of its assets or if a creditor seeks the appointment of a receiver, trustee, agent, custodian or other similar official for any substantial part of its assets; and such proceeding is not dismissed, discharged, stayed or restrained within 20 days of the Municipality becoming aware of it.

**15.4.2.** Either party may terminate if other breaches any term, provision, obligation hereunder and such breach, is a material major 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 default if such matter is in dispute or has been referred to commercial arbitration, the outcome of which is pending, or is being resolved in good faith compliance with the dispute resolution and arbitration processes of this Agreement.

**15.4.3.** After the initial twenty (20) year term of this Agreement, either party may terminate this Agreement by giving the other not less than one (1) year's notice of termination.

## **15.5 Amendments and Waivers**

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 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.

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

Upon one party giving Notice to the other of termination of this Agreement, the parties shall negotiate in good faith to enter into a new agreement with respect to the terms and conditions under which Terasen Gas may use the Public Places. In the event that such negotiations break down and in the opinion of one or other of the parties acting in good faith that settlement is unlikely, either party may give Notice to the other of its intention to apply to the BCUC to seek resolution of the terms and conditions applicable to Terasen Gas' continued operations and construction activities within the Municipality.

#### **15.7 Continuity In The Event No Agreement Is Settled**

Upon the expiry or termination of this Agreement, if a new agreement has not been ratified or if the BCUC has not imposed the terms and conditions under which Terasen Gas may use the Public Places, the following provisions will apply:

- (a) The Company Facilities within the boundary limits of the Municipality both before and after the date of this Agreement, shall remain Terasen Gas' property and shall remain in the Public Places.
- (b) The Company Facilities may continue to be used by Terasen Gas for the purposes of its business, or removed from Public Places in whole or in part at Terasen Gas' sole discretion.
- (c) Terasen Gas may continue to use Public Places within the Municipality for the purposes of its business. Terasen Gas' employees, may enter upon all the Public Places within the Boundary Limits of the Municipality to maintain, operate, install, construct, renew, alter, or place Company Facilities; provided that Terasen Gas continues to operate in a manner consistent with the terms and conditions of this Agreement as if the term had been extended except with respect to the payment of the Operating Fee.
- (d) Terasen Gas will with the support of the Municipality take such steps necessary to seek BCUC approvals of the extension of terms and conditions including payment of the operating fee under the expiring agreement during negotiations of a new agreement.
- (e) Should Terasen Gas no longer be authorized or required to pay the operating fee under any Agreement between it and the Municipality or by any order of the BCUC, the Municipality shall be free 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**

In the event that 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) Terasen Gas will accept the appointment of such third party as the Municipality's agent or subcontractor to enable such third party to deal directly with Terasen Gas so as to enable the Municipality to comply with the terms, obligations and conditions of this Agreement.

### **16.2 Changes to the Community Charter**

In the event that the provisions of the *Community Charter* or other legislation affecting the rights and powers of municipalities change in such a way as to materially, in the opinion of the Municipality, affect municipal powers in respect to matters dealt with in this Agreement,

- (a) the Municipality may within one year of the change coming into effect propose new agreement terms with respect to only those specific changes and Terasen Gas agrees to negotiate such terms; and
- (b) failing satisfactory resolution either of the parties will seek resolution through the Dispute Resolution Process, Section 17.

### **16.3 Changes to the Utilities Commission Act**

In the event that the provisions of the *Utilities Commission Act* or other legislation affecting the rights and powers of regulated Utilities change in such a way as to materially, in Terasen Gas' opinion, affect Terasen Gas' powers in respect to matters dealt with in this Agreement,

- (a) Terasen Gas may within one year of the change coming into effect propose new agreement terms with respect to only those specific changes and the Municipality agrees to negotiate such terms; and
- (b) failing satisfactory resolution either of the parties will seek resolution through the Dispute Resolution Process, Section 17.

## **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, 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 or Arbitration**

If the parties fail to resolve the dispute through mediation, the unresolved dispute shall be referred to the BCUC if within its jurisdiction. If the matter is not within the jurisdiction of the BCUC, 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 will allow discovery as required by law in arbitration proceedings.

#### **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.

## **18. GENERAL TERMS & CONDITIONS**

### **18.1 No Liens**

Terasen Gas will do its best to not allow, suffer or permit any liens to be registered against the Company Facilities located in Public Places as a result of the conduct of Terasen Gas. If any such liens are registered, Terasen Gas will start action to clear any lien so registered to the Public Place within ten (10) days of being made aware such lien has been registered. Terasen Gas will keep the Municipality advised as to the status of the lien on a regular basis. In the event that such liens are not removed within ninety (90) days of the registration of such lien, Terasen Gas will pay them in full or post sufficient security to ensure they are discharged from title.

### **18.2 Corporate Authority**

Terasen Gas now warrants, represents and acknowledges that:

- (a) it has the full right, power and authority to enter into this Agreement;
- (b) it is a corporation, duly organized, legally existing and in good standing under the laws of its jurisdiction of incorporation or continuance and is lawfully registered and licensed to do business in British Columbia.

### **18.3 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 venture 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.

### **18.4 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.

### **18.5 Governing Law**

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

### **18.6 General**

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.

### **18.7 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.

### **18.8 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. To the extent permitted by applicable law, the parties hereby waive any provision of law that renders any provision hereof prohibitive or unenforceable in any respect.

### **18.9 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.

### **18.10 Notice**

Any notice or other written communication required, or permitted to be made or given pursuant to this Agreement (the "Notice") 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:

- A) if to the Municipality:

**CITY OF FERNIE**  
Box 190  
Fernie, British Columbia  
V0B 1M0

(B) If to Terasen Gas:

**TERASEN GAS INC.**

16705 Fraser Highway  
Surrey, British Columbia  
V3S 2X7  
Attention: Vice President, Regulatory Affairs

**CITY OF FERNIE**  
by its authorized signatories

  
\_\_\_\_\_  
Authorized Signatory  
  
\_\_\_\_\_  
Authorized Signatory

**TERASEN GAS INC.**  
by its authorized signatories

D.L. Stout, Vice-President  
Marketing & Business  
Development

  
\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Authorized Signatory

SIXTH FLOOR, 900 HOWE STREET, BOX 250  
VANCOUVER, B.C. V6Z 2N3 CANADA  
web site: <http://www.bcuc.com>



**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER** C-11-06

TELEPHONE: (604) 660-4700  
BC TOLL FREE: 1-800-663-1385  
FACSIMILE: (604) 660-1102

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

and

An Application by Terasen Gas Inc.  
for Approval of an Operating Agreement  
with the City of Fernie

**BEFORE:**      L.F. Kelsey, Commissioner                )  
                        L.A. Zaozirny, Commissioner        )      August 10, 2006

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

**WHEREAS:**

- A. On January 12, 2006, Terasen Gas Inc. ("Terasen Gas") applied to the British Columbia Utilities Commission ("the Commission") for approval of an Operating Agreement with the City of Fernie ("the Municipality") ("the Application"); and
- B. The Franchise Agreement approved by Commission Order No. C-6-83 expired on July 25, 2004; and
- C. By Commission Order No. C-5-05, the term of the Franchise Agreement was extended to December 31, 2005; and
- D. In its Application, Terasen Gas advised that it undertook negotiations with the Union of British Columbia Municipalities ("UBCM") Operating Agreement Committee to establish the terms of a new form of Operating Agreement. In 2005 Terasen Gas successfully negotiated a pro-forma Operating Agreement with the UBCM and using this agreement as a template, negotiated new Operating Agreements with those municipalities with Operating Agreements which expired on December 31, 2005 (collectively the "Municipalities"); and
- E. The Application requests approval of a 20-year Operating Agreement between Terasen Gas and the Municipality from January 1, 2006 to December 31, 2025 that sets out the terms and conditions, including a

**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER**      C-11-06

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3 percent operating fee, under which Terasen Gas shall exercise its rights to use the public places of the Municipality in conducting its business of distributing gas within the Municipality; and

- F. Commission Order No. C-7-03, which approved a District of Salmon Arm and Terasen Gas Operating Agreement and Addendum, directed Terasen Gas to seek a method in future agreements to convert the operating fee to a charge on utility margin; and
- G. The Commission issued Information Request No. 1 to Terasen Gas on February 20, 2006, including questions related to the impacts of the proposed operating fee on rate stability and requesting an explanation of how such a fee based on Terasen Gas revenue fairly compensates the Municipalities for the costs incurred as a result of Terasen Gas' use of the streets and other public places within the Municipalities; and
- H. Terasen Gas responded to the Commission's Information Request No. 1 on March 9, 2006. Terasen Gas provided historical franchise fee information and discussed five operating fee options (Option 1-5) which were all rejected by the Municipalities; and
- I. The Commission issued Information Request No. 2 on March 28, 2006 and Terasen Gas responded on April 13, 2006. In IR No. 2, Terasen Gas analyzed an operating fee calculation using a base year methodology and provided additional information as to why Options 2, 4 and 5 in IR No. 1 were rejected; and
- J. In a letter dated May 9, 2006, the Commission sought further submissions from Terasen Gas, the UBCM and the Municipalities to support or justify how the public interest is better served through an operating fee, as proposed, compared to Option 5, described as a "Hybrid Approach" whereby customers in Rate Classes 1-3 would pay a margin based fee and all other customers would continue to pay a franchise fee based on revenue of 3.09 percent; and

**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER**      C-11-06

- K. From May 17, 2006 to May 26, 2006 the Commission received submissions from Terasen Gas, the City of Rossland, the District of Hudson's Hope, the City of Kimberley, the City of Fernie, the City of Grand Forks, the Town of Oliver and the City of Cranbrook. Other interested parties such as the City of Kelowna, the City of Nelson and Mr. Greg McCormick also provided submissions to the Commission. Among other things, Terasen Gas and the Municipalities stated that the agreements are "package deals" with a considerable amount of compromise involved, including the fees agreed to within the package, and outlined their significant concerns to the added complexity, costs, communication and need to renegotiate if a margin fee were imposed; and
- L. The Commission has reviewed the Application and the related submissions presented to it and has determined that the Operating Agreement with the City of Fernie should be approved.

**NOW THEREFORE** the Commission, pursuant to Section 45 of the Utilities Commission Act the Commission approves the Operating Agreement as filed.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 29<sup>th</sup> of August 2006.

BY ORDER

*Original signed by*

L.F. Kelsey  
Commissioner

# THE CORPORATION OF THE CITY OF GRAND FORKS

BOX 220 - GRAND FORKS, B.C. V0H 1H0 - FAX (250) 442-8000 - TELEPHONE (250) 442-8266  
Email: vkumar@grandforks.ca



January 4<sup>th</sup>, 2006

Terasen Gas Inc  
Mr. Jason Wolfe  
Vice President, Regulatory Affairs  
16705 Fraser Highway  
Surrey, BC  
V3S 2X7

Via Courier service

Dear Mr. Wolfe

Re Operating Agreement City of Grand Forks and Terasen Gas

Attached are two executed copies the Operating Agreement related to the terms and conditions under which Terasen Gas may use Public Places in conducting business of distributing Gas with the City of Grand Forks. Mr. Greno's letter dated November 29<sup>th</sup>, 2005 to Mr. Wayne Staudt of the City of Cranbrook is understood to apply to this Agreement as well.

Please return one executed copy of the Agreement for our record.

Yours truly,

Victor Kumar,  
City Manager

C: Mr. Robert Greno, Manager Community and Aboriginal Affairs  
Southern Interior  
Terasen Gas  
444 Okanagan Avenue E  
Penticton, BC  
V2A 3K3

## OPERATING AGREEMENT

THIS OPERATING AGREEMENT (the "Agreement") made this 1st day of December,  
2005.

BETWEEN:

### **CITY OF GRAND FORKS**

P.O. Box 22,  
Grand Forks, British Columbia,  
V0H 1H0

(hereinafter called the "**Municipality**")

OF THE FIRST PART

AND:

**TERASEN GAS 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

(hereinafter called "**Terasen Gas**")

OF THE SECOND PART

### **RECITALS:**

- A. Whereas by a certificate of public convenience and necessity (CPCN), Terasen Gas was granted the right to construct and operate gas distribution facilities within the Municipality;
- B. And whereas pursuant to the Community Charter, S.B.C. 2003, a Municipal council may, by resolution adopt and enter into a licensing and operating agreement;
- C. And whereas Terasen Gas and the Municipality are the parties to a Franchise or Operating Agreement dated the 14 day of November, 1955 and subsequently renewed by various amending agreements, which will expire on December 31, 2005;
- D. And whereas Terasen Gas and the Municipality wish to enter into this Agreement to clarify and settle the terms and conditions under which Terasen Gas shall exercise its rights to use Public Places in conducting its business of distributing Gas within the Municipality.

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

## **1. DEFINITIONS**

For the purposes of this Agreement:

- (a) "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;
- (b) "BCUC" means the British Columbia Utilities Commission or successor having regulatory jurisdiction over natural gas distribution utilities in British Columbia;
- (c) "CPCN" means a Certificate of Public Convenience and Necessity granted by the BCUC which allows Terasen Gas to operate, maintain and install Company Facilities for the distribution of Gas within the Municipality;
- (d) "Company Design" means the installation and design specifications which meet all applicable Provincial and Federal codes, standards and safety requirements for the gas services in the province of British Columbia, as they relate to approved gas works, system improvements, upgrades, connections and system extensions;
- (e) "Company Facilities" means Terasen Gas' facilities, including pipes, buildings, structures, valves, signage, storage facilities, machinery, vehicles and other equipment used to maintain, operate, renew, repair, construct and monitor a natural Gas Distribution and transmission system;
- (f) "Distribution Pipelines" means pipelines operating at a pressure less than 2071 kilopascals (300 psi);
- (g) "Gas" means natural gas, propane, methane, synthetic gas, liquefied petroleum in a gaseous form or any mixture thereof;
- (h) "Gas Distribution" means fixed equipment, structures, plastic and metal lines and pipe, valves, fittings, appliances and related facilities used or intended for the purpose of conveying, testing, monitoring, distributing, mixing, storing, measuring and delivering Gas and making it available for use with the Municipality;
- (i) "Highway" means street, road, lane, bridge or viaduct controlled by the Municipality or Provincial Government of British Columbia;
- (j) "Losses" means direct and indirect losses, damages, costs and expenses (including without limitation, interest, penalties and amounts paid in settlement but does not include legal and professional fees and disbursements);

- (k) "Mains" means pipes used by Terasen Gas to carry gas for general or collective use for the purposes of Gas Distribution;
- (l) "Municipal Employees" means personnel employed by or engaged by the municipality, including officers, employees, directors, contractors and agents;
- (m) "Municipal Facilities" means any facilities, including highways, sidewalks, conduits, manholes, equipment, machinery, pipes, wires, valves, buildings, structures, signage, bridges, viaducts and other equipment within the Public Places used by the Municipality for the purposes of its public works or municipal operations;
- (n) "Municipal Supervisor" means the Municipal Engineer or other such person designated by the Municipality to receive notices and issue approval as set out in this Agreement;
- (o) "New Work" means any installation, construction, repair, maintenance, alteration, extension or removal work of the Company Facilities in Public Places except:
  - (i) routine maintenance and repair of the Company Facilities that does not involve any cutting of asphalted road surface;
  - (ii) installation or repair of Service Lines whether or not such installation or repair involves cutting of asphalted road service; or
  - (iii) emergency work;but notwithstanding such exceptions, New Work shall include any installation, construction or removal of the Company Facilities in Public Places that are planned to disturb underground Municipal Facilities;
- (p) "Pipeline Markers" means post, signage or any similar means of identification used to show the general location of Transmission Pipelines and distribution pipelines or Terasen Gas Rights of Way;
- (q) "Planned Facilities" means those facilities not yet constructed but which have been identified by way of documented plans for the works of the Municipality, for works of third parties, where such works are identified by documented plans approved by the Municipality, or for works of Terasen Gas submitted to the Municipality subject to Municipal approval;
- (r) "Public Places" means any public thoroughfare, highway, road, street, lane, alley, trail, square, park, bridge, right of way, viaduct, subway, watercourse or other public place in the Municipality;
- (s) "Service Line" means that portion of Terasen Gas' gas distribution system extending from a Main to the inlet of a meter set and, for the purposes of this Agreement, includes a service header and service stubs;

- (t) "Terasen Gas Employees" means personnel employed by or engaged by Terasen Gas including officers, employees, directors, contractors, and agents;
- (u) "Transmission Pipeline" means a pipeline of Terasen Gas having an operating pressure in excess of 2071 kilopascals (300 psi); and
- (v) "Utilities" means the facilities or operations of any water, waste water, sewer, telecommunications, energy, cable service or similar service provider located in Public Places within the Municipality.

## **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) words in the singular include the plural, words importing a corporate entity include individuals, and vice versa;
- (c) in calculating time where the agreement refers to "at least" or "not less than" 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" a number of days, Saturdays, Sundays and holidays must be excluded;
- (d) 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.

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

Terasen Gas 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.

Terasen Gas 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.

## **4. TERASEN GAS RIGHTS TO ACCESS & USE PUBLIC PLACES**

The Municipality hereby acknowledges Terasen Gas' rights to:

- (a) develop, construct, install, maintain or remove Company Facilities on, over, in and under Public Places in the Municipality;
- (b) enter on Public Places from time to time as may be reasonably necessary for the purpose of maintaining, repairing, or operating the Company's Facilities;
- (c) place pipeline identification markers within Public Places where a Transmission Pipeline or Distribution Pipeline crosses or is otherwise within a Public Place;

subject to terms and conditions defined in this Agreement.

## **5. TERASEN GAS COMPLIANCE WITH STANDARDS FOR USE OF PUBLIC PLACES**

### **5.1 Non-discriminatory Standards for Terasen Gas**

In its use of Public Places, Terasen Gas shall comply with all Federal and Provincial laws, regulations and codes and shall comply with all Municipal bylaws, standards and policies except that Terasen Gas shall not have to comply with such Municipal bylaws, standards and policies that:

- (a) conflict with terms of this Agreement or limit any rights or concessions granted to Terasen Gas by the Municipality under this Agreement; or
- (b) conflict with other legislation governing Terasen Gas.

Further, where the Municipality has established requirements and standards for work in Public Places, the Municipality shall apply them in a fair, reasonable and non-discriminatory manner consistent with the manner that the Municipality establishes requirements on other Utilities.

### **5.2 Provide emergency contacts.**

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

### **5.3 Assist with facility locates**

Terasen Gas 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 unless the reason for the request is the result of an emergency; in which case the information shall be provided forthwith. Terasen Gas shall provide gas locations from Terasen Gas records. Terasen Gas shall perform on site facility locates in accordance with the *Safety Standards Act – Gas Safety Regulations Section 39*.

## **6. TERASEN GAS WORK OBLIGATIONS:**

### **6.1 Notices - General Requirements**

#### **6.1.1. Notice for New Work**

For New Work, if required by the Municipality, Terasen Gas shall give notice to the Municipality or such officer or official thereof who has been designated from time to time by the Municipality that it intends to perform such New Work. The Notice shall include:

- (a) a plan and specifications showing the proposed location and dimensions of the New Work;
- (b) Terasen Gas' plans for the restoration of the Public Place affected by the New Work if Terasen Gas' restoration plans are different from those set out in Section 6.4.2 of this Agreement;
- (c) the name of a Terasen Gas representative who may be contacted for more information;
- (d) projected commencement and completion dates; and
- (e) such other information relevant to the New Work as the Municipality may reasonably request from time to time.

#### **6.1.2. Exception for Emergency**

Where Terasen Gas is required to carry out work urgently in the interests of public safety or health or to preserve the safety of property and Company Facilities, Terasen Gas shall not be required to give prior notice but shall do so as soon as possible thereafter.

#### **6.1.3. Municipal Approval for New Work**

The Municipality may object to the New Work on the following grounds:

- (a) the proposed location of the New Work conflicts with Planned Facilities; or
- (b) the proposed location or design of the New Work is likely to compromise public safety or does not conform with Municipal bylaws, standards or policies; or
- (c) in instances where Terasen Gas can delay the New Work without compromising the supply, capacity or safety of its Gas Distribution System or its customers' need for gas service and the Municipality intends within the next 3 months to undertake work in the same location and wishes to co-ordinate both work;

by providing Terasen Gas with notice of its objections, provided such objections are reasonable, no more than 10 days after receiving Terasen Gas' notice of New Work. If the Municipality has not provided such notice of its objections to Terasen Gas, or in the case of large and complex New Work, the Municipality has not provided Terasen Gas with a notice to extend the time to reply to Terasen Gas until a stated time, the Municipality shall be deemed to have granted its approval of the New Work. The Municipality shall not otherwise withhold or delay its approval.

In addition, the Municipality may request Terasen Gas to provide the public with notice of the New Work.

#### **6.1.4. Work Not to Proceed**

If the Municipality has notified Terasen Gas of its objections or has requested a time extension, no more than 10 days after receiving Terasen Gas' notice of New Work, Terasen Gas shall not proceed with the New Work until Terasen Gas and the Municipality have agreed upon a resolution to the Municipality's objections. If the Municipality and Terasen Gas are unable to agree, then the matter shall be resolved in accordance with Section 17 (Resolution of Disputes).

### **6.2 Notice of Service Lines**

Terasen Gas, if required by the Municipality, shall provide the Municipality with notice of its intent to install, remove or repair Service Lines no less than three (3) days prior to commencement of such work. Terasen Gas' request for the location of the Municipality's utilities shall be deemed to be a notice of Terasen's intent to install, remove or repair Service Lines. The Municipality may object to such work on the same grounds as set out in Subsection 6.1.3 (a) and (b) above by providing Terasen Gas with notice of its objections within two (2) days of receiving Terasen Gas' notice. If the Municipality has not provided such notice of its objections to Terasen Gas, the Municipality shall be deemed to have granted its approval of the installation, removal or repair of the Service Lines. The Municipality shall not otherwise withhold or delay its approval.

### **6.3 Terasen Gas to Secure Locate Information**

Prior to conducting any New Work, Terasen Gas shall locate other Utilities and satisfy itself that it is clear to proceed.

### **6.4 Work Standards**

#### **6.4.1. Specific Work Requirements Remove Materials**

Terasen Gas shall keep its work sites clean and tidy. Terasen Gas shall remove all rubbish and surplus material from Public Places upon completion of its work.

#### **6.4.2. Restore Surface and Subsurface**

Where Terasen Gas has performed any operations or New Work in a Public Place, Terasen Gas shall restore without unreasonable delay and return such Public Place, as much as reasonably practical, to the condition and use which existed prior to such activity. The restoration will be in accordance with the specifications set out by the Municipality. Such specifications may include the degree and nature of compaction, subsurface structure, surface finish and landscaping required.

Without limiting the generality of this section and by way of example only, the Municipality may require Terasen Gas to restore asphalt and concrete surfaces with a permanent repair or a temporary repair. Should a temporary repair be directed, Terasen Gas or the Municipality at its discretion will subsequently construct a permanent repair in accordance to its usual maintenance/replacement schedule for that area. The cost of permanent and temporary repairs to remediate Highway surfaces will be at the expense of Terasen Gas proportional to the surface area affected by the New Work.

Where Terasen Gas is required to cut pavement on a Public Place such cuts and restoration will be limited to less than 1.5 meters unless at the discretion of Terasen Gas a larger excavation is warranted due to the depth or size of the pipe or requirements of the Workers' Compensation Board or other relevant Provincial or Federal regulations. Terasen Gas will be responsible for any repairs and maintenance of the surface repair for a period of three (3) years. However, where pavement restoration has been conducted by the Municipality, whether or not such work was undertaken to repair cuts on Terasen Gas' behalf, Terasen Gas shall not be responsible for the repairs or maintenance of the surface repair.

#### **6.4.3. Repair Damage to Municipal Facilities**

To the extent that any of the work being done by Terasen Gas 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 Terasen Gas shall restore in accordance with Section 6.4.2 above, Terasen Gas will report such damage and reimburse the Municipality for its costs arising from such damage calculated in accordance with Section 14.1 below. Where such damage results directly from inaccurate or incomplete information supplied by Municipality, and Terasen Gas has complied with all applicable laws and regulations, and with instructions supplied by the Municipality, then the cost of repairing damaged Municipal Facilities or Public Places will be at the expense of the Municipality.

### **6.5 Conformity Requirement**

The New Work must be carried out in conformity with Terasen Gas' notice of New Work except that Terasen Gas may make in-field design changes when carrying out the New Work to accommodate field conditions which could not have been reasonably foreseen by Terasen Gas. If such in-field conditions materially impact Terasen Gas' plans for

restoration or materially change the impact of Terasen Gas' work on Municipal Facilities, other than in respect of projected commencement and completion dates, Terasen Gas shall notify the Municipality.

#### **6.6 Non-Compliance**

If Company Facilities located in Public Places are later found not to be located in compliance with Terasen Gas' notice of New Work provided in accordance with Section 6.1 and 6.5, then any alteration or upgrading required to bring them into compliance with such notice will be at the expense of Terasen Gas provided that the work has not been altered, damaged or modified by the Municipality or a third party.

### **7. COMPANY FACILITY CHANGES REQUIRED BY THE MUNICIPALITY**

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

Before any Public Places containing Company Facilities may be legally closed or alienated by the Municipality, the Municipality shall promptly notify Terasen Gas of its intent to close or alienate such Public Places and either:

- (a) grant Terasen Gas a registered statutory right of way in a form satisfactory to Terasen Gas so as to maintain Terasen Gas' right to use the land; or
- (b) request Terasen Gas to remove and (if possible and practicable) relocate those Company Facilities affected by such closure or alienation at the sole cost of the Municipality.

If the Public Places are expropriated by an expropriating authority and Terasen Gas is required to remove its facilities then the Municipality shall use reasonable efforts to seek compensation from such expropriating authority to compensate Terasen Gas for its relocation costs. If the Municipality is unable to obtain such compensation despite its reasonable efforts, then the Municipality shall have no further liability to Terasen Gas. The Municipality shall not be required to incur any legal expenses without the approval and reimbursement by Terasen Gas in order to obtain such compensation for Terasen Gas.

### **8. FACILITY CHANGES REQUIRED**

#### **8.1 By Terasen Gas**

Terasen Gas may provide Notice to the Municipality that it requires Municipal Facilities to be altered, changed or relocated to accommodate its requirements. The Municipality will comply with Terasen Gas's requests to the extent it is reasonably able to do so and with reasonable speed and dispatch after receipt of written request. Terasen Gas agrees to pay for all of the costs for changes to the affected Municipal Facilities.

## **8.2 By the Municipality**

The Municipality may provide Notice to Terasen Gas that it requires Company Facilities to be altered, changed or relocated to accommodate its requirements. Terasen Gas will comply with the Municipality's requests to the extent it is reasonably able to do so and with reasonable speed and dispatch after receipt of written request. The Municipality agrees to pay for all of the costs for changes to the affected Company Facilities.

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

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

The Municipality and Terasen Gas agree to use reasonable efforts in carrying out their construction and maintenance activities in a manner that is responsive to the affect that it may have on the other party, as well as other users of Public Places. Such reasonable efforts include attending the planning meetings described in Section 9.2 below 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.

## **9.2 Communication and Coordination Activities**

At the initiation of the Municipality, representatives of the Municipality, Terasen Gas and other affected Utilities and third parties will meet each year, prior to the construction season, to discuss the parties' anticipated construction activities for that year. Such discussions will include

- (a) the use of common trenching, common utility access facilities and such other common facilities as may be commercially reasonable and comply with operating and safety standards; and
- (b) the consolidation of planned maintenance work where pavement must be cut in order to avoid multiple excavations.

## **9.3 Municipal Planning Lead**

During such annual planning meetings, the Municipality shall lead the planning process for all Utilities and third parties with Planned Facilities in Public Places.

# **10. MUTUAL INDEMNITY**

## **10.1 Indemnity by Terasen Gas**

- 10.1.1.** Terasen Gas 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 Terasen Gas in:

(a) placing, constructing, renewing, altering, repairing, maintaining, removing, extending, operating or using the Company's Facilities on or under any Public Places;

(b) any breach of this Agreement by Terasen Gas;

except to the extent contributed by negligence or default of the Municipality or the Municipal Employees.

**10.1.2.** This indemnity expressly extends to all acts and omissions of Terasen Gas Employees.

## **10.2 Indemnity by the Municipality**

**10.2.1.** The Municipality indemnifies and protects and saves Terasen Gas 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:

(a) placing, constructing, renewing, altering, repairing, maintaining, removing, extending, operating or using the Municipal Facilities on or under any Public Places;

(b) any breach of this Agreement by the Municipality;

except to the extent contributed by the negligence or default of Terasen Gas or Terasen Gas Employees.

**10.2.2.** This indemnity expressly extends to all acts and omissions of Municipal Employees.

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

All property of Terasen Gas kept or stored on the Public Places will be kept or stored at the risk of Terasen Gas. For further certainty, Terasen Gas 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. Terasen Gas accepts its use of Public Places on an "as is" basis.

# **11. OPERATING FEE**

## **11.1 Fee Calculation**

**11.1.1.** Terasen Gas agrees to pay to the Municipality a fee of three percent (3%) of the amount received by Terasen Gas for provision and distribution of all gas consumed within the Boundary Limits of the Municipality. Such amount will not include any amount received by Terasen Gas for gas supplied or sold for resale.

**11.1.2.** The Municipality will notify Terasen Gas in writing of any boundary expansion so that new customers can be included as a part of the annual payment fee.

**11.1.3.** Terasen Gas will be responsible for adding those new customers within the new Municipal boundary upon receipt of such notice from the Municipality and the revised calculation of the fee will commence at that point.

## **11.2 Payment Date and Period**

Payments by Terasen Gas to the Municipality will be made on the first day of March of each year of the Agreement in respect of the amount received by Terasen Gas during that portion of the term of this Agreement which is in the immediately preceding calendar year. By way of example only, payment made on March 1, 2006 will be the amount received during the 2005 calendar year.

## **11.3 BCUC Decision or Provincial Legislation**

In the event that a decision by the BCUC, other than periodic rate changes as a result of commodity, delivery or margin increases or decreases, or new legislation by the Provincial Government, impacts the operating fee being paid to the Municipality so as to increase it or decrease it by more than 5% annually at the time of the decision or in subsequent years, the parties shall negotiate a new operating fee formula which best reflects the revenue stream received by the Municipality under this Agreement. For greater certainty, the parties acknowledge that a change to the BCUC's decision that Terasen Gas shall provide the agency billing and collections service for marketers on a mandatory basis, as set out in the "Business Rules for Commodity Unbundling dated June 5, 2003 as set out in Appendix A to Letter No. L-25-03, may impact the operating fee being paid to the Municipality.

## **12. OTHER APPROVALS, PERMITS OR LICENSES**

Except as specifically provided in this Agreement, the Municipality will not require Terasen Gas to seek or obtain approvals, permits or licenses. The Municipality will not charge or levy against Terasen Gas any approval, license, inspection or permit fee, or charge of any other type, that in any manner is related to or associated with Terasen Gas constructing, installing, renewing, altering, repairing, maintaining or operating Company Facilities on any Public Places or in any manner related to or associated with Terasen Gas exercising the powers and rights granted to it by this Agreement.

If the Municipality does charge or levy fees or costs against Terasen Gas (other than for repair of damage to the Municipal Facilities or Public Places in accordance with Section 14) then Terasen Gas may reduce the annual operating fee payable to the Municipality under Section 11 by an amount equal to such charges, fees or costs.

## **13. MUNICIPAL OBLIGATIONS**

### **13.1 Municipal Work**

**13.1.1.** Before the Municipality undertakes any construction or maintenance activity which is likely to affect a part of the Company Facilities, it must give Terasen Gas notice not less than 10 days before commencing such construction or maintenance activity.

**13.1.2.** Where the Municipality is required to carry out work urgently in the interests of public safety or health or to preserve the safety of property and Municipal Facilities, the Municipality shall not be required to give prior notice but shall do so as soon as possible thereafter.

**13.1.3.** Terasen Gas will be entitled to appoint at its cost a representative to inspect any construction or maintenance activity undertaken by the Municipality. The provisions of this section do not relieve the Municipality of its responsibilities under the *Gas Safety Act*, *Pipeline Act*, and successor legislation, regulations thereunder, or the requirements of the BC Workers' Compensation Board.

**13.1.4.** In addition, the Municipality shall provide Notice to Terasen Gas of any work planned that will be adjacent to, across, over or under a Transmission Pipeline or within a right-of-way for a Transmission Pipeline. To the extent that Terasen Gas requires that permit be issued for construction or other activities within a Transmission Pipeline right-of-way, the Municipality will submit an application for such a permit in sufficient time for the application to be reviewed and approved by Terasen Gas prior to the commencement of the construction or other activity.

**13.1.5.** The Municipality shall assist Terasen Gas in Terasen Gas' efforts to reduce instances of residences being built over gas lines and other similarly unsafe building practices by third parties.

**13.1.6.** The Municipality shall not interfere with Transmission Pipeline markers.

**13.1.7.** The Municipality shall provide notice to Terasen Gas of any damage caused by the Municipality to Company Facilities or Transmission Pipeline Markers as soon as reasonably possible. To the extent that any of the work being done by the Municipality results in damage to the Company Facilities, the Municipality will report such damage and pay Terasen Gas its costs arising from such damage in accordance with Section 14.1 below. Where such damage results directly from inaccurate or incomplete information supplied by Terasen Gas, and the Municipality has complied with all applicable laws and regulations, and with instructions supplied by Terasen Gas, then the cost of repairing the damaged Company Facilities will be at the expense of Terasen Gas.

**13.1.8.** The Municipality shall notify Terasen Gas of any new bylaws, standards or policies adopted or passed by the Municipality that are likely to affect Terasen Gas' operations in Public Places.

## **14. COSTS AND PAYMENT PROCEDURES**

### **14.1 Definition of Costs**

Wherever one party is required to pay the other party Costs as a result of damage caused by one party to the other's property, the Costs shall be:

- (a) all direct expenses and disbursements incurred to restore such property to as good a state of repair as had existed prior to the damage;
- (b) reasonable administration and overhead charges on labour, equipment and materials;
- (c) such taxes as may be required in the appropriate jurisdiction;
- (d) in the case of loss of gas or re-lights, the cost of the commodity as determined by the length of time that the gas is leaking, size of pipe and hole and the pressure; and
- (e) in the case of water, electrical or sewer, cost of supplying alternate service.

## 14.2 Cost Claim Procedures

**14.2.1.** Wherever one party is claiming Costs of the other party in regard to any work or issue arising under this Agreement the claiming party shall:

- (a) provide an invoice to the other party no later than one year after incurring Costs;
- (b) provide detailed descriptions of the cost items;
- (c) provide the time period the invoice covers;
- (d) provide a minimum of 21 day terms for payment of the invoice; and
- (e) provide for late payment interest at the rate consistent with the party's policy for charging for late payments, which rate must be reasonable;

**14.2.2.** The party claiming Costs shall have no right of set off for these invoices against any amounts otherwise payable to the other party, except to the extent so approved in writing by the other party.

## 14.3 Cost Verification Procedures

**14.3.1.** Wherever either party is the recipient of or is claiming Costs and or fees that party may at its own discretion request from the other party:

- (a) Certification by an officer or designated representative verifying the calculations and computations of the Costs and or fees,
- (b) An internal review or audit of the calculations and computations of the Costs and or fees, with the internal review or audit to be carried out by a person appointed by the party being asked to provide the review;
- (c) An independent external audit of the calculations and computations of the costs and fees, with the independent external auditor being a Chartered or a Certified General Accountant in British Columbia appointed by the party requesting the external audit;

**14.3.2.** The costs of this cost verification process shall be borne by the party who is required to supply the information except as otherwise specified providing the frequency of such requests does not exceed once per calendar year. For all future cases which occur in that calendar year, the costs of such further verifications shall be at the expense of the requester.

Where the independent external audit finds and establishes errors representing a variance greater than 2% of the originally calculated value in favour of the party claiming Costs, the costs shall be at the expense of the party supplying the information. Once an error has been verified, payment or refund of the amount found to be in error will be made within 21 days.

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

### **15.1 Agreement Not Binding Until Approved**

**15.1.1.** This Agreement will not come into effect and does not bind the parties until the following conditions have been fulfilled:

- (a) Terasen Gas has obtained such approvals of this Agreement, or its terms, as may be required under the *Utilities Commission Act*; and
- (b) the Municipality 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.

**15.1.2.** Upon executing this Agreement the parties shall make reasonable efforts to fulfill the conditions set out in this section. If the conditions are not fulfilled or waived within one (1) year of the execution of this Agreement, then the obligation on the parties to make reasonable efforts to fulfill the conditions will terminate, and neither party will have any further obligation to the other under this Agreement.

### **15.2 Termination of Franchise Agreement**

If not already terminated or expired, any franchise and operating agreement between the Municipality and Terasen Gas is terminated upon the effective date of this Agreement.

### **15.3 Term of Agreement**

This Agreement will have a term of 20 years from the date that it comes into effect and after the initial term shall continue indefinitely unless terminated in accordance with Section 15.4 below.

### **15.4 Termination of Agreement**

**15.4.1.** This Agreement may be terminated by the Municipality upon the occurrence of any of the following events:

- (a) Terasen Gas admits its inability to pay its debts generally as they become due or otherwise acknowledges its insolvency;

- (b) Terasen Gas starts proceedings or takes any action to commence or executes an agreement to authorize its participation in any proceeding:
- (i) seeking to adjudicate it bankrupt or insolvent;
  - (ii) seeking liquidation, reorganization, arrangement, protection, relief or composition of it or any of its property or debt or making a proposal with respect to it under any law relating to bankruptcy, insolvency, reorganization or compromise of debts or other similar laws; or
  - (iii) seeking the appointment of a receiver, trustee, agent, custodian or other similar official for it or for any substantial part of its assets or if a creditor seeks the appointment of a receiver, trustee, agent, custodian or other similar official for any substantial part of its assets; and such proceeding is not dismissed, discharged, stayed or restrained within 20 days of the Municipality becoming aware of it.

**15.4.2.** Either party may terminate if other breaches any term, provision, obligation hereunder and such breach, is a material major 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 default if such matter is in dispute or has been referred to commercial arbitration, the outcome of which is pending, or is being resolved in good faith compliance with the dispute resolution and arbitration processes of this Agreement.

**15.4.3.** After the initial twenty (20) year term of this Agreement, either party may terminate this Agreement by giving the other not less than one (1) year's notice of termination.

## **15.5 Amendments and Waivers**

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 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.

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

Upon one party giving Notice to the other of termination of this Agreement, the parties shall negotiate in good faith to enter into a new agreement with respect to the terms and conditions under which Terasen Gas may use the Public Places. In the event that such negotiations break down and in the opinion of one or other of the parties acting in good faith that settlement is unlikely, either party may give Notice to the other of its intention to apply to the BCUC to seek resolution of the terms and conditions applicable to Terasen Gas' continued operations and construction activities within the Municipality.

### **15.7 Continuity In The Event No Agreement Is Settled**

Upon the expiry or termination of this Agreement, if a new agreement has not been ratified or if the BCUC has not imposed the terms and conditions under which Terasen Gas may use the Public Places, the following provisions will apply:

- (a) The Company Facilities within the boundary limits of the Municipality both before and after the date of this Agreement, shall remain Terasen Gas' property and shall remain in the Public Places.
- (b) The Company Facilities may continue to be used by Terasen Gas for the purposes of its business, or removed from Public Places in whole or in part at Terasen Gas' sole discretion.
- (c) Terasen Gas may continue to use Public Places within the Municipality for the purposes of its business. Terasen Gas' employees, may enter upon all the Public Places within the Boundary Limits of the Municipality to maintain, operate, install, construct, renew, alter, or place Company Facilities; provided that Terasen Gas continues to operate in a manner consistent with the terms and conditions of this Agreement as if the term had been extended except with respect to the payment of the Operating Fee.
- (d) Terasen Gas will with the support of the Municipality take such steps necessary to seek BCUC approvals of the extension of terms and conditions including payment of the operating fee under the expiring agreement during negotiations of a new agreement.
- (e) Should Terasen Gas no longer be authorized or required to pay the operating fee under any Agreement between it and the Municipality or by any order of the BCUC, the Municipality shall be free 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**

In the event that 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) Terasen Gas will accept the appointment of such third party as the Municipality's agent or subcontractor to enable such third party to deal directly with Terasen Gas so as to enable the Municipality to comply with the terms, obligations and conditions of this Agreement.

### **16.2 Changes to the Community Charter**

In the event that the provisions of the *Community Charter* or other legislation affecting the rights and powers of municipalities change in such a way as to materially, in the opinion of the Municipality, affect municipal powers in respect to matters dealt with in this Agreement,

- (a) the Municipality may within one year of the change coming into effect propose new agreement terms with respect to only those specific changes and Terasen Gas agrees to negotiate such terms; and
- (b) failing satisfactory resolution either of the parties will seek resolution through the Dispute Resolution Process, Section 17.

### **16.3 Changes to the Utilities Commission Act**

In the event that the provisions of the *Utilities Commission Act* or other legislation affecting the rights and powers of regulated Utilities change in such a way as to materially, in Terasen Gas' opinion, affect Terasen Gas' powers in respect to matters dealt with in this Agreement,

- (a) Terasen Gas may within one year of the change coming into effect propose new agreement terms with respect to only those specific changes and the Municipality agrees to negotiate such terms; and
- (b) failing satisfactory resolution either of the parties will seek resolution through the Dispute Resolution Process, Section 17.

## **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, 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 or Arbitration**

If the parties fail to resolve the dispute through mediation, the unresolved dispute shall be referred to the BCUC if within its jurisdiction. If the matter is not within the jurisdiction of the BCUC, 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 will allow discovery as required by law in arbitration proceedings.

### **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.

## **18. GENERAL TERMS & CONDITIONS**

### **18.1 No Liens**

Terasen Gas will do its best to not allow, suffer or permit any liens to be registered against the Company Facilities located in Public Places as a result of the conduct of Terasen Gas. If any such liens are registered, Terasen Gas will start action to clear any lien so registered to the Public Place within ten (10) days of being made aware such lien has been registered. Terasen Gas will keep the Municipality advised as to the status of the lien on a regular basis. In the event that such liens are not removed within ninety (90) days of the registration of such lien, Terasen Gas will pay them in full or post sufficient security to ensure they are discharged from title.

### **18.2 Corporate Authority**

Terasen Gas now warrants, represents and acknowledges that:

- (a) it has the full right, power and authority to enter into this Agreement;
- (b) it is a corporation, duly organized, legally existing and in good standing under the laws of its jurisdiction of incorporation or continuance and is lawfully registered and licensed to do business in British Columbia.

### **18.3 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 venture 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.

### **18.4 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.

#### **18.5 Governing Law**

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

#### **18.6 General**

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.

#### **18.7 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.

#### **18.8 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. To the extent permitted by applicable law, the parties hereby waive any provision of law that renders any provision hereof prohibitive or unenforceable in any respect.

#### **18.9 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.

#### **18.10 Notice**

Any notice or other written communication required, or permitted to be made or given pursuant to this Agreement (the "Notice") 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:

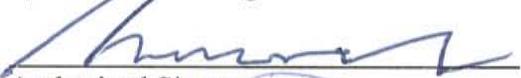
- A) if to the Municipality:

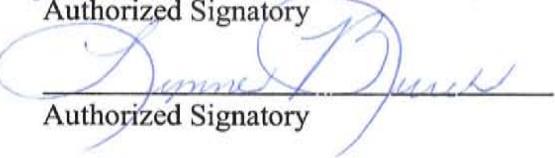
**CITY OF GRAND FORKS**  
P.O. Box 22,  
Grand Forks, British Columbia,  
V0H 1H0

(B) If to Terasen Gas:

**TERASEN GAS INC.**  
16705 Fraser Highway  
Surrey, British Columbia  
V3S 2X7  
Attention: Vice -President, Regulatory Affairs

**CITY OF GRAND FORKS**  
by its authorized signatories

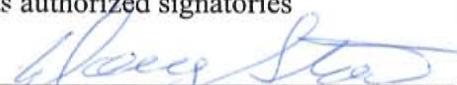
  
Authorized Signatory

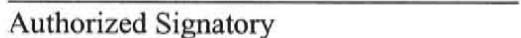
  
Authorized Signatory

**TERASEN GAS INC.**

by its authorized signatories

D.L. Stout, Vice-President  
Marketing & Business  
Development

  
Authorized Signatory

  
Authorized Signatory

SIXTH FLOOR, 900 HOWE STREET, BOX 250  
VANCOUVER, B.C. V6Z 2N3 CANADA  
web site: <http://www.bcuc.com>



**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER** C-12-06

TELEPHONE: (604) 660-4700  
BC TOLL FREE: 1-800-663-1385  
FACSIMILE: (604) 660-1102

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

and

An Application by Terasen Gas Inc.  
for Approval of an Operating Agreement  
with the City of Grand Forks

**BEFORE:**      L.F. Kelsey, Commissioner      )  
                  L.A. Zaozirny, Commissioner      )      August 10, 2006

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

**WHEREAS:**

- A. On January 12, 2006, Terasen Gas Inc. ("Terasen Gas") applied to the British Columbia Utilities Commission ("the Commission") for approval of an Operating Agreement with the City of Grand Forks ("the Municipality") ("the Application"); and
- B. The Franchise Agreement approved by Commission Order No. C-5-79 expired on February 26, 1979; and
- C. By way of successive amending agreements the term of the Franchise Agreement was extended to December 31, 2005; and
- D. In its Application, Terasen Gas advised that it undertook negotiations with the Union of British Columbia Municipalities ("UBCM") Operating Agreement Committee to establish the terms of a new form of Operating Agreement. In 2005 Terasen Gas successfully negotiated a pro-forma Operating Agreement with the UBCM and using this agreement as a template, negotiated new Operating Agreements with those municipalities with Operating Agreements which expired on December 31, 2005 (collectively the "Municipalities"); and
- E. The Application requests approval of a 20-year Operating Agreement between Terasen Gas and the Municipality from January 1, 2006 to December 31, 2025 that sets out the terms and conditions, including a

**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER**      C-12-06

2

3 percent operating fee, under which Terasen Gas shall exercise its rights to use the public places of the Municipality in conducting its business of distributing gas within the Municipality; and

- F. Commission Order No. C-7-03, which approved a District of Salmon Arm and Terasen Gas Operating Agreement and Addendum, directed Terasen Gas to seek a method in future agreements to convert the operating fee to a charge on utility margin; and
- G. The Commission issued Information Request No. 1 to Terasen Gas on February 20, 2006, including questions related to the impacts of the proposed operating fee on rate stability and requesting an explanation of how such a fee based on Terasen Gas revenue fairly compensates the Municipalities for the costs incurred as a result of Terasen Gas' use of the streets and other public places within the Municipalities; and
- H. Terasen Gas responded to the Commission's Information Request No. 1 on March 9, 2006. Terasen Gas provided historical franchise fee information and discussed five operating fee options (Option 1-5) which were all rejected by the Municipalities; and
- I. The Commission issued Information Request No. 2 on March 28, 2006 and Terasen Gas responded on April 13, 2006. In IR No. 2, Terasen Gas analyzed an operating fee calculation using a base year methodology and provided additional information as to why Options 2, 4 and 5 in IR No. 1 were rejected; and
- J. In a letter dated May 9, 2006, the Commission sought further submissions from Terasen Gas, the UBCM and the Municipalities to support or justify how the public interest is better served through an operating fee, as proposed, compared to Option 5, described as a "Hybrid Approach" whereby customers in Rate Classes 1-3 would pay a margin based fee and all other customers would continue to pay a franchise fee based on revenue of 3.09 percent; and

**BRITISH COLUMBIA  
UTILITIES COMMISSION**

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NUMBER**      C-12-06

- K. From May 17, 2006 to May 26, 2006 the Commission received submissions from Terasen Gas, the City of Rossland, the District of Hudson's Hope, the City of Kimberley, the City of Fernie, the City of Grand Forks, the Town of Oliver and the City of Cranbrook. Other interested parties such as the City of Kelowna, the City of Nelson and Mr. Greg McCormick also provided submissions to the Commission. Among other things, Terasen Gas and the Municipalities stated that the agreements are "package deals" with a considerable amount of compromise involved, including the fees agreed to within the package, and outlined their significant concerns to the added complexity, costs, communication and need to renegotiate if a margin fee were imposed; and
- L. The Commission has reviewed the Application and the related submissions presented to it and has determined that the Operating Agreement with the City of Grand Forks should be approved.

**NOW THEREFORE** the Commission, pursuant to Section 45 of the Utilities Commission Act the Commission approves the Operating Agreement as filed.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 29<sup>th</sup> of August 2006.

BY ORDER

*Original signed by*

L.F. Kelsey  
Commissioner



# DISTRICT OF HUDSON'S HOPE

9904 Dudley Drive  
P.O. Box 330  
Hudson's Hope, BC  
V0C 1V0

Telephone: (250) 783-9901  
Fax: (250) 783-5741

E-mail: district@dist.hudsons-hope.bc.ca  
Web Site <http://dist.hudsons-hope.bc.ca>

Our file: 9.7.3.1.

Thursday, November 24, 2005

Terasen Gas Inc.  
16705 Fraser Highway  
Surrey, BC, V3S 2X7

Attention: Scott Thomson  
Vice President, Regulatory Affairs

Dear Mr. Thomson:

Re: Operating Agreement

During its regular meeting held on November 21, 2005, the Council adopted Gas Distributing Authorization Agreement Bylaw No. 688, 2005. Enclosed please find two copies of the Operating Agreement which have been executed by the Mayor and Clerk in accordance with Bylaw No. 688.

Yours truly,

DISTRICT OF HUDSON'S HOPE

W.K. (Bill) Lindsay  
Administrator

Encl.

## OPERATING AGREEMENT

THIS OPERATING AGREEMENT (the "Agreement") made this 25<sup>th</sup> day of November, 2005. *JK*

1st

BETWEEN:

**DISTRICT OF HUDSON'S HOPE**  
Box 330  
Hudson's Hope, British Columbia  
V0C 1V0

(hereinafter called the "Municipality")

OF THE FIRST PART

AND:

**TERASEN GAS 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

(hereinafter called "Terasen Gas")

OF THE SECOND PART

### RECITALS:

- A. Whereas by a certificate of public convenience and necessity (CPCN), Terasen Gas was granted the right to construct and operate gas distribution facilities within the Municipality;
- B. And whereas pursuant to the Community Charter, S.B.C. 2003, a Municipal council may, by resolution adopt and enter into a licensing and operating agreement;
- C. And whereas Terasen Gas operates in the Municipality under British Columbia Utilities Commission Order Number C-14-05 dated July 5, 2005, which will expire on June 30, 2006;
- D. And whereas Terasen Gas and the Municipality wish to enter into this Agreement to clarify and settle the terms and conditions under which Terasen Gas shall exercise its rights to use Public Places in conducting its business of distributing Gas within the Municipality.

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

**1. DEFINITIONS**

For the purposes of this Agreement:

- (a) “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;
- (b) “BCUC” means the British Columbia Utilities Commission or successor having regulatory jurisdiction over natural gas distribution utilities in British Columbia;
- (c) “CPCN” means a Certificate of Public Convenience and Necessity granted by the BCUC which allows Terasen Gas to operate, maintain and install Company Facilities for the distribution of Gas within the Municipality;
- (d) “Company Design” means the installation and design specifications which meet all applicable Provincial and Federal codes, standards and safety requirements for the gas services in the province of British Columbia, as they relate to approved gas works, system improvements, upgrades, connections and system extensions;
- (e) “Company Facilities” means Terasen Gas’ facilities, including pipes, buildings, structures, valves, signage, storage facilities, machinery, vehicles and other equipment used to maintain, operate, renew, repair, construct and monitor a natural Gas Distribution and transmission system;
- (f) “Distribution Pipelines” means pipelines operating at a pressure less than 2071 kilopascals (300 psi);
- (g) “Gas” means natural gas, propane, methane, synthetic gas, liquefied petroleum in a gaseous form or any mixture thereof;
- (h) “Gas Distribution” means fixed equipment, structures, plastic and metal lines and pipe, valves, fittings, appliances and related facilities used or intended for the purpose of conveying, testing, monitoring, distributing, mixing, storing, measuring and delivering Gas and making it available for use with the Municipality;
- (i) “Highway” means street, road, lane, bridge or viaduct controlled by the Municipality or Provincial Government of British Columbia;
- (j) “Losses” means direct and indirect losses, damages, costs and expenses (including without limitation, interest, penalties and amounts paid in settlement but does not include legal and professional fees and disbursements);

- (k) "Mains" means pipes used by Terasen Gas to carry gas for general or collective use for the purposes of Gas Distribution;
- (l) "Municipal Employees" means personnel employed by or engaged by the municipality, including officers, employees, directors, contractors and agents;
- (m) "Municipal Facilities" means any facilities, including highways, sidewalks, conduits, manholes, equipment, machinery, pipes, wires, valves, buildings, structures, signage, bridges, viaducts and other equipment within the Public Places used by the Municipality for the purposes of its public works or municipal operations;
- (n) "Municipal Supervisor" means the Municipal Engineer or other such person designated by the Municipality to receive notices and issue approval as set out in this Agreement;
- (o) "New Work" means any installation, construction, repair, maintenance, alteration, extension or removal work of the Company Facilities in Public Places except:
  - (i) routine maintenance and repair of the Company Facilities that does not involve any cutting of asphalted road surface;
  - (ii) installation or repair of Service Lines whether or not such installation or repair involves cutting of asphalted road service; or
  - (iii) emergency work;but notwithstanding such exceptions, New Work shall include any installation, construction or removal of the Company Facilities in Public Places that are planned to disturb underground Municipal Facilities;
- (p) "Pipeline Markers" means post, signage or any similar means of identification used to show the general location of Transmission Pipelines and distribution pipelines or Terasen Gas Rights of Way;
- (q) "Planned Facilities" means those facilities not yet constructed but which have been identified by way of documented plans for the works of the Municipality, for works of third parties, where such works are identified by documented plans approved by the Municipality, or for works of Terasen Gas submitted to the Municipality subject to Municipal approval;
- (r) "Public Places" means any public thoroughfare, highway, road, street, lane, alley, trail, square, park, bridge, right of way, viaduct, subway, watercourse or other public place in the Municipality;
- (s) "Service Line" means that portion of Terasen Gas' gas distribution system extending from a Main to the inlet of a meter set and, for the purposes of this Agreement, includes a service header and service stubs;

- (t) "Terasen Gas Employees" means personnel employed by or engaged by Terasen Gas including officers, employees, directors, contractors, and agents;
- (u) "Transmission Pipeline" means a pipeline of Terasen Gas having an operating pressure in excess of 2071 kilopascals (300 psi); and
- (v) "Utilities" means the facilities or operations of any water, waste water, sewer, telecommunications, energy, cable service or similar service provider located in Public Places within the Municipality.

## **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) words in the singular include the plural, words importing a corporate entity include individuals, and vice versa;
- (c) in calculating time where the agreement refers to "at least" or "not less than" 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" a number of days, Saturdays, Sundays and holidays must be excluded;
- (d) 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.

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

Terasen Gas 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.

Terasen Gas 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.

## **4. TERASEN GAS RIGHTS TO ACCESS & USE PUBLIC PLACES**

The Municipality hereby acknowledges Terasen Gas' rights to:

- (a) develop, construct, install, maintain or remove Company Facilities on, over, in and under Public Places in the Municipality;
- (b) enter on Public Places from time to time as may be reasonably necessary for the purpose of maintaining, repairing, or operating the Company's Facilities;
- (c) place pipeline identification markers within Public Places where a Transmission Pipeline or Distribution Pipeline crosses or is otherwise within a Public Place;

subject to terms and conditions defined in this Agreement.

## **5. TERASEN GAS COMPLIANCE WITH STANDARDS FOR USE OF PUBLIC PLACES**

### **5.1 Non-discriminatory Standards for Terasen Gas**

In its use of Public Places, Terasen Gas shall comply with all Federal and Provincial laws, regulations and codes and shall comply with all Municipal bylaws, standards and policies except that Terasen Gas shall not have to comply with such Municipal bylaws, standards and policies that:

- (a) conflict with terms of this Agreement or limit any rights or concessions granted to Terasen Gas by the Municipality under this Agreement; or
- (b) conflict with other legislation governing Terasen Gas.

Further, where the Municipality has established requirements and standards for work in Public Places, the Municipality shall apply them in a fair, reasonable and non-discriminatory manner consistent with the manner that the Municipality establishes requirements on other Utilities.

### **5.2 Provide emergency contacts.**

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

### **5.3 Assist with facility locates**

Terasen Gas 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 unless the reason for the request is the result of an emergency; in which case the information shall be provided forthwith. Terasen Gas shall provide gas locations from Terasen Gas records. Terasen Gas shall perform on site facility locates in accordance with the *Safety Standards Act – Gas Safety Regulations Section 39*.

## 6. TERASEN GAS WORK OBLIGATIONS:

### 6.1 Notices - General Requirements

#### 6.1.1. Notice for New Work

For New Work, if required by the Municipality, Terasen Gas shall give notice to the Municipality or such officer or official thereof who has been designated from time to time by the Municipality that it intends to perform such New Work. The Notice shall include:

- (a) a plan and specifications showing the proposed location and dimensions of the New Work;
- (b) Terasen Gas' plans for the restoration of the Public Place affected by the New Work if Terasen Gas' restoration plans are different from those set out in Section 6.4.2 of this Agreement;
- (c) the name of a Terasen Gas representative who may be contacted for more information;
- (d) projected commencement and completion dates; and
- (e) such other information relevant to the New Work as the Municipality may reasonably request from time to time.

#### 6.1.2. Exception for Emergency

Where Terasen Gas is required to carry out work urgently in the interests of public safety or health or to preserve the safety of property and Company Facilities, Terasen Gas shall not be required to give prior notice but shall do so as soon as possible thereafter.

#### 6.1.3. Municipal Approval for New Work

The Municipality may object to the New Work on the following grounds:

- (a) the proposed location of the New Work conflicts with Planned Facilities; or
- (b) the proposed location or design of the New Work is likely to compromise public safety or does not conform with Municipal bylaws, standards or policies; or
- (c) in instances where Terasen Gas can delay the New Work without compromising the supply, capacity or safety of its Gas Distribution System or its customers' need for gas service and the Municipality intends within the next 3 months to undertake work in the same location and wishes to co-ordinate both work;

by providing Terasen Gas with notice of its objections, provided such objections are reasonable, no more than 10 days after receiving Terasen Gas' notice of New Work. If the Municipality has not provided such notice of its objections to Terasen Gas, or in the case of large and complex New Work, the Municipality has not provided Terasen Gas with a notice to extend the time to reply to Terasen Gas until a stated time, the Municipality shall be deemed to have granted its approval of the New Work. The Municipality shall not otherwise withhold or delay its approval.

In addition, the Municipality may request Terasen Gas to provide the public with notice of the New Work.

#### **6.1.4. Work Not to Proceed**

If the Municipality has notified Terasen Gas of its objections or has requested a time extension, no more than 10 days after receiving Terasen Gas' notice of New Work, Terasen Gas shall not proceed with the New Work until Terasen Gas and the Municipality have agreed upon a resolution to the Municipality's objections. If the Municipality and Terasen Gas are unable to agree, then the matter shall be resolved in accordance with Section 17 (Resolution of Disputes).

### **6.2 Notice of Service Lines**

Terasen Gas, if required by the Municipality, shall provide the Municipality with notice of its intent to install, remove or repair Service Lines no less than three (3) days prior to commencement of such work. Terasen Gas' request for the location of the Municipality's utilities shall be deemed to be a notice of Terasen's intent to install, remove or repair Service Lines. The Municipality may object to such work on the same grounds as set out in Subsection 6.1.3 (a) and (b) above by providing Terasen Gas with notice of its objections within two (2) days of receiving Terasen Gas' notice. If the Municipality has not provided such notice of its objections to Terasen Gas, the Municipality shall be deemed to have granted its approval of the installation, removal or repair of the Service Lines. The Municipality shall not otherwise withhold or delay its approval.

### **6.3 Terasen Gas to Secure Locate Information**

Prior to conducting any New Work, Terasen Gas shall locate other Utilities and satisfy itself that it is clear to proceed.

### **6.4 Work Standards**

#### **6.4.1. Specific Work Requirements Remove Materials**

Terasen Gas shall keep its work sites clean and tidy. Terasen Gas shall remove all rubbish and surplus material from Public Places upon completion of its work.

#### **6.4.2. Restore Surface and Subsurface**

Where Terasen Gas has performed any operations or New Work in a Public Place, Terasen Gas shall restore without unreasonable delay and return such Public Place, as much as reasonably practical, to the condition and use which existed prior to such activity. The restoration will be in accordance with the specifications set out by the Municipality. Such specifications may include the degree and nature of compaction, subsurface structure, surface finish and landscaping required.

Without limiting the generality of this section and by way of example only, the Municipality may require Terasen Gas to restore asphalt and concrete surfaces with a permanent repair or a temporary repair. Should a temporary repair be directed, Terasen Gas or the Municipality at its discretion will subsequently construct a permanent repair in accordance to its usual maintenance/replacement schedule for that area. The cost of permanent and temporary repairs to remediate Highway surfaces will be at the expense of Terasen Gas proportional to the surface area affected by the New Work.

Where Terasen Gas is required to cut pavement on a Public Place such cuts and restoration will be limited to less than 1.5 meters unless at the discretion of Terasen Gas a larger excavation is warranted due to the depth or size of the pipe or requirements of the Workers' Compensation Board or other relevant Provincial or Federal regulations. Terasen Gas will be responsible for any repairs and maintenance of the surface repair for a period of three (3) years. However, where pavement restoration has been conducted by the Municipality, whether or not such work was undertaken to repair cuts on Terasen Gas' behalf, Terasen Gas shall not be responsible for the repairs or maintenance of the surface repair.

#### **6.4.3. Repair Damage to Municipal Facilities**

To the extent that any of the work being done by Terasen Gas 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 Terasen Gas shall restore in accordance with Section 6.4.2 above, Terasen Gas will report such damage and reimburse the Municipality for its costs arising from such damage calculated in accordance with Section 14.1 below. Where such damage results directly from inaccurate or incomplete information supplied by Municipality, and Terasen Gas has complied with all applicable laws and regulations, and with instructions supplied by the Municipality, then the cost of repairing damaged Municipal Facilities or Public Places will be at the expense of the Municipality.

## **6.5 Conformity Requirement**

The New Work must be carried out in conformity with Terasen Gas' notice of New Work except that Terasen Gas may make in-field design changes when carrying out the New Work to accommodate field conditions which could not have been reasonably foreseen by Terasen Gas. If such in-field conditions materially impact Terasen Gas' plans for restoration or materially change the impact of Terasen Gas' work on Municipal Facilities, other than in respect of projected commencement and completion dates, Terasen Gas shall notify the Municipality.

## **6.6 Non-Compliance**

If Company Facilities located in Public Places are later found not to be located in compliance with Terasen Gas' notice of New Work provided in accordance with Section 6.1 and 6.5, then any alteration or upgrading required to bring them into compliance with such notice will be at the expense of Terasen Gas provided that the work has not been altered, damaged or modified by the Municipality or a third party.

# **7. COMPANY FACILITY CHANGES REQUIRED BY THE MUNICIPALITY**

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

Before any Public Places containing Company Facilities may be legally closed or alienated by the Municipality, the Municipality shall promptly notify Terasen Gas of its intent to close or alienate such Public Places and either:

- (a) grant Terasen Gas a registered statutory right of way in a form satisfactory to Terasen Gas so as to maintain Terasen Gas' right to use the land; or
- (b) request Terasen Gas to remove and (if possible and practicable) relocate those Company Facilities affected by such closure or alienation at the sole cost of the Municipality.

If the Public Places are expropriated by an expropriating authority and Terasen Gas is required to remove its facilities then the Municipality shall use reasonable efforts to seek compensation from such expropriating authority to compensate Terasen Gas for its relocation costs. If the Municipality is unable to obtain such compensation despite its reasonable efforts, then the Municipality shall have no further liability to Terasen Gas. The Municipality shall not be required to incur any legal expenses without the approval and reimbursement by Terasen Gas in order to obtain such compensation for Terasen Gas.

## **8. FACILITY CHANGES REQUIRED**

### **8.1 By Terasen Gas**

Terasen Gas may provide Notice to the Municipality that it requires Municipal Facilities to be altered, changed or relocated to accommodate its requirements. The Municipality will comply with Terasen Gas's requests to the extent it is reasonably able to do so and with reasonable speed and dispatch after receipt of written request. Terasen Gas agrees to pay for all of the costs for changes to the affected Municipal Facilities.

### **8.2 By the Municipality**

The Municipality may provide Notice to Terasen Gas that it requires Company Facilities to be altered, changed or relocated to accommodate its requirements. Terasen Gas will comply with the Municipality's requests to the extent it is reasonably able to do so and with reasonable speed and dispatch after receipt of written request. The Municipality agrees to pay for all of the costs for changes to the affected Company Facilities.

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

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

The Municipality and Terasen Gas agree to use reasonable efforts in carrying out their construction and maintenance activities in a manner that is responsive to the affect that it may have on the other party, as well as other users of Public Places. Such reasonable efforts include attending the planning meetings described in Section 9.2 below 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.

### **9.2 Communication and Coordination Activities**

At the initiation of the Municipality, representatives of the Municipality, Terasen Gas and other affected Utilities and third parties will meet each year, prior to the construction season, to discuss the parties' anticipated construction activities for that year. Such discussions will include

- (a) the use of common trenching, common utility access facilities and such other common facilities as may be commercially reasonable and comply with operating and safety standards; and
- (b) the consolidation of planned maintenance work where pavement must be cut in order to avoid multiple excavations.

### **9.3 Municipal Planning Lead**

During such annual planning meetings, the Municipality shall lead the planning process for all Utilities and third parties with Planned Facilities in Public Places.

## 10. MUTUAL INDEMNITY

### 10.1 Indemnity by Terasen Gas

**10.1.1.** Terasen Gas 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 Terasen Gas in:

- (a) placing, constructing, renewing, altering, repairing, maintaining, removing, extending, operating or using the Company's Facilities on or under any Public Places;
- (b) any breach of this Agreement by Terasen Gas;

except to the extent contributed by negligence or default of the Municipality or the Municipal Employees.

**10.1.2.** This indemnity expressly extends to all acts and omissions of Terasen Gas Employees.

### 10.2 Indemnity by the Municipality

**10.2.1.** The Municipality indemnifies and protects and saves Terasen Gas 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:

- (a) placing, constructing, renewing, altering, repairing, maintaining, removing, extending, operating or using the Municipal Facilities on or under any Public Places;
- (b) any breach of this Agreement by the Municipality;

except to the extent contributed by the negligence or default of Terasen Gas or Terasen Gas Employees.

**10.2.2.** This indemnity expressly extends to all acts and omissions of Municipal Employees.

### 10.3 Limitations on Municipality's Liability

All property of Terasen Gas kept or stored on the Public Places will be kept or stored at the risk of Terasen Gas. For further certainty, Terasen Gas 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. Terasen Gas accepts its use of Public Places on an "as is" basis.

## **11. OPERATING FEE**

### **11.1 Fee Calculation**

- 11.1.1.** Terasen Gas agrees to pay to the Municipality a fee of three percent (3%) of the amount received by Terasen Gas for provision and distribution of all gas consumed within the Boundary Limits of the Municipality. Such amount will not include any amount received by Terasen Gas for gas supplied or sold for resale.
- 11.1.2.** The Municipality will notify Terasen Gas in writing of any boundary expansion so that new customers can be included as a part of the annual payment fee.
- 11.1.3.** Terasen Gas will be responsible for adding those new customers within the new Municipal boundary upon receipt of such notice from the Municipality and the revised calculation of the fee will commence at that point.

### **11.2 Payment Date and Period**

Payments by Terasen Gas to the Municipality will be made on the first day of March of each year of the Agreement in respect of the amount received by Terasen Gas during that portion of the term of this Agreement which is in the immediately preceding calendar year. By way of example only, payment made on March 1, 2006 will be the amount received during the 2005 calendar year.

### **11.3 BCUC Decision or Provincial Legislation**

In the event that a decision by the BCUC, other than periodic rate changes as a result of commodity, delivery or margin increases or decreases, or new legislation by the Provincial Government, impacts the operating fee being paid to the Municipality so as to increase it or decrease it by more than 5% annually at the time of the decision or in subsequent years, the parties shall negotiate a new operating fee formula which best reflects the revenue stream received by the Municipality under this Agreement. For greater certainty, the parties acknowledge that a change to the BCUC's decision that Terasen Gas shall provide the agency billing and collections service for marketers on a mandatory basis, as set out in the "Business Rules for Commodity Unbundling dated June 5, 2003 as set out in Appendix A to Letter No. L-25-03, may impact the operating fee being paid to the Municipality.

## **12. OTHER APPROVALS, PERMITS OR LICENSES**

Except as specifically provided in this Agreement, the Municipality will not require Terasen Gas to seek or obtain approvals, permits or licenses. The Municipality will not charge or levy against Terasen Gas any approval, license, inspection or permit fee, or charge of any other type, that in any manner is related to or associated with Terasen Gas constructing, installing, renewing, altering, repairing, maintaining or operating Company

Facilities on any Public Places or in any manner related to or associated with Terasen Gas exercising the powers and rights granted to it by this Agreement.

If the Municipality does charge or levy fees or costs against Terasen Gas (other than for repair of damage to the Municipal Facilities or Public Places in accordance with Section 14) then Terasen Gas may reduce the annual operating fee payable to the Municipality under Section 11 by an amount equal to such charges, fees or costs.

## **13. MUNICIPAL OBLIGATIONS**

### **13.1 Municipal Work**

**13.1.1.** Before the Municipality undertakes any construction or maintenance activity which is likely to affect a part of the Company Facilities, it must give Terasen Gas notice not less than 10 days before commencing such construction or maintenance activity.

**13.1.2.** Where the Municipality is required to carry out work urgently in the interests of public safety or health or to preserve the safety of property and Municipal Facilities, the Municipality shall not be required to give prior notice but shall do so as soon as possible thereafter.

**13.1.3.** Terasen Gas will be entitled to appoint at its cost a representative to inspect any construction or maintenance activity undertaken by the Municipality. The provisions of this section do not relieve the Municipality of its responsibilities under the *Gas Safety Act*, *Pipeline Act*, and successor legislation, regulations thereunder, or the requirements of the BC Workers' Compensation Board.

**13.1.4.** In addition, the Municipality shall provide Notice to Terasen Gas of any work planned that will be adjacent to, across, over or under a Transmission Pipeline or within a right-of-way for a Transmission Pipeline. To the extent that Terasen Gas requires that permit be issued for construction or other activities within a Transmission Pipeline right-of-way, the Municipality will submit an application for such a permit in sufficient time for the application to be reviewed and approved by Terasen Gas prior to the commencement of the construction or other activity.

**13.1.5.** The Municipality shall assist Terasen Gas in Terasen Gas' efforts to reduce instances of residences being built over gas lines and other similarly unsafe building practices by third parties.

**13.1.6.** The Municipality shall not interfere with Transmission Pipeline markers.

**13.1.7.** The Municipality shall provide notice to Terasen Gas of any damage caused by the Municipality to Company Facilities or Transmission Pipeline Markers as soon as reasonably possible. To the extent that any of the work being done by the Municipality results in damage to the Company Facilities, the Municipality will report such damage and pay Terasen Gas its costs arising from such damage in accordance with Section 14.1 below. Where such damage results directly from inaccurate or incomplete information supplied by Terasen Gas, and the Municipality has complied with all applicable laws and regulations, and with instructions supplied by Terasen Gas, then the cost of repairing the damaged Company Facilities will be at the expense of Terasen Gas.

**13.1.8.** The Municipality shall notify Terasen Gas of any new bylaws, standards or policies adopted or passed by the Municipality that are likely to affect Terasen Gas' operations in Public Places.

## **14. COSTS AND PAYMENT PROCEDURES**

### **14.1 Definition of Costs**

Wherever one party is required to pay the other party Costs as a result of damage caused by one party to the other's property, the Costs shall be:

- (a) all direct expenses and disbursements incurred to restore such property to as good a state of repair as had existed prior to the damage;
- (b) reasonable administration and overhead charges on labour, equipment and materials;
- (c) such taxes as may be required in the appropriate jurisdiction;
- (d) in the case of loss of gas or re-lights, the cost of the commodity as determined by the length of time that the gas is leaking, size of pipe and hole and the pressure; and
- (e) in the case of water, electrical or sewer, cost of supplying alternate service.

### **14.2 Cost Claim Procedures**

**14.2.1.** Wherever one party is claiming Costs of the other party in regard to any work or issue arising under this Agreement the claiming party shall:

- (a) provide an invoice to the other party no later than one year after incurring Costs;

- (b) provide detailed descriptions of the cost items;
- (c) provide the time period the invoice covers;
- (d) provide a minimum of 21 day terms for payment of the invoice; and
- (e) provide for late payment interest at the rate consistent with the party's policy for charging for late payments, which rate must be reasonable;

**14.2.2.** The party claiming Costs shall have no right of set off for these invoices against any amounts otherwise payable to the other party, except to the extent so approved in writing by the other party.

#### **14.3 Cost Verification Procedures**

**14.3.1.** Wherever either party is the recipient of or is claiming Costs and or fees that party may at its own discretion request from the other party:

- (a) Certification by an officer or designated representative verifying the calculations and computations of the Costs and or fees,
- (b) An internal review or audit of the calculations and computations of the Costs and or fees, with the internal review or audit to be carried out by a person appointed by the party being asked to provide the review;
- (c) An independent external audit of the calculations and computations of the costs and fees, with the independent external auditor being a Chartered or a Certified General Accountant in British Columbia appointed by the party requesting the external audit;

**14.3.2.** The costs of this cost verification process shall be borne by the party who is required to supply the information except as otherwise specified providing the frequency of such requests does not exceed once per calendar year. For all future cases which occur in that calendar year, the costs of such further verifications shall be at the expense of the requester.

Where the independent external audit finds and establishes errors representing a variance greater than 2% of the originally calculated value in favour of the party claiming Costs, the costs shall be at the expense of the party supplying the information. Once an error has been verified, payment or refund of the amount found to be in error will be made within 21 days.

## 15. START, TERMINATION AND CONTINUITY

### 15.1 Agreement Not Binding Until Approved

**15.1.1.** This Agreement will not come into effect and does not bind the parties until the following conditions have been fulfilled:

- (a) Terasen Gas has obtained such approvals of this Agreement, or its terms, as may be required under the *Utilities Commission Act*; and
- (b) the Municipality 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.

**15.1.2.** Upon executing this Agreement the parties shall make reasonable efforts to fulfill the conditions set out in this section. If the conditions are not fulfilled or waived within one (1) year of the execution of this Agreement, then the obligation on the parties to make reasonable efforts to fulfill the conditions will terminate, and neither party will have any further obligation to the other under this Agreement.

### 15.2 Termination of Franchise Agreement

If not already terminated or expired, any franchise and operating agreement between the Municipality and Terasen Gas is terminated upon the effective date of this Agreement.

### 15.3 Term of Agreement

This Agreement will have a term of 20 years from the date that it comes into effect and after the initial term shall continue indefinitely unless terminated in accordance with Section 15.4 below.

### 15.4 Termination of Agreement

**15.4.1.** This Agreement may be terminated by the Municipality upon the occurrence of any of the following events:

- (a) Terasen Gas admits its inability to pay its debts generally as they become due or otherwise acknowledges its insolvency;
- (b) Terasen Gas starts proceedings or takes any action to commence or executes an agreement to authorize its participation in any proceeding:
  - (i) seeking to adjudicate it bankrupt or insolvent;

- (ii) seeking liquidation, reorganization, arrangement, protection, relief or composition of it or any of its property or debt or making a proposal with respect to it under any law relating to bankruptcy, insolvency, reorganization or compromise of debts or other similar laws; or
- (iii) seeking the appointment of a receiver, trustee, agent, custodian or other similar official for it or for any substantial part of its assets or if a creditor seeks the appointment of a receiver, trustee, agent, custodian or other similar official for any substantial part of its assets; and such proceeding is not dismissed, discharged, stayed or restrained within 20 days of the Municipality becoming aware of it.

**15.4.2.** Either party may terminate if other breaches any term, provision, obligation hereunder and such breach, is a material major 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 default if such matter is in dispute or has been referred to commercial arbitration, the outcome of which is pending, or is being resolved in good faith compliance with the dispute resolution and arbitration processes of this Agreement.

**15.4.3.** After the initial twenty (20) year term of this Agreement, either party may terminate this Agreement by giving the other not less than one (1) year's notice of termination.

### **15.5 Amendments and Waivers**

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 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.

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

Upon one party giving Notice to the other of termination of this Agreement, the parties shall negotiate in good faith to enter into a new agreement with respect to the terms and conditions under which Terasen Gas may use the Public Places. In the event that such negotiations break down and in the opinion of one or other of the parties acting in good

faith that settlement is unlikely, either party may give Notice to the other of its intention to apply to the BCUC to seek resolution of the terms and conditions applicable to Terasen Gas' continued operations and construction activities within the Municipality.

### **15.7 Continuity In The Event No Agreement Is Settled**

Upon the expiry or termination of this Agreement, if a new agreement has not been ratified or if the BCUC has not imposed the terms and conditions under which Terasen Gas may use the Public Places, the following provisions will apply:

- (a) The Company Facilities within the boundary limits of the Municipality both before and after the date of this Agreement, shall remain Terasen Gas' property and shall remain in the Public Places.
- (b) The Company Facilities may continue to be used by Terasen Gas for the purposes of its business, or removed from Public Places in whole or in part at Terasen Gas' sole discretion.
- (c) Terasen Gas may continue to use Public Places within the Municipality for the purposes of its business. Terasen Gas' employees, may enter upon all the Public Places within the Boundary Limits of the Municipality to maintain, operate, install, construct, renew, alter, or place Company Facilities; provided that Terasen Gas continues to operate in a manner consistent with the terms and conditions of this Agreement as if the term had been extended except with respect to the payment of the Operating Fee.
- (d) Terasen Gas will with the support of the Municipality take such steps necessary to seek BCUC approvals of the extension of terms and conditions including payment of the operating fee under the expiring agreement during negotiations of a new agreement.
- (e) Should Terasen Gas no longer be authorized or required to pay the operating fee under any Agreement between it and the Municipality or by any order of the BCUC, the Municipality shall be free 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**

In the event that 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) Terasen Gas will accept the appointment of such third party as the Municipality's agent or subcontractor to enable such third party to deal directly with Terasen Gas so as to enable the Municipality to comply with the terms, obligations and conditions of this Agreement.

### **16.2 Changes to the Community Charter**

In the event that the provisions of the *Community Charter* or other legislation affecting the rights and powers of municipalities change in such a way as to materially, in the opinion of the Municipality, affect municipal powers in respect to matters dealt with in this Agreement,

- (a) the Municipality may within one year of the change coming into effect propose new agreement terms with respect to only those specific changes and Terasen Gas agrees to negotiate such terms; and
- (b) failing satisfactory resolution either of the parties will seek resolution through the Dispute Resolution Process, Section 17.

### **16.3 Changes to the Utilities Commission Act**

In the event that the provisions of the *Utilities Commission Act* or other legislation affecting the rights and powers of regulated Utilities change in such a way as to materially, in Terasen Gas' opinion, affect Terasen Gas' powers in respect to matters dealt with in this Agreement,

- (a) Terasen Gas may within one year of the change coming into effect propose new agreement terms with respect to only those specific changes and the Municipality agrees to negotiate such terms; and
- (b) failing satisfactory resolution either of the parties will seek resolution through the Dispute Resolution Process, Section 17.

## **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, 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 or Arbitration**

If the parties fail to resolve the dispute through mediation, the unresolved dispute shall be referred to the BCUC if within its jurisdiction. If the matter is not within the jurisdiction of the BCUC, 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 will allow discovery as required by law in arbitration proceedings.

### **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.

## **18. GENERAL TERMS & CONDITIONS**

### **18.1 No Liens**

Terasen Gas will do its best to not allow, suffer or permit any liens to be registered against the Company Facilities located in Public Places as a result of the conduct of Terasen Gas. If any such liens are registered, Terasen Gas will start action to clear any lien so registered to the Public Place within ten (10) days of being made aware such lien has been registered. Terasen Gas will keep the Municipality advised as to the status of the lien on a regular basis. In the event that such liens are not removed within ninety (90) days of the registration of such lien, Terasen Gas will pay them in full or post sufficient security to ensure they are discharged from title.

### **18.2 Corporate Authority**

Terasen Gas now warrants, represents and acknowledges that:

- (a) it has the full right, power and authority to enter into this Agreement;
- (b) it is a corporation, duly organized, legally existing and in good standing under the laws of its jurisdiction of incorporation or continuance and is lawfully registered and licensed to do business in British Columbia.

### **18.3 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 venture 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.

### **18.4 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.

### **18.5 Governing Law**

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

#### **18.6 General**

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.

#### **18.7 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.

#### **18.8 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. To the extent permitted by applicable law, the parties hereby waive any provision of law that renders any provision hereof prohibitive or unenforceable in any respect.

#### **18.9 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.

#### **18.10 Notice**

Any notice or other written communication required, or permitted to be made or given pursuant to this Agreement (the "Notice") 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:

- (A) if to the Municipality:

**DISTRICT OF HUDSON'S HOPE**  
Box 330  
Hudson's Hope, British Columbia  
V0C 1V0

(B) If to Terasen Gas:

**TERASEN GAS INC.**  
16705 Fraser Highway  
Surrey, British Columbia  
V3S 2X7  
Attention: Vice President, Regulatory Affairs

**DISTRICT OF HUDSON'S HOPE**  
by its authorized signatories

L. M. Harwood MAYOR  
Authorized Signatory

W. Lindsay CLERK  
Authorized Signatory

**TERASEN GAS INC.**  
by its authorized signatories

Roger D. D.L. Stout, Vice-President  
Marketing & Business  
Development  
Authorized Signatory

\_\_\_\_\_  
Authorized Signatory

SIXTH FLOOR, 900 HOWE STREET, BOX 250  
VANCOUVER, B.C. V6Z 2N3 CANADA  
web site: <http://www.bcuc.com>



**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER** C-13-06

TELEPHONE: (604) 660-4700  
BC TOLL FREE: 1-800-663-1385  
FACSIMILE: (604) 660-1102

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

and

An Application by Terasen Gas Inc.  
for Approval of an Operating Agreement  
with the District of Hudson's Hope

**BEFORE:**      L.F. Kelsey, Commissioner                )  
                        L.A. Zaozirny, Commissioner        )      August 10, 2006

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

**WHEREAS:**

- A. On January 12, 2006, Terasen Gas Inc. ("Terasen Gas") applied to the British Columbia Utilities Commission ("the Commission") for approval of an Operating Agreement with the District of Hudson's Hope ("the Municipality") ("the Application"); and
- B. The Franchise Agreement approved by Commission Order No. C-21-80 expired on June 30, 2001; and
- C. By way of successive amending agreements, the Franchise Agreement was amended and the term extended to June 30, 2006; and
- D. In its Application, Terasen Gas advised that it undertook negotiations with the Union of British Columbia Municipalities ("UBCM") Operating Agreement Committee to establish the terms of a new form of Operating Agreement. In 2005 Terasen Gas successfully negotiated a pro-forma Operating Agreement with the UBCM and using this agreement as a template, negotiated new Operating Agreements with those municipalities with Operating Agreements which expired on December 31, 2005 (collectively the "Municipalities"); and
- E. The Application requests approval of a 20-year Operating Agreement between Terasen Gas and the Municipality from January 1, 2006 to December 31, 2025 that sets out the terms and conditions, including a

**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER**      C-13-06

2

3 percent operating fee, under which Terasen Gas shall exercise its rights to use the public places of the Municipality in conducting its business of distributing gas within the Municipality; and

- F. Commission Order No. C-7-03, which approved a District of Salmon Arm and Terasen Gas Operating Agreement and Addendum, directed Terasen Gas to seek a method in future agreements to convert the operating fee to a charge on utility margin; and
- G. The Commission issued Information Request No. 1 to Terasen Gas on February 20, 2006, including questions related to the impacts of the proposed operating fee on rate stability and requesting an explanation of how such a fee based on Terasen Gas revenue fairly compensates the Municipalities for the costs incurred as a result of Terasen Gas' use of the streets and other public places within the Municipalities; and
- H. Terasen Gas responded to the Commission's Information Request No. 1 on March 9, 2006. Terasen Gas provided historical franchise fee information and discussed five operating fee options (Option 1-5) which were all rejected by the Municipalities; and
- I. The Commission issued Information Request No. 2 on March 28, 2006 and Terasen Gas responded on April 13, 2006. In IR No. 2, Terasen Gas analyzed an operating fee calculation using a base year methodology and provided additional information as to why Options 2, 4 and 5 in IR No. 1 were rejected; and
- J. In a letter dated May 9, 2006, the Commission sought further submissions from Terasen Gas, the UBCM and the Municipalities to support or justify how the public interest is better served through an operating fee, as proposed, compared to Option 5, described as a "Hybrid Approach" whereby customers in Rate Classes 1-3 would pay a margin based fee and all other customers would continue to pay a franchise fee based on revenue of 3.09 percent; and

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UTILITIES COMMISSION**

**ORDER  
NUMBER**      C-13-06

- K. From May 17, 2006 to May 26, 2006 the Commission received submissions from Terasen Gas, the City of Rossland, the District of Hudson's Hope, the City of Kimberley, the City of Fernie, the City of Grand Forks, the Town of Oliver and the City of Cranbrook. Other interested parties such as the City of Kelowna, the City of Nelson and Mr. Greg McCormick also provided submissions to the Commission. Among other things, Terasen Gas and the Municipalities stated that the agreements are "package deals" with a considerable amount of compromise involved, including the fees agreed to within the package, and outlined their significant concerns to the added complexity, costs, communication and need to renegotiate if a margin fee were imposed; and
- L. The Commission has reviewed the Application and the related submissions presented to it and has determined that the Operating Agreement with the District of Hudson's Hope should be approved.

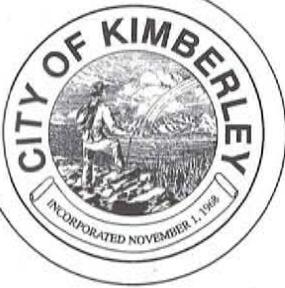
**NOW THEREFORE** the Commission, pursuant to Section 45 of the Utilities Commission Act the Commission approves the Operating Agreement as filed.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 29<sup>th</sup> of August 2006.

BY ORDER

*Original signed by*

L.F. Kelsey  
Commissioner



# City of Kimberley

November 28, 2005

File: 6.1  
Agreement File

Vice President, Regulatory Affairs  
Terasen Gas Inc.  
16705 Fraser Highway  
Surrey BC V3S 2X7

Dear Sirs:

**Re: Operating Agreement between Terasen Gas Inc. and  
the City of Kimberley**

I am pleased to enclose two copies of the above noted Agreement, duly executed by the authorized signatories of the City of Kimberley.

Would you please provide the City of Kimberley with an executed copy once Terasen Gas Inc. has signed the Agreement.

Should you have any questions in this matter, please contact Ms. H. Ronnquist, Chief Financial Officer, at (250) 427-5311 ext. 203.

Yours truly,

A handwritten signature in black ink, appearing to read "G. Stratton".

G. Stratton  
Chief Corporate Administration Officer

/hh

Attachments

cc: H. Ronnquist



The Bavarian City of the Rockies

## **OPERATING AGREEMENT**

**THIS OPERATING AGREEMENT** (the "Agreement") made this 1st day of JANUARY, 2005. *[Signature]*

BETWEEN:

**CITY OF KIMBERLEY**  
340 Spokane Street  
Kimberley, British Columbia  
V1A 2E8

(hereinafter called the "**Municipality**")

OF THE FIRST PART

AND:

**TERASEN GAS 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

(hereinafter called "**Terasen Gas**")

OF THE SECOND PART

### **RECITALS:**

A. Whereas by a certificate of public convenience and necessity (CPCN), Terasen Gas was granted the right to construct and operate gas distribution facilities within the Municipality;

B. And whereas pursuant to the Community Charter, S.B.C. 2003, a Municipal council may, by resolution adopt and enter into a licensing and operating agreement;

C. And whereas Terasen Gas and the Municipality are the parties to a Franchise or Operating Agreement dated the 12 day of September, 1983 and subsequently renewed by various amending agreements, which will expire on December 31, 2005;

D. And whereas Terasen Gas and the Municipality wish to enter into this Agreement to clarify and settle the terms and conditions under which Terasen Gas shall exercise its rights to use Public Places in conducting its business of distributing Gas within the Municipality.

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

**1. DEFINITIONS**

For the purposes of this Agreement:

- (a) "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;
- (b) "BCUC" means the British Columbia Utilities Commission or successor having regulatory jurisdiction over natural gas distribution utilities in British Columbia;
- (c) "CPCN" means a Certificate of Public Convenience and Necessity granted by the BCUC which allows Terasen Gas to operate, maintain and install Company Facilities for the distribution of Gas within the Municipality;
- (d) "Company Design" means the installation and design specifications which meet all applicable Provincial and Federal codes, standards and safety requirements for the gas services in the province of British Columbia, as they relate to approved gas works, system improvements, upgrades, connections and system extensions;
- (e) "Company Facilities" means Terasen Gas' facilities, including pipes, buildings, structures, valves, signage, storage facilities, machinery, vehicles and other equipment used to maintain, operate, renew, repair, construct and monitor a natural Gas Distribution and transmission system;
- (f) "Distribution Pipelines" means pipelines operating at a pressure less than 2071 kilopascals (300 psi);
- (g) "Gas" means natural gas, propane, methane, synthetic gas, liquefied petroleum in a gaseous form or any mixture thereof;
- (h) "Gas Distribution" means fixed equipment, structures, plastic and metal lines and pipe, valves, fittings, appliances and related facilities used or intended for the purpose of conveying, testing, monitoring, distributing, mixing, storing, measuring and delivering Gas and making it available for use with the Municipality;
- (i) "Highway" means street, road, lane, bridge or viaduct controlled by the Municipality or Provincial Government of British Columbia;
- (j) "Losses" means direct and indirect losses, damages, costs and expenses (including without limitation, interest, penalties and amounts paid in settlement but does not include legal and professional fees and disbursements);

- (k) "Mains" means pipes used by Terasen Gas to carry gas for general or collective use for the purposes of Gas Distribution;
- (l) "Municipal Employees" means personnel employed by or engaged by the municipality, including officers, employees, directors, contractors and agents;
- (m) "Municipal Facilities" means any facilities, including highways, sidewalks, conduits, manholes, equipment, machinery, pipes, wires, valves, buildings, structures, signage, bridges, viaducts and other equipment within the Public Places used by the Municipality for the purposes of its public works or municipal operations;
- (n) "Municipal Supervisor" means the Municipal Engineer or other such person designated by the Municipality to receive notices and issue approval as set out in this Agreement;
- (o) "New Work" means any installation, construction, repair, maintenance, alteration, extension or removal work of the Company Facilities in Public Places except:
  - (i) routine maintenance and repair of the Company Facilities that does not involve any cutting of asphalted road surface;
  - (ii) installation or repair of Service Lines whether or not such installation or repair involves cutting of asphalted road service; or
  - (iii) emergency work;but notwithstanding such exceptions, New Work shall include any installation, construction or removal of the Company Facilities in Public Places that are planned to disturb underground Municipal Facilities;
- (p) "Pipeline Markers" means post, signage or any similar means of identification used to show the general location of Transmission Pipelines and distribution pipelines or Terasen Gas Rights of Way;
- (q) "Planned Facilities" means those facilities not yet constructed but which have been identified by way of documented plans for the works of the Municipality, for works of third parties, where such works are identified by documented plans approved by the Municipality, or for works of Terasen Gas submitted to the Municipality subject to Municipal approval;
- (r) "Public Places" means any public thoroughfare, highway, road, street, lane, alley, trail, square, park, bridge, right of way, viaduct, subway, watercourse or other public place in the Municipality;
- (s) "Service Line" means that portion of Terasen Gas' gas distribution system extending from a Main to the inlet of a meter set and, for the purposes of this Agreement, includes a service header and service stubs;

- (t) "Terasen Gas Employees" means personnel employed by or engaged by Terasen Gas including officers, employees, directors, contractors, and agents;
- (u) "Transmission Pipeline" means a pipeline of Terasen Gas having an operating pressure in excess of 2071 kilopascals (300 psi); and
- (v) "Utilities" means the facilities or operations of any water, waste water, sewer, telecommunications, energy, cable service or similar service provider located in Public Places within the Municipality.

## 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) words in the singular include the plural, words importing a corporate entity include individuals, and vice versa;
- (c) in calculating time where the agreement refers to "at least" or "not less than" 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" a number of days, Saturdays, Sundays and holidays must be excluded;
- (d) 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.

## 3. OBLIGATION TO ACT IN GOOD FAITH

Terasen Gas 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.

Terasen Gas 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.

## 4. TERASEN GAS RIGHTS TO ACCESS & USE PUBLIC PLACES

The Municipality hereby acknowledges Terasen Gas' rights to:

- (a) develop, construct, install, maintain or remove Company Facilities on, over, in and under Public Places in the Municipality;
- (b) enter on Public Places from time to time as may be reasonably necessary for the purpose of maintaining, repairing, or operating the Company's Facilities;
- (c) place pipeline identification markers within Public Places where a Transmission Pipeline or Distribution Pipeline crosses or is otherwise within a Public Place;

subject to terms and conditions defined in this Agreement.

## **5. TERASEN GAS COMPLIANCE WITH STANDARDS FOR USE OF PUBLIC PLACES**

### **5.1 Non-discriminatory Standards for Terasen Gas**

In its use of Public Places, Terasen Gas shall comply with all Federal and Provincial laws, regulations and codes and shall comply with all Municipal bylaws, standards and policies except that Terasen Gas shall not have to comply with such Municipal bylaws, standards and policies that:

- (a) conflict with terms of this Agreement or limit any rights or concessions granted to Terasen Gas by the Municipality under this Agreement; or
- (b) conflict with other legislation governing Terasen Gas.

Further, where the Municipality has established requirements and standards for work in Public Places, the Municipality shall apply them in a fair, reasonable and non-discriminatory manner consistent with the manner that the Municipality establishes requirements on other Utilities.

### **5.2 Provide emergency contacts.**

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

### **5.3 Assist with facility locates**

Terasen Gas 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 unless the reason for the request is the result of an emergency; in which case the information shall be provided forthwith. Terasen Gas shall provide gas locations from Terasen Gas records. Terasen Gas shall perform on site facility locates in accordance with the *Safety Standards Act – Gas Safety Regulations Section 39*.

## 6. TERASEN GAS WORK OBLIGATIONS:

### 6.1 Notices - General Requirements

#### 6.1.1. Notice for New Work

For New Work, if required by the Municipality, Terasen Gas shall give notice to the Municipality or such officer or official thereof who has been designated from time to time by the Municipality that it intends to perform such New Work. The Notice shall include:

- (a) a plan and specifications showing the proposed location and dimensions of the New Work;
- (b) Terasen Gas' plans for the restoration of the Public Place affected by the New Work if Terasen Gas' restoration plans are different from those set out in Section 6.4.2 of this Agreement;
- (c) the name of a Terasen Gas representative who may be contacted for more information;
- (d) projected commencement and completion dates; and
- (e) such other information relevant to the New Work as the Municipality may reasonably request from time to time.

#### 6.1.2. Exception for Emergency

Where Terasen Gas is required to carry out work urgently in the interests of public safety or health or to preserve the safety of property and Company Facilities, Terasen Gas shall not be required to give prior notice but shall do so as soon as possible thereafter.

#### 6.1.3. Municipal Approval for New Work

The Municipality may object to the New Work on the following grounds:

- (a) the proposed location of the New Work conflicts with Planned Facilities; or
- (b) the proposed location or design of the New Work is likely to compromise public safety or does not conform with Municipal bylaws, standards or policies; or
- (c) in instances where Terasen Gas can delay the New Work without compromising the supply, capacity or safety of its Gas Distribution System or its customers' need for gas service and the Municipality intends within the next 3 months to undertake work in the same location and wishes to co-ordinate both work;

by providing Terasen Gas with notice of its objections, provided such objections are reasonable, no more than 10 days after receiving Terasen Gas' notice of New Work. If the Municipality has not provided such notice of its objections to Terasen Gas, or in the case of large and complex New Work, the Municipality has not provided Terasen Gas with a notice to extend the time to reply to Terasen Gas until a stated time, the Municipality shall be deemed to have granted its approval of the New Work. The Municipality shall not otherwise withhold or delay its approval.

In addition, the Municipality may request Terasen Gas to provide the public with notice of the New Work.

#### **6.1.4. Work Not to Proceed**

If the Municipality has notified Terasen Gas of its objections or has requested a time extension, no more than 10 days after receiving Terasen Gas' notice of New Work, Terasen Gas shall not proceed with the New Work until Terasen Gas and the Municipality have agreed upon a resolution to the Municipality's objections. If the Municipality and Terasen Gas are unable to agree, then the matter shall be resolved in accordance with Section 17 (Resolution of Disputes).

### **6.2 Notice of Service Lines**

Terasen Gas, if required by the Municipality, shall provide the Municipality with notice of its intent to install, remove or repair Service Lines no less than three (3) days prior to commencement of such work. Terasen Gas' request for the location of the Municipality's utilities shall be deemed to be a notice of Terasen's intent to install, remove or repair Service Lines. The Municipality may object to such work on the same grounds as set out in Subsection 6.1.3 (a) and (b) above by providing Terasen Gas with notice of its objections within two (2) days of receiving Terasen Gas' notice. If the Municipality has not provided such notice of its objections to Terasen Gas, the Municipality shall be deemed to have granted its approval of the installation, removal or repair of the Service Lines. The Municipality shall not otherwise withhold or delay its approval.

### **6.3 Terasen Gas to Secure Locate Information**

Prior to conducting any New Work, Terasen Gas shall locate other Utilities and satisfy itself that it is clear to proceed.

### **6.4 Work Standards**

#### **6.4.1. Specific Work Requirements Remove Materials**

Terasen Gas shall keep its work sites clean and tidy. Terasen Gas shall remove all rubbish and surplus material from Public Places upon completion of its work.

#### **6.4.2. Restore Surface and Subsurface**

Where Terasen Gas has performed any operations or New Work in a Public Place, Terasen Gas shall restore without unreasonable delay and return such Public Place, as much as reasonably practical, to the condition and use which existed prior to such activity. The restoration will be in accordance with the specifications set out by the Municipality. Such specifications may include the degree and nature of compaction, subsurface structure, surface finish and landscaping required.

Without limiting the generality of this section and by way of example only, the Municipality may require Terasen Gas to restore asphalt and concrete surfaces with a permanent repair or a temporary repair. Should a temporary repair be directed, Terasen Gas or the Municipality at its discretion will subsequently construct a permanent repair in accordance to its usual maintenance/replacement schedule for that area. The cost of permanent and temporary repairs to remediate Highway surfaces will be at the expense of Terasen Gas proportional to the surface area affected by the New Work.

Where Terasen Gas is required to cut pavement on a Public Place such cuts and restoration will be limited to less than 1.5 meters unless at the discretion of Terasen Gas a larger excavation is warranted due to the depth or size of the pipe or requirements of the Workers' Compensation Board or other relevant Provincial or Federal regulations. Terasen Gas will be responsible for any repairs and maintenance of the surface repair for a period of three (3) years. However, where pavement restoration has been conducted by the Municipality, whether or not such work was undertaken to repair cuts on Terasen Gas' behalf, Terasen Gas shall not be responsible for the repairs or maintenance of the surface repair.

#### **6.4.3. Repair Damage to Municipal Facilities**

To the extent that any of the work being done by Terasen Gas 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 Terasen Gas

shall restore in accordance with Section 6.4.2 above, Terasen Gas will report such damage and reimburse the Municipality for its costs arising from such damage calculated in accordance with Section 14.1 below. Where such damage results directly from inaccurate or incomplete information supplied by Municipality, and Terasen Gas has complied with all applicable laws and regulations, and with instructions supplied by the Municipality, then the cost of repairing damaged Municipal Facilities or Public Places will be at the expense of the Municipality.

### **6.5 Conformity Requirement**

The New Work must be carried out in conformity with Terasen Gas' notice of New Work except that Terasen Gas may make in-field design changes when carrying out the New Work to accommodate field conditions which could not have been reasonably foreseen by Terasen Gas. If such in-field conditions materially impact Terasen Gas' plans for restoration or materially change the impact of Terasen Gas' work on Municipal Facilities, other than in respect of projected commencement and completion dates, Terasen Gas shall notify the Municipality.

### **6.6 Non-Compliance**

If Company Facilities located in Public Places are later found not to be located in compliance with Terasen Gas' notice of New Work provided in accordance with Section 6.1 and 6.5, then any alteration or upgrading required to bring them into compliance with such notice will be at the expense of Terasen Gas provided that the work has not been altered, damaged or modified by the Municipality or a third party.

## **7. COMPANY FACILITY CHANGES REQUIRED BY THE MUNICIPALITY**

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

Before any Public Places containing Company Facilities may be legally closed or alienated by the Municipality, the Municipality shall promptly notify Terasen Gas of its intent to close or alienate such Public Places and either:

- (a) grant Terasen Gas a registered statutory right of way in a form satisfactory to Terasen Gas so as to maintain Terasen Gas' right to use the land; or
- (b) request Terasen Gas to remove and (if possible and practicable) relocate those Company Facilities affected by such closure or alienation at the sole cost of the Municipality.

If the Public Places are expropriated by an expropriating authority and Terasen Gas is required to remove its facilities then the Municipality shall use reasonable efforts to seek compensation from such expropriating authority to compensate Terasen Gas for its relocation costs. If the Municipality is unable to obtain such compensation despite its reasonable efforts, then the Municipality shall have no further liability to Terasen Gas.

The Municipality shall not be required to incur any legal expenses without the approval and reimbursement by Terasen Gas in order to obtain such compensation for Terasen Gas.

## **8. FACILITY CHANGES REQUIRED**

### **8.1 By Terasen Gas**

Terasen Gas may provide Notice to the Municipality that it requires Municipal Facilities to be altered, changed or relocated to accommodate its requirements. The Municipality will comply with Terasen Gas's requests to the extent it is reasonably able to do so and with reasonable speed and dispatch after receipt of written request. Terasen Gas agrees to pay for all of the costs for changes to the affected Municipal Facilities.

### **8.2 By the Municipality**

The Municipality may provide Notice to Terasen Gas that it requires Company Facilities to be altered, changed or relocated to accommodate its requirements. Terasen Gas will comply with the Municipality's requests to the extent it is reasonably able to do so and with reasonable speed and dispatch after receipt of written request. The Municipality agrees to pay for all of the costs for changes to the affected Company Facilities.

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

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

The Municipality and Terasen Gas agree to use reasonable efforts in carrying out their construction and maintenance activities in a manner that is responsive to the affect that it may have on the other party, as well as other users of Public Places. Such reasonable efforts include attending the planning meetings described in Section 9.2 below 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.

### **9.2 Communication and Coordination Activities**

At the initiation of the Municipality, representatives of the Municipality, Terasen Gas and other affected Utilities and third parties will meet each year, prior to the construction season, to discuss the parties' anticipated construction activities for that year. Such discussions will include

- (a) the use of common trenching, common utility access facilities and such other common facilities as may be commercially reasonable and comply with operating and safety standards; and
- (b) the consolidation of planned maintenance work where pavement must be cut in order to avoid multiple excavations.

### **9.3 Municipal Planning Lead**

During such annual planning meetings, the Municipality shall lead the planning process for all Utilities and third parties with Planned Facilities in Public Places.

## **10. MUTUAL INDEMNITY**

### **10.1 Indemnity by Terasen Gas**

**10.1.1.** Terasen Gas 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 Terasen Gas in:

- (a) placing, constructing, renewing, altering, repairing, maintaining, removing, extending, operating or using the Company's Facilities on or under any Public Places;
- (b) any breach of this Agreement by Terasen Gas;

except to the extent contributed by negligence or default of the Municipality or the Municipal Employees.

**10.1.2.** This indemnity expressly extends to all acts and omissions of Terasen Gas Employees.

### **10.2 Indemnity by the Municipality**

**10.2.1.** The Municipality indemnifies and protects and saves Terasen Gas 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:

- (a) placing, constructing, renewing, altering, repairing, maintaining, removing, extending, operating or using the Municipal Facilities on or under any Public Places;
- (b) any breach of this Agreement by the Municipality;

except to the extent contributed by the negligence or default of Terasen Gas or Terasen Gas Employees.

**10.2.2.** This indemnity expressly extends to all acts and omissions of Municipal Employees.

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

All property of Terasen Gas kept or stored on the Public Places will be kept or stored at the risk of Terasen Gas. For further certainty, Terasen Gas 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. Terasen Gas accepts its use of Public Places on an "as is" basis.

## **11. OPERATING FEE**

### **11.1 Fee Calculation**

- 11.1.1.** Terasen Gas agrees to pay to the Municipality a fee of three percent (3%) of the amount received by Terasen Gas for provision and distribution of all gas consumed within the Boundary Limits of the Municipality. Such amount will not include any amount received by Terasen Gas for gas supplied or sold for resale.
- 11.1.2.** The Municipality will notify Terasen Gas in writing of any boundary expansion so that new customers can be included as a part of the annual payment fee.
- 11.1.3.** Terasen Gas will be responsible for adding those new customers within the new Municipal boundary upon receipt of such notice from the Municipality and the revised calculation of the fee will commence at that point.

### **11.2 Payment Date and Period**

Payments by Terasen Gas to the Municipality will be made on the first day of March of each year of the Agreement in respect of the amount received by Terasen Gas during that portion of the term of this Agreement which is in the immediately preceding calendar year. By way of example only, payment made on March 1, 2006 will be the amount received during the 2005 calendar year.

### **11.3 BCUC Decision or Provincial Legislation**

In the event that a decision by the BCUC, other than periodic rate changes as a result of commodity, delivery or margin increases or decreases, or new legislation by the Provincial Government, impacts the operating fee being paid to the Municipality so as to increase it or decrease it by more than 5% annually at the time of the decision or in subsequent years, the parties shall negotiate a new operating fee formula which best reflects the revenue stream received by the Municipality under this Agreement. For greater certainty, the parties acknowledge that a change to the BCUC's decision that Terasen Gas shall provide the agency billing and collections service for marketers on a mandatory basis, as set out in the "Business Rules for Commodity Unbundling dated June

5, 2003 as set out in Appendix A to Letter No. L-25-03, may impact the operating fee being paid to the Municipality.

## **12. OTHER APPROVALS, PERMITS OR LICENSES**

Except as specifically provided in this Agreement, the Municipality will not require Terasen Gas to seek or obtain approvals, permits or licenses. The Municipality will not charge or levy against Terasen Gas any approval, license, inspection or permit fee, or charge of any other type, that in any manner is related to or associated with Terasen Gas constructing, installing, renewing, altering, repairing, maintaining or operating Company Facilities on any Public Places or in any manner related to or associated with Terasen Gas exercising the powers and rights granted to it by this Agreement.

If the Municipality does charge or levy fees or costs against Terasen Gas (other than for repair of damage to the Municipal Facilities or Public Places in accordance with Section 14) then Terasen Gas may reduce the annual operating fee payable to the Municipality under Section 11 by an amount equal to such charges, fees or costs.

## **13. MUNICIPAL OBLIGATIONS**

### **13.1 Municipal Work**

**13.1.1.** Before the Municipality undertakes any construction or maintenance activity which is likely to affect a part of the Company Facilities, it must give Terasen Gas notice not less than 10 days before commencing such construction or maintenance activity.

**13.1.2.** Where the Municipality is required to carry out work urgently in the interests of public safety or health or to preserve the safety of property and Municipal Facilities, the Municipality shall not be required to give prior notice but shall do so as soon as possible thereafter.

**13.1.3.** Terasen Gas will be entitled to appoint at its cost a representative to inspect any construction or maintenance activity undertaken by the Municipality. The provisions of this section do not relieve the Municipality of its responsibilities under the *Gas Safety Act*, *Pipeline Act*, and successor legislation, regulations thereunder, or the requirements of the BC Workers' Compensation Board.

**13.1.4.** In addition, the Municipality shall provide Notice to Terasen Gas of any work planned that will be adjacent to, across, over or under a Transmission Pipeline or within a right-of-way for a Transmission Pipeline. To the extent that Terasen Gas requires that permit be issued for construction or other activities within a Transmission Pipeline right-of-way, the Municipality will submit

an application for such a permit in sufficient time for the application to be reviewed and approved by Terasen Gas prior to the commencement of the construction or other activity.

**13.1.5.** The Municipality shall assist Terasen Gas in Terasen Gas' efforts to reduce instances of residences being built over gas lines and other similarly unsafe building practices by third parties.

**13.1.6.** The Municipality shall not interfere with Transmission Pipeline markers.

**13.1.7.** The Municipality shall provide notice to Terasen Gas of any damage caused by the Municipality to Company Facilities or Transmission Pipeline Markers as soon as reasonably possible. To the extent that any of the work being done by the Municipality results in damage to the Company Facilities, the Municipality will report such damage and pay Terasen Gas its costs arising from such damage in accordance with Section 14.1 below. Where such damage results directly from inaccurate or incomplete information supplied by Terasen Gas, and the Municipality has complied with all applicable laws and regulations, and with instructions supplied by Terasen Gas, then the cost of repairing the damaged Company Facilities will be at the expense of Terasen Gas.

**13.1.8.** The Municipality shall notify Terasen Gas of any new bylaws, standards or policies adopted or passed by the Municipality that are likely to affect Terasen Gas' operations in Public Places.

## **14. COSTS AND PAYMENT PROCEDURES**

### **14.1 Definition of Costs**

Wherever one party is required to pay the other party Costs as a result of damage caused by one party to the other's property, the Costs shall be:

- (a) all direct expenses and disbursements incurred to restore such property to as good a state of repair as had existed prior to the damage;
- (b) reasonable administration and overhead charges on labour, equipment and materials;
- (c) such taxes as may be required in the appropriate jurisdiction;
- (d) in the case of loss of gas or re-lights, the cost of the commodity as determined by the length of time that the gas is leaking, size of pipe and hole and the pressure; and

- (e) in the case of water, electrical or sewer, cost of supplying alternate service.

## **14.2 Cost Claim Procedures**

**14.2.1.** Wherever one party is claiming Costs of the other party in regard to any work or issue arising under this Agreement the claiming party shall:

- (a) provide an invoice to the other party no later than one year after incurring Costs;
- (b) provide detailed descriptions of the cost items;
- (c) provide the time period the invoice covers;
- (d) provide a minimum of 21 day terms for payment of the invoice; and
- (e) provide for late payment interest at the rate consistent with the party's policy for charging for late payments, which rate must be reasonable;

**14.2.2.** The party claiming Costs shall have no right of set off for these invoices against any amounts otherwise payable to the other party, except to the extent so approved in writing by the other party.

## **14.3 Cost Verification Procedures**

**14.3.1.** Wherever either party is the recipient of or is claiming Costs and or fees that party may at its own discretion request from the other party:

- (a) Certification by an officer or designated representative verifying the calculations and computations of the Costs and or fees,
- (b) An internal review or audit of the calculations and computations of the Costs and or fees, with the internal review or audit to be carried out by a person appointed by the party being asked to provide the review;
- (c) An independent external audit of the calculations and computations of the costs and fees, with the independent external auditor being a Chartered or a Certified General Accountant in British Columbia appointed by the party requesting the external audit;

**14.3.2.** The costs of this cost verification process shall be borne by the party who is required to supply the information except as otherwise specified providing the frequency of such requests does not exceed once per calendar year. For all future cases which occur in that

calendar year, the costs of such further verifications shall be at the expense of the requester.

Where the independent external audit finds and establishes errors representing a variance greater than 2% of the originally calculated value in favour of the party claiming Costs, the costs shall be at the expense of the party supplying the information. Once an error has been verified, payment or refund of the amount found to be in error will be made within 21 days.

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

### **15.1 Agreement Not Binding Until Approved**

**15.1.1.** This Agreement will not come into effect and does not bind the parties until the following conditions have been fulfilled:

- (a) Terasen Gas has obtained such approvals of this Agreement, or its terms, as may be required under the *Utilities Commission Act*; and
- (b) the Municipality 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.

**15.1.2.** Upon executing this Agreement the parties shall make reasonable efforts to fulfill the conditions set out in this section. If the conditions are not fulfilled or waived within one (1) year of the execution of this Agreement, then the obligation on the parties to make reasonable efforts to fulfill the conditions will terminate, and neither party will have any further obligation to the other under this Agreement.

### **15.2 Termination of Franchise Agreement**

If not already terminated or expired, any franchise and operating agreement between the Municipality and Terasen Gas is terminated upon the effective date of this Agreement.

### **15.3 Term of Agreement**

This Agreement will have a term of 20 years from the date that it comes into effect and after the initial term shall continue indefinitely unless terminated in accordance with Section 15.4 below.

### **15.4 Termination of Agreement**

**15.4.1.** This Agreement may be terminated by the Municipality upon the occurrence of any of the following events:

- (a) Terasen Gas admits its inability to pay its debts generally as they become due or otherwise acknowledges its insolvency;
- (b) Terasen Gas starts proceedings or takes any action to commence or executes an agreement to authorize its participation in any proceeding:
  - (i) seeking to adjudicate it bankrupt or insolvent;
  - (ii) seeking liquidation, reorganization, arrangement, protection, relief or composition of it or any of its property or debt or making a proposal with respect to it under any law relating to bankruptcy, insolvency, reorganization or compromise of debts or other similar laws; or
  - (iii) seeking the appointment of a receiver, trustee, agent, custodian or other similar official for it or for any substantial part of its assets or if a creditor seeks the appointment of a receiver, trustee, agent, custodian or other similar official for any substantial part of its assets; and such proceeding is not dismissed, discharged, stayed or restrained within 20 days of the Municipality becoming aware of it.

**15.4.2.** Either party may terminate if other breaches any term, provision, obligation hereunder and such breach, is a material major 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 default if such matter is in dispute or has been referred to commercial arbitration, the outcome of which is pending, or is being resolved in good faith compliance with the dispute resolution and arbitration processes of this Agreement.

**15.4.3.** After the initial twenty (20) year term of this Agreement, either party may terminate this Agreement by giving the other not less than one (1) year's notice of termination.

## **15.5 Amendments and Waivers**

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 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.

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

Upon one party giving Notice to the other of termination of this Agreement, the parties shall negotiate in good faith to enter into a new agreement with respect to the terms and conditions under which Terasen Gas may use the Public Places. In the event that such negotiations break down and in the opinion of one or other of the parties acting in good faith that settlement is unlikely, either party may give Notice to the other of its intention to apply to the BCUC to seek resolution of the terms and conditions applicable to Terasen Gas' continued operations and construction activities within the Municipality.

#### **15.7 Continuity In The Event No Agreement Is Settled**

Upon the expiry or termination of this Agreement, if a new agreement has not been ratified or if the BCUC has not imposed the terms and conditions under which Terasen Gas may use the Public Places, the following provisions will apply:

- (a) The Company Facilities within the boundary limits of the Municipality both before and after the date of this Agreement, shall remain Terasen Gas' property and shall remain in the Public Places.
- (b) The Company Facilities may continue to be used by Terasen Gas for the purposes of its business, or removed from Public Places in whole or in part at Terasen Gas' sole discretion.
- (c) Terasen Gas may continue to use Public Places within the Municipality for the purposes of its business. Terasen Gas' employees, may enter upon all the Public Places within the Boundary Limits of the Municipality to maintain, operate, install, construct, renew, alter, or place Company Facilities; provided that Terasen Gas continues to operate in a manner consistent with the terms and conditions of this Agreement as if the term had been extended except with respect to the payment of the Operating Fee.
- (d) Terasen Gas will with the support of the Municipality take such steps necessary to seek BCUC approvals of the extension of terms and conditions including payment of the operating fee under the expiring agreement during negotiations of a new agreement.
- (e) Should Terasen Gas no longer be authorized or required to pay the operating fee under any Agreement between it and the Municipality or by any order of the BCUC, the Municipality shall be free 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

In the event that 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) Terasen Gas will accept the appointment of such third party as the Municipality's agent or subcontractor to enable such third party to deal directly with Terasen Gas so as to enable the Municipality to comply with the terms, obligations and conditions of this Agreement.

### 16.2 Changes to the Community Charter

In the event that the provisions of the *Community Charter* or other legislation affecting the rights and powers of municipalities change in such a way as to materially, in the opinion of the Municipality, affect municipal powers in respect to matters dealt with in this Agreement,

- (a) the Municipality may within one year of the change coming into effect propose new agreement terms with respect to only those specific changes and Terasen Gas agrees to negotiate such terms; and
- (b) failing satisfactory resolution either of the parties will seek resolution through the Dispute Resolution Process, Section 17.

### 16.3 Changes to the Utilities Commission Act

In the event that the provisions of the *Utilities Commission Act* or other legislation affecting the rights and powers of regulated Utilities change in such a way as to materially, in Terasen Gas' opinion, affect Terasen Gas' powers in respect to matters dealt with in this Agreement,

- (a) Terasen Gas may within one year of the change coming into effect propose new agreement terms with respect to only those specific changes and the Municipality agrees to negotiate such terms; and
- (b) failing satisfactory resolution either of the parties will seek resolution through the Dispute Resolution Process, Section 17.

## 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, 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 or Arbitration**

If the parties fail to resolve the dispute through mediation, the unresolved dispute shall be referred to the BCUC if within its jurisdiction. If the matter is not within the jurisdiction of the BCUC, 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 will allow discovery as required by law in arbitration proceedings.

#### **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.

## **18. GENERAL TERMS & CONDITIONS**

### **18.1 No Liens**

Terasen Gas will do its best to not allow, suffer or permit any liens to be registered against the Company Facilities located in Public Places as a result of the conduct of Terasen Gas. If any such liens are registered, Terasen Gas will start action to clear any lien so registered to the Public Place within ten (10) days of being made aware such lien has been registered. Terasen Gas will keep the Municipality advised as to the status of the lien on a regular basis. In the event that such liens are not removed within ninety (90) days of the registration of such lien, Terasen Gas will pay them in full or post sufficient security to ensure they are discharged from title.

### **18.2 Corporate Authority**

Terasen Gas now warrants, represents and acknowledges that:

- (a) it has the full right, power and authority to enter into this Agreement;
- (b) it is a corporation, duly organized, legally existing and in good standing under the laws of its jurisdiction of incorporation or continuance and is lawfully registered and licensed to do business in British Columbia.

### **18.3 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 venture 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.

### **18.4 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.

### **18.5 Governing Law**

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

### **18.6 General**

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.

### **18.7 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.

### **18.8 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. To the extent permitted by applicable law, the parties hereby waive any provision of law that renders any provision hereof prohibitive or unenforceable in any respect.

### **18.9 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.

### **18.10 Notice**

Any notice or other written communication required, or permitted to be made or given pursuant to this Agreement (the "Notice") 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:

- A) if to the Municipality:

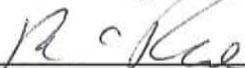
**CITY OF KIMBERLEY**  
340 Spokane Street  
Kimberley, British Columbia V1A 2E8

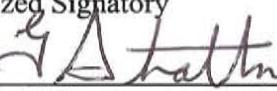
(B) If to Terasen Gas:

**TERASEN GAS INC.**

16705 Fraser Highway  
Surrey, British Columbia V3S 2X7  
Attention: Vice President, Regulatory Affairs

**CITY OF KIMBERLEY**  
by its authorized signatories

  
\_\_\_\_\_  
Authorized Signatory

  
\_\_\_\_\_  
Authorized Signatory

**TERASEN GAS INC.**  
by its authorized signatories

D.L. Stout, Vice-President  
Marketing & Business  
Development

  
\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Authorized Signatory

SIXTH FLOOR, 900 HOWE STREET, BOX 250  
VANCOUVER, B.C. V6Z 2N3 CANADA  
web site: <http://www.bcuc.com>



**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER** C-14-06

TELEPHONE: (604) 660-4700  
BC TOLL FREE: 1-800-663-1385  
FACSIMILE: (604) 660-1102

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

and

An Application by Terasen Gas Inc.  
for Approval of an Operating Agreement  
with the City of Kimberley

**BEFORE:**      L.F. Kelsey, Commissioner                )  
                        L.A. Zaozirny, Commissioner        )      August 10, 2006

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

**WHEREAS:**

- A. On January 12, 2006, Terasen Gas Inc. ("Terasen Gas") applied to the British Columbia Utilities Commission ("the Commission") for approval of an Operating Agreement with the City of Kimberley ("the Municipality") ("the Application"); and
- B. The Franchise Agreement approved by Commission Order No. C-7-83 expired on July 3, 2004; and
- C. By Commission Order No. C-7-05, the term of the Franchise Agreement was extended to December 31, 2005; and
- D. In its Application, Terasen Gas advised that it undertook negotiations with the Union of British Columbia Municipalities ("UBCM") Operating Agreement Committee to establish the terms of a new form of Operating Agreement. In 2005 Terasen Gas successfully negotiated a pro-forma Operating Agreement with the UBCM and using this agreement as a template, negotiated new Operating Agreements with those municipalities with Operating Agreements which expired on December 31, 2005 (collectively the "Municipalities"); and
- E. The Application requests approval of a 20-year Operating Agreement between Terasen Gas and the Municipality from January 1, 2006 to December 31, 2025 that sets out the terms and conditions, including a

**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER**      C-14-06

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3 percent operating fee, under which Terasen Gas shall exercise its rights to use the public places of the Municipality in conducting its business of distributing gas within the Municipality; and

- F. Commission Order No. C-7-03, which approved a District of Salmon Arm and Terasen Gas Operating Agreement and Addendum, directed Terasen Gas to seek a method in future agreements to convert the operating fee to a charge on utility margin; and
- G. The Commission issued Information Request No. 1 to Terasen Gas on February 20, 2006, including questions related to the impacts of the proposed operating fee on rate stability and requesting an explanation of how such a fee based on Terasen Gas revenue fairly compensates the Municipalities for the costs incurred as a result of Terasen Gas' use of the streets and other public places within the Municipalities; and
- H. Terasen Gas responded to the Commission's Information Request No. 1 on March 9, 2006. Terasen Gas provided historical franchise fee information and discussed five operating fee options (Option 1-5) which were all rejected by the Municipalities; and
- I. The Commission issued Information Request No. 2 on March 28, 2006 and Terasen Gas responded on April 13, 2006. In IR No. 2, Terasen Gas analyzed an operating fee calculation using a base year methodology and provided additional information as to why Options 2, 4 and 5 in IR No. 1 were rejected; and
- J. In a letter dated May 9, 2006, the Commission sought further submissions from Terasen Gas, the UBCM and the Municipalities to support or justify how the public interest is better served through an operating fee, as proposed, compared to Option 5, described as a "Hybrid Approach" whereby customers in Rate Classes 1-3 would pay a margin based fee and all other customers would continue to pay a franchise fee based on revenue of 3.09 percent; and

**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER**      C-14-06

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- K. From May 17, 2006 to May 26, 2006 the Commission received submissions from Terasen Gas, the City of Rossland, the District of Hudson's Hope, the City of Kimberley, the City of Fernie, the City of Grand Forks, the Town of Oliver and the City of Cranbrook. Other interested parties such as the City of Kelowna, the City of Nelson and Mr. Greg McCormick also provided submissions to the Commission. Among other things, Terasen Gas and the Municipalities stated that the agreements are "package deals" with a considerable amount of compromise involved, including the fees agreed to within the package, and outlined their significant concerns to the added complexity, costs, communication and need to renegotiate if a margin fee were imposed; and
- L. The Commission has reviewed the Application and the related submissions presented to it and has determined that the Operating Agreement with the City of Kimberley should be approved.

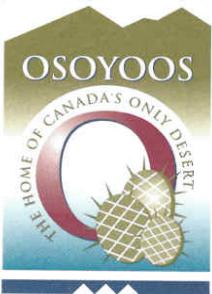
**NOW THEREFORE** the Commission, pursuant to Section 45 of the Utilities Commission Act the Commission approves the Operating Agreement as filed.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 29<sup>th</sup> of August 2006.

BY ORDER

*Original signed by*

L.F. Kelsey  
Commissioner



November 25, 2005

Terasen Gas Inc.  
444 Okanagan Ave. E.  
Penticton, B.C.  
V2A 3K3

ATTENTION: Rob Greno

Dear Mr. Greno:

**Re: Operating Agreement – Terasen Gas and Town of Osoyoos**

Attached please find two copies of the Operating Agreement between Terasen Gas Inc. and the Town of Osoyoos.

We trust that one copy will be returned to us after it is signed by Terasen.

Yours truly,

Janette Van Vianen  
Director of Corporate Services

Cc: Mayor and Council  
CAO  
Director of Finance

## **OPERATING AGREEMENT**

**THIS OPERATING AGREEMENT** (the "Agreement") made this 1st day of JANUARY, 2005. *[Signature]*

BETWEEN:

**TOWN OF OSOYOOS**  
PO Box 3010  
Osoyoos, British Columbia  
V0H 1V0

(hereinafter called the "Municipality")

**OF THE FIRST PART**

AND:

**TERASEN GAS 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

(hereinafter called "Terasen Gas")

**OF THE SECOND PART**

### **RECITALS:**

- A. Whereas by a certificate of public convenience and necessity (CPCN), Terasen Gas was granted the right to construct and operate gas distribution facilities within the Municipality;
- B. And whereas pursuant to the Community Charter, S.B.C. 2003, a Municipal council may, by resolution adopt and enter into a licensing and operating agreement;
- C. And whereas Terasen Gas and the Municipality are the parties to a Franchise or Operating Agreement dated the 12 day of September, 1977 and subsequently renewed by various amending agreements, which will expire on December 31, 2005;
- D. And whereas Terasen Gas and the Municipality wish to enter into this Agreement to clarify and settle the terms and conditions under which Terasen Gas shall exercise its rights to use Public Places in conducting its business of distributing Gas within the Municipality.

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

**1. DEFINITIONS**

For the purposes of this Agreement:

- (a) “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;
- (b) “BCUC” means the British Columbia Utilities Commission or successor having regulatory jurisdiction over natural gas distribution utilities in British Columbia;
- (c) “CPCN” means a Certificate of Public Convenience and Necessity granted by the BCUC which allows Terasen Gas to operate, maintain and install Company Facilities for the distribution of Gas within the Municipality;
- (d) “Company Design” means the installation and design specifications which meet all applicable Provincial and Federal codes, standards and safety requirements for the gas services in the province of British Columbia, as they relate to approved gas works, system improvements, upgrades, connections and system extensions;
- (e) “Company Facilities” means Terasen Gas’ facilities, including pipes, buildings, structures, valves, signage, storage facilities, machinery, vehicles and other equipment used to maintain, operate, renew, repair, construct and monitor a natural Gas Distribution and transmission system;
- (f) “Distribution Pipelines” means pipelines operating at a pressure less than 2071 kilopascals (300 psi);
- (g) “Gas” means natural gas, propane, methane, synthetic gas, liquefied petroleum in a gaseous form or any mixture thereof;
- (h) “Gas Distribution” means fixed equipment, structures, plastic and metal lines and pipe, valves, fittings, appliances and related facilities used or intended for the purpose of conveying, testing, monitoring, distributing, mixing, storing, measuring and delivering Gas and making it available for use with the Municipality;
- (i) “Highway” means street, road, lane, bridge or viaduct controlled by the Municipality or Provincial Government of British Columbia;
- (j) “Losses” means direct and indirect losses, damages, costs and expenses (including without limitation, interest, penalties and amounts paid in settlement but does not include legal and professional fees and disbursements);

- (k) "Mains" means pipes used by Terasen Gas to carry gas for general or collective use for the purposes of Gas Distribution;
- (l) "Municipal Employees" means personnel employed by or engaged by the municipality, including officers, employees, directors, contractors and agents;
- (m) "Municipal Facilities" means any facilities, including highways, sidewalks, conduits, manholes, equipment, machinery, pipes, wires, valves, buildings, structures, signage, bridges, viaducts and other equipment within the Public Places used by the Municipality for the purposes of its public works or municipal operations;
- (n) "Municipal Supervisor" means the Municipal Engineer or other such person designated by the Municipality to receive notices and issue approval as set out in this Agreement;
- (o) "New Work" means any installation, construction, repair, maintenance, alteration, extension or removal work of the Company Facilities in Public Places except:
  - (i) routine maintenance and repair of the Company Facilities that does not involve any cutting of asphalted road surface;
  - (ii) installation or repair of Service Lines whether or not such installation or repair involves cutting of asphalted road service; or
  - (iii) emergency work;but notwithstanding such exceptions, New Work shall include any installation, construction or removal of the Company Facilities in Public Places that are planned to disturb underground Municipal Facilities;
- (p) "Pipeline Markers" means post, signage or any similar means of identification used to show the general location of Transmission Pipelines and distribution pipelines or Terasen Gas Rights of Way;
- (q) "Planned Facilities" means those facilities not yet constructed but which have been identified by way of documented plans for the works of the Municipality, for works of third parties, where such works are identified by documented plans approved by the Municipality, or for works of Terasen Gas submitted to the Municipality subject to Municipal approval;
- (r) "Public Places" means any public thoroughfare, highway, road, street, lane, alley, trail, square, park, bridge, right of way, viaduct, subway, watercourse or other public place in the Municipality;
- (s) "Service Line" means that portion of Terasen Gas' gas distribution system extending from a Main to the inlet of a meter set and, for the purposes of this Agreement, includes a service header and service stubs;

- (t) "Terasen Gas Employees" means personnel employed by or engaged by Terasen Gas including officers, employees, directors, contractors, and agents;
- (u) "Transmission Pipeline" means a pipeline of Terasen Gas having an operating pressure in excess of 2071 kilopascals (300 psi); and
- (v) "Utilities" means the facilities or operations of any water, waste water, sewer, telecommunications, energy, cable service or similar service provider located in Public Places within the Municipality.

## **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) words in the singular include the plural, words importing a corporate entity include individuals, and vice versa;
- (c) in calculating time where the agreement refers to "at least" or "not less than" 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" a number of days, Saturdays, Sundays and holidays must be excluded;
- (d) 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.

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

Terasen Gas 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.

Terasen Gas 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.

## **4. TERASEN GAS RIGHTS TO ACCESS & USE PUBLIC PLACES**

The Municipality hereby acknowledges Terasen Gas' rights to:

- (a) develop, construct, install, maintain or remove Company Facilities on, over, in and under Public Places in the Municipality;
- (b) enter on Public Places from time to time as may be reasonably necessary for the purpose of maintaining, repairing, or operating the Company's Facilities;
- (c) place pipeline identification markers within Public Places where a Transmission Pipeline or Distribution Pipeline crosses or is otherwise within a Public Place;

subject to terms and conditions defined in this Agreement.

## **5. TERASEN GAS COMPLIANCE WITH STANDARDS FOR USE OF PUBLIC PLACES**

### **5.1 Non-discriminatory Standards for Terasen Gas**

In its use of Public Places, Terasen Gas shall comply with all Federal and Provincial laws, regulations and codes and shall comply with all Municipal bylaws, standards and policies except that Terasen Gas shall not have to comply with such Municipal bylaws, standards and policies that:

- (a) conflict with terms of this Agreement or limit any rights or concessions granted to Terasen Gas by the Municipality under this Agreement; or
- (b) conflict with other legislation governing Terasen Gas.

Further, where the Municipality has established requirements and standards for work in Public Places, the Municipality shall apply them in a fair, reasonable and non-discriminatory manner consistent with the manner that the Municipality establishes requirements on other Utilities.

### **5.2 Provide emergency contacts.**

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

### **5.3 Assist with facility locates**

Terasen Gas 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 unless the reason for the request is the result of an emergency; in which case the information shall be provided forthwith. Terasen Gas shall provide gas locations from Terasen Gas records. Terasen Gas shall perform on site facility locates in accordance with the *Safety Standards Act – Gas Safety Regulations Section 39*.

## 6. TERASEN GAS WORK OBLIGATIONS:

### 6.1 Notices - General Requirements

#### 6.1.1. Notice for New Work

For New Work, if required by the Municipality, Terasen Gas shall give notice to the Municipality or such officer or official thereof who has been designated from time to time by the Municipality that it intends to perform such New Work. The Notice shall include:

- (a) a plan and specifications showing the proposed location and dimensions of the New Work;
- (b) Terasen Gas' plans for the restoration of the Public Place affected by the New Work if Terasen Gas' restoration plans are different from those set out in Section 6.4.2 of this Agreement;
- (c) the name of a Terasen Gas representative who may be contacted for more information;
- (d) projected commencement and completion dates; and
- (e) such other information relevant to the New Work as the Municipality may reasonably request from time to time.

#### 6.1.2. Exception for Emergency

Where Terasen Gas is required to carry out work urgently in the interests of public safety or health or to preserve the safety of property and Company Facilities, Terasen Gas shall not be required to give prior notice but shall do so as soon as possible thereafter.

#### 6.1.3. Municipal Approval for New Work

The Municipality may object to the New Work on the following grounds:

- (a) the proposed location of the New Work conflicts with Planned Facilities; or
- (b) the proposed location or design of the New Work is likely to compromise public safety or does not conform with Municipal bylaws, standards or policies; or
- (c) in instances where Terasen Gas can delay the New Work without compromising the supply, capacity or safety of its Gas Distribution System or its customers' need for gas service and the Municipality intends within the next 3 months to undertake work in the same location and wishes to co-ordinate both work;

by providing Terasen Gas with notice of its objections, provided such objections are reasonable, no more than 10 days after receiving Terasen Gas' notice of New Work. If the Municipality has not provided such notice of its objections to Terasen Gas, or in the case of large and complex New Work, the Municipality has not provided Terasen Gas with a notice to extend the time to reply to Terasen Gas until a stated time, the Municipality shall be deemed to have granted its approval of the New Work. The Municipality shall not otherwise withhold or delay its approval.

In addition, the Municipality may request Terasen Gas to provide the public with notice of the New Work.

#### **6.1.4. Work Not to Proceed**

If the Municipality has notified Terasen Gas of its objections or has requested a time extension, no more than 10 days after receiving Terasen Gas' notice of New Work, Terasen Gas shall not proceed with the New Work until Terasen Gas and the Municipality have agreed upon a resolution to the Municipality's objections. If the Municipality and Terasen Gas are unable to agree, then the matter shall be resolved in accordance with Section 17 (Resolution of Disputes).

### **6.2 Notice of Service Lines**

Terasen Gas, if required by the Municipality, shall provide the Municipality with notice of its intent to install, remove or repair Service Lines no less than three (3) days prior to commencement of such work. Terasen Gas' request for the location of the Municipality's utilities shall be deemed to be a notice of Terasen's intent to install, remove or repair Service Lines. The Municipality may object to such work on the same grounds as set out in Subsection 6.1.3 (a) and (b) above by providing Terasen Gas with notice of its objections within two (2) days of receiving Terasen Gas' notice. If the Municipality has not provided such notice of its objections to Terasen Gas, the Municipality shall be deemed to have granted its approval of the installation, removal or repair of the Service Lines. The Municipality shall not otherwise withhold or delay its approval.

### **6.3 Terasen Gas to Secure Locate Information**

Prior to conducting any New Work, Terasen Gas shall locate other Utilities and satisfy itself that it is clear to proceed.

### **6.4 Work Standards**

#### **6.4.1. Specific Work Requirements Remove Materials**

Terasen Gas shall keep its work sites clean and tidy. Terasen Gas shall remove all rubbish and surplus material from Public Places upon completion of its work.

#### **6.4.2. Restore Surface and Subsurface**

Where Terasen Gas has performed any operations or New Work in a Public Place, Terasen Gas shall restore without unreasonable delay and return such Public Place, as much as reasonably practical, to the condition and use which existed prior to such activity. The restoration will be in accordance with the specifications set out by the Municipality. Such specifications may include the degree and nature of compaction, subsurface structure, surface finish and landscaping required.

Without limiting the generality of this section and by way of example only, the Municipality may require Terasen Gas to restore asphalt and concrete surfaces with a permanent repair or a temporary repair. Should a temporary repair be directed, Terasen Gas or the Municipality at its discretion will subsequently construct a permanent repair in accordance to its usual maintenance/replacement schedule for that area. The cost of permanent and temporary repairs to remediate Highway surfaces will be at the expense of Terasen Gas proportional to the surface area affected by the New Work.

Where Terasen Gas is required to cut pavement on a Public Place such cuts and restoration will be limited to less than 1.5 meters unless at the discretion of Terasen Gas a larger excavation is warranted to due the depth or size of the pipe or requirements of the Workers' Compensation Board or other relevant Provincial or Federal regulations. Terasen Gas will be responsible for any repairs and maintenance of the surface repair for a period of three (3) years. However, where pavement restoration has been conducted by the Municipality, whether or not such work was undertaken to repair cuts on Terasen Gas' behalf, Terasen Gas shall not be responsible for the repairs or maintenance of the surface repair.

#### **6.4.3. Repair Damage to Municipal Facilities**

To the extent that any of the work being done by Terasen Gas 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 Terasen Gas shall restore in accordance with Section 6.4.2 above, Terasen Gas will report such damage and reimburse the Municipality for its costs arising from such damage calculated in accordance with Section 14.1 below. Where such damage results directly from inaccurate or incomplete information supplied by Municipality, and Terasen Gas has complied with all applicable laws and regulations, and with instructions supplied by the Municipality, then the cost of repairing damaged Municipal Facilities or Public Places will be at the expense of the Municipality.

### **6.5 Conformity Requirement**

The New Work must be carried out in conformity with Terasen Gas' notice of New Work except that Terasen Gas may make in-field design changes when carrying out the New

Work to accommodate field conditions which could not have been reasonably foreseen by Terasen Gas. If such in-field conditions materially impact Terasen Gas' plans for restoration or materially change the impact of Terasen Gas' work on Municipal Facilities, other than in respect of projected commencement and completion dates, Terasen Gas shall notify the Municipality.

#### **6.6 Non-Compliance**

If Company Facilities located in Public Places are later found not to be located in compliance with Terasen Gas' notice of New Work provided in accordance with Section 6.1 and 6.5, then any alteration or upgrading required to bring them into compliance with such notice will be at the expense of Terasen Gas provided that the work has not been altered, damaged or modified by the Municipality or a third party.

### **7. COMPANY FACILITY CHANGES REQUIRED BY THE MUNICIPALITY**

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

Before any Public Places containing Company Facilities may be legally closed or alienated by the Municipality, the Municipality shall promptly notify Terasen Gas of its intent to close or alienate such Public Places and either:

- (a) grant Terasen Gas a registered statutory right of way in a form satisfactory to Terasen Gas so as to maintain Terasen Gas' right to use the land; or
- (b) request Terasen Gas to remove and (if possible and practicable) relocate those Company Facilities affected by such closure or alienation at the sole cost of the Municipality.

If the Public Places are expropriated by an expropriating authority and Terasen Gas is required to remove its facilities then the Municipality shall use reasonable efforts to seek compensation from such expropriating authority to compensate Terasen Gas for its relocation costs. If the Municipality is unable to obtain such compensation despite its reasonable efforts, then the Municipality shall have no further liability to Terasen Gas. The Municipality shall not be required to incur any legal expenses without the approval and reimbursement by Terasen Gas in order to obtain such compensation for Terasen Gas.

### **8. FACILITY CHANGES REQUIRED**

#### **8.1 By Terasen Gas**

Terasen Gas may provide Notice to the Municipality that it requires Municipal Facilities to be altered, changed or relocated to accommodate its requirements. The Municipality will comply with Terasen Gas's requests to the extent it is reasonably able to do so and

with reasonable speed and dispatch after receipt of written request. Terasen Gas agrees to pay for all of the costs for changes to the affected Municipal Facilities.

### **8.2 By the Municipality**

The Municipality may provide Notice to Terasen Gas that it requires Company Facilities to be altered, changed or relocated to accommodate its requirements. Terasen Gas will comply with the Municipality's requests to the extent it is reasonably able to do so and with reasonable speed and dispatch after receipt of written request. The Municipality agrees to pay for all of the costs for changes to the affected Company Facilities.

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

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

The Municipality and Terasen Gas agree to use reasonable efforts in carrying out their construction and maintenance activities in a manner that is responsive to the affect that it may have on the other party, as well as other users of Public Places. Such reasonable efforts include attending the planning meetings described in Section 9.2 below 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.

### **9.2 Communication and Coordination Activities**

At the initiation of the Municipality, representatives of the Municipality, Terasen Gas and other affected Utilities and third parties will meet each year, prior to the construction season, to discuss the parties' anticipated construction activities for that year. Such discussions will include

- (a) the use of common trenching, common utility access facilities and such other common facilities as may be commercially reasonable and comply with operating and safety standards; and
- (b) the consolidation of planned maintenance work where pavement must be cut in order to avoid multiple excavations.

### **9.3 Municipal Planning Lead**

During such annual planning meetings, the Municipality shall lead the planning process for all Utilities and third parties with Planned Facilities in Public Places.

## **10. MUTUAL INDEMNITY**

### **10.1 Indemnity by Terasen Gas**

- 10.1.1.** Terasen Gas 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 Terasen Gas in:

- (a) placing, constructing, renewing, altering, repairing, maintaining, removing, extending, operating or using the Company's Facilities on or under any Public Places;
- (b) any breach of this Agreement by Terasen Gas;

except to the extent contributed by negligence or default of the Municipality or the Municipal Employees.

**10.1.2.** This indemnity expressly extends to all acts and omissions of Terasen Gas Employees.

#### **10.2 Indemnity by the Municipality**

**10.2.1.** The Municipality indemnifies and protects and saves Terasen Gas 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:

- (a) placing, constructing, renewing, altering, repairing, maintaining, removing, extending, operating or using the Municipal Facilities on or under any Public Places;
- (b) any breach of this Agreement by the Municipality;

except to the extent contributed by the negligence or default of Terasen Gas or Terasen Gas Employees.

**10.2.2.** This indemnity expressly extends to all acts and omissions of Municipal Employees.

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

All property of Terasen Gas kept or stored on the Public Places will be kept or stored at the risk of Terasen Gas. For further certainty, Terasen Gas 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. Terasen Gas accepts its use of Public Places on an "as is" basis.

### **11. OPERATING FEE**

#### **11.1 Fee Calculation**

**11.1.1.** Terasen Gas agrees to pay to the Municipality a fee of three percent (3%) of the amount received by Terasen Gas for provision

and distribution of all gas consumed within the Boundary Limits of the Municipality. Such amount will not include any amount received by Terasen Gas for gas supplied or sold for resale.

**11.1.2.** The Municipality will notify Terasen Gas in writing of any boundary expansion so that new customers can be included as a part of the annual payment fee.

**11.1.3.** Terasen Gas will be responsible for adding those new customers within the new Municipal boundary upon receipt of such notice from the Municipality and the revised calculation of the fee will commence at that point.

## **11.2 Payment Date and Period**

Payments by Terasen Gas to the Municipality will be made on the first day of March of each year of the Agreement in respect of the amount received by Terasen Gas during that portion of the term of this Agreement which is in the immediately preceding calendar year. By way of example only, payment made on March 1, 2006 will be the amount received during the 2005 calendar year.

## **11.3 BCUC Decision or Provincial Legislation**

In the event that a decision by the BCUC, other than periodic rate changes as a result of commodity, delivery or margin increases or decreases, or new legislation by the Provincial Government, impacts the operating fee being paid to the Municipality so as to increase it or decrease it by more than 5% annually at the time of the decision or in subsequent years, the parties shall negotiate a new operating fee formula which best reflects the revenue stream received by the Municipality under this Agreement. For greater certainty, the parties acknowledge that a change to the BCUC's decision that Terasen Gas shall provide the agency billing and collections service for marketers on a mandatory basis, as set out in the "Business Rules for Commodity Unbundling dated June 5, 2003 as set out in Appendix A to Letter No. L-25-03, may impact the operating fee being paid to the Municipality.

## **12. OTHER APPROVALS, PERMITS OR LICENSES**

Except as specifically provided in this Agreement, the Municipality will not require Terasen Gas to seek or obtain approvals, permits or licenses. The Municipality will not charge or levy against Terasen Gas any approval, license, inspection or permit fee, or charge of any other type, that in any manner is related to or associated with Terasen Gas constructing, installing, renewing, altering, repairing, maintaining or operating Company Facilities on any Public Places or in any manner related to or associated with Terasen Gas exercising the powers and rights granted to it by this Agreement.

If the Municipality does charge or levy fees or costs against Terasen Gas (other than for repair of damage to the Municipal Facilities or Public Places in accordance with Section

14) then Terasen Gas may reduce the annual operating fee payable to the Municipality under Section 11 by an amount equal to such charges, fees or costs.

## 13. MUNICIPAL OBLIGATIONS

### 13.1 Municipal Work

- 13.1.1. Before the Municipality undertakes any construction or maintenance activity which is likely to affect a part of the Company Facilities, it must give Terasen Gas notice not less than 10 days before commencing such construction or maintenance activity.
- 13.1.2. Where the Municipality is required to carry out work urgently in the interests of public safety or health or to preserve the safety of property and Municipal Facilities, the Municipality shall not be required to give prior notice but shall do so as soon as possible thereafter.
- 13.1.3. Terasen Gas will be entitled to appoint at its cost a representative to inspect any construction or maintenance activity undertaken by the Municipality. The provisions of this section do not relieve the Municipality of its responsibilities under the *Gas Safety Act*, *Pipeline Act*, and successor legislation, regulations thereunder, or the requirements of the BC Workers' Compensation Board.
- 13.1.4. In addition, the Municipality shall provide Notice to Terasen Gas of any work planned that will be adjacent to, across, over or under a Transmission Pipeline or within a right-of-way for a Transmission Pipeline. To the extent that Terasen Gas requires that permit be issued for construction or other activities within a Transmission Pipeline right-of-way, the Municipality will submit an application for such a permit in sufficient time for the application to be reviewed and approved by Terasen Gas prior to the commencement of the construction or other activity.
- 13.1.5. The Municipality shall assist Terasen Gas in Terasen Gas' efforts to reduce instances of residences being built over gas lines and other similarly unsafe building practices by third parties.
- 13.1.6. The Municipality shall not interfere with Transmission Pipeline markers.
- 13.1.7. The Municipality shall provide notice to Terasen Gas of any damage caused by the Municipality to Company Facilities or Transmission Pipeline Markers as soon as reasonably possible. To the extent that any of the work being done by the Municipality results in damage to the Company Facilities, the Municipality will

report such damage and pay Terasen Gas its costs arising from such damage in accordance with Section 14.1 below. Where such damage results directly from inaccurate or incomplete information supplied by Terasen Gas, and the Municipality has complied with all applicable laws and regulations, and with instructions supplied by Terasen Gas, then the cost of repairing the damaged Company Facilities will be at the expense of Terasen Gas.

- 13.1.8.** The Municipality shall notify Terasen Gas of any new bylaws, standards or policies adopted or passed by the Municipality that are likely to affect Terasen Gas' operations in Public Places.

## **14. COSTS AND PAYMENT PROCEDURES**

### **14.1 Definition of Costs**

Wherever one party is required to pay the other party Costs as a result of damage caused by one party to the other's property, the Costs shall be:

- (a) all direct expenses and disbursements incurred to restore such property to as good a state of repair as had existed prior to the damage;
- (b) reasonable administration and overhead charges on labour, equipment and materials;
- (c) such taxes as may be required in the appropriate jurisdiction;
- (d) in the case of loss of gas or re-lights, the cost of the commodity as determined by the length of time that the gas is leaking, size of pipe and hole and the pressure; and
- (e) in the case of water, electrical or sewer, cost of supplying alternate service.

### **14.2 Cost Claim Procedures**

**14.2.1.** Wherever one party is claiming Costs of the other party in regard to any work or issue arising under this Agreement the claiming party shall:

- (a) provide an invoice to the other party no later than one year after incurring Costs;
- (b) provide detailed descriptions of the cost items;
- (c) provide the time period the invoice covers;
- (d) provide a minimum of 21 day terms for payment of the invoice; and

- (e) provide for late payment interest at the rate consistent with the party's policy for charging for late payments, which rate must be reasonable;

**14.2.2.** The party claiming Costs shall have no right of set off for these invoices against any amounts otherwise payable to the other party, except to the extent so approved in writing by the other party.

#### **14.3 Cost Verification Procedures**

**14.3.1.** Wherever either party is the recipient of or is claiming Costs and or fees that party may at its own discretion request from the other party:

- (a) Certification by an officer or designated representative verifying the calculations and computations of the Costs and or fees,
- (b) An internal review or audit of the calculations and computations of the Costs and or fees, with the internal review or audit to be carried out by a person appointed by the party being asked to provide the review;
- (c) An independent external audit of the calculations and computations of the costs and fees, with the independent external auditor being a Chartered or a Certified General Accountant in British Columbia appointed by the party requesting the external audit;

**14.3.2.** The costs of this cost verification process shall be borne by the party who is required to supply the information except as otherwise specified providing the frequency of such requests does not exceed once per calendar year. For all future cases which occur in that calendar year, the costs of such further verifications shall be at the expense of the requester.

Where the independent external audit finds and establishes errors representing a variance greater than 2% of the originally calculated value in favour of the party claiming Costs, the costs shall be at the expense of the party supplying the information. Once an error has been verified, payment or refund of the amount found to be in error will be made within 21 days.

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

#### **15.1 Agreement Not Binding Until Approved**

**15.1.1.** This Agreement will not come into effect and does not bind the parties until the following conditions have been fulfilled:

- (a) Terasen Gas has obtained such approvals of this Agreement, or its terms, as may be required under the *Utilities Commission Act*; and
- (b) the Municipality 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.

**15.1.2.** Upon executing this Agreement the parties shall make reasonable efforts to fulfill the conditions set out in this section. If the conditions are not fulfilled or waived within one (1) year of the execution of this Agreement, then the obligation on the parties to make reasonable efforts to fulfill the conditions will terminate, and neither party will have any further obligation to the other under this Agreement.

## **15.2 Termination of Franchise Agreement**

If not already terminated or expired, any franchise and operating agreement between the Municipality and Terasen Gas is terminated upon the effective date of this Agreement.

## **15.3 Term of Agreement**

This Agreement will have a term of 20 years from the date that it comes into effect and after the initial term shall continue indefinitely unless terminated in accordance with Section 15.4 below.

## **15.4 Termination of Agreement**

**15.4.1.** This Agreement may be terminated by the Municipality upon the occurrence of any of the following events:

- (a) Terasen Gas admits its inability to pay its debts generally as they become due or otherwise acknowledges its insolvency;
- (b) Terasen Gas starts proceedings or takes any action to commence or executes an agreement to authorize its participation in any proceeding:
  - (i) seeking to adjudicate if bankrupt or insolvent;
  - (ii) seeking liquidation, reorganization, arrangement, protection, relief or composition of it or any of its property or debt or making a proposal with respect to it under any law relating to bankruptcy, insolvency, reorganization or compromise of debts or other similar laws; or
  - (iii) seeking the appointment of a receiver, trustee, agent, custodian or other similar official for it or for any

substantial part of its assets or if a creditor seeks the appointment of a receiver, trustee, agent, custodian or other similar official for any substantial part of its assets; and such proceeding is not dismissed, discharged, stayed or restrained within 20 days of the Municipality becoming aware of it.

- 15.4.2. Either party may terminate if other breaches any term, provision, obligation hereunder and such breach, is a material major 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 default if such matter is in dispute or has been referred to commercial arbitration, the outcome of which is pending, or is being resolved in good faith compliance with the dispute resolution and arbitration processes of this Agreement.
- 15.4.3. After the initial twenty (20) year term of this Agreement, either party may terminate this Agreement by giving the other not less than one (1) year's notice of termination.

## **15.5 Amendments and Waivers**

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 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.

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

Upon one party giving Notice to the other of termination of this Agreement, the parties shall negotiate in good faith to enter into a new agreement with respect to the terms and conditions under which Terasen Gas may use the Public Places. In the event that such negotiations break down and in the opinion of one or other of the parties acting in good faith that settlement is unlikely, either party may give Notice to the other of its intention to apply to the BCUC to seek resolution of the terms and conditions applicable to Terasen Gas' continued operations and construction activities within the Municipality.

### **15.7 Continuity In The Event No Agreement Is Settled**

Upon the expiry or termination of this Agreement, if a new agreement has not been ratified or if the BCUC has not imposed the terms and conditions under which Terasen Gas may use the Public Places, the following provisions will apply:

- (a) The Company Facilities within the boundary limits of the Municipality both before and after the date of this Agreement, shall remain Terasen Gas' property and shall remain in the Public Places.
- (b) The Company Facilities may continue to be used by Terasen Gas for the purposes of its business, or removed from Public Places in whole or in part at Terasen Gas' sole discretion.
- (c) Terasen Gas may continue to use Public Places within the Municipality for the purposes of its business. Terasen Gas' employees, may enter upon all the Public Places within the Boundary Limits of the Municipality to maintain, operate, install, construct, renew, alter, or place Company Facilities; provided that Terasen Gas continues to operate in a manner consistent with the terms and conditions of this Agreement as if the term had been extended except with respect to the payment of the Operating Fee.
- (d) Terasen Gas will with the support of the Municipality take such steps necessary to seek BCUC approvals of the extension of terms and conditions including payment of the operating fee under the expiring agreement during negotiations of a new agreement.
- (e) Should Terasen Gas no longer be authorized or required to pay the operating fee under any Agreement between it and the Municipality or by any order of the BCUC, the Municipality shall be free 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**

In the event that 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) Terasen Gas will accept the appointment of such third party as the Municipality's agent or subcontractor to enable such third party to deal directly with Terasen Gas so as to enable the Municipality to comply with the terms, obligations and conditions of this Agreement.

#### **16.2 Changes to the Community Charter**

In the event that the provisions of the *Community Charter* or other legislation affecting the rights and powers of municipalities change in such a way as to materially, in the opinion of the Municipality, affect municipal powers in respect to matters dealt with in this Agreement,

- (a) the Municipality may within one year of the change coming into effect propose new agreement terms with respect to only those specific changes and Terasen Gas agrees to negotiate such terms; and
- (b) failing satisfactory resolution either of the parties will seek resolution through the Dispute Resolution Process, Section 17.

#### **16.3 Changes to the Utilities Commission Act**

In the event that the provisions of the *Utilities Commission Act* or other legislation affecting the rights and powers of regulated Utilities change in such a way as to materially, in Terasen Gas' opinion, affect Terasen Gas' powers in respect to matters dealt with in this Agreement,

- (a) Terasen Gas may within one year of the change coming into effect propose new agreement terms with respect to only those specific changes and the Municipality agrees to negotiate such terms; and
- (b) failing satisfactory resolution either of the parties will seek resolution through the Dispute Resolution Process, Section 17.

### **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, 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 or Arbitration**

If the parties fail to resolve the dispute through mediation, the unresolved dispute shall be referred to the BCUC if within its jurisdiction. If the matter is not within the jurisdiction of the BCUC, 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 will allow discovery as required by law in arbitration proceedings.

### **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.

## **18. GENERAL TERMS & CONDITIONS**

### **18.1 No Liens**

Terasen Gas will do its best to not allow, suffer or permit any liens to be registered against the Company Facilities located in Public Places as a result of the conduct of Terasen Gas. If any such liens are registered, Terasen Gas will start action to clear any lien so registered to the Public Place within ten (10) days of being made aware such lien has been registered. Terasen Gas will keep the Municipality advised as to the status of the lien on a regular basis. In the event that such liens are not removed within ninety (90) days of the registration of such lien, Terasen Gas will pay them in full or post sufficient security to ensure they are discharged from title.

### **18.2 Corporate Authority**

Terasen Gas now warrants, represents and acknowledges that:

- (a) it has the full right, power and authority to enter into this Agreement;
- (b) it is a corporation, duly organized, legally existing and in good standing under the laws of its jurisdiction of incorporation or continuance and is lawfully registered and licensed to do business in British Columbia.

### **18.3 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 venture 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.

### **18.4 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.

### **18.5 Governing Law**

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

#### **18.6 General**

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.

#### **18.7 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.

#### **18.8 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. To the extent permitted by applicable law, the parties hereby waive any provision of law that renders any provision hereof prohibitive or unenforceable in any respect.

#### **18.9 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.

#### **18.10 Notice**

Any notice or other written communication required, or permitted to be made or given pursuant to this Agreement (the "Notice") 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:

(A) if to the Municipality:

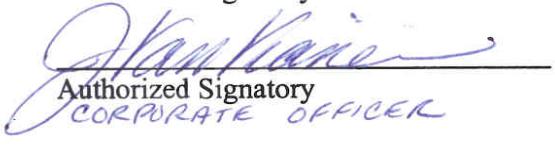
**TOWN OF OSOYOOS**  
PO Box 3010  
Osoyoos, British Columbia  
V0H 1V0

(B) If to Terasen Gas:

**TERASEN GAS INC.**  
16705 Fraser Highway  
Surrey, British Columbia  
V3S 2X7  
Attention: Vice President, Regulatory Affairs

**TOWN OF OSOYOOS**  
by its authorized signatories

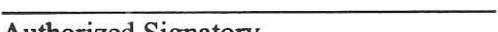
  
Authorized Signatory *Mayor*

  
Authorized Signatory *Corporate Officer*

**TERASEN GAS INC.**  
by its authorized signatories

*D.L. Stout*, Vice-President  
Marketing & Business  
Development

  
Authorized Signatory

  
Authorized Signatory

SIXTH FLOOR, 900 HOWE STREET, BOX 250  
VANCOUVER, B.C. V6Z 2N3 CANADA  
web site: <http://www.bcuc.com>



**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER** C-15-06

TELEPHONE: (604) 660-4700  
BC TOLL FREE: 1-800-663-1385  
FACSIMILE: (604) 660-1102

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

and

An Application by Terasen Gas Inc.  
for Approval of an Operating Agreement  
with the Town of Osoyoos

**BEFORE:**      L.F. Kelsey, Commissioner                )  
                        L.A. Zaozirny, Commissioner        )      August 10, 2006

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

**WHEREAS:**

- A. On January 12, 2006, Terasen Gas Inc. ("Terasen Gas") applied to the British Columbia Utilities Commission ("the Commission") for approval of an Operating Agreement with the Town of Osoyoos ("the Municipality") ("the Application"); and
- B. The Franchise Agreement approved by Commission Order No. C-2-79 expired on September 25, 1998; and
- C. By way of successive extension agreements, the term of the Franchise Agreement was extended to December 31, 2004; and
- D. In its Application, Terasen Gas advised that it undertook negotiations with the Union of British Columbia Municipalities ("UBCM") Operating Agreement Committee to establish the terms of a new form of Operating Agreement. In 2005 Terasen Gas successfully negotiated a pro-forma Operating Agreement with the UBCM and using this agreement as a template, negotiated new Operating Agreements with those municipalities with Operating Agreements which expired on December 31, 2005 (collectively the "Municipalities"); and
- E. The Application requests approval of a 20-year Operating Agreement between Terasen Gas and the Municipality from January 1, 2006 to December 31, 2025 that sets out the terms and conditions, including a

**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER**      C-15-06

2

3 percent operating fee, under which Terasen Gas shall exercise its rights to use the public places of the Municipality in conducting its business of distributing gas within the Municipality; and

- F. Commission Order No. C-7-03, which approved a District of Salmon Arm and Terasen Gas Operating Agreement and Addendum, directed Terasen Gas to seek a method in future agreements to convert the operating fee to a charge on utility margin; and
- G. The Commission issued Information Request No. 1 to Terasen Gas on February 20, 2006, including questions related to the impacts of the proposed operating fee on rate stability and requesting an explanation of how such a fee based on Terasen Gas revenue fairly compensates the Municipalities for the costs incurred as a result of Terasen Gas' use of the streets and other public places within the Municipalities; and
- H. Terasen Gas responded to the Commission's Information Request No. 1 on March 9, 2006. Terasen Gas provided historical franchise fee information and discussed five operating fee options (Option 1-5) which were all rejected by the Municipalities; and
- I. The Commission issued Information Request No. 2 on March 28, 2006 and Terasen Gas responded on April 13, 2006. In IR No. 2, Terasen Gas analyzed an operating fee calculation using a base year methodology and provided additional information as to why Options 2, 4 and 5 in IR No. 1 were rejected; and
- J. In a letter dated May 9, 2006, the Commission sought further submissions from Terasen Gas, the UBCM and the Municipalities to support or justify how the public interest is better served through an operating fee, as proposed, compared to Option 5, described as a "Hybrid Approach" whereby customers in Rate Classes 1-3 would pay a margin based fee and all other customers would continue to pay a franchise fee based on revenue of 3.09 percent; and

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NUMBER**      C-15-06

- K. From May 17, 2006 to May 26, 2006 the Commission received submissions from Terasen Gas, the City of Rossland, the District of Hudson's Hope, the City of Kimberley, the City of Fernie, the City of Grand Forks, the Town of Oliver and the City of Cranbrook. Other interested parties such as the City of Kelowna, the City of Nelson and Mr. Greg McCormick also provided submissions to the Commission. Among other things, Terasen Gas and the Municipalities stated that the agreements are "package deals" with a considerable amount of compromise involved, including the fees agreed to within the package, and outlined their significant concerns to the added complexity, costs, communication and need to renegotiate if a margin fee were imposed; and
- L. The Commission has reviewed the Application and the related submissions presented to it and has determined that the Operating Agreement with the Town of Osoyoos should be approved.

**NOW THEREFORE** the Commission, pursuant to Section 45 of the Utilities Commission Act the Commission approves the Operating Agreement as filed.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 29<sup>th</sup> of August 2006.

BY ORDER

*Original signed by*

L.F. Kelsey  
Commissioner



*The Corporation of the City of Rossland*

*Office of the Administrator*

File No.: 5500.03 – Terasen Gas

November 30, 2005

Terasen Gas  
444 Okanagan Ave. East  
Penticton, B.C.  
V2A 3K3

Attention: Robert Grenno  
Manager Community and Aboriginal Affairs, Southern Interior

Dear Rob:

**RE:           Operating Agreement between the City of Rossland and Terasen Gas**

At its November 28, 2005 meeting the City of Rossland Council reviewed and approved the proposed Operating Agreement between the City of Rossland and Terasen Gas. Accordingly, enclosed are two originals of the Operating Agreement signed by the City of Rossland's authorized signatories.

When Terasen Gas' authorized signatories have signed these documents, please return to me one fully executed original of the Operating Agreement for the City of Rosland's records.

Yours truly,

L. Ross McPhee  
Chief Administrative Officer

## OPERATING AGREEMENT

THIS OPERATING AGREEMENT (the "Agreement") made this 1st day of  
JANUARY, 2005<sup>16</sup> *RS*

BETWEEN:

**CITY OF ROSSLAND**  
Box 1179  
Rossland, British Columbia  
V0G 1Y0

(hereinafter called the "Municipality")

OF THE FIRST PART

AND:

**TERASEN GAS 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

(hereinafter called "Terasen Gas")

OF THE SECOND PART

### RECITALS:

- A. Whereas by a certificate of public convenience and necessity (CPCN), Terasen Gas was granted the right to construct and operate gas distribution facilities within the Municipality;
- B. And whereas pursuant to the Community Charter, S.B.C. 2003, a Municipal council may, by resolution adopt and enter into a licensing and operating agreement;
- C. And whereas Terasen Gas and the Municipality are the parties to a Franchise or Operating Agreement last amended by Interim Agreement dated February 9, 2005, which will expire on December 31, 2005;
- D. And whereas Terasen Gas and the Municipality wish to enter into this Agreement to clarify and settle the terms and conditions under which Terasen Gas shall exercise its rights to use Public Places in conducting its business of distributing Gas within the Municipality.

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

## **1. DEFINITIONS**

For the purposes of this Agreement:

- (a) “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;
- (b) “BCUC” means the British Columbia Utilities Commission or successor having regulatory jurisdiction over natural gas distribution utilities in British Columbia;
- (c) “CPCN” means a Certificate of Public Convenience and Necessity granted by the BCUC which allows Terasen Gas to operate, maintain and install Company Facilities for the distribution of Gas within the Municipality;
- (d) “Company Design” means the installation and design specifications which meet all applicable Provincial and Federal codes, standards and safety requirements for the gas services in the province of British Columbia, as they relate to approved gas works, system improvements, upgrades, connections and system extensions;
- (e) “Company Facilities” means Terasen Gas’ facilities, including pipes, buildings, structures, valves, signage, storage facilities, machinery, vehicles and other equipment used to maintain, operate, renew, repair, construct and monitor a natural Gas Distribution and transmission system;
- (f) “Distribution Pipelines” means pipelines operating at a pressure less than 2071 kilopascals (300 psi);
- (g) “Gas” means natural gas, propane, methane, synthetic gas, liquefied petroleum in a gaseous form or any mixture thereof;
- (h) “Gas Distribution” means fixed equipment, structures, plastic and metal lines and pipe, valves, fittings, appliances and related facilities used or intended for the purpose of conveying, testing, monitoring, distributing, mixing, storing, measuring and delivering Gas and making it available for use with the Municipality;
- (i) “Highway” means street, road, lane, bridge or viaduct controlled by the Municipality or Provincial Government of British Columbia;
- (j) “Losses” means direct and indirect losses, damages, costs and expenses (including without limitation, interest, penalties and amounts paid in settlement but does not include legal and professional fees and disbursements);

- (k) "Mains" means pipes used by Terasen Gas to carry gas for general or collective use for the purposes of Gas Distribution;
- (l) "Municipal Employees" means personnel employed by or engaged by the municipality, including officers, employees, directors, contractors and agents;
- (m) "Municipal Facilities" means any facilities, including highways, sidewalks, conduits, manholes, equipment, machinery, pipes, wires, valves, buildings, structures, signage, bridges, viaducts and other equipment within the Public Places used by the Municipality for the purposes of its public works or municipal operations;
- (n) "Municipal Supervisor" means the Municipal Engineer or other such person designated by the Municipality to receive notices and issue approval as set out in this Agreement;
- (o) "New Work" means any installation, construction, repair, maintenance, alteration, extension or removal work of the Company Facilities in Public Places except;
  - (i) routine maintenance and repair of the Company Facilities that does not involve any cutting of asphalted road surface;
  - (ii) installation or repair of Service Lines whether or not such installation or repair involves cutting of asphalted road service; or
  - (iii) emergency work;but notwithstanding such exceptions, New Work shall include any installation, construction or removal of the Company Facilities in Public Places that are planned to disturb underground Municipal Facilities;
- (p) "Pipeline Markers" means post, signage or any similar means of identification used to show the general location of Transmission Pipelines and distribution pipelines or Terasen Gas Rights of Way;
- (q) "Planned Facilities" means those facilities not yet constructed but which have been identified by way of documented plans for the works of the Municipality, for works of third parties, where such works are identified by documented plans approved by the Municipality, or for works of Terasen Gas submitted to the Municipality subject to Municipal approval;
- (r) "Public Places" means any public thoroughfare, highway, road, street, lane, alley, trail, square, park, bridge, right of way, viaduct, subway, watercourse or other public place in the Municipality;
- (s) "Service Line" means that portion of Terasen Gas' gas distribution system extending from a Main to the inlet of a meter set and, for the purposes of this Agreement, includes a service header and service stubs;

- (t) "Terasen Gas Employees" means personnel employed by or engaged by Terasen Gas including officers, employees, directors, contractors, and agents;
- (u) "Transmission Pipeline" means a pipeline of Terasen Gas having an operating pressure in excess of 2071 kilopascals (300 psi); and
- (v) "Utilities" means the facilities or operations of any water, waste water, sewer, telecommunications, energy, cable service or similar service provider located in Public Places within the Municipality.

## **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) words in the singular include the plural, words importing a corporate entity include individuals, and vice versa;
- (c) in calculating time where the agreement refers to "at least" or "not less than" 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" a number of days, Saturdays, Sundays and holidays must be excluded;
- (d) 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.

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

Terasen Gas 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.

Terasen Gas 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.

## **4. TERASEN GAS RIGHTS TO ACCESS & USE PUBLIC PLACES**

The Municipality hereby acknowledges Terasen Gas' rights to:

- (a) develop, construct, install, maintain or remove Company Facilities on, over, in and under Public Places in the Municipality;
- (b) enter on Public Places from time to time as may be reasonably necessary for the purpose of maintaining, repairing, or operating the Company's Facilities;
- (c) place pipeline identification markers within Public Places where a Transmission Pipeline or Distribution Pipeline crosses or is otherwise within a Public Place;

subject to terms and conditions defined in this Agreement.

## **5. TERASEN GAS COMPLIANCE WITH STANDARDS FOR USE OF PUBLIC PLACES**

### **5.1 Non-discriminatory Standards for Terasen Gas**

In its use of Public Places, Terasen Gas shall comply with all Federal and Provincial laws, regulations and codes and shall comply with all Municipal bylaws, standards and policies except that Terasen Gas shall not have to comply with such Municipal bylaws, standards and policies that:

- (a) conflict with terms of this Agreement or limit any rights or concessions granted to Terasen Gas by the Municipality under this Agreement; or
- (b) conflict with other legislation governing Terasen Gas.

Further, where the Municipality has established requirements and standards for work in Public Places, the Municipality shall apply them in a fair, reasonable and non-discriminatory manner consistent with the manner that the Municipality establishes requirements on other Utilities.

### **5.2 Provide emergency contacts.**

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

### **5.3 Assist with facility locates**

Terasen Gas 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 unless the reason for the request is the result of an emergency; in which case the information shall be provided forthwith. Terasen Gas shall provide gas locations from Terasen Gas records. Terasen Gas shall perform on site facility locates in accordance with the *Safety Standards Act – Gas Safety Regulations Section 39*.

## **6. TERASEN GAS WORK OBLIGATIONS:**

### **6.1 Notices - General Requirements**

#### **6.1.1. Notice for New Work**

For New Work, if required by the Municipality, Terasen Gas shall give notice to the Municipality or such officer or official thereof who has been designated from time to time by the Municipality that it intends to perform such New Work. The Notice shall include:

- (a) a plan and specifications showing the proposed location and dimensions of the New Work;
- (b) Terasen Gas' plans for the restoration of the Public Place affected by the New Work if Terasen Gas' restoration plans are different from those set out in Section 6.4.2 of this Agreement;
- (c) the name of a Terasen Gas representative who may be contacted for more information;
- (d) projected commencement and completion dates; and
- (e) such other information relevant to the New Work as the Municipality may reasonably request from time to time.

#### **6.1.2. Exception for Emergency**

Where Terasen Gas is required to carry out work urgently in the interests of public safety or health or to preserve the safety of property and Company Facilities, Terasen Gas shall not be required to give prior notice but shall do so as soon as possible thereafter.

#### **6.1.3. Municipal Approval for New Work**

The Municipality may object to the New Work on the following grounds:

- (a) the proposed location of the New Work conflicts with Planned Facilities; or
- (b) the proposed location or design of the New Work is likely to compromise public safety or does not conform with Municipal bylaws, standards or policies; or
- (c) in instances where Terasen Gas can delay the New Work without compromising the supply, capacity or safety of its Gas Distribution System or its customers' need for gas service and the Municipality intends within the next 3 months to undertake work in the same location and wishes to co-ordinate both work;

by providing Terasen Gas with notice of its objections, provided such objections are reasonable, no more than 10 days after receiving Terasen Gas' notice of New Work. If the Municipality has not provided such notice of its objections to Terasen Gas, or in the case of large and complex New Work, the Municipality has not provided Terasen Gas with a notice to extend the time to reply to Terasen Gas until a stated time, the Municipality shall be deemed to have granted its approval of the New Work. The Municipality shall not otherwise withhold or delay its approval.

In addition, the Municipality may request Terasen Gas to provide the public with notice of the New Work.

#### **6.1.4. Work Not to Proceed**

If the Municipality has notified Terasen Gas of its objections or has requested a time extension, no more than 10 days after receiving Terasen Gas' notice of New Work, Terasen Gas shall not proceed with the New Work until Terasen Gas and the Municipality have agreed upon a resolution to the Municipality's objections. If the Municipality and Terasen Gas are unable to agree, then the matter shall be resolved in accordance with Section 17 (Resolution of Disputes).

### **6.2 Notice of Service Lines**

Terasen Gas, if required by the Municipality, shall provide the Municipality with notice of its intent to install, remove or repair Service Lines no less than three (3) days prior to commencement of such work. Terasen Gas' request for the location of the Municipality's utilities shall be deemed to be a notice of Terasen's intent to install, remove or repair Service Lines. The Municipality may object to such work on the same grounds as set out in Subsection 6.1.3 (a) and (b) above by providing Terasen Gas with notice of its objections within two (2) days of receiving Terasen Gas' notice. If the Municipality has not provided such notice of its objections to Terasen Gas, the Municipality shall be deemed to have granted its approval of the installation, removal or repair of the Service Lines. The Municipality shall not otherwise withhold or delay its approval.

### **6.3 Terasen Gas to Secure Locate Information**

Prior to conducting any New Work, Terasen Gas shall locate other Utilities and satisfy itself that it is clear to proceed.

### **6.4 Work Standards**

#### **6.4.1. Specific Work Requirements Remove Materials**

Terasen Gas shall keep its work sites clean and tidy. Terasen Gas shall remove all rubbish and surplus material from Public Places upon completion of its work.

#### **6.4.2. Restore Surface and Subsurface**

Where Terasen Gas has performed any operations or New Work in a Public Place, Terasen Gas shall restore without unreasonable delay and return such Public Place, as much as reasonably practical, to the condition and use which existed prior to such activity. The restoration will be in accordance with the specifications set out by the Municipality. Such specifications may include the degree and nature of compaction, subsurface structure, surface finish and landscaping required.

Without limiting the generality of this section and by way of example only, the Municipality may require Terasen Gas to restore asphalt and concrete surfaces with a permanent repair or a temporary repair. Should a temporary repair be directed, Terasen Gas or the Municipality at its discretion will subsequently construct a permanent repair in accordance to its usual maintenance/replacement schedule for that area. The cost of permanent and temporary repairs to remediate Highway surfaces will be at the expense of Terasen Gas proportional to the surface area affected by the New Work.

Where Terasen Gas is required to cut pavement on a Public Place such cuts and restoration will be limited to less than 1.5 meters unless at the discretion of Terasen Gas a larger excavation is warranted due to the depth or size of the pipe or requirements of the Workers' Compensation Board or other relevant Provincial or Federal regulations. Terasen Gas will be responsible for any repairs and maintenance of the surface repair for a period of three (3) years. However, where pavement restoration has been conducted by the Municipality, whether or not such work was undertaken to repair cuts on Terasen Gas' behalf, Terasen Gas shall not be responsible for the repairs or maintenance of the surface repair.

#### **6.4.3. Repair Damage to Municipal Facilities**

To the extent that any of the work being done by Terasen Gas 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 Terasen Gas

shall restore in accordance with Section 6.4.2 above, Terasen Gas will report such damage and reimburse the Municipality for its costs arising from such damage calculated in accordance with Section 14.1 below. Where such damage results directly from inaccurate or incomplete information supplied by Municipality, and Terasen Gas has complied with all applicable laws and regulations, and with instructions supplied by the Municipality, then the cost of repairing damaged Municipal Facilities or Public Places will be at the expense of the Municipality.

## **6.5 Conformity Requirement**

The New Work must be carried out in conformity with Terasen Gas' notice of New Work except that Terasen Gas may make in-field design changes when carrying out the New Work to accommodate field conditions which could not have been reasonably foreseen by Terasen Gas. If such in-field conditions materially impact Terasen Gas' plans for restoration or materially change the impact of Terasen Gas' work on Municipal Facilities, other than in respect of projected commencement and completion dates, Terasen Gas shall notify the Municipality.

## **6.6 Non-Compliance**

If Company Facilities located in Public Places are later found not to be located in compliance with Terasen Gas' notice of New Work provided in accordance with Section 6.1 and 6.5, then any alteration or upgrading required to bring them into compliance with such notice will be at the expense of Terasen Gas provided that the work has not been altered, damaged or modified by the Municipality or a third party.

# **7. COMPANY FACILITY CHANGES REQUIRED BY THE MUNICIPALITY**

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

Before any Public Places containing Company Facilities may be legally closed or alienated by the Municipality, the Municipality shall promptly notify Terasen Gas of its intent to close or alienate such Public Places and either:

- (a) grant Terasen Gas a registered statutory right of way in a form satisfactory to Terasen Gas so as to maintain Terasen Gas' right to use the land; or
- (b) request Terasen Gas to remove and (if possible and practicable) relocate those Company Facilities affected by such closure or alienation at the sole cost of the Municipality.

If the Public Places are expropriated by an expropriating authority and Terasen Gas is required to remove its facilities then the Municipality shall use reasonable efforts to seek compensation from such expropriating authority to compensate Terasen Gas for its relocation costs. If the Municipality is unable to obtain such compensation despite its reasonable efforts, then the Municipality shall have no further liability to Terasen Gas.

The Municipality shall not be required to incur any legal expenses without the approval and reimbursement by Terasen Gas in order to obtain such compensation for Terasen Gas.

## **8. FACILITY CHANGES REQUIRED**

### **8.1 By Terasen Gas**

Terasen Gas may provide Notice to the Municipality that it requires Municipal Facilities to be altered, changed or relocated to accommodate its requirements. The Municipality will comply with Terasen Gas's requests to the extent it is reasonably able to do so and with reasonable speed and dispatch after receipt of written request. Terasen Gas agrees to pay for all of the costs for changes to the affected Municipal Facilities.

### **8.2 By the Municipality**

The Municipality may provide Notice to Terasen Gas that it requires Company Facilities to be altered, changed or relocated to accommodate its requirements. Terasen Gas will comply with the Municipality's requests to the extent it is reasonably able to do so and with reasonable speed and dispatch after receipt of written request. The Municipality agrees to pay for all of the costs for changes to the affected Company Facilities.

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

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

The Municipality and Terasen Gas agree to use reasonable efforts in carrying out their construction and maintenance activities in a manner that is responsive to the affect that it may have on the other party, as well as other users of Public Places. Such reasonable efforts include attending the planning meetings described in Section 9.2 below 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.

### **9.2 Communication and Coordination Activities**

At the initiation of the Municipality, representatives of the Municipality, Terasen Gas and other affected Utilities and third parties will meet each year, prior to the construction season, to discuss the parties' anticipated construction activities for that year. Such discussions will include

- (a) the use of common trenching, common utility access facilities and such other common facilities as may be commercially reasonable and comply with operating and safety standards; and
- (b) the consolidation of planned maintenance work where pavement must be cut in order to avoid multiple excavations.

### **9.3 Municipal Planning Lead**

During such annual planning meetings, the Municipality shall lead the planning process for all Utilities and third parties with Planned Facilities in Public Places.

## **10. MUTUAL INDEMNITY**

### **10.1 Indemnity by Terasen Gas**

**10.1.1.** Terasen Gas 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 Terasen Gas in:

- (a) placing, constructing, renewing, altering, repairing, maintaining, removing, extending, operating or using the Company's Facilities on or under any Public Places;
- (b) any breach of this Agreement by Terasen Gas;

except to the extent contributed by negligence or default of the Municipality or the Municipal Employees.

**10.1.2.** This indemnity expressly extends to all acts and omissions of Terasen Gas Employees.

### **10.2 Indemnity by the Municipality**

**10.2.1.** The Municipality indemnifies and protects and saves Terasen Gas 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:

- (a) placing, constructing, renewing, altering, repairing, maintaining, removing, extending, operating or using the Municipal Facilities on or under any Public Places;
- (b) any breach of this Agreement by the Municipality;

except to the extent contributed by the negligence or default of Terasen Gas or Terasen Gas Employees.

**10.2.2.** This indemnity expressly extends to all acts and omissions of Municipal Employees.

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

All property of Terasen Gas kept or stored on the Public Places will be kept or stored at the risk of Terasen Gas. For further certainty, Terasen Gas 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. Terasen Gas accepts its use of Public Places on an "as is" basis.

## **11. OPERATING FEE**

### **11.1 Fee Calculation**

- 11.1.1.** Terasen Gas agrees to pay to the Municipality a fee of three percent (3%) of the amount received by Terasen Gas for provision and distribution of all gas consumed within the Boundary Limits of the Municipality. Such amount will not include any amount received by Terasen Gas for gas supplied or sold for resale.
- 11.1.2.** The Municipality will notify Terasen Gas in writing of any boundary expansion so that new customers can be included as a part of the annual payment fee.
- 11.1.3.** Terasen Gas will be responsible for adding those new customers within the new Municipal boundary upon receipt of such notice from the Municipality and the revised calculation of the fee will commence at that point.

### **11.2 Payment Date and Period**

Payments by Terasen Gas to the Municipality will be made on the first day of March of each year of the Agreement in respect of the amount received by Terasen Gas during that portion of the term of this Agreement which is in the immediately preceding calendar year. By way of example only, payment made on March 1, 2006 will be the amount received during the 2005 calendar year.

### **11.3 BCUC Decision or Provincial Legislation**

In the event that a decision by the BCUC, other than periodic rate changes as a result of commodity, delivery or margin increases or decreases, or new legislation by the Provincial Government, impacts the operating fee being paid to the Municipality so as to increase it or decrease it by more than 5% annually at the time of the decision or in subsequent years, the parties shall negotiate a new operating fee formula which best reflects the revenue stream received by the Municipality under this Agreement. For greater certainty, the parties acknowledge that a change to the BCUC's decision that Terasen Gas shall provide the agency billing and collections service for marketers on a mandatory basis, as set out in the "Business Rules for Commodity Unbundling dated June

5, 2003 as set out in Appendix A to Letter No. L-25-03, may impact the operating fee being paid to the Municipality.

## **12. OTHER APPROVALS, PERMITS OR LICENSES**

Except as specifically provided in this Agreement, the Municipality will not require Terasen Gas to seek or obtain approvals, permits or licenses. The Municipality will not charge or levy against Terasen Gas any approval, license, inspection or permit fee, or charge of any other type, that in any manner is related to or associated with Terasen Gas constructing, installing, renewing, altering, repairing, maintaining or operating Company Facilities on any Public Places or in any manner related to or associated with Terasen Gas exercising the powers and rights granted to it by this Agreement.

If the Municipality does charge or levy fees or costs against Terasen Gas (other than for repair of damage to the Municipal Facilities or Public Places in accordance with Section 14) then Terasen Gas may reduce the annual operating fee payable to the Municipality under Section 11 by an amount equal to such charges, fees or costs.

## **13. MUNICIPAL OBLIGATIONS**

### **13.1 Municipal Work**

**13.1.1.** Before the Municipality undertakes any construction or maintenance activity which is likely to affect a part of the Company Facilities, it must give Terasen Gas notice not less than 10 days before commencing such construction or maintenance activity.

**13.1.2.** Where the Municipality is required to carry out work urgently in the interests of public safety or health or to preserve the safety of property and Municipal Facilities, the Municipality shall not be required to give prior notice but shall do so as soon as possible thereafter.

**13.1.3.** Terasen Gas will be entitled to appoint at its cost a representative to inspect any construction or maintenance activity undertaken by the Municipality. The provisions of this section do not relieve the Municipality of its responsibilities under the *Gas Safety Act*, *Pipeline Act*, and successor legislation, regulations thereunder, or the requirements of the BC Workers' Compensation Board.

**13.1.4.** In addition, the Municipality shall provide Notice to Terasen Gas of any work planned that will be adjacent to, across, over or under a Transmission Pipeline or within a right-of-way for a Transmission Pipeline. To the extent that Terasen Gas requires that permit be issued for construction or other activities within a Transmission Pipeline right-of-way, the Municipality will submit

an application for such a permit in sufficient time for the application to be reviewed and approved by Terasen Gas prior to the commencement of the construction or other activity.

**13.1.5.** The Municipality shall assist Terasen Gas in Terasen Gas' efforts to reduce instances of residences being built over gas lines and other similarly unsafe building practices by third parties.

**13.1.6.** The Municipality shall not interfere with Transmission Pipeline markers.

**13.1.7.** The Municipality shall provide notice to Terasen Gas of any damage caused by the Municipality to Company Facilities or Transmission Pipeline Markers as soon as reasonably possible. To the extent that any of the work being done by the Municipality results in damage to the Company Facilities, the Municipality will report such damage and pay Terasen Gas its costs arising from such damage in accordance with Section 14.1 below. Where such damage results directly from inaccurate or incomplete information supplied by Terasen Gas, and the Municipality has complied with all applicable laws and regulations, and with instructions supplied by Terasen Gas, then the cost of repairing the damaged Company Facilities will be at the expense of Terasen Gas.

**13.1.8.** The Municipality shall notify Terasen Gas of any new bylaws, standards or policies adopted or passed by the Municipality that are likely to affect Terasen Gas' operations in Public Places.

## **14. COSTS AND PAYMENT PROCEDURES**

### **14.1 Definition of Costs**

Wherever one party is required to pay the other party Costs as a result of damage caused by one party to the other's property, the Costs shall be:

- (a) all direct expenses and disbursements incurred to restore such property to as good a state of repair as had existed prior to the damage;
- (b) reasonable administration and overhead charges on labour, equipment and materials;
- (c) such taxes as may be required in the appropriate jurisdiction;
- (d) in the case of loss of gas or re-lights, the cost of the commodity as determined by the length of time that the gas is leaking, size of pipe and hole and the pressure; and

- (e) in the case of water, electrical or sewer, cost of supplying alternate service.

## **14.2 Cost Claim Procedures**

**14.2.1.** Wherever one party is claiming Costs of the other party in regard to any work or issue arising under this Agreement the claiming party shall:

- (a) provide an invoice to the other party no later than one year after incurring Costs;
- (b) provide detailed descriptions of the cost items;
- (c) provide the time period the invoice covers;
- (d) provide a minimum of 21 day terms for payment of the invoice; and
- (e) provide for late payment interest at the rate consistent with the party's policy for charging for late payments, which rate must be reasonable;

**14.2.2.** The party claiming Costs shall have no right of set off for these invoices against any amounts otherwise payable to the other party, except to the extent so approved in writing by the other party.

## **14.3 Cost Verification Procedures**

**14.3.1.** Wherever either party is the recipient of or is claiming Costs and or fees that party may at its own discretion request from the other party:

- (a) Certification by an officer or designated representative verifying the calculations and computations of the Costs and or fees,
- (b) An internal review or audit of the calculations and computations of the Costs and or fees, with the internal review or audit to be carried out by a person appointed by the party being asked to provide the review;
- (c) An independent external audit of the calculations and computations of the costs and fees, with the independent external auditor being a Chartered or a Certified General Accountant in British Columbia appointed by the party requesting the external audit;

**14.3.2.** The costs of this cost verification process shall be borne by the party who is required to supply the information except as otherwise specified providing the frequency of such requests does not exceed once per calendar year. For all future cases which occur in that

calendar year, the costs of such further verifications shall be at the expense of the requester.

Where the independent external audit finds and establishes errors representing a variance greater than 2% of the originally calculated value in favour of the party claiming Costs, the costs shall be at the expense of the party supplying the information. Once an error has been verified, payment or refund of the amount found to be in error will be made within 21 days.

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

### **15.1 Agreement Not Binding Until Approved**

**15.1.1.** This Agreement will not come into effect and does not bind the parties until the following conditions have been fulfilled:

- (a) Terasen Gas has obtained such approvals of this Agreement, or its terms, as may be required under the *Utilities Commission Act*; and
- (b) the Municipality 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.

**15.1.2.** Upon executing this Agreement the parties shall make reasonable efforts to fulfill the conditions set out in this section. If the conditions are not fulfilled or waived within one (1) year of the execution of this Agreement, then the obligation on the parties to make reasonable efforts to fulfill the conditions will terminate, and neither party will have any further obligation to the other under this Agreement.

### **15.2 Termination of Franchise Agreement**

If not already terminated or expired, any franchise and operating agreement between the Municipality and Terasen Gas is terminated upon the effective date of this Agreement.

### **15.3 Term of Agreement**

This Agreement will have a term of 20 years from the date that it comes into effect and after the initial term shall continue indefinitely unless terminated in accordance with Section 15.4 below.

### **15.4 Termination of Agreement**

**15.4.1.** This Agreement may be terminated by the Municipality upon the occurrence of any of the following events:

- (a) Terasen Gas admits its inability to pay its debts generally as they become due or otherwise acknowledges its insolvency;
- (b) Terasen Gas starts proceedings or takes any action to commence or executes an agreement to authorize its participation in any proceeding:
  - (i) seeking to adjudicate it bankrupt or insolvent;
  - (ii) seeking liquidation, reorganization, arrangement, protection, relief or composition of it or any of its property or debt or making a proposal with respect to it under any law relating to bankruptcy, insolvency, reorganization or compromise of debts or other similar laws; or
  - (iii) seeking the appointment of a receiver, trustee, agent, custodian or other similar official for it or for any substantial part of its assets or if a creditor seeks the appointment of a receiver, trustee, agent, custodian or other similar official for any substantial part of its assets; and such proceeding is not dismissed, discharged, stayed or restrained within 20 days of the Municipality becoming aware of it.

**15.4.2.** Either party may terminate if other breaches any term, provision, obligation hereunder and such breach, is a material major 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 default if such matter is in dispute or has been referred to commercial arbitration, the outcome of which is pending, or is being resolved in good faith compliance with the dispute resolution and arbitration processes of this Agreement.

**15.4.3.** After the initial twenty (20) year term of this Agreement, either party may terminate this Agreement by giving the other not less than one (1) year's notice of termination.

## **15.5 Amendments and Waivers**

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 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.

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

Upon one party giving Notice to the other of termination of this Agreement, the parties shall negotiate in good faith to enter into a new agreement with respect to the terms and conditions under which Terasen Gas may use the Public Places. In the event that such negotiations break down and in the opinion of one or other of the parties acting in good faith that settlement is unlikely, either party may give Notice to the other of its intention to apply to the BCUC to seek resolution of the terms and conditions applicable to Terasen Gas' continued operations and construction activities within the Municipality.

#### **15.7 Continuity In The Event No Agreement Is Settled**

Upon the expiry or termination of this Agreement, if a new agreement has not been ratified or if the BCUC has not imposed the terms and conditions under which Terasen Gas may use the Public Places, the following provisions will apply:

- (a) The Company Facilities within the boundary limits of the Municipality both before and after the date of this Agreement, shall remain Terasen Gas' property and shall remain in the Public Places.
- (b) The Company Facilities may continue to be used by Terasen Gas for the purposes of its business, or removed from Public Places in whole or in part at Terasen Gas' sole discretion.
- (c) Terasen Gas may continue to use Public Places within the Municipality for the purposes of its business. Terasen Gas' employees, may enter upon all the Public Places within the Boundary Limits of the Municipality to maintain, operate, install, construct, renew, alter, or place Company Facilities; provided that Terasen Gas continues to operate in a manner consistent with the terms and conditions of this Agreement as if the term had been extended except with respect to the payment of the Operating Fee.
- (d) Terasen Gas will with the support of the Municipality take such steps necessary to seek BCUC approvals of the extension of terms and conditions including payment of the operating fee under the expiring agreement during negotiations of a new agreement.
- (e) Should Terasen Gas no longer be authorized or required to pay the operating fee under any Agreement between it and the Municipality or by any order of the BCUC, the Municipality shall be free 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

In the event that 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) Terasen Gas will accept the appointment of such third party as the Municipality's agent or subcontractor to enable such third party to deal directly with Terasen Gas so as to enable the Municipality to comply with the terms, obligations and conditions of this Agreement.

### 16.2 Changes to the Community Charter

In the event that the provisions of the *Community Charter* or other legislation affecting the rights and powers of municipalities change in such a way as to materially, in the opinion of the Municipality, affect municipal powers in respect to matters dealt with in this Agreement,

- (a) the Municipality may within one year of the change coming into effect propose new agreement terms with respect to only those specific changes and Terasen Gas agrees to negotiate such terms; and
- (b) failing satisfactory resolution either of the parties will seek resolution through the Dispute Resolution Process, Section 17.

### 16.3 Changes to the Utilities Commission Act

In the event that the provisions of the *Utilities Commission Act* or other legislation affecting the rights and powers of regulated Utilities change in such a way as to materially, in Terasen Gas' opinion, affect Terasen Gas' powers in respect to matters dealt with in this Agreement,

- (a) Terasen Gas may within one year of the change coming into effect propose new agreement terms with respect to only those specific changes and the Municipality agrees to negotiate such terms; and
- (b) failing satisfactory resolution either of the parties will seek resolution through the Dispute Resolution Process, Section 17.

## 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, 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 or Arbitration**

If the parties fail to resolve the dispute through mediation, the unresolved dispute shall be referred to the BCUC if within its jurisdiction. If the matter is not within the jurisdiction of the BCUC, 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 will allow discovery as required by law in arbitration proceedings.

### **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.

# **18. GENERAL TERMS & CONDITIONS**

## **18.1 No Liens**

Terasen Gas will do its best to not allow, suffer or permit any liens to be registered against the Company Facilities located in Public Places as a result of the conduct of Terasen Gas. If any such liens are registered, Terasen Gas will start action to clear any lien so registered to the Public Place within ten (10) days of being made aware such lien has been registered. Terasen Gas will keep the Municipality advised as to the status of the lien on a regular basis. In the event that such liens are not removed within ninety (90) days of the registration of such lien, Terasen Gas will pay them in full or post sufficient security to ensure they are discharged from title.

## **18.2 Corporate Authority**

Terasen Gas now warrants, represents and acknowledges that:

- (a) it has the full right, power and authority to enter into this Agreement;
- (b) it is a corporation, duly organized, legally existing and in good standing under the laws of its jurisdiction of incorporation or continuance and is lawfully registered and licensed to do business in British Columbia.

## **18.3 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 venture 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.

## **18.4 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.

## **18.5 Governing Law**

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

## **18.6 General**

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.

## **18.7 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.

## **18.8 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. To the extent permitted by applicable law, the parties hereby waive any provision of law that renders any provision hereof prohibitive or unenforceable in any respect.

## **18.9 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.

## **18.10 Notice**

Any notice or other written communication required, or permitted to be made or given pursuant to this Agreement (the "Notice") 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:

- (A) if to the Municipality:

**CITY OF ROSSLAND**  
PO Box 1179  
Rossland, British Columbia V0G 1Y0

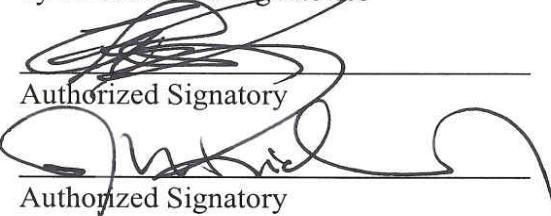
(B) If to Terasen Gas:

**TERASEN GAS INC.**

16705 Fraser Highway  
Surrey, British Columbia V3S 2X7  
Attention: Vice President, Regulatory Affairs

**CITY OF ROSSLAND**

by its authorized signatories



\_\_\_\_\_  
Authorized Signatory  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Authorized Signatory

**TERASEN GAS INC.**

by its authorized signatories



\_\_\_\_\_  
Authorized Signatory

D.L. Stout, Vice-President  
Marketing & Business  
Development

\_\_\_\_\_  
Authorized Signatory

SIXTH FLOOR, 900 HOWE STREET, BOX 250  
VANCOUVER, B.C. V6Z 2N3 CANADA  
web site: <http://www.bcuc.com>



**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER** C-16-06

TELEPHONE: (604) 660-4700  
BC TOLL FREE: 1-800-663-1385  
FACSIMILE: (604) 660-1102

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

and

An Application by Terasen Gas Inc.  
for Approval of an Operating Agreement  
with the City of Rossland

**BEFORE:**      L.F. Kelsey, Commissioner      )  
                  L.A. Zaozirny, Commissioner      )      August 10, 2006

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

**WHEREAS:**

- A. On January 12, 2006, Terasen Gas Inc. ("Terasen Gas") applied to the British Columbia Utilities Commission ("the Commission") for approval of an Operating Agreement with the City of Rossland ("the Municipality") ("the Application"); and
- B. The Franchise Agreement approved by Commission Order No. C-18-80 expired on January 8, 1999; and
- C. By way of successive amending agreements, the Franchise Agreement was amended and the term extended to December 31, 2005; and
- D. In its Application, Terasen Gas advised that it undertook negotiations with the Union of British Columbia Municipalities ("UBCM") Operating Agreement Committee to establish the terms of a new form of Operating Agreement. In 2005 Terasen Gas successfully negotiated a pro-forma Operating Agreement with the UBCM and using this agreement as a template, negotiated new Operating Agreements with those municipalities with Operating Agreements which expired on December 31, 2005 (collectively the "Municipalities"); and
- E. The Application requests approval of a 20-year Operating Agreement between Terasen Gas and the Municipality from January 1, 2006 to December 31, 2025 that sets out the terms and conditions, including a

**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER**      C-16-06

2

3 percent operating fee, under which Terasen Gas shall exercise its rights to use the public places of the Municipality in conducting its business of distributing gas within the Municipality; and

- F. Commission Order No. C-7-03, which approved a District of Salmon Arm and Terasen Gas Operating Agreement and Addendum, directed Terasen Gas to seek a method in future agreements to convert the operating fee to a charge on utility margin; and
- G. The Commission issued Information Request No. 1 to Terasen Gas on February 20, 2006, including questions related to the impacts of the proposed operating fee on rate stability and requesting an explanation of how such a fee based on Terasen Gas revenue fairly compensates the Municipalities for the costs incurred as a result of Terasen Gas' use of the streets and other public places within the Municipalities; and
- H. Terasen Gas responded to the Commission's Information Request No. 1 on March 9, 2006. Terasen Gas provided historical franchise fee information and discussed five operating fee options (Option 1-5) which were all rejected by the Municipalities; and
- I. The Commission issued Information Request No. 2 on March 28, 2006 and Terasen Gas responded on April 13, 2006. In IR No. 2, Terasen Gas analyzed an operating fee calculation using a base year methodology and provided additional information as to why Options 2, 4 and 5 in IR No. 1 were rejected; and
- J. In a letter dated May 9, 2006, the Commission sought further submissions from Terasen Gas, the UBCM and the Municipalities to support or justify how the public interest is better served through an operating fee, as proposed, compared to Option 5, described as a "Hybrid Approach" whereby customers in Rate Classes 1-3 would pay a margin based fee and all other customers would continue to pay a franchise fee based on revenue of 3.09 percent; and

**BRITISH COLUMBIA  
UTILITIES COMMISSION**

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NUMBER**      C-16-06

- K. From May 17, 2006 to May 26, 2006 the Commission received submissions from Terasen Gas, the City of Rossland, the District of Hudson's Hope, the City of Kimberley, the City of Fernie, the City of Grand Forks, the Town of Oliver and the City of Cranbrook. Other interested parties such as the City of Kelowna, the City of Nelson and Mr. Greg McCormick also provided submissions to the Commission. Among other things, Terasen Gas and the Municipalities stated that the agreements are "package deals" with a considerable amount of compromise involved, including the fees agreed to within the package, and outlined their significant concerns to the added complexity, costs, communication and need to renegotiate if a margin fee were imposed; and
- L. The Commission has reviewed the Application and the related submissions presented to it and has determined that the Operating Agreement with the City of Rossland should be approved.

**NOW THEREFORE** the Commission, pursuant to Section 45 of the Utilities Commission Act the Commission approves the Operating Agreement as filed.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 29<sup>th</sup> of August 2006.

BY ORDER

*Original signed by*

L.F. Kelsey  
Commissioner

## **Appendix C**

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### **G-113-12 – OPERATING TERMS BETWEEN THE DISTRICT OF COLDSTREM AND FEI**



ERICA HAMILTON  
COMMISSION SECRETARY  
COMMISSION.SECRETARY@BCUC.COM  
WEB SITE: HTTP://WWW.BCUC.COM

SIXTH FLOOR, 900 HOWE STREET, BOX 250  
VANCOUVER, BC CANADA V6Z 2N3  
TELEPHONE: (604) 660-4700  
BC TOLL FREE: 1-800-663-1385  
FACSIMILE: (604) 660-1102

Log No. 38596

**VIA EMAIL**

[diane.roy@fortisbc.com](mailto:diane.roy@fortisbc.com)

[gas.regulatory.affairs@fortisbc.com](mailto:gas.regulatory.affairs@fortisbc.com)

August 29, 2012

Ms. Diane Roy  
Director, Regulatory Affairs - Gas  
FortisBC Energy Inc.  
16705 Fraser Highway  
Surrey, BC V4N 0E8

Dear Ms. Roy:

Re: An Application by FortisBC Energy Inc.  
for Approval of Operating Terms between the District of Coldstream and FEI

Further to your February 27, 2012 application for approval of operating terms between the District of Coldstream and FortisBC Energy Inc., enclosed please find Commission Order G-113-12 and Reasons for Decision.

Yours truly,

A handwritten signature in black ink, appearing to read "Erica Hamilton".

LR/cms  
Enclosures

cc: James Yardley  
Murdy & McAllister  
[jgy@murdymcallister.com](mailto:jgy@murdymcallister.com)

Trevor Seibel  
District of Coldstream  
[tseibel@district.coldstream.bc.ca](mailto:tseibel@district.coldstream.bc.ca)

SIXTH FLOOR, 900 HOWE STREET, BOX 250  
VANCOUVER, BC V6Z 2N3 CANADA  
web site: <http://www.bcuc.com>



BRITISH COLUMBIA  
UTILITIES COMMISSION

ORDER  
NUMBER G-113-12

TELEPHONE: (604) 660-4700  
BC TOLL FREE: 1-800-663-1385  
FACSIMILE: (604) 660-1102

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

and

An Application by FortisBC Energy Inc.  
for Approval of Operating Terms Between the District of Coldstream and FortisBC Energy Inc.

**BEFORE:** L.F. Kelsey, Commissioner  
C.A. Brown, Commissioner  
N.E. MacMurchy, Commissioner August 23, 2012  
B.A. Magnan, Commissioner  
D.M. Morton, Commissioner

**O R D E R**

**WHEREAS:**

- A. FortisBC Energy Inc. (FEI) (formerly BC Gas Inc. and Terasen Gas Inc.) entered into a Certificate of Public Convenience and Necessity (CPCN) to operate its system in the District of Coldstream (the Municipality) on October 10, 1967;
- B. On January 28, 1991, FEI entered into a Franchise Agreement with the Municipality that expired on August 11, 2010 (the Franchise Agreement);
- C. On August 23, 2010, FEI applied to the British Columbia Utilities Commission (the Commission) for approval of an extension of the Franchise Agreement to December 31, 2010, and on September 30, 2010, Commission Order C-7-10 approved the requested extension;
- D. On December 21, 2010, FEI applied to the Commission for approval of an additional extension of the Franchise Agreement to March 31, 2011, and on February 10, 2011, Commission Order C-2-11 approved the requested extension;
- E. On June 13, 2011, FEI applied to the Commission for approval of an additional extension of the Franchise Agreement to December 31, 2011, and on August 18, 2011, Commission Order C-10-11 approved the requested extension;
- F. On January 3, 2012, FEI applied to the Commission for approval of an additional extension of the Franchise Agreement to June 30, 2012, and on January 26, 2012, Commission Order C-1-12 approved the requested extension;

**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER** G-113-12

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- G. On February 27, 2012, FEI applied to the Commission under section 32 of the *Utilities Commission Act* for approval of Operating Terms between the Municipality and FEI (the Application);
- H. On March 8, 2012, Commission Order G-32-12 established a written hearing process for review of the Application and a regulatory timetable;
- I. On June 28, 2012, FEI applied to the Commission for approval of an additional extension of the Franchise Agreement to December 31, 2012, and on July 5, 2012, Commission Order C-9-12 approved the requested extension;
- J. The Commission has reviewed the Application and the related submissions.

**NOW THEREFORE** pursuant to section 32 of the *Utilities Commission Act*, the Commission, for the Reasons attached as Appendix A, orders as follows:

1. The Operating Agreement proposed by FEI, as amended by the Commission and set out in the attached Appendix A and Appendix B to this Order is approved, effective July 1, 2012.
2. The Operating Agreement between FEI and the Municipality approved herein shall expire twenty years from July 1, 2012.
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 and Appendix B.
4. The terms of the Operating Agreement may be reviewed, upon application by FEI or the Municipality, should the Commission determine that a significant revision is required.
5. The amendments to the Operating Agreement, as directed by the Commission and set out in the attached Appendix A and Appendix B to this Order, are to be incorporated into future operating agreements between FEI and municipalities.

DATED at the City of Vancouver, in the Province of British Columbia, this

29<sup>th</sup>

of August 2012.

BY ORDER



D.M. Morton  
Commissioner

Attachments



**IN THE MATTER OF**

**FORTISBC ENERGY INC.  
APPLICATION FOR APPROVAL OF OPERATING TERMS  
BETWEEN  
THE DISTRICT OF COLDSTREAM AND FORTISBC ENERGY INC.**

**REASONS FOR DECISION**

**August 29, 2012**

**BEFORE:**

L.F. Kelsey, Commissioner  
C.A. Brown, Commissioner  
N.E. MacMurchy, Commissioner  
B.A. Magnan, Commissioner  
D.M. Morton, Commissioner

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## **1.0 BACKGROUND**

FortisBC Energy Inc. (FEI or the Company) is the successor to Terasen Gas Inc. (Terasen), BC Gas Utility Ltd. (BC Gas) and Inland Natural Gas Co. Ltd. (Inland). On October 10, 1967, the British Columbia Public Utilities Commission granted Inland a Certificate of Public Convenience and Necessity (CPCN) approving the construction and operation of transmission and distribution facilities in the Village of Princeton, the District of Coldstream (the District, the Municipality) and the District of Peachland. On August 30, 1968, Inland and the Municipality entered into an Operating Agreement, with a term of 21 years (the 1968 Agreement). On January 28, 1991, BC Gas and the Municipality entered into a Franchise Agreement, with a "Primary Term" from August 12, 1989 to August 11, 1999 and the option to renew on a year to year basis to a maximum term of 21 years (the 1991 Agreement). This option to renew was exercised each year until the expiration of the 1991 Agreement on August 11, 2010. By Orders C-7-10, C-2-11, C-10-11, C-1-12 and C-9-12 the British Columbia Utilities Commission (the Commission) approved five extensions to the terms and conditions of the 1991 Agreement. The most recent extension (the Existing Agreement) is effective until December 31, 2012.

In 2002, the Union of British Columbia Municipalities (the UBCM) facilitated the formation of the BC Gas Franchise/Operating Agreement Committee (the Committee), comprised of UBCM members in the BC interior whose agreements with BC Gas contained franchise and operating agreements. The objective of the Committee was to recommend to members proposed operating terms with BC Gas to replace those agreements that were expired or expiring in the future.

The following is an excerpt from the Committee's Terms of Reference,<sup>1</sup> which specifies the goals of the Committee's Working Group.

### Goals

1. To develop an agreement which provides:
  - Stability and predictability in revenue
  - Fairness to the taxpayers (in actuality and perception)
  - Equity between BC Gas and the 46 impacted municipalities, and between BC Gas and other Gas providers.
2. To negotiate a "best deal" on behalf of the 46 municipalities based on the principle of "win-win" between the parties for both the operational and financial terms of the agreement.
3. To maximize overall revenues, at a minimum cost to taxpayers.
4. To rationalize the revenues received under the provisions of the franchise agreement with other revenue sources, and the cost of funding the municipalities operations.
5. To ensure that the operation provisions provide the necessary legal and liability protection for municipalities while protecting the short and long run use of the municipal property.
6. To focus on a solution with respect to Gas, however, the solution could be applied to other utilities based on the particular needs of any municipality.

In 2005, Terasen and the Committee successfully negotiated the terms of a pro-forma operating agreement (the Pro-

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<sup>1</sup> BC Gas Franchise / Operating Agreement Committee, Working Group. Terms of Reference (December 2002). Included in the Coldstream Comments.

formal Agreement) and using this as a template, negotiated new operating agreements with 10 municipalities whose operating agreements had expired on December 31, 2005.<sup>2</sup>

Since 2006, Terasen (and subsequent to March 2011, FEI) successfully negotiated new operating agreements containing terms substantially similar to the Pro-forma Agreement with 11 municipalities.<sup>3</sup>

## **2.0 FEI APPLICATION**

On February 27, 2012, FEI applied to the Commission under section 32 of the *Utilities Commission Act* (the Act) for approval of operating terms between the Municipality and FEI (the Application). FEI submitted that it was unable to agree on terms of an operating agreement with the Municipality, despite several rounds of negotiations.

The following are excerpts from section 32 of the Act:

### **Use of municipal thoroughfares**

32 (1) This section applies if a public utility

- (a) has the right to enter a municipality to place its distribution equipment on, along, across, over or under a public street, lane, square, park, public place, bridge, viaduct, subway or watercourse, and
- (b) cannot come to an agreement with the municipality on the use of the street or other place or on the terms of the use.

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

The Application noted that pursuant to section 45(2) of the Act, FEI is deemed to have a CPCN to operate its system in the Municipality and to construct and operate extensions. The following are related excerpts from section 45 of the Act.

### **Certificate of public convenience and necessity**

45 (1) Except as otherwise provided, after September 11, 1980, a person must not begin the construction or operation of a public utility plant or system, or an extension of either, without first obtaining from the commission a certificate that public convenience and necessity require or will require the construction or operation.

(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.

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<sup>2</sup> Town of Oliver (Order C-7-06), District of 100 Mile House (Order C-8-06), City of Cranbrook (Order C-9-06), Town of Creston (Order C-10-06), City of Fernie (Order C-11-06), City of Grand Forks (Order C-12-06), District of Hudson's Hope (Order C-13-06), City of Kimberly (Order C-14-06), Town of Osoyoos (Order C-15-06), City of Rossland (Order C-16-06).

<sup>3</sup> Village of Chase (C-1-07), Westbank First Nation (C-3-07), Village of Warfield (C-2-08), Village of Midway (C-4-10), Town of Princeton (C-6-10), District of Peachland (Order C-8-11), City of Sparwood (Order C-11-11), Village of Lumby (Order C-12-11), City of Greenwood (Order C-2-12), Village of Clinton (Order C-7-12), District of Mackenzie (Order C-8-12).

- (3) Nothing in subsection (2) authorizes the construction or operation of an extension that is a reviewable project under the Environmental Assessment Act.
- (4) The commission may, by regulation, exclude utility plant or categories of utility plant from the operation of subsection (1).
- (5) If it appears to the commission that a public utility should, before constructing or operating an extension to a utility plant or system, apply for a separate certificate of public convenience and necessity, the commission may, not later than 30 days after construction of the extension is begun, order that subsection (2) does not apply in respect of the construction or operation of the extension.

The operating terms proposed in the Application (the FEI Operating Terms) are described as being substantially similar to the terms in the Pro-forma Agreement. FEI stated in the Application that their general approach is to reach agreements that are “substantially similar to the agreements already negotiated with other municipalities” for the following reasons:

1. Standardizing the rights and responsibilities of both FEI and the municipalities provides value to FEI’s ratepayers.
2. Changes diminish FEI’s ability to negotiate future agreements.
3. Standardized and consistent agreements provide operational certainty and consistency.

The Application outlined 26 revisions proposed by the Municipality to the FEI Operating Terms (the Specific Terms in Dispute) and noted that “...FEI agrees with four of the revisions, agrees that two others are acceptable with some modification, and considers that seven others are not necessary since the matter is addressed elsewhere in the agreement.” FEI submitted that they disagree with the remaining 13 items. A summary of the 26 Specific Terms in Dispute is included in Appendix A.1.

### **3.0 REGULATORY PROCESS**

On February 29, 2012, the Municipality’s legal counsel filed a letter (the Municipality Letter) to the Commission with the following comment over the regulatory process by which the Application should be reviewed:

*As the Application does not seem to propose a process by which the Commission is to consider the Application or by which the parties (and the District in particular) may pursue the matter, I [the Municipality’s legal counsel] am writing to enquire as to whether the Commission has any particular proposal for pursing this matter, and ask that I be advised accordingly.*

On March 7, 2012, Commission staff met with the Municipality’s legal counsel and representatives from FEI to discuss the regulatory process and timetable for the Application. Subsequently, the Commission issued Order G-32-12 on March 8, 2012, establishing a written hearing process and a timetable for further submissions from FEI and the Municipality on the Application.

### **4.0 MUNICIPALITY’S COMMENTS ON THE APPLICATION**

On March 21, 2012, the Municipality filed the comments on the Application (the Coldstream Comments) in which they outlined their position on each of the Specific Terms in Dispute.

The Municipality highlighted that the Pro-forma Agreement was neither approved nor endorsed by the UBCM but

rather the UBCM provided resources and acted as a facilitator during the negotiations between the municipalities and FEI.

On March 21, 2012, the Municipality also filed Information Requests to FEI (the Municipality IRs).

## **5.0 FEI RESPONSE TO THE COLDSTREAM COMMENTS**

On April 4, 2012, FEI filed the response to the Coldstream Comments (the FEI Response) in which they further outlined their position on the Specific Terms in Dispute. On April 4, 2012 FEI also filed Information Requests to the Municipality (the FEI IRs) and their response to the Municipality IRs (the FEI IR Response).

The Municipality filed the response to the FEI IRs on April 20, 2012 (the Coldstream IR Response).

## **6.0 FEI FINAL ARGUMENT**

On June 4, 2012, FEI filed the final argument submissions (the FEI Final Argument), including updated operating terms reflecting any changes made to the FEI Operating Terms since the Application (the Revised FEI Operating Terms). The FEI Final Argument sought the following three Commission approvals under section 32 of the Act:

1. Approval of the Revised FEI Operating Terms.
2. A 20-year term from July 1, 2012.
3. The Revised FEI Operating Terms may be reviewed and revised by the Commission, upon application by FEI or the Coldstream, should the Commission determine that a significant revision is required.

The FEI Final Argument addressed three issues as follows:

### **1. Application of Section 32**

FEI submitted that the application of section 32 of the Act is appropriate to the Application and noted the following:

- (a) Under section 32 of the Act, the Commission has the jurisdiction to make the orders requested by FEI in the Application;
- (b) Section 32 of the Act grants the Commission broad discretion over the use of municipal highways and other public places by a utility; and
- (c) Under section 36 of the Act, the Commission also has jurisdiction to make the orders requested by FEI in the Application.

### **2. Operating Terms Are in the Public Interest**

FEI submitted that the Revised FEI Operating Terms are in the public interest as they are substantially similar to the Pro-forma Agreement which FEI has entered into, and the Commission subsequently approved, with 21 other municipalities since 2006.

### **3. Specific Terms in Dispute**

FEI submitted additional comments on several of the outstanding Specific Terms in Dispute.

## 7.0 COLDSTREAM REPLY TO FEI FINAL ARGUMENT

On June 11, 2012, the Municipality filed the reply to the FEI Final Argument (the Coldstream Reply) and addressed the following issues:

1. The Municipality expressed concerns that the Revised FEI Operating Terms both increase the power of FEI to undertake works in public places and limit the ability of the Municipality to exercise its authority. The Municipality submitted that the powers granted to FEI are in excess of those granted under the 1967 CPCN, the 1968 Agreement and the 1991 Agreement.
2. The Municipality submitted that the importance placed on the Pro-forma Agreement by FEI is misplaced and commented specifically on the following points:
  - a. The Municipality submitted that they are unaware of any proceeding whereby the Commission has approved a standardized agreement with FEI applicable to all municipalities and further indicated their understanding to be that the Commission would make decisions based on the specific circumstances in each municipality.
  - b. The Municipality highlighted various questions raised and comments made by the Commission in Orders C-7-06 and C-8-06 relative to the Pro-forma Agreement. They argued that these comments do not provide a "strong endorsement" of the Pro-forma Agreement.
3. In relation to the application of section 32 of the Act, the Municipality requested that the Commission consider each Specific Term in Dispute based on their individual merits. Specifically, the Municipality requested that the Commission consider FEI's historical operations in the Municipality's public places, as per the terms of the 1968 Agreement and the 1991 Agreement.

The Coldstream Reply included the Municipality's proposed operating terms (the Municipality Operating Terms).

## 8.0 FEI REPLY TO THE COLDSTREAM REPLY

On June 18, 2012, FEI filed the reply argument submissions (the FEI Reply) and made the following general remarks:

### 1. Consistency is in the public interest

FEI highlighted citations from the Ontario Energy Board (the OEB) and the Alberta Energy and Utilities Board (the AEUB) whereby they have pointed to the merits of standardized agreements. FEI submitted that, while they are open to modifications to the standardized agreement, "...[Coldstream] has not demonstrated the particular local conditions in Coldstream that make the proposed Operating Terms unreasonable."

FEI requested that, should the Commission identify changes to the Revised FEI Operating Terms, those changes that are specific to the Municipality are distinguished from those that have a broader relevance to other municipalities.

### 2. The Revised FEI Operating Terms place a "narrow and appropriate" limitation on the authority of the Municipality

FEI highlighted that the Revised FEI Operating Terms only exempt FEI from compliance with the Municipality's bylaws that conflict with the Revised FEI Operating Terms and / or other legislation directing FEI. Specifically, FEI expressed concern that a clause requiring FEI to comply with all Municipality bylaws would not be in the public interest as it would require FEI to comply with such bylaws as the Building Code

and Building Bylaw, for example, in their operation of the natural gas distribution and transmission system within public places.

3. Intermediate pressure and transmission pressure pipelines should be included in the operating terms.

FEI addressed three points related to this issue:

- a) The Commission has jurisdiction to impose terms with respect to moves of the gas system within municipal streets and the cost allocation of such moves.
- b) The Municipality does not have a right to the cost allocation contained in Section 12 of the *Oil and Gas Act General Regulation*.
- c) The public interest requires that the intermediate transmission pressure pipelines be included in the operating terms. Further, the cost allocation proposed by FEI in Section 8.2 of the Operating Terms is in the public interest.

FEI also submitted final comments on several of the Specific Terms in Dispute.

## **9.0 COMMISSION DETERMINATION**

### Application of Sections 32, 36 and 45 of the Act

The Commission agrees with FEI that section 32 of the Act is applicable for the review of this Application. FEI, by virtue of Section 45(2) of the Act, is deemed to have a CPCN that does not expire. FEI has the authority under section 45(2) of the Act to operate the plant or system and to construct and operate extensions to the system; therefore, it meets the requirements of section 32 of the Act for review of the Application.

### FEI Pro-forma Agreement

The Commission notes the Municipality's concerns over the emphasis placed on the Pro-forma Agreement by FEI and is in agreement with the Municipality that, with regard to applications made pursuant to section 32 of the Act, the circumstances in each municipality should be considered to determine the appropriate terms and conditions on an individual basis. The Commission has reviewed submissions from both parties and has included its determination on each of the Specific Terms in Dispute in Appendix A.1.

The Commission does not agree with comments made by the Municipality in the Coldstream Reply that questions raised and comments made by the Commission specific to the Pro-forma Agreement do not provide a "strong endorsement" of the Pro-forma Agreement. Instead, such questions and comments are part of the regulatory process that the Commission engages in prior to issuing orders and decisions. In the Commission's view, that FEI has successfully negotiated new operating agreements that are substantially similar to the Pro-forma Agreement with 21 municipalities, each with individual circumstances, since 2006 provides strong support for the merits of the Pro-forma Agreement.

### Oil and Gas Activities Act

Section 8.1 of the Revised FEI Operating Terms deals with requests by FEI when they require Municipal Facilities to be altered, changed or relocated. Section 8.2 deals with requests by the Municipality when they require the same of FEI's Company Facilities. Both Section 8.1 and 8.2 require that the party making the request pay for all of the costs. The Municipality has noted in several submissions that the requirement in Section 8.2 that the Municipality "...agrees to

pay for all of the costs for changes to the affected Company Facilities" forces them to abandon their rights under the *Oil and Gas Activities Act* (the OAGA Act). The *Oil and Gas Activities Act General Regulation* provides the opportunity for cost sharing between specific parties when particular conditions are met. In the Commission's view, the Municipality does not abandon its rights under the OAGA Act, given that Section 5.1 of the Revised FEI Operating Terms requires FEI to comply with "all Federal and Provincial laws, regulations and codes."

**Specific Terms in Dispute**

The Commission has reviewed submissions from both parties and has included its determination on each of the Specific Terms in Dispute in Appendix A.1.

**The Commission approves the Revised FEI Operating Terms, as amended by the Commission and set out in the attached Appendix A.1 and Appendix B.**

**The Commission considers that a term of twenty years is appropriate for the new Operating Agreement and is effective from July 1, 2012.**

**FEI and the Municipality are to file with the Commission an endorsed Operating Agreement in accordance with the terms approved by the Order accompanying the Reasons for Decision and consistent with Appendix B.**

**The terms of the Operating Agreement may be reviewed, upon application by FEI or the Municipality, should the Commission determine that a significant revision is required.**

**The amendments to the Operating Agreement, as directed by the Commission and set out in the attached Appendix A.1 and Appendix B, are to be incorporated into future operating agreements between FEI and municipalities.**

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
1	<b>1 (e) Company Facilities</b>	<p>“ “Company Facilities” means FortisBC’s facilities, including pipes, buildings, structures, valves, signage, storage facilities, machinery, vehicles and other equipment used to maintain, operate, renew, repair, construct and monitor a natural Gas Distribution and transmission system”;</p>	<p>“ “Company Facilities” means FortisBC’s facilities, including pipes, buildings, structures, valves, signage, <del>storage facilities</del>, machinery, vehicles and other equipment used to maintain, operate, renew, repair, construct and monitor a natural Gas Distribution and transmission system”;</p>	<p>“ “Company Facilities” means FortisBC’s facilities, including pipes, <del>buildings, structures</del>, valves, signage, <del>storage facilities</del>, machinery, <del>vehicles</del> and other equipment used to maintain, operate, renew, repair, construct and monitor a natural Gas Distribution and transmission system”;</p>	<p><b>The revision proposed by the Municipality is not approved.</b></p> <p><u>Transmission System</u></p> <p>In the Commission’s view, the inclusion of the term “transmission system” in the definition is appropriate.</p> <p>FEI, by virtue of section 45(2) of the Act, is deemed to have a CPCN that does not expire. FEI has the authority under section 45(2) to operate the plant or system and to construct and operate extensions to the system. The CPCN granted to Inland in 1967 required the “construction and operation by [Inland] of transmission and distribution facilities to supply natural gas” to Municipality.</p> <p>In addition, the 1991 Agreement granted FEI “ .. the full power, right and liberty to place, construct, renew, alter, repair, maintain, operate and use its pipes and other equipments and appliances... for mixing, <b>transmitting</b>, distributing, delivering, furnishing, selling and taking delivery of gas upon , along, across, over or under any public thoroughfare, highway, road, street, land, alley, square, park, public place, bridge, viaduct, subway or watercourse in the Municipality...as may be necessary or convenient for the purposes of supplying and conducting gas to the consumers thereof.”</p>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
					<u>Other Proposed Revisions</u>  The Commission does not agree with the Municipality's position that the definition proposed by FEI would allow them to construct works in public places that are not connected to the natural gas system. The definition directly specifies that Company Facilities are those that are "...used to maintain, operate, renew, repair, construct and monitor a natural gas distribution and transmission system." The Commission considers it appropriate that all facilities used for this purpose should be included in the definition to ensure that FEI is not impeded from acting in accordance with the set terms.
2	<b>1 (o) New Wok</b>	"New Work" means any installation, construction, repair, maintenance, alteration, extension or removal work of the Company Facilities in Public Places except;  (i) routine maintenance and repair of the Company Facilities that does not involve any cutting of asphalted road surface;	Same as FEI Application Operating Terms	"New Work" means any installation, construction, repair, maintenance, alteration, extension or removal work of the Company Facilities in Public Places except;  (i) Routine <u>work and maintenance, field testing, installation, removal</u> and repair of the Company Facilities <del>that does not involve any cutting of asphalted road surface</del>	<b>The revision proposed by the Municipality is not approved.</b>  The Commission notes that the main difference between the definition of New Work in the Revised FEI Operating Terms and the Municipality Operating Terms concerns the installation or repair of Service Lines. The Municipality objects to the exclusion of Service Lines from the definition of New Work.  Section 6.1 of the Revised FEI Operating Terms relates to New Work. Section 6.2 of the Revised FEI Operating Terms relates to the installation, removal or repair of Service Lines. In the Commission's view, given that New Work and Service Lines are dealt with in separate Sections of the Revised FEI Operating Terms, it is

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
		<p>(ii) installation or repair of Service Lines whether or not such installation or repair involves cutting of asphalted road service; or</p> <p>(iii) emergency work;</p> <p>but notwithstanding such exceptions, New Work shall include any installation, construction or removal of the Company Facilities in Public Places that are planned to disturb underground Municipal Facilities;</p>		<p><u>provided that;</u></p> <p>a. <u>Such</u> installation or repair of Service Lines whether or <u>does not</u> such installation or repair involves cutting of asphalted road service; <u>and or</u></p> <p>(iii) emergency work;</p> <p>but notwithstanding such exceptions, New Work shall include any installation, construction or removal of the Company Facilities in Public Places that are planned to disturb underground Municipal Facilities;</p>	<p>appropriate that the installation or repair of Service Lines is excluded from the definition of New Work.</p> <p>The Commission notes the Municipality's concerns regarding the definition of Company Facilities and its impact on the definition of New Work. This is addressed in the Commission determination on Issue #1.</p>
3	<b>5.1 Non-discriminatory Standards for FortisBC</b>	<p>"In its use of Public Places, FortisBC shall comply with all Federal and Provincial laws, regulations and codes and shall comply with all Municipal bylaws, standards and policies except that FortisBC shall not have to</p>	<p>Only minor change to (a):</p> <p>"conflict with terms of these terms or limit any rights or concessions granted to FortisBC by the Municipality under these terms; or"</p>	<p>The following sentence is added to the end of the first paragraph: "...are in direct conflict with provincial or federal legislation governing the operations of FortisBC."</p>	<p><b>The revision proposed by the Municipality is not approved.</b></p> <p>The Commission notes section 121 of the Act, which states the following:</p>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
		<p>comply with such Municipal bylaws, standards and policies that:</p> <ul style="list-style-type: none"> <li>(a) conflict with terms of these terms or limit any rights or concessions granted to FortisBC by the Municipality under these terms; or</li> <li>(b) conflict with other legislation governing FortisBC.</li> </ul> <p>Further, where the Municipality has established requirements and standards for work in Public Places, the Municipality shall apply them in a fair, reasonable and non-discriminatory manner consistent with the manner that the Municipality establishes requirements on other Utilities.”</p>		<p>Section (a), (b) and the final paragraph are deleted</p>	<p>121 (1) Nothing in or done under the Community Charter or the Local Government Act</p> <ul style="list-style-type: none"> <li>(a) supersedes or impairs a power conferred on the commission or an authorization granted to a public utility, or</li> <li>(b) relieves a person of an obligation imposed under this Act or the <i>Gas Utility Act</i>.</li> </ul> <p>Section 121 of the Act requires that a municipality may not enact bylaws, standards and policies that conflict with an authorization granted to a public utility. Therefore, the Commission considers that paragraph (a) and (b) add clarity to the scope of the agreement in regards to any bylaws that might otherwise apply to FEI's operations in public places.</p> <p>The Commission considers that the final paragraph adds clarity to the Revised FEI Operating Terms to ensure that fair requirements and standards are applied to FEI's work in the Municipality's public places.</p>
4	<b>6.1.1 Notice for New Work</b>	Remove “if required by Municipality.” Change made in Application Operating Terms.	Same as FEI Application Operating Terms	Same as FEI Application Operating Terms	<b>Issue resolved between parties.</b>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
5	<b>6.1.3 Municipal Approval for New Work</b>	(a) the proposed location of the New Work conflicts with existing Municipal Facilities, existing third party facilities or Planned Facilities; or"	Same as FEI Application Operating Terms	(a) the proposed location or <u>design</u> of the New Work conflicts with <u>existing Municipal Facilities, existing third party facilities or Planned Facilities, the Municipality's Official Community Plan or other bylaws, standards or policies of the Municipality</u> ; or"	<p><b>The revision proposed by the Municipality is not approved.</b></p> <p>The Commission considers that the addition of "other bylaws, standards or policies of the Municipality" is redundant as this appears in Section 6.1.3(b) of the Revised FEI Operating Terms.</p> <p>In the Commission's view, the addition of the Official Community Plan is unnecessary for two reasons.</p> <p>First, the Municipality noted in the Coldstream Comments that "The OCP is a fundamental tool in guiding the future development of the District and, under the <i>Local Government Act</i> municipal bylaws must be consistent with the OCP." Given that the Municipality's bylaws are consistent with the OCP, the Municipality has grounds to object to New Work under Section 6.1.3(b) to the extent that the New Work does not conform to Municipal bylaws, standards or policies.</p> <p>Second, Section 6.1.3(a) of the Revised FEI Operating Terms provides that the Municipality may object to New Work on the grounds that the New Work conflicts with "Planned Facilities". Therefore, to the extent that any New Work conflicts with Planned Facilities included in the Municipality's Official Community Plan, a means for objection is already provided in the Revised FEI Operating Terms.</p>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
6	<b>6.1.3 Municipal Approval for New Work</b>	Section (d) not included in FEI Application Operating Terms.	Same as FEI Application Operating Terms	<p>The following is added:</p> <p>“(d) the Municipality, acting reasonably, considers that the nature, design, type or location of the proposed New Work will cause undue interference or disruption to, or substantially affect the appearance or current use of, and Public Place or is otherwise not in the best interests of the public;”</p>	<p><b>The revision proposed by the Municipality is not approved.</b></p> <p>The Commission considers the proposed revision unnecessary as the Municipality is provided grounds to object to New Work in Sections 6.1.3 (a) and (b) of the Revised FEI Operating Terms if that New Work conflicts with existing or planned facilities, does not conform to Municipal bylaws, standards or policies and/or is likely to compromise public safety. Also, the addition of “not in the best interests of the public” is unnecessary as FEI is already required by Section 3 of the Revised FEI Operating Terms to carry out work and operations “with the due care and attention that is necessary to safeguard the interest of the public...”.</p>
7	<b>6.1.3 Municipal Approval for New Work</b>	“...by providing FortisBC with notice of its objections, provided such objections are reasonable, no more than 10 days after receiving FortisBC’s notice of New Work...”	Same as FEI Application Operating Terms	<p>The following is removed:</p> <p>“...provided such objections are reasonable...”</p>	<p><b>The revision proposed by the Municipality is not approved.</b></p> <p>The Municipality noted that the statement that “such objections are reasonable” is “unnecessary and poorly defined” yet proposed similar wording to Section 6.1.3(d). In the Commission’s view, it is appropriate that all objections to New Work are reasonable, to ensure that FEI is not unnecessarily impeded from acting in accordance with the terms of agreement.</p>
8	<b>6.2 Notice of Service Lines</b>	“FortisBC shall provide the Municipality with notice of its intent to install, remove or repair	Same as FEI Application Operating Terms	<p>The following is removed:</p> <p>“FortisBC’s request for the</p>	<p><b>The revision proposed by the Municipality is not approved.</b></p>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
		<p>Service Lines no less than three (3) days prior to commencement of such work. FortisBC's request for the location of the Municipality's utilities shall be deemed to be a notice of FortisBC's intent to install, remove or repair Service Lines. The Municipality may object to such work on the same grounds as set out in SubSection 6.1.3 (a) and (b) above by providing FortisBC with notice of its objections within three (3) days of receiving FortisBC's notice. If the Municipality has not provided such notice of its objections to FortisBC, the Municipality shall be deemed to have granted its approval of the installation, removal or repair of the Service Lines. The Municipality shall not otherwise withhold or delay its approval."</p>		<p>location of the Municipality's utilities shall be deemed to be a notice of FortisBC's intent to install, remove or repair Service Lines."</p>	<p><b>The Commission directs that all locate information requests sent by FEI expressly state FEI's intention is to install, remove and / or repair Service lines at the location under consideration.</b></p> <p><b>The Commission directs FEI to make the aforementioned change to all locate information requests sent to municipalities.</b></p> <p>The Municipality submitted that the 'locate information requests' are inadequate notification as they do not specify FEI's intent to install, remove or repair Service Lines. FEI submitted that 'locate information requests' provide sufficient notification of their plans regarding Service Lines and that any additional notification would unnecessarily increase the costs to FEI's ratepayers.</p> <p>The Commission is in agreement with FEI that the requirement to send a second notification in addition to the 'locate information requests' would unnecessarily increase costs to ratepayers.</p> <p>However, the Commission agrees with the Municipality's argument that the 'locate information requests' do not provide sufficient information as to FEI's intent to install, repair and/or remove Service Lines. This hinders the Municipality's right to object to such work in instances where they are uncertain as to what work is actually being performed. Therefore, the Commission directs that all 'locate information requests' sent by FEI expressly state in the 'description</p>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
					of the work' Section FEI's intention to install, remove and / or repair Service Lines at the location under consideration.
9	<b>6.4.1. Specific Work Requirements Remove Materials</b>	“FortisBC shall keep its work sites clean and tidy. FortisBC shall remove all rubbish and surplus material from Public Places upon completion of its work.”	Same as FEI Application Operating Terms	<p>The following is added to the end of the Section:</p> <p>“All work carried out by FortisBC on Public Places shall:</p> <ul style="list-style-type: none"> <li>(a) Comply with all federal, provincial and municipal laws and regulations;</li> <li>(b) Be carried out diligently in a good and workmanlike manner in accordance with sound engineering practices;</li> <li>(c) Not damage or interfere with existing third party or Municipal Facilities or other equipment or improvements over, under or adjacent to the Public Places;</li> <li>(d) Be conducted and completed to the reasonable satisfaction of the Municipality; and</li> <li>(e) Not unduly interfere with the public use and</li> </ul>	<p><b>The addition of (a) is not approved.</b> Section 5.1 of the Revised FEI Operating Terms requires FEI to comply with all Federal and Provincial laws in addition to Municipal bylaws, standards and policies, other than those conflicting with the Revised FEI Operating Terms.</p> <p><b>The addition of (b) is approved, in part.</b> The Commission directs FEI to include the following in Section 6.4 of the Revised FEI Operating Terms:</p> <p style="padding-left: 40px;"><b>All work carried out by FortisBC on Public Places shall be carried out in accordance with sound engineering practices.</b></p> <p><b>The Commission directs FEI to incorporate the aforementioned revision into future operating agreements with municipalities.</b></p> <p>The Commission agrees that the inclusion of “sound engineering practices” is required to ensure that the appropriate professional judgement is applied by FEI in its engineering within the Municipality. The Commission disagrees with the inclusion of "...diligently in a good and workmanlike manner ..." as this is a broad statement that adds little clarity to the Revised FEI Operating Terms.</p>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
				enjoyment of the Public Places."	<p><b>The addition of (c) is not approved.</b></p> <p>The Municipality is provided grounds to object to New Work that conflicts with existing Municipal Facilities, existing third party facilities and/or planned facilities in Section 6.1.3(a) of the Revised FEI Operating Terms.</p> <p>The Commission considers it more appropriate to outline FEI's obligations in the unlikely event that work performed by FEI results in damage to Municipal Facilities. Such obligations are outlined in Section 6.4.3 of the Revised FEI Operating Terms.</p> <p>In the Commission's view, it is not appropriate to include 'third party facilities' in this section under consideration as indemnity against third party claims is covered in Section 10.1.1 of the Revised FEI Operating Terms.</p> <p><b>The addition of (d) is not approved.</b> In the Commission's view, this is a broad term that adds little clarity to the Revised FEI Operating Terms. Section 6.4.2 of the Revised FEI Operating Terms provides that any restoration of the surface or subsurface by FEI must be "...in accordance with the specifications set out by the Municipality." Section 6.4.3 further specifies that any damage to Municipal Facilities must be conducted in accordance with 6.4.2, i.e. "...in accordance with the specifications set out by the Municipality."</p>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
					<b>The addition of (e) is not approved.</b> Section 3 of the Revised FEI Operating Terms requires FEI to carry out all work in a manner that protects the interest of the public.
10	<b>6.4.4 Municipal Repairs Upon Default</b>	Section not included in Application Operating Terms	Same as FEI Application Operating Terms	<p>The following Section is added:</p> <p>“ 6.4.4 Municipal Repairs Upon Default</p> <p>If FortisBC fails to restore the surface or subsurface of a Public Place and when required by Section 6.4.2, or fails to repair Municipal Facilities as and when required by Section 6.4.3, the Municipality may, but is not required to, carry out and complete such restoration or repair at the cost of FortisBC and, despite anything to the contrary in Section 6.4.2. FortisBC shall be responsible for any repairs and maintenance of the surface repair for a period of three (3) years.”</p>	<p><b>The revision proposed by the Municipality is not approved.</b></p> <p>Section 6.4.2 of the Revised FEI Operating Terms requires FEI to carry out restoration work on surfaces and subsurface “without unreasonable delay” and “in accordance with the specifications set out by the Municipality”. Section 3 of the Revised FEI Operating Terms requires FEI to carry out their obligations under the terms within “reasonable time frames”.</p> <p>Given FEI’s obligations under Sections 3 and 6.4.2 as noted above, the proposed revision is, in the Commission’s view, unnecessary.</p> <p>The Commission is in agreement with FEI that they should not be held responsible for the maintenance of restoration work performed by the Municipality.</p> <p>The Commission also highlights that the proposed revision is ambiguous, as it relates to Section 6.4.3. Section 6.4.3 requires FEI to notify and reimburse the Municipality for any damage to Municipal facilities, as opposed to FEI performing restoration work. Therefore, there is no requirement to “...repair Municipal Facilities</p>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
					as and when required by Section 6.4.3" as noted in the proposed addition of Section 6.4.4.
11	<b>6.4.5 WCB Coverage</b>	Section not included in Application Operating Terms	Same as FEI Application Operating Terms	<p>The following Section is added:</p> <p>" 6.4.5 WCB Coverage</p> <p>FortisBC shall at its own expense procure, carry and pay for, or cause to be procured, carried or paid for, full Workers' Compensation Board coverage for itself and all workers, employees, servants and others engaged in or upon any work or service which is the subject matter of these terms. FortisBC shall comply with all regulations and safety rules of the Workers' Compensation Act and ensure that all such safety rules and regulations are observed during the performance of any work under these terms."</p>	<p><b>The revision proposed by the Municipality is not approved.</b></p> <p>Section 5.1 of the Revised FEI Operating Terms requires FEI to comply with all Federal and Provincial laws. All incorporated entities, such as FEI, are required by law to register with WorkSafeBC. Therefore, pursuant to Section 5.1 of the Revised FEI Operating Terms, FEI is required to register with WorkSafeBC.</p> <p>Section 118 of the <i>Workers Compensation Act</i> (the WC Act) provides for the designation of one employer at a multi-employer site to be the prime contractor. The "prime contractor" is defined in the WC Act as follows:</p> <ul style="list-style-type: none"> <li>(a) the directing contractor, employer or other person who enters into a written agreement with the owner of that workplace to be the prime contractor for the purposes of this Part, or</li> <li>(b) if there is no agreement referred to in paragraph (a), the owner of the workplace.</li> </ul> <p>Section 118 of the WC Act further notes:</p> <p class="list-item-l1">(2) The prime contractor of a multi-employer workplace must</p>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
					<ul style="list-style-type: none"> <li>(a) ensure that the activities of employers, workers and other persons at the workplace relating to occupational health and safety are coordinated, and</li> <li>(b) do everything that is reasonably practicable to establish and maintain a system or process that will ensure compliance with this Part and the regulations in respect of the workplace.</li> </ul> <p>(3) Each employer of workers at a multiple-employer workplace must give to the prime contractor the name of the person the employer has designated to supervise the employer's workers at that workplace.</p> <p>The revision proposed by the Municipality extends beyond FEI's legal obligations under the WC Act with the inclusion of "...others engaged in or upon any work of service which is the subject matter of these terms." This statement would require FEI to be responsible for other employers' workers or contractors when FEI is not the prime contractor. In the Commission's view, it is not in the public interest to increase FEI's responsibilities beyond what is required by the WC Act.</p>
<b>12</b>	<b>6.7 Removal of Company Facilities</b>	Section not included in Application Operating Terms	Same as FEI Application Operating Terms	The following Section is added: " 6.7 Removal of Company	<b>The revision proposed by the Municipality is approved, in part.</b>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
				<p>Facilities</p> <p>FortisBC shall notify the Municipality from time to time if FortisBC no longer requires any Company Facilities located above the surface of the ground in any Public Place and, at the request of the Municipality, shall, within a reasonable period of time and at its cost, remove such surface Company Facilities, repair any damage caused by such removal and restore the surface of the Public Place. If FortisBC fails to repair any damage and restore the Public Place, the Municipality may carry out such work at the cost of FortisBC."</p>	<p><b>The Commission directs FEI to add the following paragraph to the end of Section 6.4.1 of the Revised FEI Operating Terms:</b></p> <p><b>The Company shall not leave any part of its gas system in such a state as to constitute a nuisance or a danger to the public through neglect, non-use and want or repair.</b></p> <p><b>The Commission directs FEI to incorporate the aforementioned revision into future operating agreements with municipalities.</b></p> <p>In the Commission's view, a provision regarding disused Company Facilities is reasonable, in order to ensure that obsolete Company Facilities in public places are dealt with appropriately and in a timely manner.</p> <p>The Commission is in agreement with the Municipality that Section 6.4.2 of the Revised FEI Operating Terms does not specifically address the removal of unused FEI facilities and thus it would be appropriate to modify Section 6.4.2 of the Revised FEI Operating Terms to include removal of unused above-ground facilities, as directed by the Commission above.</p> <p>The revision ordered by the Commission above is reduced in scope as compared to the revision proposed by the Municipality for the following reasons:</p> <ul style="list-style-type: none"><li>• Section 3 of the Revised FEI Operating Terms already requires FEI to carry out their</li></ul>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
					<p>obligations under the terms within “reasonable time frames”.</p> <ul style="list-style-type: none"> <li>• The restoration of surface and subsurface is covered in Section 6.4.2 of the Revised FEI Operating Terms.</li> <li>• The repair of damage to Municipal Facilities is covered in Section 6.4.3 of the Revised FEI Operating Terms.</li> <li>• The proposed revision that “...the Municipality may carry out such work at the cost of FortisBC” is not approved as Section 3 of the Revised FEI Operating Terms requires FEI to carry out their obligations under the terms within “reasonable time frames”. Any disputes regarding compliance with the terms of agreement should be dealt with in accordance with the dispute resolution mechanisms outlined in Section 17 of the Revised FEI Operating Terms.</li> </ul>
13	<b>7.1 Notice of Closure of Public Places</b>	“If the Public Places are expropriated by an expropriating authority and FortisBC is required to remove the Company Facilities then the Municipality shall promptly notify FortisBC of the expropriation.”	Same as FEI Application Operating Terms	Full paragraph is deleted.	<p><b>The revision proposed by the Municipality is approved, in part.</b></p> <p><b>The Commission directs FEI to revise Section 7.1 of the Revised FEI Operating Terms to conclude with the following sentence:</b></p>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
					<p><b>This provision is applicable when the Municipality receives official notice of expropriation or otherwise becomes aware of expropriation through communications with the expropriating authority.</b></p> <p><b>The Commission directs FEI to incorporate the aforementioned revision into future operating agreements with municipalities.</b></p> <p>The Commission agrees with the Municipality that FEI could be included in the definition of “owner” per the <i>Expropriation Act</i>. Section 1 defines “owner,” in relation to land, as:</p> <ul style="list-style-type: none"><li>a) a person who has an estate, interest, right or title in or to the land including a person who holds a subsisting judgment or builder's lien,</li><li>(b) a committee under the Patients Property Act,</li><li>(b.1) an attorney under Part 2 of the Power of Attorney Act,</li><li>(b.2) a guardian, executor, administrator or trustee in whom land is vested, or</li><li>(c) a person who is in legal possession or occupation of land, other than a person who leases residential premises under an agreement that has a term of less than one year;</li></ul>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
				<p>Pursuant to Section 6 of the <i>Expropriation Act</i>, an expropriating authority must serve notice on each owner. However, FEI notes that they are unable to register ownership interest in the Land Title Office to ensure that an expropriating authority will know of its interest when doing a land title search. Therefore, whether or not FEI is likely to receive expropriation notice is a function of the knowledge and experience of the staff at the expropriating authority.</p> <p>The Commission notes that the definition of “Public Places” per the Revised FEI Operating Terms could include those that are not owned by the Municipality and may instead be owned by provincial or federal entities. Therefore, it is not appropriate that the Municipality is obliged to notify FEI of expropriation when they may not have received or be entitled to receive notification themselves.</p> <p>In the Commission’s view, in instances where the Municipality receives official notice of expropriation or otherwise becomes aware of expropriation through communications with the expropriating authority, the obligation to inform FEI would only require minimal effort and resources on their part and is therefore reasonable to be included in the terms.</p>	

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
14	<b>8.1 Facility Changes Required By FortisBC</b>	<p>"FortisBC may provide Notice to the Municipality that it requires Municipal Facilities to be altered, changed or relocated to accommodate its requirements.</p> <p>The Municipality will comply with FortisBC's requests to the extent it is reasonably able to do so and with reasonable speed and dispatch after receipt of written request. FortisBC agrees to pay for all of the costs for changes to the affected Municipal Facilities."</p>	Same as FEI Application Operating Terms	<p>The following is added at the end of the first paragraph:</p> <p>"Provided that such request does not:</p> <ul style="list-style-type: none"> <li>• Conflict with the Municipality's Official Community Plan or other bylaws, standards or policies of the Municipality;</li> <li>• Conflict with the location of any Planned Facilities; or</li> <li>• Compromise public safety;"</li> </ul>	<p><b>The revision proposed by the Municipality is not approved.</b></p> <p>The Commission notes that Section 8.1 of the Revised FEI Operating Terms deals with requests by FEI that they require Municipal Facilities to be altered, changed or relocated. Section 8.2 deals with requests by the Municipality that they require the same of FEI's Company Facilities. Section 8.1 and 8.2 are reciprocal, with the exception of a sentence regarding the OAGA Act in Section 8.2. There is no equivalent sentence to be included in Section 8.1 as the OAGA Act relates to the safety of pipelines as opposed to Municipal Facilities.</p> <p>Both Section 8.1. and 8.2 require the party whose facilities are requested to be altered, changed or relocated to comply "...to the extent that it is reasonably able to do so..." Therefore, if it is unreasonable for the Municipality to comply with FEI's requests that conflict with Planned Facilities or municipal bylaws, the conflict should be dealt with in accordance the dispute resolution terms outlined in Section 17 of the Revised FEI Operating Terms.</p> <p>The Commission considers the third point unnecessary as Section 3 of the Revised FEI Operating Terms requires FEI to carry out work and operations "with the due care and attention that is necessary to safeguard the interest of the public...".</p>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
15	<b>9.2 Communication and Coordination Activities</b>	Remove requirement to 'meet' each year to "will be invited to meet". Change made in Application Operating Terms.	Same as FEI Application Operating Terms	Same as FEI Application Operating Terms	<b>Issue resolved between parties.</b>
16	<b>10.3 Limitations on Municipality's Liability</b>	"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."	Same as FEI Application Operating Terms	<p>The following is added at the end of the paragraph:</p> <p>"Neither FortisBC nor the Municipality shall be liable to each other in any way for indirect or consequential losses or damage, or damage for pure economic loss, howsoever caused or contributed to, in connection with these terms."</p>	<p><b>The revision proposed by the Municipality is not approved.</b></p> <p>In the Commission's view, it is not in the public interest to have a contractual limitation that may result in all FEI ratepayers bearing the burden of damages that would otherwise be the Municipality's legal responsibility. Also, the revision proposed by the Municipality deals with liability arising from the use of public places by FEI to store its equipment. Therefore, the Commission considers that the proposed revision is not an explicitly mutual restriction on liability, further supporting that it is not in the public interest.</p>
17	<b>10.4 Insurance</b>	Section not included in Application Operating Terms	<p>FEI has added the following Section:</p> <p><b>"10.4 Insurance</b></p> <p>FortisBC shall obtain at its own</p>	Same as FEI Revised Operating Terms.	<b>Issue resolved between parties.</b>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
			expense General Commercial liability insurance for bodily injury, death and property damage with minimum amount \$5 million per occurrence and name the Municipality as an additional insured on such policy.”		
18	<b>10.5 Environmental Liabilities</b>	Section not included in Application Operating Terms	Same as FEI Application Operating Terms	The following Section is added:  “FortisBC shall assume all environmental liability, including but not limited to liability for cleanup of any hazardous substances which it brings or deposits or causes to be brought or deposited onto any Public Place is uses under these terms. For certainty, FortisBC is not liable for any hazardous substances which may be or are present in, or under, along or around the Public Places which were not brought or deposited, or caused to be brought or deposited onto the Public Places by FortisBC, or which were brought or deposited by any party who FortisBC is not responsible or at law. For the	<p><b>The revision proposed by the Municipality is not approved.</b></p> <p>Section 5.1 of the Revised FEI Operating Terms requires FEI to abide by all applicable laws. This would include the <i>Environmental Management Act</i> (the EM Act). The following are excerpts from the EM Act.</p> <p><b>Section 45</b></p> <p><b>Persons responsible for remediation of contaminated sites</b></p> <p>(d) a person who</p> <p>(i) transported or arranged for transport of a substance, and</p> <p>(ii) by contract, agreement or otherwise caused the substance to be disposed of, handled or treated in a manner that, in whole</p>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
				<p>purposes of this Sections, “hazardous substances” means any hazardous substances and includes, but is not limited to, radiation, petroleum products and byproducts, industrial wastes, contaminants, pollutants, dangerous substances, and toxic substances, as defined in or pursuant to any law, ordinance, rule, regulation, by-law or code, whether federal, provincial or municipal.</p>	<p>or in part, caused the site to become a contaminated site;</p> <p><b>Section 46</b></p> <p><b>Persons not responsible for remediation</b></p> <p>(e) an owner or operator who</p> <p>(i) owned or occupied a site that at the time of acquisition was not a contaminated site, and</p> <p>(ii) during the ownership or operation, did not dispose of, handle or treat a substance in a manner that, in whole or in part, caused the site to become a contaminated site;</p> <p>The Commission considers that under Section 45 of the EM Act FEI could be held responsible for remediation of contaminated sites, when applicable.</p> <p>Section 10.1 of the Revised FEI Operating Terms provides the following indemnity by FEI to the Municipality:</p> <p>10.1.1 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...loss or damage to property caused by FortisBC</p> <p>The Municipality submitted that Section 10.1.1 does not protect the Municipality against legal or</p>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
					<p>administrative sanctions for environmental offences; however, the Commission considers that Section 10.1.1 is appropriate as it refers to “all claims” in respect to “loss or damage to property”.</p> <p>The revision proposed by the Municipality requires FEI to “assume all environmental liability”. This differs from Section 10.1 of the Revised FEI Operating Terms, in which FEI indemnifies the Municipality “...except to the extent contributed by negligence or default of the Municipality or Municipal Employees.” The Commission does not consider it to be in the public interest for FEI to assume all liability in instances where there may be shared liability due to negligence by the Municipality.</p>
19	<b>12 OTHER APPROVALS, PERMITS OR LICENSES</b>	“Except as specifically provided in these terms, the Municipality will not require FortisBC to seek or obtain approvals, permits or licenses.”	Same as FEI Application Operating Terms	“Except as specifically provided in <u>these terms or as required by Municipal bylaws, provincial or federal legislation</u> <del>these terms</del> , the Municipality will not require FortisBC to seek or obtain approvals, permits or licenses.”	<p><b>The revision proposed by the Municipality is not approved.</b></p> <p>The proposed revision is not approved as it places undue restrictions on FEI’s operations.</p> <p>The Commission is in agreement with FEI that the proposed revision would reduce the benefit that ratepayers obtain from the agreement. For example, FEI would be required to obtain permits and pay the applicable permit fees in order to comply with <i>Building and Plumbing Bylaw No. 1442</i>.</p> <p>The following is an excerpt from the Act:</p>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
					<p><b>Relationship with Local Government Act</b>          121 (1) Nothing in or done under the Community Charter or the Local Government Act</p> <p>(a) supersedes or impairs a power conferred on the commission or an authorization granted to a public utility, or</p> <p>(b) relieves a person of an obligation imposed under this Act or the Gas Utility Act.</p>
20	<b>13.1.1 Municipal Work</b>	<p>“Before the Municipality undertakes any construction or maintenance activity which is likely to affect a part of the Company Facilities, it must give FortisBC notice not less than 10 days before commencing such construction or maintenance activity.”</p>	<p>Same as FEI Application Operating Terms</p>	<p>“Before the Municipality undertakes any construction or maintenance activity which <u>will require modification to</u> <del>is likely to affect a part of</del> the Company Facilities, it must give FortisBC notice not less than <del>10</del> <u>3</u> days before commencing such construction or maintenance activity.”</p>	<p><b>The proposed revision to include “will require modification to” is not approved.</b></p> <p><b>The Commission directs FEI to make the following revision to Section 13.1.1 of the Revised FEI Operating Terms:</b></p> <p><b><i>Before the Municipality undertakes any construction or maintenance activity which is likely to affect a part of the Company Facilities, excluding routine maintenance and repair that does not involve any cutting of asphalted road surface, it must give FortisBC notice not less than 10 days before commencing such construction or maintenance activity.</i></b></p>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
				<p><i>Before the Municipality undertakes routine maintenance and repair that does not involve any cutting of asphalted road surface and is likely to affect Company Facilities, it must give FortisBC notice not less than 3 days before commencing such construction or maintenance activity.</i></p> <p>The Commission directs FEI to incorporate the aforementioned revision into future operating agreements with municipalities.</p> <p>The Commission agrees with FEI regarding the symmetry between Section 6.1.3 and 13.1.1 of the Revised FEI Operating Terms. Section 6.1.3 of the Revised FEI Operating Terms provides the Municipality with 10 days after receiving FEI's notice of New Work to object. Section 13.1.1 requires the Municipality to give FEI 10 days notice of municipal work.</p> <p>However, the Commission is in agreement with the Municipality that a 10 day notice period for routine maintenance activities is not appropriate. The Commission notes that the definition of New Work excludes "... routine maintenance and repair of the Company Facilities that does not involve any cutting of asphalted road surface." Therefore, the Commission considers a 3 day notice period for routine maintenance to be more appropriate. This is consistent with Section 6.2 of the Revised FEI Operating Terms that requires FEI to provide no less than 3 days notice to the</p>	

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
					<p>Municipality of its intent to install, remove or repair Service Lines.</p> <p>In the Commission's view, it is appropriate that the Municipality notify FEI of all Municipal work that is 'likely' to affect a part of the Company Facilities as the Municipality may not be aware in all circumstances of what construction or maintenance will in fact require modification to the Company Facilities.</p>
21	<b>13.1.8 Municipal Work</b>	“The Municipality shall notify FortisBC of any new bylaws, standards or policies adopted or passed by the Municipality that are likely to affect FortisBC’s operations in Public Places.”	Same as FEI Application Operating Terms	The word “directly” is added: “The Municipality shall notify FortisBC of any new bylaws, standards or policies adopted or passed by the Municipality that are likely to <u>directly</u> affect FortisBC’s operations in Public Places.”	<p><b>The revision proposed by the Municipality is not approved.</b></p> <p>In the Commission's view, it is important that the Municipality advise FEI of any new bylaws, standards or policies that are likely to impact FEI, to ensure FEI complies with Section 5.1 of the Revised FEI Operating Terms.</p>
22	<b>14.1 Definition of Costs</b>	<p>“Wherever one party is required to pay the other party Costs as a result of damage caused by one party to the other’s property, the Costs shall be: ...</p> <p>d) in the case of loss of gas or re-lights, the cost of the commodity as determined by the</p>	Same as FEI Application Operating Terms	Both (d) and (e) are deleted.	<p><b>The revision proposed by the Municipality is not approved.</b></p> <p>The Commission considers it appropriate that both FEI and the Municipality are entitled to recover the costs outlined in Section 14.1 incurred as a result of damage caused by the other party.</p>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
		<p>length of time that the gas is leaking, size of pipe and hole and the pressure; and</p> <p>e) in the case of water, electrical or sewer, cost of supplying alternate service.”</p>			
23	<b>14.3.1 Cost Verification Procedures</b>	<p>“Wherever either party is the recipient of or is claiming Costs and or fees that party may at its own discretion request from the other party: ...”</p>	<p>Same as FEI Application Operating Terms</p>	<p>A \$50,000 threshold is added as follows:</p> <p>“Wherever either party is the recipient of or is claiming Costs and or fees that party may at its own discretion request from the other party, <u>and that exceed \$50,000 in value</u>”:</p>	<p><b>The revision proposed by the Municipality is not approved.</b></p> <p><b>The Commission directs FEI to amend the Revised FEI Operating Terms to conclude (a) and (b) with the word “or,” to clarify that only one cost verification procedure can be requested in each situation.</b></p> <p><b>The Commission directs FEI to incorporate the aforementioned revision into future operating agreements with municipalities.</b></p> <p>The Municipality seeks to avoid the transaction costs associated with Section 14.3.1 for costs below a \$50,000 threshold. The revision proposed by the Municipality means that disputes regarding costs below \$50,000 would be dealt with in accordance with the dispute resolution mechanisms outlined in Section 17 of the Revised FEI Operating Terms. Section 17 requires</p>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
					<p>disputes to be resolved in a structured mediation conference, followed by referral to arbitration or to the Commission, where applicable.</p> <p>In the Commission's view, cost verification is not always well-suited to mediation or arbitration. Also, whether the cost verification procedures as per Section 14.3.1 are more or less expensive than the dispute resolution procedures as per Section 17 will depend on the specifics of each individual situation and thus the benefit of the \$50,000 threshold proposed by the Municipality to the ratepayers is not evident. For that reason, the Commission takes the view that the \$50,000 threshold proposed by the Municipality is not in the public interest.</p> <p>The Commission notes that Section 14.3.1 of the Revised FEI Operating Terms is ambiguous as it does not specify whether either party can request more than one of the three cost verification procedures. In the Commission's view, only one cost verification procedure should be employed in each instance and therefore the Commission directs FEI to amend the Revised FEI Operating Terms.</p>
24	<b>15.7 (c) Continuity In The Event No Agreement Is Settled</b>	"FortisBC may continue to use Public Places within the Municipality for the purposes of its business. FortisBC's employees, may enter upon all	Same as FEI Application Operating Terms	The end of the sentence is modified as follows:  "... provided that FortisBC	<p><b>The revision proposed by the Municipality is not approved.</b></p> <p>In the Commission's view, the collection and remittance of the operating fee is not appropriate upon expiry of</p>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
		the Public Places within the Boundary Limits of the Municipality to maintain, operate, install, construct, renew, alter, or place Company Facilities; provided that FortisBC continues to operate in a manner consistent with the terms and conditions of these terms as if the term had been extended except with respect to the payment of the Operating Fee.”		continues to operate in a manner consistent with the terms and conditions of these terms as if the term had been extended <u>including payment of the Operating Fee as required by Section 11.1 except with respect to the payment of the Operating Fee.</u> ”	the agreement, unless directed by the Commission.
25	<b>15.7 (e) Continuity In The Event No Agreement Is Settled</b>	“Should FortisBC no longer be authorized or required to pay the operating fee under these terms between it and the Municipality or by any other order of the BCUC, the Municipality shall be free to apply such approval, permit and licence fees, charges and levies it is legally entitled to collect.”	Same as FEI Application Operating Terms	The paragraph is modified as follows:  “Should FortisBC <u>no longer</u> be authorized or required to pay the <u>Operating Fee under any new agreement or these terms</u> between it and the Municipality or by any other order of the BCUC, <u>FortisBC shall reimburse</u> the Municipality <u>for any operating fees or rents not paid by FortisBC during the time period commencing on the termination or expiry of these terms until the effective date of the new terms or agreement, as the case may be, at the rate</u>	<b>The revision proposed by the Municipality is not approved.</b>  In the Commission’s view, the collection and remittance of the operating fee is not appropriate upon expiry of the agreement, unless directed by the Commission.

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
				<u>specified in the new agreement or terms , as the case may be shall be free to apply such approval, permit and licence fees, charges and levies it is legally entitled to collect.”</u>	
26	<b>17.7 Continuation of Obligation</b>	Condition added regarding dispute resolution. Change made in Application Operating Terms.	Same as FEI Application Operating Terms	Same as FEI Application Operating Terms	<b>Issue resolved between parties.</b>

**OPERATING TERMS** for Fortis Energy Inc. (“FortisBC”) in the District of Coldstream

**1. DEFINITIONS**

For the purposes of these terms:

- (a) “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;
- (b) “BCUC” means the British Columbia Utilities Commission or successor having regulatory jurisdiction over natural gas distribution utilities in British Columbia;
- (c) “CPCN” means a Certificate of Public Convenience and Necessity granted by the BCUC which allows FortisBC to operate, maintain and install Company Facilities for the distribution of Gas within the Municipality;
- (d) “Company Design” means the installation and design specifications which meet all applicable Provincial and Federal codes, standards and safety requirements for the gas services in the province of British Columbia, as they relate to approved gas works, system improvements, upgrades, connections and system extensions;
- (e) “Company Facilities” means FortisBC’s facilities, including pipes, buildings, structures, valves, signage, machinery, vehicles and other equipment used to maintain, operate, renew, repair, construct and monitor a natural Gas Distribution and transmission system;
- (f) “Distribution Pipelines” means pipelines operating at a pressure less than 2071 kilopascals (300 psi);
- (g) “FortisBC Employees” means personnel employed by or engaged by FortisBC including officers, employees, directors, contractors, and agents;
- (h) “Gas” means natural gas, propane, methane, synthetic gas, liquefied petroleum in a gaseous form or any mixture thereof;
- (i) “Gas Distribution” means fixed equipment, structures, plastic and metal lines and pipe, valves, fittings, appliances and related facilities used or intended for the purpose of conveying, testing, monitoring, distributing, mixing, storing, measuring and delivering Gas and making it available for use within the Municipality;
- (j) “Highway” means street, road, lane, bridge or viaduct controlled by the Municipality or Provincial Government of British Columbia;
- (k) “Mains” means pipes used by FortisBC to carry gas for general or collective use for the purposes of Gas Distribution;
- (l) “Municipal Employees” means personnel employed by or engaged by the municipality, including officers, employees, directors, contractors and agents;

- (m) “Municipal Facilities” means any facilities, including highways, sidewalks, conduits, manholes, equipment, machinery, pipes, wires, valves, buildings, structures, signage, bridges, viaducts and other equipment within the Public Places used by the Municipality for the purposes of its public works or municipal operations;
- (n) “Municipal Supervisor” means the Municipal Engineer or other such person designated by the Municipality to receive notices and issue approval as set out in these terms;
- (o) “New Work” means any installation, construction, repair, maintenance, alteration, extension or removal work of the Company Facilities in Public Places except;
  - (i) routine maintenance and repair of the Company Facilities that does not involve any cutting of asphalted road surface;
  - (ii) installation or repair of Service Lines whether or not such installation or repair involves cutting of asphalted road service; or
  - (iii) emergency work;
- but notwithstanding such exceptions, New Work shall include any installation, construction or removal of the Company Facilities in Public Places that are planned to disturb underground Municipal Facilities;
- (p) “Pipeline Markers” means post, signage or any similar means of identification used to show the general location of Transmission Pipelines and distribution pipelines or FortisBC Rights of Way;
- (q) “Planned Facilities” means those facilities not yet constructed but which have been identified by way of documented plans for the works of the Municipality, for works of third parties, where such works are identified by documented plans approved by the Municipality, or for works of FortisBC submitted to the Municipality subject to Municipal approval;
- (r) “Public Places” means any public thoroughfare, highway, road, street, lane, alley, trail, square, park, bridge, right of way, viaduct, subway, watercourse or other public place in the Municipality;
- (s) “Service Line” means that portion of FortisBC’s gas distribution system extending from a Main to the inlet of a meter set and, for the purposes of these terms, includes a service header and service stubs;
- (t) “Transmission Pipeline” means a pipeline of FortisBC having an operating pressure in excess of 2071 kilopascals (300 psi); and
- (u) “Utilities” means the facilities or operations of any water, waste water, sewer, telecommunications, energy, cable service or similar service provider located in Public Places within the Municipality.

## **2. INTERPRETATION**

For the purposes of interpreting these terms:

- (a) the headings are for convenience only and are not intended as a guide to interpretation of these terms;
- (b) words in the singular include the plural, words importing a corporate entity include individuals, and vice versa;
- (c) in calculating time where the agreement refers to "at least" or "not less than" 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" a number of days, Saturdays, Sundays and holidays must be excluded;
- (d) 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.

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

FortisBC and the Municipality shall act in good faith in carrying out these terms and, within reasonable time frames, carry out the obligations under these terms.

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.

## **4. FORTISBC RIGHTS TO ACCESS & USE PUBLIC PLACES**

FortisBC has the right to:

- (a) develop, construct, install, maintain or remove Company Facilities on, over, in and under Public Places in the Municipality;
- (b) enter on Public Places from time to time as may be reasonably necessary for the purpose of maintaining, repairing, or operating the Company's Facilities;
- (c) place pipeline identification markers within Public Places where a Transmission Pipeline or Distribution Pipeline crosses or is otherwise within a Public Place;

subject to these terms.

## **5. FORTISBC COMPLIANCE WITH STANDARDS FOR USE OF PUBLIC PLACES**

### **5.1 Non-discriminatory Standards for FortisBC**

In its use of Public Places, FortisBC shall comply with all Federal and Provincial laws, regulations and codes and shall comply with all Municipal bylaws, standards and policies except that FortisBC shall not have to comply with such Municipal bylaws, standards and policies that:

- (a) conflict with these terms or limit any rights or concessions granted to FortisBC by the Municipality under these terms; or
- (b) conflict with other legislation governing FortisBC.

Further, where the Municipality has established requirements and standards for work in Public Places, the Municipality shall apply them in a fair, reasonable and non-discriminatory manner consistent with the manner that the Municipality establishes requirements on other Utilities.

### **5.2 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.

### **5.3 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 unless the reason for the request is the result of an emergency; in which case the information shall be provided forthwith. FortisBC shall provide gas locations from FortisBC records. FortisBC shall perform on site facility locates in accordance with the *Safety Standards Act – Gas Safety Regulations* Section 39.

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

### **6.1 Notices - General Requirements**

#### **6.1.1. Notice for New Work**

For New Work, FortisBC shall give notice to the Municipality or such officer or official thereof who has been designated from time to time by the Municipality that it intends to perform such New Work. The Notice shall include:

- (a) a plan and specifications showing the proposed location and dimensions of the New Work;
- (b) FortisBC's plans for the restoration of the Public Place affected by the New Work if FortisBC's restoration plans are different from those set out in Section 6.4.2 of these terms;
- (c) the name of a FortisBC representative who may be contacted for more information;

- (d) projected commencement and completion dates; and
- (e) such other information relevant to the New Work as the Municipality may reasonably request from time to time.

**6.1.2. Exception for Emergency**

Where FortisBC is required to carry out work urgently in the interests of public safety or health or to preserve the safety of property and Company Facilities, FortisBC shall not be required to give prior notice but shall do so as soon as possible thereafter.

**6.1.3. Municipal Approval for New Work**

The Municipality may object to the New Work on the following grounds:

- (a) the proposed location of the New Work conflicts with existing Municipal Facilities, existing third party facilities or Planned Facilities; or
- (b) the proposed location or design of the New Work is likely to compromise public safety or does not conform with Municipal bylaws, standards or policies; or
- (c) in instances where FortisBC can delay the New Work without compromising the supply, capacity or safety of its Gas Distribution System or its customers' need for gas service and the Municipality intends within the next 3 months to undertake work in the same location and wishes to co-ordinate both work;

by providing FortisBC with notice of its objections, provided such objections are reasonable, no more than 10 days after receiving FortisBC's notice of New Work. If the Municipality has not provided such notice of its objections to FortisBC, or in the case of large and complex New Work, the Municipality has not provided FortisBC with a notice to extend the time to reply to FortisBC until a stated time, the Municipality shall be deemed to have granted its approval of the New Work. The Municipality shall not otherwise withhold or delay its approval.

In addition, the Municipality may request FortisBC to provide the public with notice of the New Work.

**6.1.4. Work Not to Proceed**

If the Municipality has notified FortisBC of its objections or has requested a time extension, no more than 10 days after receiving FortisBC's notice of New Work, FortisBC shall not proceed with the New Work until FortisBC and the Municipality have agreed upon a resolution to the Municipality's objections. If the Municipality and FortisBC are unable to agree, then the matter shall be resolved in accordance with Section 17 (Resolution of Disputes).

**6.2 Notice of Service Lines**

FortisBC, shall provide the Municipality with notice of its intent to install, remove or repair Service Lines no less than three (3) days prior to commencement of such work. FortisBC's request for the location of the Municipality's utilities shall be deemed to be a notice of FortisBC's intent to install, remove or repair Service Lines. The Municipality may object to such work on the same grounds as set out in Subsection 6.1.3 (a) and (b) above by providing FortisBC

with notice of its objections within three (3) days of receiving FortisBC's notice. If the Municipality has not provided such notice of its objections to FortisBC, the Municipality shall be deemed to have granted its approval of the installation, removal or repair of the Service Lines. The Municipality shall not otherwise withhold or delay its approval.

### **6.3      FortisBC to Secure Locate Information**

Prior to conducting any New Work, FortisBC shall locate other Utilities and satisfy itself that it is clear to proceed.

### **6.4      Work Standards**

All work carried out by FortisBC shall be carried out in accordance with sound engineering practices.

#### **6.4.1.    Specific Work Requirements Remove Materials**

FortisBC shall keep its work sites clean and tidy. FortisBC shall remove all rubbish and surplus material from Public Places upon completion of its work.

The Company shall not leave any part of its gas system in such a state as to constitute a nuisance or a danger to the public through neglect, non-use and want or repair.

#### **6.4.2.    Restore Surface and Subsurface**

Where FortisBC has performed any operations or New Work in a Public Place, FortisBC shall restore without unreasonable delay and return such Public Place, as much as reasonably practical, to the condition and use which existed prior to such activity. The restoration will be in accordance with the specifications set out by the Municipality. Such specifications may include the degree and nature of compaction, subsurface structure, surface finish and landscaping required.

Without limiting the generality of this section and by way of example only, the Municipality may require FortisBC to restore asphalt and concrete surfaces with a permanent repair or a temporary repair. Should a temporary repair be directed, FortisBC or the Municipality at its discretion will subsequently construct a permanent repair in accordance to its usual maintenance/replacement schedule for that area. The cost of permanent and temporary repairs to remediate Highway surfaces will be at the expense of FortisBC proportional to the surface area affected by the New Work.

Where FortisBC is required to cut pavement on a Public Place such cuts and restoration will be limited to less than 1.5 meters unless at the discretion of FortisBC a larger excavation is warranted to due the depth or size of the pipe or requirements of the Workers' Compensation Board or other relevant Provincial or Federal regulations. FortisBC will be responsible for any repairs and maintenance of the surface repair for a period of three (3) years. However, where pavement restoration has been conducted by the Municipality, whether or not such work was undertaken to repair cuts on FortisBC's behalf, FortisBC shall not be responsible for the repairs or maintenance of the surface repair.

#### **6.4.3. 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 6.4.2 above, FortisBC will report such damage and reimburse the Municipality for its costs arising from such damage calculated in accordance with Section 14.1 below. Where such damage results directly from inaccurate or incomplete information supplied by Municipality, and FortisBC has complied with all applicable laws and regulations, and with instructions supplied by the Municipality, then the cost of repairing damaged Municipal Facilities or Public Places will be at the expense of the Municipality.

#### **6.5 Conformity Requirement**

The New Work must be carried out in conformity with FortisBC's notice of New Work except that FortisBC may make in-field design changes when carrying out the 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 FortisBC's work on Municipal Facilities, other than in respect of projected commencement and completion dates, FortisBC shall notify the Municipality.

#### **6.6 Non-Compliance**

If Company Facilities located in Public Places are later found not to be located in compliance with FortisBC's notice of New Work provided in accordance with Section 6.1 and 6.5, then any alteration or upgrading required to bring them into compliance with such notice will be at the expense of FortisBC provided that the work has not been altered, damaged or modified by the Municipality or a third party.

### **7. COMPANY FACILITY CHANGES REQUIRED BY THE MUNICIPALITY**

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

Before any Public Places containing Company Facilities may be legally closed or alienated by the Municipality, the Municipality shall promptly notify FortisBC of its intent to close or alienate such Public Places and either:

- (a) grant FortisBC a registered statutory right of way in a form satisfactory to FortisBC so as to maintain FortisBC's right to use the land; or
- (b) request FortisBC to remove and (if possible and practicable) relocate those Company Facilities affected by such closure or alienation at the sole cost of the Municipality.

If the Public Places are expropriated by an expropriating authority and FortisBC is required to remove the Company Facilities then the Municipality shall promptly 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. FACILITY CHANGES REQUIRED**

### **8.1 By FortisBC**

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

### **8.2 By the Municipality**

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

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

### **9.1 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 is responsive to the affect that it may have on the other party, as well as other users of Public Places. Such reasonable efforts include attending the planning meetings described in Section 9.2 below 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.

### **9.2 Communication and Coordination Activities**

At the initiation of the Municipality, representatives of the Municipality, FortisBC and other affected Utilities and third parties may be invited to meet each year, prior to the construction season, to discuss the parties' anticipated construction activities for that year. Such discussions will include

- (a) the use of common trenching, common utility access facilities and such other common facilities as may be commercially reasonable and comply with operating and safety standards; and
- (b) the consolidation of planned maintenance work where pavement must be cut in order to avoid multiple excavations.

### **9.3 Municipal Planning Lead**

During such annual planning meetings, the Municipality shall lead the planning process for all Utilities and third parties with Planned Facilities in Public Places.

## **10. MUTUAL INDEMNITY**

### **10.1 Indemnity by FortisBC**

**10.1.1.** 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:

- (a) placing, constructing, renewing, altering, repairing, maintaining, removing, extending, operating or using the Company's Facilities on or under any Public Places;
- (b) any breach of these terms by FortisBC;

except to the extent contributed by negligence or default of the Municipality or the Municipal Employees.

**10.1.2.** This indemnity expressly extends to all acts and omissions of FortisBC Employees.

### **10.2 Indemnity by the Municipality**

**10.2.1.** 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:

- (a) placing, constructing, renewing, altering, repairing, maintaining, removing, extending, operating or using the Municipal Facilities on or under any Public Places;
- (b) any breach of these terms by the Municipality;

except to the extent contributed by the negligence or default of FortisBC or FortisBC Employees.

**10.2.2.** This indemnity expressly extends to all acts and omissions of Municipal Employees.

### **10.3 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.

#### **10.4 Insurance**

FortisBC shall obtain at its own expense General Commercial liability insurance for bodily injury, death and property damage with minimum amount of \$5 million per occurrence and name the Municipality as an additional insured on such policy.

### **11. OPERATING FEE**

#### **11.1 Fee Calculation**

- 11.1.1.** FortisBC agrees to pay to the Municipality a fee of three percent (3%) of the gross revenues (excluding taxes) received by FortisBC for provision and distribution of all gas consumed within the Boundary Limits of the Municipality. Such amount will not include any amount received by FortisBC for gas supplied or sold for resale.
- 11.1.2.** The Municipality will provide FortisBC with thirty (30) days prior written notice of any boundary expansion so that new customers can be included as a part of the annual payment fee.
- 11.1.3.** FortisBC will be responsible for adding those new customers within the new Municipal boundary upon receipt of such notice from the Municipality and the revised calculation of the fee will commence effective the date that is the later of the date of actual boundary change or thirty (30) days after the notification under section 11.1.2.

#### **11.2 Payment Date and Period**

Payments by FortisBC to the Municipality will be made on the first day of March of each year of the Agreement in respect of the amount received by FortisBC during that portion of the term of these terms which is in the immediately preceding calendar year. By way of example only, payment made on November 1, 2012 will be the amount received during the 2011 calendar year.

#### **11.3 BCUC Decision or Provincial Legislation**

In the event that a decision by the BCUC, other than periodic rate changes as a result of commodity, delivery or margin increases or decreases, or new legislation by the Provincial Government, impacts the operating fee being paid to the Municipality so as to increase it or decrease it by more than 5% annually at the time of the decision or in subsequent years, the parties shall negotiate a new operating fee formula which best reflects the revenue stream received by the Municipality under these terms. For greater certainty, the parties acknowledge that a change to the BCUC's decision that FortisBC shall provide the agency billing and collections service for marketers on a mandatory basis, as set out in the "Business Rules for Commodity Unbundling dated June 5, 2003 as set out in Appendix A to Letter No. L-25-03, may impact the operating fee being paid to the Municipality.

### **12. OTHER APPROVALS, PERMITS OR LICENSES**

Except as specifically provided in these terms, the Municipality will not require FortisBC to seek or obtain approvals, permits or licenses. The Municipality will not charge or levy against FortisBC any

approval, license, inspection or permit fee, or charge of any other type, that in any manner is related to or associated with FortisBC constructing, installing, renewing, altering, repairing, maintaining or operating Company Facilities on any Public Places or in any manner related to or associated with FortisBC exercising the powers and rights granted to it by these terms (other than for repair of damage to the Municipal Facilities or Public Places in accordance with Section 14).

If the Municipality does charge or levy fees or costs against FortisBC (other than for repair of damage to the Municipal Facilities or Public Places in accordance with Section 14) then FortisBC may reduce the annual operating fee payable to the Municipality under Section 11 by an amount equal to such charges, fees or costs.

## **13. MUNICIPAL OBLIGATIONS**

### **13.1 Municipal Work**

**13.1.1.** Before the Municipality undertakes any construction or maintenance activity which is likely to affect a part of the Company Facilities, excluding routine maintenance and repair that does not involve any cutting of asphalted road surface, it must give FortisBC notice not less than 10 days before commencing such construction or maintenance activity.

Before the Municipality undertakes routine maintenance and repair that does not involve any cutting of asphalted road surface and is likely to affect Company Facilities, it must give FortisBC notice not less than 3 days before commencing such construction or maintenance activity.

**13.1.2.** Where the Municipality is required to carry out work urgently in the interests of public safety or health or to preserve the safety of property and Municipal Facilities, the Municipality shall not be required to give prior notice but shall do so as soon as possible thereafter.

**13.1.3.** FortisBC will be entitled to appoint at its cost a representative to inspect any construction or maintenance activity undertaken by the Municipality. The provisions of this section do not relieve the Municipality of its responsibilities under the *Gas Safety Act*, *Oil and Gas Activities Act*, and successor legislation, regulations thereunder, or the requirements of the BC Workers' Compensation Board.

**13.1.4.** In addition, the Municipality shall provide Notice to FortisBC of any work planned that will be adjacent to, across, over or under a Transmission Pipeline or within a right-of-way for a Transmission Pipeline. To the extent that FortisBC requires that permit be issued for construction or other activities within a Transmission Pipeline right-of-way, the Municipality will submit an application for such a permit in sufficient time for the application to be reviewed and approved by FortisBC prior to the commencement of the construction or other activity.

**13.1.5.** The Municipality shall assist FortisBC in FortisBC's efforts to reduce instances of residences being built over gas lines and other similarly unsafe building practices by third parties.

**13.1.6.** The Municipality shall not interfere with Transmission Pipeline markers.

**13.1.7.** The Municipality shall provide notice to FortisBC of any damage caused by the Municipality to Company Facilities or Transmission Pipeline Markers as soon as reasonably possible. To the extent that any of the work being done by the Municipality results in damage to the Company Facilities, the Municipality will report such damage and pay FortisBC its costs arising from such damage in accordance with Section 14.1 below. Where such damage results directly from inaccurate or incomplete information supplied by FortisBC, and the Municipality has complied with all applicable laws and regulations, and with instructions supplied by FortisBC, then the cost of repairing the damaged Company Facilities will be at the expense of FortisBC.

**13.1.8.** The Municipality shall notify FortisBC of any new bylaws, standards or policies adopted or passed by the Municipality that are likely to affect FortisBC's operations in Public Places.

## **14. COSTS AND PAYMENT PROCEDURES**

### **14.1 Definition of Costs**

Wherever one party is required to pay the other party Costs as a result of damage caused by one party to the other's property, the Costs shall be:

- (a) all direct expenses and disbursements incurred to restore such property to as good a state of repair as had existed prior to the damage;
- (b) reasonable administration and overhead charges on labour, equipment and materials;
- (c) such taxes as may be required in the appropriate jurisdiction;
- (d) in the case of loss of gas or re-lights, the cost of the commodity as determined by the length of time that the gas is leaking, size of pipe and hole and the pressure; and
- (e) in the case of water, electrical or sewer, cost of supplying alternate service.

### **14.2 Cost Claim Procedures**

**14.2.1.** Wherever one party is claiming Costs of the other party in regard to any work or issue arising under these terms the claiming party shall:

- (a) provide an invoice to the other party no later than one year after incurring Costs;
- (b) provide detailed descriptions of the cost items;

- (c) provide the time period the invoice covers;
- (d) provide a minimum of 21 day terms for payment of the invoice; and
- (e) provide for late payment interest at the rate consistent with the party's policy for charging for late payments, which rate must be reasonable;

**14.2.2.** The party claiming Costs shall have no right of set off for these invoices against any amounts otherwise payable to the other party, except to the extent so approved in writing by the other party.

#### **14.3 Cost Verification Procedures**

**14.3.1.** Wherever either party is the recipient of or is claiming Costs and or fees that party may at its own discretion request from the other party:

- (a) Certification by an officer or designated representative verifying the calculations and computations of the Costs and or fees, or
- (b) An internal review or audit of the calculations and computations of the Costs and or fees, with the internal review or audit to be carried out by a person appointed by the party being asked to provide the review; or
- (c) An independent external audit of the calculations and computations of the costs and fees, with the independent external auditor being a Chartered or a Certified General Accountant in British Columbia appointed by the party requesting the external audit;

**14.3.2.** The costs of this cost verification process shall be borne by the party who is required to supply the information except as otherwise specified providing the frequency of such requests does not exceed once per calendar year. For all future cases which occur in that calendar year, the costs of such further verifications shall be at the expense of the requester.

Where the independent external audit finds and establishes errors representing a variance greater than 2% of the originally calculated value in favour of the party claiming Costs, the costs shall be at the expense of the party supplying the information. Once an error has been verified, payment or refund of the amount found to be in error will be made within 21 days.

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

**15.1 (*not used*)**

**15.2 (*not used*)**

**15.3 Term of Agreement**

These terms will be in effect for 20 years from the date that it comes into effect.

**15.4 (*not used*)**

**15.5 (*not used*)**

**15.6 Negotiations on Termination or Expiry of these terms**

Upon expiry of these terms, the parties shall negotiate in good faith to enter into a new agreement with respect to the terms and conditions under which FortisBC may use the Public Places. In the event that such negotiations break down and in the opinion of one or other of the parties acting in good faith that settlement is unlikely, either party may give Notice to the other of its intention to apply to the BCUC to seek resolution of the terms and conditions applicable to FortisBC's continued operations and construction activities within the Municipality.

**15.7 Continuity In The Event No Agreement Is Settled**

Upon the expiry of these terms, if an agreement has not been ratified or if the BCUC has not imposed new terms and conditions under which FortisBC may use the Public Places, the following provisions will apply:

- (a) The Company Facilities within the boundary limits of the Municipality both before and after the date of these terms, shall remain FortisBC's property and shall remain in the Public Places.
- (b) The Company Facilities may continue to be used by FortisBC for the purposes of its business, or removed from Public Places in whole or in part at FortisBC's sole discretion.
- (c) FortisBC may continue to use Public Places within the Municipality for the purposes of its business. FortisBC's employees, may enter upon all the Public Places within the Boundary Limits of the Municipality to maintain, operate, install, construct, renew, alter, or place Company Facilities; provided that FortisBC continues to operate in a manner consistent with the terms and conditions of these terms as if the term had been extended except with respect to the payment of the Operating Fee.
- (d) FortisBC will, with the support of the Municipality, take such steps necessary to seek BCUC approvals of the extension of terms and conditions including payment of the operating fee under the expiring terms during negotiations of an agreement.
- (e) Should FortisBC no longer be authorized or required to pay the operating fee under these terms between it and the Municipality or by any other order of the BCUC, the Municipality shall be free 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**

In the event that 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, these terms, 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 these terms.

## **16.2 Changes to the Community Charter**

In the event that the provisions of the *Community Charter* or other legislation affecting the rights and powers of municipalities change in such a way as to materially, in the opinion of the Municipality, affect municipal powers in respect to matters dealt with in these terms,

- (a) the Municipality may within one year of the change coming into effect propose new terms with respect to only those specific changes and FortisBC agrees to negotiate such terms; and
- (b) failing satisfactory resolution either of the parties will seek resolution through the Dispute Resolution Process, Section 17.

## **16.3 Changes to the Utilities Commission Act**

In the event that the provisions of the *Utilities Commission Act* or other legislation affecting the rights and powers of regulated Utilities change in such a way as to materially, in FortisBC's opinion, affect FortisBC's powers in respect to matters dealt with in these terms,

- (a) FortisBC may within one year of the change coming into effect propose new terms with respect to only those specific changes and the Municipality agrees to negotiate such terms; and
- (b) failing satisfactory resolution either of the parties will seek resolution through the Dispute Resolution Process, Section 17.

# **17. DISPUTE RESOLUTION**

## **17.1 Mediation**

Where any dispute arises out of or in connection with these terms, including failure of the parties to reach agreement on any matter arising in connection with these terms, 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 or Arbitration**

If the parties fail to resolve the dispute through mediation, the unresolved dispute shall be referred to the BCUC if within its jurisdiction. If the matter is not within the jurisdiction of the BCUC, 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 will allow discovery as required by law in arbitration proceedings.

### **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 either FortisBC or the Municipality 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 these terms during the resolution of any dispute in accordance with this Section 17, 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 & CONDITIONS**

### **18.1 No Liens**

FortisBC will do its best to not allow, suffer or permit any liens to be registered against the Company Facilities located in Public Places as a result of the conduct of FortisBC. If any such liens are registered, FortisBC will start action to clear any lien so registered to the Public Place within ten (10) days of being made aware such lien has been registered. FortisBC will keep the Municipality advised as to the status of the lien on a regular basis. In the event that 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.

**18.2 *(not used)***

**18.3 Representations**

Nothing in these terms shall be deemed in any way or for any purpose to constitute either party as the legal representative, agent, partner or joint venture 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.

**18.4 Enurement**

These terms shall be binding upon, enure to the benefit of, and be enforceable by, the successors of the parties hereto.

**18.5 Governing Law *(not used)***

**18.6 General**

These terms are subject to the laws of Province of British Columbia and the applicable laws of Canada, and nothing in these terms will be deemed to exclude the application of the provisions of such laws, or regulations thereunder.

**18.7 *(not used)***

**18.8 *(not used)***

**18.9 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.

**18.10 Notice**

Any notice or other written communication required, or permitted to be made or given pursuant to these terms (the "Notice") 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:

(A) if to the Municipality:

THE DISTRICT OF COLDSTREAM  
9901 Kalamalka Road  
Coldstream, BC V1B 1L6

(B) If to FortisBC:

FORTISBC ENERGY INC.  
16705 Fraser Highway  
Surrey, B.C. V4N 0E8  
Attention: Director, Regulatory Affairs

**Appendix D**

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**C-7-14 – OPERATING AGREEMENT BETWEEN THE  
VILLAGE OF KEREMEOS AND FEI**

ERICA HAMILTON  
COMMISSION SECRETARY  
Commission.Secretary@bcuc.com  
web site: <http://www.bcuc.com>



SIXTH FLOOR, 900 HOWE STREET, BOX 250  
VANCOUVER, BC CANADA V6Z 2N3  
TELEPHONE: (604) 660-4700  
BC TOLL FREE: 1-800-663-1385  
FACSIMILE: (604) 660-1102

Log No. 47855

**VIA EMAIL**

[gas.regulatory.affairs@fortisbc.com](mailto:gas.regulatory.affairs@fortisbc.com)

July 10, 2014

Ms. Diane Roy  
Director, Regulatory Affairs  
FortisBC Energy Inc.  
16705 Fraser Highway  
Surrey, BC V4N 0E8

Dear Ms. Roy:

Re: FortisBC Energy Inc.  
Operating Agreement with the Village of Keremeos

Further to your May 27, 2014 filing of an Operating Agreement with the Village of Keremeos, enclosed please find Commission Order C-7-14.

Yours truly,

A handwritten signature in black ink, appearing to read "Erica Hamilton".

cms  
Enclosure

SIXTH FLOOR, 900 HOWE STREET, BOX 250  
VANCOUVER, BC V6Z 2N3 CANADA  
web site: <http://www.bcuc.com>



BRITISH COLUMBIA  
UTILITIES COMMISSION  
  
ORDER  
NUMBER C-7-14

TELEPHONE: (604) 660-4700  
BC TOLL FREE: 1-800-663-1385  
FACSIMILE: (604) 660-1102

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

and

FortisBC Energy Inc.  
Application for Approval of an Operating Agreement with the Village of Keremeos

BEFORE: L.F. Kelsey, Commissioner  
C.A. Brown, Commissioner  
H.G. Harowitz, Commissioner  
K.A. Keilty, Commissioner  
N.E. MacMurchy, Commissioner  
I.F. MacPhail, Commissioner  
B.A. Magnan, Commissioner  
D.M. Morton, Commissioner

July 10, 2014

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

WHEREAS:

- A. FortisBC Energy Inc. (FEI), formerly known as BC Gas Utility Ltd. and Terasen Gas Inc., and the Village of Keremeos entered into a Standard Form Franchise Agreement dated October 16, 1993 (Franchise Agreement);
- B. Commission Order C-6-94 approved the Franchise Agreement;
- C. In Order and Decision G-113-12 the British Columbia Utilities Commission (Commission) ordered that amendments in the Operating Agreement between FEI and the District of Coldstream be incorporated into future operating agreements between FEI and municipalities;
- D. On May 27, 2014, FEI applied to the Commission for approval of an Operating Agreement between FEI and the Village of Keremeos, effective April 1, 2014 (Application); and
- E. The Commission reviewed the Application and considers that approval is warranted.

NOW THEREFORE pursuant to section 45 of the *Utilities Commission Act*, the British Columbia Utilities Commission approves the Operating Agreement between FortisBC Energy Inc. and the Village of Keremeos, as filed.

DATED at the City of Vancouver, in the Province of British Columbia, this

10<sup>th</sup>  
of July 2014.

BY ORDER

A handwritten signature in black ink, appearing to read "D.M. Morton".

D.M. Morton  
Commissioner

**Appendix E**

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**C-8-14 –VILLAGE OF KEREMEOS OPERATING AGREEMENT  
BASIS FOR COMPARISON FOR FUTURE OPERATING  
AGREEMENT APPLICATIONS**

ERICA HAMILTON  
COMMISSION SECRETARY  
Commission.Secretary@bcuc.com  
web site: <http://www.bcuc.com>



SIXTH FLOOR, 900 HOWE STREET, BOX 250  
VANCOUVER, BC CANADA V6Z 2N3  
TELEPHONE: (604) 660-4700  
BC TOLL FREE: 1-800-663-1385  
FACSIMILE: (604) 660-1102

Log No. 47855

**VIA EMAIL**

gas.regulatory.affairs@fortisbc.com

July 24, 2014

Ms. Diane Roy  
Director, Regulatory Affairs  
FortisBC Energy Inc.  
16705 Fraser Highway  
Surrey, BC V4N 0E8

Dear Ms. Roy:

Re: FortisBC Energy Inc.  
Operating Agreement with the Village of Keremeos

Further to your May 27, 2014 filing of an Operating Agreement with the Village of Keremeos, enclosed please find Commission Order C-8-14.

Yours truly,

A handwritten signature in black ink, appearing to read "Erica Hamilton".

Erica Hamilton

/y/  
Enclosure

SIXTH FLOOR, 900 HOWE STREET, BOX 250  
VANCOUVER, BC V6Z 2N3 CANADA  
web site: <http://www.bcuc.com>



BRITISH COLUMBIA  
UTILITIES COMMISSION

ORDER  
NUMBER C-8-14

TELEPHONE: (604) 660-4700  
BC TOLL FREE: 1-800-663-1385  
FACSIMILE: (604) 660-1102

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

and

An Application by FortisBC Energy Inc.  
for Approval of an Operating Agreement  
with the Village of Keremeos

**BEFORE:** D.M. Morton, Commissioner  
H.G. Harowitz, Commissioner  
K.A. Keilty, Commissioner  
N.E. MacMurchy, Commissioner July 24, 2014  
I.F. MacPhail, Commissioner  
B.A. Magnan, Commissioner  
R.D. Revel, Commissioner

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

**WHEREAS:**

- A. On May 27, 2014, FortisBC Energy Inc. (FEI) applied to the British Columbia Utilities Commission (the Commission) for approval of an Operating Agreement (Operating Agreement) between FEI and the Village of Keremeos (Municipality) effective April 1, 2014. FEI also requested approval to use the Operating Agreement, if approved, as the operating agreement terms that will become the basis for comparison for future operating agreement applications (Application);
- B. Commission Order C-7-14 approved the Operating Agreement between FEI and the Municipality;
- C. Commission Orders C-9-13 and C-10-13 directed FEI to: "provide to the Commission an analysis for any wording that differs from the amendments directed in Order and Decision G-113-12";
- D. In a letter dated December 2, 2013, the Commission stated that: "In each future application, FEI may request that the operating agreement submitted in said application, once approved, becomes the basis for comparison in subsequent applications";
- E. The Commission reviewed the Application and considers that approval is warranted.

**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER** C-8-14

2

**NOW THEREFORE** pursuant to section 45 of the *Utilities Commission Act*, the Commission orders that the Operating Agreement between FortisBC Energy Inc. and the Village of Keremeos becomes the basis for comparison for future operating agreement applications.

DATED at the City of Vancouver, in the Province of British Columbia, this

24<sup>TH</sup> of July 2014.

BY ORDER



D.M. Morton  
Commissioner

**Appendix F**

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**C-8-15 – OPERATING AGREEMENT BETWEEN  
THE CITY OF CAMPBELL RIVER AND FEVI**

## **OPERATING AGREEMENT**

THIS OPERATING AGREEMENT (the "Agreement") made this 7<sup>TH</sup> day of  
October, 2014.

BETWEEN:

CITY OF CAMPBELL RIVER  
301 St. Ann's Road  
Campbell River, BC V9W 7Y7

(hereinafter called the "**Municipality**")

OF THE FIRST PART

AND:

**FORTISBC ENERGY (VANCOUVER ISLAND) 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

(hereinafter called "**FortisBC**")

OF THE SECOND PART

### **RECITALS:**

- A. Whereas by a certificate of public convenience and necessity (CPCN), FortisBC (formerly Terasen Gas (Vancouver Island) Inc.) was granted the right to construct and operate gas distribution facilities within the Municipality;
- B. And whereas pursuant to the Community Charter, S.B.C. 2003, a Municipal council may, by resolution adopt and enter into a licensing and operating agreement;
- C. And whereas FortisBC and the Municipality are the parties to a Franchise or Operating Agreement dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ which has or will expire on \_\_\_\_\_;
- D. And whereas FortisBC and the Municipality wish to enter into this Agreement to clarify and settle the terms and conditions under which FortisBC shall exercise its rights to use Public Places in conducting its business of distributing Gas within the Municipality;

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

## **1. DEFINITIONS**

### **1.1 For the purposes of this Agreement:**

- (a) “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;
- (b) “BCUC” means the British Columbia Utilities Commission or successor having regulatory jurisdiction over natural gas distribution utilities in British Columbia;
- (c) “CPCN” means a Certificate of Public Convenience and Necessity granted by the BCUC which allows FortisBC to operate, maintain and install Company Facilities for the distribution of Gas within the Municipality;
- (d) “Company Facilities” means FortisBC’s facilities, including pipes (live and abandoned), buildings, structures, valves, signage, storage facilities, machinery, vehicles and other equipment used to maintain, operate, renew, repair, construct and monitor a natural Gas Distribution and transmission system;
- (e) “Costs” has the meaning ascribed to it in Section 15.1;
- (f) “Distribution Pipelines” means pipelines operating at a pressure less than 2071 kilopascals (300 psi);
- (g) “Emergency Work” means any work that, in its reasonable opinion, each party carrying out the work believes 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;
- (h) “FortisBC Employees” means personnel employed by or engaged by FortisBC including officers, employees, directors, contractors, and agents;
- (i) “Gas” means natural gas, propane, methane, synthetic gas, liquefied petroleum in a gaseous form or any mixture thereof;
- (j) “Gas Distribution” means fixed equipment, structures, plastic and metal lines and pipe, valves, fittings, appliances and related facilities used or intended for the purpose of conveying, testing, monitoring, distributing, mixing, storing, measuring and delivering Gas and making it available for use within the Municipality;
- (k) “Impact Service Work” means Service Line Work that:
  - (i) requires cutting of asphalted or concrete surfaces

- (ii) impact to trees, or requires working in or near wetlands, water bodies or other areas of special environmental sensitivity;
  - (iii) requires working on a site known to have archeological significance, including those designated by the Province of British Columbia or by the Municipality as heritage sites; or
  - (iv) impacts existing Municipal or third party underground Facilities.
- (l) “Mains” means pipes used by FortisBC to carry gas for general or collective use for the purposes of Gas Distribution;
- (m) “Municipal Employees” means personnel employed by or engaged by the municipality, including officers, employees, directors, contractors and agents;
- (n) “Municipal Facilities” means any facilities, including highways, sidewalks, conduits, manholes, equipment, machinery, pipes, wires, valves, buildings, structures, signage, bridges, viaducts and other equipment within the Public Places used by the Municipality for the purposes of its public works or municipal operations;
- (o) “Municipal Supervisor” means the Municipal Engineer or other such person designated by the Municipality to receive notices and issue approval as set out in this Agreement;
- (p) “New Work” means any installation, construction, repair, maintenance, alteration, extension or removal work of the Company Facilities in Public Places except;
- (i) routine maintenance and repair of the Company Facilities that does not require any cutting of asphalted or concrete surface;
  - (ii) Service Line Work or Impact Service Work; or
  - (iii) Emergency Work;
- (q) “Park” means land dedicated, held, managed or operated by the Municipality as a public park;
- (r) “Pipeline Markers” means post, signage or any similar means of identification used to show the general location of Transmission Pipelines and distribution pipelines or FortisBC Rights of Way;
- (s) “Planned Facilities” means those facilities not yet constructed but which have been identified by way of documented plans for Utilities, for works of third parties, where such works are identified by documented plans permitted by the Municipality;
- (t) “Public Places” means any public thoroughfare, highway, road, street, lane, alley, trail, square, bridge, right of way, viaduct, subway,

watercourse or other public place in the Municipality but does not mean Parks;

- (u) "Service Line Work" means installation, construction, repair, maintenance, alteration, extension or removal work of that portion of FortisBC's gas distribution system extending from a Main to the inlet of a meter set and, for the purposes of this Agreement, includes a service header and service stubs;
- (v) "Transmission Pipeline" means a pipeline of FortisBC having an operating pressure in excess of 2071 kilopascals (300 psi); and
- (w) "Utilities" means the facilities or operations of any water, waste water, sewer, telecommunications, energy, cable service or similar service provider located in Public Places within the Municipality.

## **2. INTERPRETATION**

### **2.1 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) words in the singular include the plural, words importing a corporate entity include individuals, and vice versa;
- (c) in calculating time where the agreement refers to "at least" or "not less than" 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" a number of days, Saturdays, Sundays and holidays must be excluded;
- (d) 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.

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

- 3.1** 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.
- 3.2** 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.

#### **4. FORTISBC RIGHTS TO ACCESS & USE PUBLIC PLACES**

##### **4.1 Use of Public Places**

The Municipality hereby acknowledges FortisBC's rights to:

- (a) develop, construct, install, maintain or remove Company Facilities on, over, in and under Public Places in the Municipality;
- (b) enter on Public Places from time to time as may be reasonably necessary for the purpose of maintaining, repairing, or operating Company Facilities; and
- (c) place pipeline identification markers within Public Places where a Transmission Pipeline or Distribution Pipeline crosses or is otherwise within a Public Place;

subject to terms and conditions defined in this Agreement.

##### **4.2 Use of Parks**

- (a) The Municipality may authorize Fortis BC to use Parks for the Company Facilities. The Municipality shall not unreasonably withhold permission in circumstances where Utilities owned by third parties are already placed within the Park and the Municipality does not consider that the use of the Park by Fortis BC will materially affect the public's use of the Park or existing Utilities. Where such permission has been granted to Fortis BC, the Municipality shall grant FortisBC:
  - (i) a right of way in registerable form; or
  - (ii) in the case of a dedicated Park or other Park for which there is no registered title, a license or permit;

allowing FortisBC to use the Park for the Company Facilities and Fortis BC shall pay to the Municipality compensation for the fair market value of the right-of-way, the license or permit as the case may be. Fair market value shall be as agreed by the Municipality and Fortis BC based on compensation by Fortis BC or other public utilities or other municipalities in the Province of British Columbia for similar rights-of-way, licenses or permits, as the case may be, granted with respect to similar public lands in other municipalities. Failing agreement between Fortis BC and the Municipality as to the fair market value of any right-of-way, license or permit, compensation shall be determined in accordance with the *Expropriation Act*, RSBC 1996, c125. as amended or replaced from time to time.

## **5. GRANDFATHERING FOR EXISTING USE OF PARKS**

- 5.1** The Municipality acknowledges that Company Facilities may have been installed in Parks. Where FortisBC has existing Company Facilities in a Park, FortisBC may maintain, replace or remove such Company Facilities and enter such park from time to time as may be reasonably necessary for the same purposes, subject to the same terms and conditions defined in this Agreement with respect to FortisBC's use of Public Places, as reasonably applicable.

## **6. FORTISBC COMPLIANCE WITH STANDARDS FOR USE OF PUBLIC PLACES**

### **6.1 Non-discriminatory Standards for FortisBC**

In its use of Public Places, FortisBC shall comply with all Federal and Provincial laws, regulations and codes and shall comply with all Municipal bylaws, standards and policies except that FortisBC shall not have to comply with such Municipal bylaws, standards and policies that:

- (a) conflict with terms of this Agreement or limit any rights or concessions granted to FortisBC by the Municipality under this Agreement; or
- (b) conflict with other legislation governing FortisBC.

Further, where the Municipality has established requirements and standards for work in Public Places, the Municipality shall apply them in a fair, reasonable and non-discriminatory manner consistent with the manner that the Municipality establishes requirements on other Utilities.

### **6.2 Depth of Cover**

Subject to Section 6.1 above, FortisBC shall comply with Municipal standards that establish a minimum depth of cover for the installation of Company Facilities to a maximum of 75cm depth of cover. Notwithstanding the foregoing, the Municipality may require a greater depth of cover for the installation of Company Facilities where such cover is required to accommodate Planned Facilities.

### **6.3 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.

### **6.4 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 unless the reason for the request is the result of an emergency; in which case the information shall be

provided forthwith. FortisBC shall provide gas locations from FortisBC records. FortisBC shall perform on site facility locates in accordance with the *Safety Standards Act – Gas Safety Regulations*, section 39.

## 7. FORTISBC WORK OBLIGATIONS:

### 7.1 New Work

#### 7.1.1. Application for New Work

For New Work, FortisBC shall submit an application to the Municipal Supervisor for a permit when it intends to perform New Work. The application shall include:

- (a) a plan and specifications showing:
  - (i) the size and dimensions of all New Works, their proposed depth below the surface of the ground and their proposed locations related to property lines;
  - (ii) profiles for gas applications for gas mains 114 mm or greater that may impact Planned Facilities, if requested by the Municipality;
  - (iii) the edge of hard surfaces of affected roads, streets or highways or other Public Places;
  - (iv) the proposed location and/or clearances of the New Works where the New Works cross existing Utilities provided that all such locations and elevations are made available to FortisBC by the Municipality or the owner of such Utilities; and
  - (v) boundaries and legal descriptions of any private lands affected or within 1.5 meters of the proposed centre line of the New Work;
- (b) FortisBC's plans for the restoration of the Public Place affected by the New Work if FortisBC's restoration plans are different from those set out in Section 7.6.4 of this Agreement;
- (c) the name of a FortisBC representative who may be contacted for more information;
- (d) projected commencement and completion dates; and
- (e) such other information relevant to the New Work as the Municipality may reasonably require from time to time.

#### 7.1.2. Exception for Emergency

Where FortisBC is required to carry out Emergency Work, FortisBC shall not be required to give prior notice but shall do so as soon as possible thereafter.

### **7.1.3. Municipal Permits for New Work**

The Municipality shall use its best efforts to issue a permit for New Work within fifteen (15) days of receipt by the Municipality of an application containing all the information required under Section 7.1.1, or a time extension if large and complex. The Municipality may refuse to issue a permit for the New Work on the following grounds:

- (a) the proposed location of the New Work conflicts with existing Municipal Facilities, existing third party facilities or Planned Facilities, trees, wetlands, water bodies or other areas of special environmental sensitivity, or areas that are of archeological significance, including areas designated by the Province of British Columbia or by the Municipality as heritage sites; or
- (b) the proposed location or design of the New Work is likely to compromise public safety or does not conform with Municipal bylaws, standards or policies; or
- (c) in instances where FortisBC can delay the New Work without compromising the supply, capacity or safety of its Gas Distribution System or its customers' need for gas service and the Municipality intends within the next three (3) months to undertake work in the same location and wishes to co-ordinate both work; or
- (d) FortisBC has not provided the Municipality with the information required by Section 7.1.1;

and shall provide FortisBC with grounds for its refusal to grant the permit, provided such grounds are reasonable, no more than fifteen (15) days after receiving FortisBC's permit application for New Work, except that in the case of work that is large or complex, the Municipality may extend the time for response by a maximum of ten (10) additional days.

### **7.1.4. Conditions of Permit**

Notwithstanding Section 7.1.3 above, the Municipality may include conditions in its permit for the New Work to address the matters set out in Subsections 7.1.3(a) and 7.1.3(b). In addition, the Municipality may require FortisBC to provide the public with notice of the New Work. Any additional terms or conditions contained in a permit for the New Work shall be of no force and effect except to the extent that such terms or conditions are consistent with the terms of this Operating Agreement.

### **7.1.5. Work Not to Proceed**

If the Municipality

- (a) fails to provide FortisBC with a permit within fifteen (15) days of FortisBC's application of New Work or, in the case of large and complex New Work, within such extended time as may be set out in the Municipality's notice to FortisBC; or
- (b) notifies FortisBC of its objections to the New Work;

FortisBC may refer the matter to dispute resolution in accordance with Section 18. FortisBC shall not proceed with the New Work until the Municipality provides FortisBC with a permit for such work including a permit issued as a result of the resolution of a dispute by the parties.

## **7.2 Impact Service Work**

### **7.2.1. Application for Impact Service Work**

For Impact Service Work, FortisBC shall submit an application to the Municipal Supervisor for a permit when it intends to perform Impact Service Work. The application shall be in the form attached as Schedule A to this Agreement and shall include a sketch showing:

- (a) property lines and street addresses;
- (b) existing gas main and proposed service location offset to property;
- (c) all hard surfaces, trees, archeological or environmental areas impacted by the new service installation; and
- (d) buried utilities identified in the planning stages to be impacted by the proposed service.

### **7.2.2. Municipal Permits for Impact Service Work**

The Municipality shall use its best efforts to issue a permit for Impact Service Work within five (5) days of receipt by the Municipality of an application containing all the information required under Section 7.2.1. The Municipality may refuse to issue a permit for the Impact Service Work on the following grounds:

- (a) the proposed location of the Impact Service Work conflicts with existing Municipal Facilities, existing third party facilities or Planned Facilities, trees, wetlands, water bodies or other areas of special environmental sensitivity, or areas that are of archaeological significance, including areas designated by the Province of British Columbia or by the Municipality as heritage sites; or
- (b) FortisBC has not provided the Municipality with the information required by Section 7.2.1;

and shall provide FortisBC with the grounds for its refusal to grant the permit, provided such grounds are reasonable, no more than ten (10) days after receiving FortisBC's permit application for Impact Service Work.

#### **7.2.3. Conditions of Permit**

Notwithstanding Section 7.2.2 above, the Municipality may include conditions in its permit for the Impact Service Work to address the matters set out in Subsection 7.2.1(a). Any additional terms or conditions contained in a permit for the Impact Service Work shall be of no force and effect except to the extent that such terms or conditions are consistent with the terms of this Operating Agreement.

#### **7.2.4. Work Not to Proceed**

If the Municipality

- (a) fails to provide FortisBC with a permit within ten (10) days of FortisBC's application of Impact Service Work; or
- (b) notifies FortisBC of its objections to the Impact Service Work;

FortisBC may refer the matter to dispute resolution in accordance with Section 18. FortisBC shall not proceed with the Impact Service Work until the Municipality provides FortisBC with a permit for such work including a permit issued as a result of a resolution of a dispute between the Parties.

### **7.3 Notices of Service Line Work**

#### **7.3.1 Notice**

FortisBC shall provide the Municipality with notice of its intent to undertake Service Line Work. When it intends to undertake Service Line Work, FortisBC shall provide such notice in the form attached as Schedule A to this Agreement.

#### **7.3.2 Objections**

The Municipality may object to Service Line Work on the grounds set out in Subsections 7.2.2(a) and (b) above, by providing FortisBC with notice of its objections within five (5) days of receiving FortisBC's notice. If the Municipality does not provide such notice of its objections to FortisBC within five (5) days of receiving FortisBC's notice, the Municipality shall be deemed to have granted its approval of the Service Line Work.

#### **7.3.3 Resolving Objections**

If the Municipality has objections to the planned Service Line Work and if the Municipality and FortisBC are unable to agree on a resolution, then either party may refer the matter to dispute resolution in accordance with Section 18. The Municipality shall not otherwise withhold or delay its approval.

#### **7.4 Expiry of Permit or Approval After Twelve Months**

A permit or deemed approval will expire in the event that FortisBC does not carry out New Work, or Service Line Work within twelve months of the date of the permit or deemed approval.

#### **7.5 FortisBC to Obtain Locate Information**

Prior to conducting any New Work, FortisBC shall locate other Utilities and satisfy itself that it is clear to proceed.

#### **7.6 Work Standards**

##### **7.6.1. Engineering Practices**

All work carried out by FortisBC shall be carried out in accordance with sound engineering practices.

##### **7.6.2. Specific Work Requirements to Remove Materials**

FortisBC shall keep its work sites clean and tidy. FortisBC shall remove all rubbish and surplus material from Public Places upon completion of its work.

##### **7.6.3. No Nuisance**

Fortis BC shall not leave any part of its gas system in such a state as to constitute a nuisance or a danger to the public through neglect, non-use and want or repair.

##### **7.6.4. Restore Surface and Subsurface**

Where FortisBC has performed any operations, Service Line Work or New Work in a Public Place, FortisBC shall restore without unreasonable delay and return such Public Place, as much as reasonably practical, to the condition and use which existed prior to such activity. The restoration will be in accordance with the specifications set out by the Municipality. Such specifications may include the degree and nature of compaction, subsurface structure, surface finish and landscaping required.

Where FortisBC is required to cut pavement on a Public Place such cuts and restoration will be limited to less than 1.5 meters in width unless at the discretion of FortisBC a larger excavation is warranted due to the depth or size of the pipe or requirements of the Workers' Compensation Board or other relevant Provincial or Federal regulations. FortisBC will be responsible for any repairs and maintenance of the surface repair for a period of five (5) years. However, where pavement restoration has been conducted by the Municipality, whether or not such work was undertaken to repair cuts on FortisBC's behalf, FortisBC shall not be responsible for the repairs or maintenance of the surface repair.

#### **7.6.5. 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 7.6.4 above, FortisBC will, as soon as reasonably possible, report such damage and reimburse the Municipality for its Costs arising from such damage calculated in accordance with Section 15.1 below. Where such damage results directly from inaccurate or incomplete information supplied by Municipality, and FortisBC has complied with all applicable laws and regulations, and with instructions supplied by the Municipality, then the cost of repairing damaged Municipal Facilities or Public Places will be at the expense of the Municipality.

#### **7.6.6. Restoration Audit**

FortisBC may retain a third party, at FortisBC's expense, to carry out audits of FortisBC's repairs or restoration of Municipal Facilities, and the number and frequency of such audits shall be determined in consultation with, and with the agreement of the Municipality. The audit shall take into account different road classification, the results of previous audits and other criteria agreed upon by FortisBC and the Municipality. Notwithstanding the foregoing, the extent and the frequency of the audits will be results based and therefore, the results of any audits will determine whether the frequency and the extent of any audits should be increased or decreased. This system of audits shall replace any testing required by the Municipality under its bylaws.

### **7.7 Conformity Requirement**

The New Work and Service Line Work must be carried out in conformity with Municipal Permits or approved notices for New Work or Service Line Work, as the case may be, except that FortisBC may make in-field design changes when carrying out the New Work or Service Line 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 FortisBC's work on Municipal Facilities, other than in respect of projected commencement and completion dates, FortisBC shall notify the Municipality of the changes and the reasons for them prior to continuing the work.

### **7.8 Non-Compliance**

If Company Facilities located in Public Places are later found not to be located in compliance with FortisBC's notice of New Work or Service Line Work provided in accordance with Sections 7.1 and 7.3, then any alteration or upgrading required to bring them into compliance with such notice will be at the expense of FortisBC provided that the work has not been altered, damaged or modified by the Municipality or a third party.

#### **7.9 Prime Contractor**

Where FortisBC performs any work in a Public Place, FortisBC shall act as the prime contractor or designate in writing its contractor to act as the prime contractor, within the meaning of Section 118 of the Workers Compensation Act (British Columbia) unless otherwise designated in writing by the Municipality or a third party working in such Public Place.

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

#### **8.1 Closure of Public Places**

Before any Public Places containing Company Facilities may be legally closed or alienated by the Municipality, the Municipality shall as soon as reasonably possible notify FortisBC of its intent to close or alienate such Public Places and either:

- (a) grant FortisBC a registered statutory right of way in a form satisfactory to FortisBC so as to maintain FortisBC's right to use the land; or
- (b) request FortisBC to remove and (if possible and practicable) relocate those Company Facilities affected by such closure or alienation at the sole cost of the Municipality.

#### **8.2 Expropriation of Public Places**

If the Public Places are expropriated by an expropriating authority and FortisBC is required to remove the Company Facilities then the Municipality shall as soon as reasonably possible notify FortisBC of the expropriation. This Section 8.2 is applicable when the Municipality receives official notice of expropriation or otherwise becomes aware of expropriation through communications with the expropriating authority.

### **9. FACILITY CHANGES REQUIRED**

#### **9.1 By FortisBC**

FortisBC may provide Notice to the Municipality that it requires Municipal Facilities to be altered, changed or relocated to accommodate its requirements. The Municipality will comply with FortisBC's requests to the extent it is reasonably able to do so and with reasonable speed and dispatch after receipt of written request. FortisBC agrees to pay for all of the Costs for changes to the affected Municipal Facilities. The Municipality shall provide estimates and invoices to FortisBC in respect of such work in accordance with Section 15 of this Agreement.

#### **9.2 By the Municipality**

The Municipality may provide Notice to FortisBC that it requires Company Facilities to be altered, changed, temporarily shut-down, temporarily by-passed, or relocated to accommodate its requirements. FortisBC will comply with the Municipality's requests to

the extent it is reasonably able to do so and with reasonable speed and dispatch after receipt of written request. The Municipality agrees to pay for all of the Costs for changes to the affected Company Facilities except where such Company Facilities were not installed in conformity with Section 7.7 of this Agreement. FortisBC shall provide estimates and invoices to the Municipality in respect of such work in accordance with Section 15 of this Agreement.

This Section 9.2 is an agreement between the Municipality and FortisBC for the purpose of section 76(1)(c) of the *Oil and Gas Activities Act*.

## **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 is responsive to the effect that it may have on the other party, as well as other users of Public Places. Such reasonable efforts include attending the planning meetings described in Section 10.2 below 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 Communication and Coordination Activities**

At the initiation of the Municipality, representatives of the Municipality, FortisBC and other affected Utilities and third parties will meet each year, prior to the construction season, to discuss the parties' anticipated construction activities for that year and to review Planned Facilities. Such discussions will include

- (a) safe working practices;
- (b) the use of common trenching, common utility access facilities and such other common facilities as may be commercially reasonable and comply with operating and safety standards; and
- (c) the consolidation of planned New Work, Impact Service Work and maintenance work especially where pavement must be cut in order to avoid multiple excavations.

### **10.3 Municipal Planning Lead**

During such annual planning meetings, the Municipality shall lead the planning process for all Utilities and third parties with Planned Facilities in Public Places.

### **10.4 Mapping Information**

#### **10.4.1. Municipal Information**

The Municipality shall supply to FortisBC at no cost all record drawings and information it has for Municipal Facilities.

#### **10.4.2. FortisBC Information**

FortisBC shall supply to the Municipality at no cost all record drawings and information it has for Company Facilities within the Municipality, including abandoned mains.

#### **10.4.3. Co-Operation**

FortisBC and the Municipality shall co-operate to improve their mapping systems so they are compatible, provide the necessary information and are easily accessible to both parties.

### **11. MUTUAL INDEMNITY**

#### **11.1 Indemnity by FortisBC**

**11.1.1.** 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:

- (a) placing, constructing, renewing, altering, repairing, maintaining, removing, extending, operating or using the Company's Facilities on or under any Public Places; and
- (b) any breach of this Agreement by FortisBC;

except to the extent contributed by negligence or default of the Municipality or the Municipal Employees.

**11.1.2.** This indemnity expressly extends to all acts and omissions of FortisBC Employees.

#### **11.2 Indemnity by the Municipality**

**11.2.1.** 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:

- (a) placing, constructing, renewing, altering, repairing, maintaining, removing, extending, operating or using the Municipal Facilities on or under any Public Places;
- (b) any breach of this Agreement by the Municipality;

except to the extent contributed by the negligence or default of FortisBC or FortisBC Employees.

**11.2.2.** This indemnity expressly extends to all acts and omissions of Municipal Employees.

### **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 in connection with notices or applications for permits provided by FortisBC to the Municipality pursuant to this Agreement.

## **12. OPERATING FEE**

### **12.1 Fee Calculation**

**12.1.1.** FortisBC agrees to pay to the Municipality a fee of three percent (3%) (the "Operating Fee") of the gross revenues (excluding taxes) received by FortisBC for provision and distribution of all gas consumed within the Boundary Limits of the Municipality, other than gas consumed by customers from whom the BCUC has not allowed FortisBC to collect the Operating Fee, provided that the Municipality is permitted by law to charge such a fee. Such amount will not include any amount received by FortisBC for gas supplied or sold for resale.

**12.1.2.** The Municipality will provide FortisBC with thirty (30) days prior written notice of any boundary expansion so that existing and new customers in the expanded area can be included as a part of the annual payment fee.

**12.1.3.** FortisBC will be responsible for adding those existing and new customers within the new Municipal boundary upon receipt of such notice from the Municipality and the revised calculation of the fee will commence effective the date that is the later of the date of actual boundary change or thirty (30) days after the notification under section 12.1.2.

### **12.2 Payment Date and Period**

Payments by FortisBC to the Municipality will be made on the first day of March of each year of the Agreement in respect of the amount received by FortisBC during that portion of the term of this Agreement which is in the immediately preceding calendar year. By way of example only, payment made on March 1, 2015 will be the amount received during the 2014 calendar year.

### **12.3 BCUC Decision or Provincial Legislation**

In the event that a decision by the BCUC, other than periodic rate changes as a result of commodity, delivery or margin increases or decreases, or new legislation by the Provincial Government, impacts the operating fee being paid to the Municipality so as to increase it or decrease it by more than 5% annually at the time of the decision or in subsequent years, the parties shall negotiate a new operating fee formula which best reflects the revenue stream received by the Municipality under this Agreement. For greater certainty, the parties acknowledge that a change to the BCUC's decision that FortisBC shall provide the agency billing and collections service for marketers on a mandatory basis, as set out in the "Business Rules for Commodity Unbundling", dated June 5, 2003 as set out in Appendix A to Letter No. L-25-03, may impact the operating fee being paid to the Municipality.

### **13. OTHER APPROVALS, PERMITS OR LICENSES**

Except as specifically provided in this Agreement, the Municipality will not require FortisBC to seek or obtain approvals, permits or licenses related to FortisBC's use of the Public Places as contemplated in this Agreement. The Municipality will not charge or levy against FortisBC any approval, license, inspection or permit fee, or charge of any other type, that in any manner is related to or associated with FortisBC constructing, installing, renewing, altering, repairing, maintaining or operating Company Facilities on any Public Places or in any manner related to or associated with FortisBC exercising the powers and rights granted to it by this Agreement (other than for repair of damage to the Municipal Facilities or Public Places in accordance with Section 15).

If the Municipality does charge or levy fees or costs against FortisBC (other than for repair of damage to the Municipal Facilities or Public Places in accordance with Section 15) then FortisBC may reduce the annual operating fee payable to the Municipality under Section 12 by an amount equal to such charges, fees or costs or in the event no annual operating fee is payable, FortisBC will not be required to pay such charges or fees or costs.

### **14. MUNICIPAL OBLIGATIONS**

#### **14.1 Municipal Work**

**14.1.1.** Before the Municipality undertakes routine maintenance and repair that is likely to affect Company Facilities, it must give FortisBC as much notice as it can but not less than fifteen (15) days before commencing such construction or maintenance activity.

**14.1.2.** Where the Municipality is required to carry out Emergency Work, the Municipality shall not be required to give prior notice but shall do so as soon as possible thereafter.

**14.1.3.** FortisBC will be entitled to appoint at its cost a representative to inspect any construction or maintenance activity undertaken by the Municipality. The provisions of this section do not relieve the Municipality of its responsibilities under the *Gas Safety Act*, *Oil and Gas Activities Act*, and successor legislation, regulations thereunder, or the requirements of the BC Workers' Compensation Board.

**14.1.4.** In addition, the Municipality shall provide Notice to FortisBC of any work planned that will be adjacent to, across, over or under a Transmission Pipeline or within a right-of-way for a Transmission Pipeline. To the extent that FortisBC requires that permit be issued for construction or other activities within a Transmission Pipeline right-of-way, the Municipality will submit an application for such a permit in sufficient time for the application to be reviewed and approved by FortisBC prior to the commencement of the construction or other activity.

**14.1.5.** The Municipality shall assist FortisBC in FortisBC's efforts to reduce instances of residences being built over gas lines and other similarly unsafe building practices by third parties.

**14.1.6.** The Municipality shall not interfere with Transmission Pipeline markers.

**14.1.7.** The Municipality shall provide notice to FortisBC of any damage caused by the Municipality to Company Facilities or Transmission Pipeline Markers as soon as reasonably possible. To the extent that any of the work being done by the Municipality results in damage to the Company Facilities, the Municipality will report such damage and pay FortisBC its Costs arising from such damage in accordance with Section 15.1 below. Where such damage results directly from inaccurate or incomplete information supplied by FortisBC, and the Municipality has complied with all applicable laws and regulations, and with instructions supplied by FortisBC, then the cost of repairing the damaged Company Facilities will be at the expense of FortisBC.

**14.1.8.** The Municipality shall notify FortisBC of any new bylaws, standards or policies adopted or passed by the Municipality that are likely to affect FortisBC's operations in Public Places.

## **15. COSTS AND PAYMENT PROCEDURES**

### **15.1 Definition of Costs**

Wherever one party is required to pay the other party Costs as a result of damage caused by one party to the other's property or for facility changes required in accordance with Section 9 of this Agreement, the Costs shall be:

- (a) all direct expenses and disbursements incurred to restore such property to as good a state of repair as had existed prior to the damage;

- (b) reasonable administration and overhead charges on labour, equipment and materials;
- (c) such taxes as may be required in the appropriate jurisdiction;
- (d) the cost of the lost commodity as determined by the claiming party;
- (e) the cost for additional work related to the damage (for example, gas relights, flushing water mains); and
- (f) cost of supplying alternate or temporary service until the repair of the property is made.

## **15.2 Cost Claim Procedures**

**15.2.1.** Wherever one party is claiming Costs of the other party in regard to any work or issue arising under this Agreement the claiming party shall:

- (a) Notify the other party of the loss no later than two (2) months after incurring costs and provide an invoice to the other party no later than one year after incurring Costs;
- (b) provide detailed descriptions of the cost items, provided that claiming party may require the other party to keep sensitive business information, including third party information, confidential;
- (c) provide the time period the invoice covers;
- (d) provide a minimum of twenty-one (21) day terms for payment of the invoice; and
- (e) provide for late payment interest at the rate consistent with the party's policy for charging for late payments, which rate must be reasonable.

**15.2.2.** The party claiming Costs shall have no right of set off for these invoices against any amounts otherwise payable to the other party, except to the extent so approved in writing by the other party.

## **15.3 Cost Verification Procedures**

**15.3.1.** Wherever either party is the recipient of or is claiming Costs and or fees that party may at its own discretion request from the other party:

- (a) Certification by an officer or designated representative verifying the calculations and computations of the Costs and or fees; or
- (b) An internal review or audit of the calculations and computations of the Costs and or fees, with the internal review or audit to be carried

out by a person appointed by the party being asked to provide the review; or

- (c) An independent external audit of the calculations and computations of the costs and fees, with the independent external auditor being a Chartered or a Certified General Accountant in British Columbia appointed by the party requesting the external audit.

**15.3.2.** The costs of this cost verification process shall be borne by the party who is required to supply the information except as otherwise specified providing the frequency of such requests does not exceed once per calendar year. For all future cases which occur in that calendar year, the costs of such further verifications shall be at the expense of the requester.

Where the independent external audit finds and establishes errors representing a variance greater than two (2%) percent of the originally calculated value in favour of the party claiming Costs, the costs shall be at the expense of the party supplying the information. Once an error has been verified, payment or refund of the amount found to be in error will be made within twenty-one (21) days.

## **16. START, TERMINATION AND CONTINUITY**

### **16.1 Municipal Authority to Enter into Agreement**

Prior to entering into this Agreement the Municipality will complete all procedures, obtain all consents and enact and bring into force all resolutions required under the *Community Charter*, and amendments thereto, and all other applicable legislation, to approve and authorize this Agreement.

### **16.2 Agreement Not Binding Until Conditions Met**

This Agreement will not come into effect and does not bind the parties until:

- (a) FortisBC has obtained such approvals of this Agreement, or its terms, as may be required under the *Utilities Commission Act*; and
- (b) The Municipality has obtained authority permitting it to charge the operating fee set out in Section 12.1 this Agreement.

Upon executing this Agreement FortisBC shall make reasonable efforts to fulfill the condition under paragraph (a) and the Municipality shall make reasonable efforts to fulfill the condition under paragraph (b). If these conditions are not fulfilled or waived within one (1) year of the date of execution of this Agreement, then the obligation on FortisBC or the Municipality, as the case may be, to make reasonable efforts to fulfill the condition will terminate, and neither party will have any further obligation to the other under this Agreement.

### **16.3 Termination of Franchise Agreement**

If not already terminated or expired, any franchise and operating agreement between the Municipality and FortisBC is terminated upon the effective date of this Agreement as referred to in Section 16.2 of this Agreement.

### **16.4 Term of Agreement**

This Agreement will have a term of twenty (20) years from the date that it comes into effect and after the initial term shall continue indefinitely unless terminated in accordance with Section 16.5 below.

### **16.5 Termination of Agreement**

**16.5.1.** This Agreement may be terminated by the Municipality upon the occurrence of any of the following events:

- (a) FortisBC admits its inability to pay its debts generally as they become due or otherwise acknowledges its insolvency;
- (b) FortisBC starts proceedings or takes any action to commence or executes an agreement to authorize its participation in any proceeding:
  - (i) seeking to adjudicate it bankrupt or insolvent;
  - (ii) seeking liquidation, reorganization, arrangement, protection, relief or composition of it or any of its property or debt or making a proposal with respect to it under any law relating to bankruptcy, insolvency, reorganization or compromise of debts or other similar laws; or
  - (iii) seeking the appointment of a receiver, trustee, agent, custodian or other similar official for it or for any substantial part of its assets or if a creditor seeks the appointment of a receiver, trustee, agent, custodian or other similar official for any substantial part of its assets; and such proceeding is not dismissed, discharged, stayed or restrained within twenty (20) days of the Municipality becoming aware of it.

**16.5.2.** Either party may terminate if other breaches any term, provision, obligation hereunder and such breach, is a material major 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 default if such matter is in dispute or has been referred to commercial arbitration, the outcome of which is pending, or is being resolved in good faith compliance with the dispute resolution and arbitration processes of this Agreement.

**16.5.3.** After the initial twenty (20) year term of this Agreement, either party may terminate this Agreement by giving the other not less than one (1) year's notice of termination.

**16.6 Amendments and Waivers**

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 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.

**16.7 Negotiations on Termination or Expiry of this Agreement**

Upon one party giving Notice to the other of termination of this Agreement, the parties shall negotiate in good faith to enter into a new agreement with respect to the terms and conditions under which FortisBC may use the Public Places. In the event that such negotiations break down and in the opinion of one or other of the parties acting in good faith that settlement is unlikely, either party may give Notice to the other of its intention to apply to the BCUC to seek resolution of the terms and conditions applicable to FortisBC's continued operations and construction activities within the Municipality.

**16.8 Continuity In The Event No Agreement Is Settled**

Upon the expiry or termination of this Agreement, if a new agreement has not been ratified or if the BCUC has not imposed the terms and conditions under which FortisBC may use the Public Places, the following provisions will apply:

- (a) The Company Facilities within the boundary limits of the Municipality both before and after the date of this Agreement shall remain FortisBC's property and shall remain in the Public Places.
- (b) The Company Facilities may continue to be used by FortisBC for the purposes of its business, or removed from Public Places in whole or in part at FortisBC's sole discretion.
- (c) FortisBC may continue to use Public Places within the Municipality for the purposes of its business. FortisBC's employees, may enter upon all the Public Places within the Boundary Limits of the Municipality to maintain, operate, install, construct, renew, alter, or place Company Facilities; provided that FortisBC continues to operate in a manner consistent with the terms and conditions of this Agreement as if the term had been extended except with respect to the payment of the operating fee.

- (d) FortisBC will with the support of the Municipality take such steps necessary to seek BCUC approvals of the extension of terms and conditions including payment of the operating fee under the terminated agreement during negotiations of a new agreement.
- (e) Should FortisBC no longer be authorized or required to pay the operating fee under this or any other Agreement between it and the Municipality or by any order of the BCUC, the Municipality shall be free to apply such approval, permit and licence fees, charges and levies it is legally entitled to collect.

## **17. ACCOMMODATION OF FUTURE CHANGES**

### **17.1 Outsourcing of Infrastructure Management**

In the event that the Municipality assigns the task of infrastructure management to a third party:

- (a) the Municipality will ensure that 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.

### **17.2 Changes to the Community Charter**

In the event that the provisions of the *Community Charter* or other legislation affecting the rights and powers of municipalities change in such a way as to materially, in the opinion of the Municipality, affect municipal powers in respect to matters dealt with in this Agreement,

- (a) the Municipality may within one year of the change coming into effect propose new agreement terms with respect to only those specific changes and FortisBC agrees to negotiate such terms; and
- (b) failing satisfactory resolution of the terms of the Agreement either of the parties may seek resolution through the Dispute Resolution Process, Section 18.

### **17.3 Changes to the Utilities Commission Act**

In the event that the provisions of the *Utilities Commission Act* or other legislation affecting the rights and powers of regulated Utilities change in such a way as to

materially, in FortisBC's opinion, affect FortisBC's powers in respect to matters dealt with in this Agreement,

- (a) FortisBC may within one year of the change coming into effect propose new agreement terms with respect to only those specific changes and the Municipality agrees to negotiate such terms; and
- (b) failing satisfactory resolution either of the parties will seek resolution through the Dispute Resolution Process, Section 18.

## **18. DISPUTE RESOLUTION**

### **18.1 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, 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.

### **18.2 Referral to the BCUC or Arbitration**

If the parties fail to resolve the dispute through mediation, the unresolved dispute shall be referred to the BCUC if within its jurisdiction. If the matter is not within the jurisdiction of the BCUC, 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.

### **18.3 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 will allow discovery as required by the *Arbitration Act* of British Columbia in arbitration proceedings.

### **18.4 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.

### **18.5 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.

#### **18.6 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.

#### **18.7 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 18, provided that, neither party shall proceed with any work or activity or take any further action which is the subject matter of the dispute.

#### **18.8 Matters Not subject to Arbitration**

For certainty the conditions precedent referred to in Section 16.2 shall not be subject to arbitration.

### **19. GENERAL TERMS & CONDITIONS**

#### **19.1 No Liens**

FortisBC will do its best to not allow, suffer or permit any liens to be registered against the Company Facilities located in Public Places as a result of the conduct of FortisBC. If any such liens are registered, FortisBC will start action to clear any lien so registered to the Public Place within ten (10) days of being made aware such lien has been registered. FortisBC will keep the Municipality advised as to the status of the lien on a regular basis. In the event that 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.

#### **19.2 Corporate Authority**

FortisBC now warrants, represents and acknowledges that:

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

- (b) it is a corporation, duly organized, legally existing and in good standing under the laws of its jurisdiction of incorporation or continuance and is lawfully registered and licensed to do business in British Columbia.

### **19.3 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.

### **19.4 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.

### **19.5 Governing Law**

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

### **19.6 General**

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.

### **19.7 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.

### **19.8 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. To the extent permitted by applicable law, the parties hereby waive any provision of law that renders any provision hereof prohibitive or unenforceable in any respect.

### **19.9 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.

### 19.10 Notice

Any notice or other written communication required, or permitted to be made or given pursuant to this Agreement (the “Notice”) 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:

- (A) If to the Municipality:

CITY OF CAMPBELL RIVER  
301 St. Ann's Road  
Campbell River, BC V9W 4C7  
Attention: City manager

- (B) If to FortisBC:

FORTISBC ENERGY (VANCOUVER ISLAND) INC.  
16705 Fraser Highway  
Surrey, B.C. V4N 0E8  
Attention: Director, Regulatory Affairs

**CITY OF CAMPBELL RIVER**  
by its authorized signatories

Authorized Signatory Walter Jukeway, Mayor

Authorized Signatory Peter F. Wipper, City Clerk

## **FORTISBC ENERGY (VANCOUVER ISLAND) INC.**

by its authorized signatories

Authorized Signatory: Stout

Vice - President

## Market Development

## Authorized Signatory Relations

**Gas Service Line Work  
Permit Request  
Vancouver Island Municipalities**

**SCHEDULE A**



To Municipality:	Fax/email:	Date (Yr/ Mth/ Day)
/	/	/

FortisBC Energy (Vancouver Island) Inc. hereby gives notice of its intention to perform work on a natural gas service to the following listed addresses, and that excavations within a public place will occur at each location

Project number	Fortis Contact	Address	Service location	Impacts involved	Permit#

**Instructions:**

- Email is preferred
- Describe service location relative to facing front of property. i.e. Front/Left, Centre or Right: Back/Right Centre or Right
- Brief description of impact;

**Impacts are:**

- Public pavement
- Public trees, wetlands or other such environmentally sensitive areas
- Archeologically significant areas
- Existing municipal or third party facilities

**General Conditions:**

As contained in the operating agreement between the Municipality and FortisBC Energy (Vancouver Island) Inc.

**Reply to:**

Pre-Requisite Desk  
FortisBC Energy (Vancouver Island) Inc.  
16705 Fraser Highway, Surrey, BC V4N 0E8  
E-mail: Pre-RequisiteDesk@FortisBC.com  
Toll free tel: 1-866-771-7337  
Toll free fax: 1-877-413-1152

ERICA HAMILTON  
COMMISSION SECRETARY  
Commission.Secretary@bcuc.com  
web site: <http://www.bcuc.com>



SIXTH FLOOR, 900 HOWE STREET, BOX 250  
VANCOUVER, BC CANADA V6Z 2N3  
TELEPHONE: (604) 660-4700  
BC TOLL FREE: 1-800-663-1385  
FACSIMILE: (604) 660-1102

Log No. 49894

VIA EMAIL  
[gas.regulatory.affairs@fortisbc.com](mailto:gas.regulatory.affairs@fortisbc.com)

June 26, 2015

Ms. Diane Roy  
Director, Regulatory Services  
FortisBC Energy Inc.  
16705 Fraser Highway  
Surrey, BC V4N 0E8

Dear Ms. Roy:

Re: FortisBC Energy Inc.  
Application for Approval of Operating Agreements  
with 26 Municipalities on the Vancouver Island, the Sunshine Coast and the City of Powell River

Further to your March 24, 2015 filing of 26 operating agreements on Vancouver Island for Commission approval, enclosed please find Commission Order C-8-15, which approves five of the operating agreements.

Yours truly,

A handwritten signature in black ink, appearing to read "Erica Hamilton".

cms  
Enclosure

SIXTH FLOOR, 900 HOWE STREET, BOX 250  
VANCOUVER, BC V6Z 2N3 CANADA  
web site: <http://www.bcuc.com>



BRITISH COLUMBIA  
UTILITIES COMMISSION

ORDER  
NUMBER C-8-15

TELEPHONE: (604) 660-4700  
BC TOLL FREE: 1-800-663-1385  
FACSIMILE: (604) 660-1102

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

and

FortisBC Energy Inc.  
Application for Approval of Operating Agreements  
with 26 Municipalities on the Vancouver Island, the Sunshine Coast and the City of Powell River

**BEFORE:** L. F. Kelsey, Commissioner  
H. G. Harowitz, Commissioner June 25, 2015  
K. A. Keilty, Commissioner  
D. M. Morton, Commissioner

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

**WHEREAS:**

- A. On March 24, 2015, FortisBC Energy Inc. (FEI, Company) applied to the British Columbia Utilities Commission (Commission), pursuant to section 45 of the *Utilities Commission Act* (UCA) for approval of Operating Agreements with 26 municipalities on Vancouver Island, the Sunshine Coast, and the City of Powell River (Application). Listed below are the five municipalities in the Application (collectively the Municipalities) that have no operating agreement or an expired 1991 Pro Forma Agreement with FEI, and distribution and transmission customers within their municipal boundaries;

City of Powell River	City of Port Alberni
City of Campbell River	Municipality of North Cowichan
City of Nanaimo	

- B. FEI undertook negotiations, which concluded in the fall of 2014, with the Municipalities and the Association of Vancouver Island and Coastal Communities (AVICC) to establish the terms of a new form of Vancouver Island municipal operating agreement (VIMOA). In October of 2014, each of the Municipalities entered a respective VIMOA with FEI;
- C. Section 16.3 of the VIMOA provides that, if not already terminated or expired, any franchise or operating agreement between the Municipalities and FEI is terminated upon the effective date of the new VIMOA between the parties;

BRITISH COLUMBIA  
UTILITIES COMMISSION

ORDER  
NUMBER      C-8-15

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- D. The VIMOA between FEI and the Municipalities is for an initial term of 20 years from the date that it comes into effect and, after the initial term, shall continue indefinitely unless terminated by the parties pursuant to the terms in the VIMOA;
- E. The VIMOA sets out the terms and conditions, including the collection of a three percent operating fee from its customers, under which FEI exercise its rights to use the public places of the Municipalities in conducting its business of distributing gas within the Municipalities;
- F. Bill 4 – 2014 Miscellaneous Statutes Amendment Act (No. 2), 2014 amended the *Vancouver Island Natural Gas Pipeline Act* by repealing, effective January 1, 2015, a section that previously prevented local governments from collecting franchise (operating) fees;
- G. The Municipalities each have one transmission customer facility located within their municipal boundary, and are therefore subject to the terms of the VIMOA and are currently being served by FEI pursuant to specific tariff and service agreements (Agreements) under the FEI Tariff General Terms and Conditions for Gas Transportation Service. The five facilities are:
  - 1. A pulp mill located at 1000 Wave Place, in the City of Nanaimo, B.C.;
  - 2. A pulp and paper mill located at 8541 Hay Road, in the Municipality of North Cowichan, B.C.;
  - 3. A pulp and paper mill located in the City of Powell River, B.C.;
  - 4. A pulp and paper mill located in the City of Port Alberni, B.C.; and
  - 5. The Vancouver Island Co-Generation Facility located in the City of Campbell River;
- H. There are no provisions in the Agreements allowing FEI to collect operating fees from the five facilities;
- I. Section 12.1.1 of the VIMOA provides that FEI agrees to pay to the municipality an operating fee of three percent “of the gross revenues (excluding taxes) received by FortisBC for provision and distribution of all gas consumed within the Boundary Limits of the Municipality, other than gas consumed by customers from whom the BCUC has not allowed FortisBC to collect the Operating Fee, provided that the Municipality is permitted by law to charge such a fee. Such amount will not include any amount received by FortisBC for gas supplied or sold for resale”;
- J. FEI requests an order or directive allowing it to continue to serve the five facilities under the respective rates and Agreements that have been approved by the Commission, without any amendment to rates or charges, and confirmation that the Commission has allowed FEI to not collect the operating fee from them; and
- K. The Commission reviewed the Application and considers that approval of the operating agreements is in the public interest.

**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER** C-8-15

3

**NOW THEREFORE** the British Columbia Utilities Commission orders as follows:

1. The operating agreements between FortisBC Energy Inc. (FEI) and the following municipalities are approved as filed, pursuant to section 45 of the *Utilities Commission Act*:

City of Powell River	City of Port Alberni
City of Campbell River	Municipality of North Cowichan
City of Nanaimo	

2. Pursuant to sections 59-61 of the *Utilities Commission Act*, the Commission further approves that FEI continues to provide service to the following facilities in the following municipalities under the current approved existing rates and agreements, without any amendments, until the expiration or termination of the agreements, or further order by the Commission. The Commission confirms that FEI is consequently allowed to not collect a three percent operating fee from these five customer facilities:

1. The pulp mill located at 1000 Wave Place, in the City of Nanaimo, B.C.;
2. The pulp and paper mill located at 8541 Hay Road, in the Municipality of North Cowichan, B.C.;
3. The pulp and paper mill located in the City of Powell River, B.C.;
4. The pulp and paper mill located in the City of Port Alberni, B.C.; and
5. The Vancouver Island Co-Generation Facility located in the City of Campbell River.

3. FEI is to implement the collection of the operating fees within a reasonable time, but no later than 90 days from the date of this order. FEI is to coordinate with the municipalities the appropriate communication and notification to customers.

DATED at the City of Vancouver, In the Province of British Columbia, this

*26<sup>Tu</sup>*

day of June 2015.

BY ORDER



D. Morton  
Commissioner

**Appendix G**

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**G-116-19 – OPERATING AGREEMENT BETWEEN  
THE CITY OF SURREY AND FEI**

## OPERATING AGREEMENT

THIS OPERATING AGREEMENT (the "Agreement") made to be effective the 31 day of  
May, 2019,

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 adopt a resolution for the municipality to 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) "**Delivery Margin Related Charges**" mean those charges identified on FortisBC's rate schedules as delivery margin related charges, including basic charges, delivery charges and applicable rate riders;
- (e) "**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;
- (f) "**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;
- (g) "**Gas Main**" means a natural gas pipe forming part of the Company Facilities operating at less than 700 kPa;
- (h) "**High Pressure Pipeline**" means a natural gas pipeline forming part of the Company Facilities operating at, or in excess of, 700 kPa;
- (i) "**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;
- (j) "**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;
- (k) "**Lowest Cost Alternative**" means scope of work, processes, methodologies, materials and measures available, appropriate and applicable providing the lowest overall cost for the relocation work as a whole that complies with applicable Laws and sound engineering practices;
- (l) "**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;
- (m) "**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;
- (n) "**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;
- (o) "**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;
- (p) "**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;
- (q) "**Operating Fee**" has the meaning ascribed to that term in section 12 (*Operating Fee*);
- (r) "**Pipeline Markers**" means post, signage or any means of identification used to show the general location of High Pressure Pipelines;
- (s) "**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;
- (t) “**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;
- (u) “**Relocation Costs**” means:
- (i) the costs of a party to:
    1. realign, raise, lower, by-pass, relocate or protect the party’s facilities to accommodate the work of the other party;
    2. excavate material from around the facilities as needed to complete the work in (1.) above;
    3. backfill the material referred to in (2.) above and restore the surface; and
    4. flush water mains, shut down customer gas supply and customer relights as needed,based on the Lowest Cost Alternative and the cost methodologies applied in accordance with section 8.3 (*Estimation of Costs*);
  - (ii) 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 (i) above; and
  - (iii) applicable taxes;
- but excludes:
- (iv) 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; and
  - (v) the costs in relation to a Previously Planned Removal, as that term is defined in Schedule B (*Cost Considerations*).
- (v) “**Representatives**” means, with respect to each party, personnel employed by or retained by such party, including its officers, employees, directors, contractors, and agents;
- (w) “**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;
- (x) “**Service Line Work**” means any installation, alteration, extension, or removal of Service Lines on, along, across, over or under Public Places;

- (y) "**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;
  - (z) "**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;
- (aa) "**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
  - (bb) "**Work**" means any Emergency Work, Maintenance Work, New Work or Service Line Work.

## 1.2 Interpretation

For the purposes of interpreting this Agreement:

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

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

- 2.1** FortisBC and the Municipality acknowledge and agree that they will act in good faith, in carrying out the terms and conditions of this Agreement and within reasonable time frames, carry out the obligations under this Agreement.
- 2.2** FortisBC and the Municipality will at all times carry out all work and operations with the due care and attention that is necessary to safeguard the interests of the public, their own employees, and the other party's employees.

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

**3.1 Occupancy and Use of Public Places**

- (a) This Agreement governs the rights and obligations of the parties with respect to Company Facilities located or proposed to be located on, along, across, over or under Public Places and the conduct of Work by FortisBC in Public Places.
- (b) This Agreement does not apply to or specify rights or obligations of the parties with respect to:
- (i) privately owned lands, titled lands of the Municipality not identified in Schedule A or which are not Highways, and Unopened Road Allowances;
  - (ii) lands of the Municipality over which FortisBC holds a statutory right of way granted by the Municipality, except to the extent provided in section 9 (*Highway Dedication for Crossings*); and
  - (iii) the occupancy and use of Public Places by FortisBC with respect to equipment and appliances used or intended to be used to convey, test, monitor, distribute, mix, store, compress, measure and deliver (i) liquefied natural gas, and (ii) natural gas at, or in excess of, 20 MPa for vehicle use.
- (c) The Municipality hereby acknowledges FortisBC's authority and power, in accordance with and subject to the *Gas Utility Act*, *Utilities Commission Act*, and other applicable Laws, to:
- (i) operate Company Facilities on, along, across, over or under Public Places;
  - (ii) conduct Work on, along, across, over or under Public Places;
  - (iii) enter on Public Places from time to time as may be reasonably necessary for the purpose of conducting Work and operating the Company Facilities; and
  - (iv) place Pipeline Markers where required;  
subject to terms and conditions set out in this Agreement.
- (d) FortisBC's occupancy and use of Public Places pursuant to this Agreement shall not unduly interfere with the public use and enjoyment of such Public Places.

- (e) Except to the extent specifically provided in this Agreement, nothing herein contained creates or grants any ownership or property rights in or to the Public Places to FortisBC or in or to the Company Facilities to the Municipality.

### **3.2 Taxes and Utilities**

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

### **3.3 Insurance**

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

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

### **4.1 Laws and Standards**

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

and non-discriminatory manner consistent with the manner that the Municipality establishes requirements on the owners and operators of other Utilities.

**4.2 Provide emergency contacts**

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

**4.3 Assist with facility locates**

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

**5. APPROVALS, PERMITS OR LICENSES**

**5.1 General Rule**

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

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

**5.2 Approval for New Work**

- (a) FortisBC shall be required to apply for and obtain approval from the Municipality for New Work, and not for Emergency Work, Maintenance Work, including vertical relocations, or Service Line Work.

- (b) FortisBC shall submit an application to the Municipality's Engineering Department for approval when FortisBC intends to undertake New Work. The application shall include:
- (i) a plan and specifications showing:
    1. the size and dimensions of the Company Facilities and the proposed location of the Company Facilities, or, in the event of removal, the location of the Company Facilities to be removed, relative to property lines and/or edge of pavement;
    2. the proposed location and offsets of the Company Facilities where the Company Facilities cross existing Utilities of the Municipality, provided such locations and offsets are made available to FortisBC by the Municipality;
    3. the proposed elevations and clearances of Utilities for Gas Mains having a nominal diameter greater than 219 mm (8 inches), if requested by the Municipality, and for all High Pressure Pipelines, provided such locations are made available to FortisBC by the Municipality or owner of such Utilities;
    4. the location of any trees greater than 0.3 meters in diameter at approximately 1.4 meters above the ground level, wetlands, water bodies or other areas of special environmental sensitivity, or areas designated by the Province of British Columbia or by the Municipality as heritage sites, which will likely be impacted by the New Work; and
    5. boundaries and civic addresses of any private lands abutting the New Work;
  - (ii) FortisBC's plans for the restoration of the Public Places affected by the New Work, including the material that will be used to backfill the trench, if different from those set out in the applicable of section 6.3 (*Restoration and Maintenance*) and section 6.4 (*Depth of Cover*);
  - (iii) the name of a FortisBC representative who may be contacted for more information;
  - (iv) projected commencement and completion dates; and
  - (v) such other information relevant to the New Work as the Municipality may reasonably request from time to time.
- (c) Subject to subsection (d) below, the Municipality shall use commercially reasonable efforts to grant approval to FortisBC for the New Work within ten (10) days of receipt of FortisBC's application, except that in the case of large and complex New Work, the Municipality may, by notice to FortisBC extend the time for response by a maximum of ten (10) days.

- (d) The Municipality will not refuse to grant approval, except on the following grounds:
- (i) the proposed location or design of the Company Facilities or the New Work:
    1. conflicts with existing Utilities, Municipal Facilities, existing third party facilities or Planned Facilities; or
    2. unduly interferes with the public's existing use and enjoyment of those properties identified in Schedule A, where the proposed New Work is within the specific portions of the properties identified in Schedule A; or
    3. conflicts with trees greater than 0.3 meters in diameter at approximately 1.4 meters above the ground level, wetlands, water bodies or other areas of special environmental sensitivity, or areas designated by the Province of British Columbia or by the Municipality as heritage sites; or
    4. is likely to compromise public safety; or
    5. does not conform with applicable Laws provided such Laws exclude any by-laws, orders, standards and policies of the Municipality, including Municipal Specifications, that conflict with terms of this Agreement; or
  - (ii) the Municipality intends within the next one hundred and eighty (180) days to undertake work in the same location and wishes to co-ordinate both work, and FortisBC can delay the New Work without compromising the supply, capacity or safety of the Company Facilities or its customers' need for gas service; or
  - (iii) FortisBC has not provided the Municipality with the information required by subsection (b) above;
- and shall provide FortisBC with grounds for its refusal to grant approval and shall use commercially reasonable efforts to do so within ten (10) days after receiving FortisBC's application, except in the case of large and complex New Work, the Municipality may, by notice to FortisBC extend the time for response by a maximum of ten (10) days.
- (e) The Municipality may:
- (i) require FortisBC to provide the public with reasonable notice of the New Work; and
  - (ii) include conditions in its approval that,
    1. address the matters set out in subsection (d) above; and

2. require a greater depth of cover and alternate backfill material to accommodate Planned Facilities, when FortisBC has applied for approval to install or relocate a Gas Main or High Pressure Pipeline in the location of Planned Facilities,

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

### **5.3 Permits for Work**

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

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

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

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

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

- (a) advise FortisBC of any other person(s) undertaking work or using the Highway at the location of FortisBC's work in a manner that could conflict with FortisBC's

work, provided the Municipality has notice of such other activities, to enable FortisBC to coordinate its work with such other person(s); and

- (b) require FortisBC to provide the public with reasonable notice of such FortisBC work.

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

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

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

If the Municipality:

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

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

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

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

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

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

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

## **6.2 Pavement Cuts**

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

## **6.3 Restoration and Maintenance**

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

## **6.4 Depth of Cover**

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

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

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

## **6.6 Conformity Requirement**

- (a) FortisBC shall carry out Work in conformity with the applicable permit or approval.
- (b) FortisBC may make in-field design changes when carrying out New Work to accommodate field conditions which could not have been reasonably foreseen

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

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

#### **6.7 Prime Contractor**

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

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

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

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

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

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

## **7.2 Expropriation**

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

## **8. CHANGES TO FACILITIES**

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

- (a) If FortisBC plans to undertake New Work, Maintenance Work or Service Line Work that might require Municipal Facilities to be realigned, raised, lowered, protected, by-passed, or relocated to accommodate the work, FortisBC may submit details of its planned work and request that the Municipality provide an estimate of its Relocation Costs to accommodate FortisBC's work.
- (b) The Municipality shall provide the requested Relocation Costs estimate and a detailed description of the required changes to the affected Municipal Facilities to the extent it is reasonably able to do so and with reasonable speed and dispatch after receipt of such request.
- (c) The Municipality shall not proceed with the changes to Municipal Facilities identified pursuant to subsection (b) above until it receives: (i) written confirmation in the form of a purchase order from FortisBC that the undertaking contemplated in subsection (a) above will be proceeding, and (ii) an FEI Permit in respect of such changes, if applicable.
- (d) If FortisBC provides written confirmation pursuant to subsection (c) above, the Municipality shall use commercially reasonable efforts to promptly apply to FortisBC for an FEI Permit if applicable and, upon receipt of such FEI Permit, shall make such changes to the affected Municipal Facilities with reasonable speed and dispatch.
- (e) FortisBC agrees to reimburse the Municipality for 100 per cent of 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 to FortisBC and request that FortisBC provide an estimate of its Relocation Costs to accommodate the Municipality's work, and,
  - (i) FortisBC shall provide the requested Relocation Costs estimate and a detailed description of the required changes to the affected Company Facilities, to the extent it is reasonably able to do so and with reasonable speed and dispatch after receipt of such request;
  - (ii) FortisBC shall not proceed with such changes to Company Facilities until:
    - (A) FortisBC has received written confirmation from the Municipality that the Municipality has received an FEI Permit pursuant to section 13(b) (*Municipal Work*) or approval of the Oil and Gas Commission, as applicable, for the construction of the Municipal Project contemplated in subsection (b) above and confirmation in the form of a purchase order from the Municipality that the Municipal Project will be proceeding; and
    - (B) FortisBC has received applicable approval(s) and permit(s) from the Municipality pursuant to sections 5.2 (*Approval for New Work*) and 5.3 (*Permits for Work*);
  - (iii) if the Municipality provides written confirmation pursuant to subsection (ii) above, FortisBC shall use commercially reasonable efforts to promptly apply to the Municipality for applicable approval(s) and permit(s) under this Agreement and, upon receipt of such approval(s) and permit(s), shall make such changes to the affected Company Facilities with reasonable speed and dispatch.
- (c) The Municipality agrees to reimburse FortisBC for its Relocation Costs as follows:
  - (i) when the affected Company Facilities are Gas Mains, 100 percent of the Relocation Costs;
  - (ii) when the affected Company Facilities are High Pressure Pipelines, the amount recoverable pursuant to subsections 3(3) to 3(5) of the *Pipeline Crossings Regulation* (B.C. Reg. 147/2012) effective as at the date of invoice.
- (d) If FortisBC determines the Municipality is under no obligation to reimburse FortisBC for its Relocation Costs by application of section 8.2(c) and therefore FortisBC will not be seeking reimbursement from the Municipality:
  - (i) Despite the requirement to provide a Relocation Costs estimate pursuant to section 8.2(b):
    1. FortisBC is not required to provide an estimate to the Municipality; and

2. the Municipality is not required to provide a purchase order to FortisBC but will provide other written confirmation to FortisBC that the Municipal Project is proceeding.

### **8.3 Estimation of Costs**

The Relocation Costs estimates to be provided pursuant to sections 8.1(b) (*Changes to Municipal Facilities*) and 8.2(b)(i) (*Changes to Company Facilities*) and section 8.4(a) (*Notification of Costs, Invoicing and Payment*) shall:

- (a) contain sufficient detail to enable the party that requested the estimate to assess the reasonableness of the estimate;
- (b) identify:
  - (i) the scope of work, including descriptions of the main tasks to be performed;
  - (ii) costs of each of the main tasks to be performed;
  - (iii) administration and overhead charges if not included in the costs under subsection (ii) above; and
  - (iv) applicable taxes;
- (c) unless otherwise agreed by the parties in writing, reflect the Lowest Cost Alternative on the basis that the requesting party will facilitate the performance of the work in such manner and does not impose restrictions or requirements necessitating a specific or less cost effective approach; and
- (d) to the extent the scenarios in Schedule B (*Cost Considerations*) are applicable, apply the corresponding outcomes.

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

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

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

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

- (a) If the Municipality intends to create or widen a Highway, or requires as a condition of subdivision, rezoning and/or development approval that a Highway

be created or widened, on or through lands over which FortisBC holds a statutory right of way and the proposed new or widened Highway crosses or overlaps a portion of FortisBC's statutory right of way area, then, at the request of the Municipality and provided the Highway project is proceeding, FortisBC 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 Margin Related Charges (excluding taxes) received by FortisBC from its customers for the distribution of gas consumed within the Boundary Limits, but excluding compressed natural gas distributed from fueling stations and the delivery of liquefied natural gas. Delivery Margin Related Charges further do not include (i) any gas commodity related charges, or (ii) any Delivery Margin Related Charges 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. The parties acknowledge a change to BCUC's decision that FortisBC shall provide the agency billing and collections service for

marketers on a mandatory basis, as set out in the "Business Rules for Commodity Unbundling" dated June 5, 2003 as set out in Appendix A to Letter No. L-25-03, may impact the Operating Fee being paid to the Municipality.

### **13. MUNICIPAL WORK**

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

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

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

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

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

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

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

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

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

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

#### **15.2 Term of Agreement**

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

#### **15.3 Termination of Agreement**

- (a) Either party may terminate this Agreement by providing the other party with at least ninety (90) days written notice of termination if the BCUC orders that FortisBC is not authorized to recover the Operating Fee from its customers.
- (b) The Municipality may terminate this Agreement by providing FortisBC with at least twenty-four (24) hours written notice of termination if FortisBC becomes insolvent, makes an assignment for the benefit of its creditors, has a liquidator, receiver or trustee in bankruptcy appointed for it or becomes voluntarily subject

as a debtor to the provisions of the *Companies' Creditors Arrangement Act* or the *Bankruptcy and Insolvency Act*.

- (c) Either party may terminate this Agreement by providing the other party with written notice of termination if the other party breaches any term, provision or obligation hereunder and such breach is a material breach and has not been cured within sixty (60) days of receipt of notice of such breach. A party will not be considered to be in material breach if the party has sought resolution of such matter through the Dispute Resolution process under section 17 (*Dispute Resolution*) and the outcome of which is pending.
- (d) Either party may terminate this Agreement in accordance with section 16.2(b) (*Changes to Laws*).
- (e) After the initial twenty (20) year term of this Agreement, either party may terminate this Agreement by giving the other party not less than one (1) year's written notice of termination.

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

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

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

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

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

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

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

so as to enable the Municipality to comply with the terms, obligations and conditions of this Agreement.

#### **16.2 Changes to Laws**

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

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

### **17. DISPUTE RESOLUTION**

#### **17.1 Mediation**

Where any dispute arises out of or in connection with this Agreement, including failure of the parties to reach agreement on any matter arising in connection with this Agreement after escalation to senior management, the parties agree the dispute shall be mediated pursuant to the National Mediation Rules of the ADR Institute of Canada, Inc.

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

If the parties fail to resolve the dispute through mediation or if the mediation 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 by arbitration under the Arbitration Rules of the ADR Institute of Canada, Inc. Unless the parties agree otherwise the arbitration will be conducted by a single arbitrator.

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

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

#### **17.4 Appointment of Arbitrator**

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

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

The arbitrator shall have the authority to award:

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

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

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

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

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

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

#### **18.1 Rights Reserved**

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

#### **18.2 No Liens**

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

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

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

#### **18.4 Representations**

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

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

- (a) This Agreement may be amended only by an agreement in writing signed by the parties. No waiver of any provision nor consent to any exception to the terms of this Agreement shall be effective unless in writing and signed by the parties to be bound, and then only to the specific purpose, extent and instance so provided. No waiver, delay or failure to exercise any rights under this Agreement shall be construed as a continuing waiver of such right or as a waiver of any other right under this Agreement. The failure of either party to insist upon strict adherence to any term or condition of this Agreement on any occasion shall not be considered a waiver of any right thereafter to insist upon strict adherence to that term or condition or any other term or condition of this Agreement.

- (b) The parties agree to meet to discuss the operations of the Agreement within thirty (30) days of either party making the request. Such a meeting will determine whether any amendments are required to this Agreement and the parties shall discuss any proposed amendments with a view to maximizing the benefit of the relationship.

**18.6 Assignments and Enurement**

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

**18.7 Governing Law**

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

**18.8 Time**

Time is of the essence in this Agreement.

**18.9 Confidentiality**

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

**18.10 Entire Agreement**

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

**18.11 Severability**

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

**18.12 Force Majeure**

Neither party shall be liable to the other for temporary failure to perform hereunder, if such failure is caused by reason of an Act of God, labour dispute, strike, temporary breakdown of facilities, fire, flood, government order or regulations, civil disturbance,

non-delivery by program suppliers or others, or any other cause beyond the parties' respective control.

#### **18.13 Notice**

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

If to FortisBC:

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

For all other matters:

Planning Manager

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

If to the Municipality:

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

For all other matters:

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

- (b) Despite the foregoing, any formal notice or written communication with respect 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:



Authorized Signatory

Doug McCallum, Mayor



Authorized Signatory

Jennifer Ficocelli, City Clerk

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



Authorized Signatory

Diane Roy  
VP, Regulatory

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
  - Provinceton 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.

**Schedule B**  
**Cost Considerations**

Scenario	Outcome	Rationale
1. The facilities that the other party has requested be relocated are already identified for replacement under owner's asset management plans scheduled to be undertaken within three (3) years of the date of the relocation request <sup>i</sup> ("Previously Planned Removal")	Relocation Costs do not include these costs	The decision to replace is merely accelerated by the request
2. Party requests a relocation of an asset that: <ul style="list-style-type: none"> <li>• is not a Previously Planned Removal; and</li> <li>• identical replacement CAN be made under prevailing laws and sound engineering practices</li> </ul>	Relocation Costs include the lesser of (a) the actual costs for the identical replacement; or (b) the actual costs of another more cost-effective code-compliant alternative	The costs are caused solely by the requesting party, and the owner would not have incurred them but for the request
3. Party requests a relocation of an asset that: <ul style="list-style-type: none"> <li>• is not a Previously Planned Removal; and</li> <li>• Identical replacement CANNOT be made under prevailing Laws and sound engineering practices (asset or technology obsolete, etc. and alternatives are required to meet Laws and sound engineering practices)</li> </ul>	Relocation Costs include the actual costs for what needs to be installed in conformity with prevailing Laws and sound engineering practice, since identical replacement is not possible	The costs are caused solely by the requesting party, and the owner would not have incurred them but for the request
4. Party requests a relocation of an asset that: <ul style="list-style-type: none"> <li>• is not a Previously Planned Removal; and</li> <li>• a more cost-effective (less expensive) and longer-term alternative, such as polyethylene (PE) pipe can be used under prevailing Laws and sound engineering practices (no capacity increase)</li> </ul>	Relocation Costs include the actual costs of the most cost-effective code-compliant alternative	The costs are caused solely by the requesting party, and the owner would not have incurred them but for the request
5. Party requests a relocation of an asset that: <ul style="list-style-type: none"> <li>• is not a Previously Planned Removal;</li> <li>• a more cost-effective (less expensive) and longer-term alternative, such as polyethylene (PE) pipe can be used under prevailing Laws and sound engineering practices (no capacity increase); and</li> <li>• the owner takes the opportunity to increase the capacity or otherwise further improve the facilities</li> </ul>	Relocation Costs include the actual costs of the most cost-effective code-compliant alternative but do not include the incremental costs, if any for the increase in capacity or further improvement(s)	The replacement costs are caused solely by the requesting party, and the owner would not have incurred them but for the request; additional costs would be excluded

<sup>i</sup> "Asset management plans" refers to:

1. In the case of FortisBC, its capital upgrade plan which is updated annually and subject to corporate capital budget approval.
2. In the case of the Municipality, the City of Surrey 5-year Engineering Servicing Plan



**ORDER NUMBER**  
**G-116-19**

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

and

FortisBC Energy Inc. and the City of Surrey  
Applications for Approval of Terms for an Operating Agreement

**BEFORE:**

R. I. Mason, Panel Chair  
W. M. Everett, QC, Commissioner  
B. A. Magnan, Commissioner

on May 30, 2019

**ORDER**

**WHEREAS:**

- A. On April 30, 2019, FortisBC Energy Inc. (FEI) submitted a compliance filing (Compliance Filing) pursuant to the British Columbia Utilities Commission's (BCUC) decision and accompanying Order G-18-19 (Decision) regarding the Applications for Approval of Terms for an Operating Agreement by FEI and the City of Surrey (City). FEI submitted the Compliance Filing on behalf of FEI and the City and included a revised version of the New Operating Agreement containing the terms agreed to by FEI and the City (Agreed Terms) and the terms specified by the Panel according to the directives in the Decision;
- B. On May 17, 2017, the City applied to the BCUC for an order pursuant to subsection 32(2) of the *Utilities Commission Act* (UCA) specifying the terms under which FEI may install, operate and maintain its distribution equipment in public places within the City's boundary limits (City Application);
- C. On May 18, 2017, FEI applied to the BCUC pursuant to section 32 or alternatively section 33 of the UCA, for approval of new operating terms with the City (FEI Application). The new operating terms would, among other things, establish new protocols for interaction between the parties, address the allocation of costs when the City requires FEI to relocate its facilities, and provide for FEI to collect operating fees on behalf of the City from FEI customers in the City;
- D. In the Decision dated January 29, 2019, the BCUC ordered as follows:
  1. FEI and the City of Surrey are directed to submit to this Panel for approval within 90 days a revised version of the New Operating Agreement containing the Agreed Terms and the terms specified by the Panel according to the directives provided in this Decision; and
  2. FEI and the City of Surrey are directed to comply with all other directives in the Decision accompanying this Order;

- E. On April 30, 2019, the City filed a letter confirming its agreement with the New Operating Agreement filed by FEI pursuant to the Compliance Filing;
- F. On May 23, 2019, FEI submitted an amendment to its Compliance Filing providing an amended revised version of the New Operating Agreement to include revisions to the dispute resolution section; and
- G. The BCUC has completed its review of the New Operating Agreement filed pursuant to the Compliance Filing and finds that approval is warranted.

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

1. The Compliance Filing and the New Operating Agreement are approved by the Panel as being in accordance with the terms specified in the Decision.
2. FEI and the City are to execute the New Operating Agreement and file it for acceptance with the BCUC within 30 days of the date of this order.
3. FEI is to implement collection of the Operating Fee in accordance with the New Operating Agreement effective July 1, 2019.

**DATED** at the City of Vancouver, in the Province of British Columbia, this                   30<sup>th</sup>                   day of May 2019.

BY ORDER

*Original signed by:*

R. I. Mason  
Commissioner