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December 9, 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: FortisBC Energy Inc. (FEI)**

**Application for Approval of an Operating Agreement between the Corporation  
of the City of Nelson (City of Nelson) and FEI**

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FEI has entered into a new Operating Agreement dated December 4, 2020, with the City of Nelson (FEI-Nelson Operating Agreement), for which FEI is requesting approval from the British Columbia Utilities Commission (BCUC), pursuant to section 23(1)(g) of the *Utilities Commission Act* (UCA). A copy of the executed FEI-Nelson Operating Agreement is provided in Appendix A.

**City of Nelson is an Interior Municipality with an Expiring Franchise Agreement**

FEI (through predecessor companies Inland Natural Gas Co. Ltd. and Terasen Gas Inc.) and the City of Nelson have a Franchise Agreement (originally approved by BCUC Order C-16-80 and later a Franchise Amendment Agreement was approved by BCUC Order C-3-04). The term of the Franchise Agreement as amended is set to expire on February 28, 2021. A copy of the original Franchise Agreement and Franchise Amendment are provided in Appendix B.

**The FEI-Nelson Operating Agreement is Based on the Identical Terms as the FEI-Keremeos Operating Agreement**

The FEI-Nelson Operating Agreement is consistent with the approved terms of the Village of Keremeos Operating Agreement<sup>1</sup> (the Keremeos Terms).

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<sup>1</sup> Order C-8-14, dated July 24, 2014, approved the Village of Keremeos terms to be the basis for comparison in future operating agreement applications.

The only changes in the FEI-Nelson Operating Agreement as compared to the Keremeos Terms are to make six very minor corrections. Three of the changes are to make typographical corrections to reflect the original intent or make dates more current. Three of the changes are consistent with revisions to the City of Kelowna Operating Agreement directed by the BCUC in Order G-81-19 and later approved by Order G-99-19, which include an update to referenced applicable legislation, addition of clarifying language, and an update to reference the Alternative Dispute Resolution Institute of Canada, Inc.

The following summarizes the six changes that have been made to the FEI-Nelson Operating Agreement as compared to the Keremeos Terms:

1. **Section 6.2**, third line, capitalization of utilities:
  - "...the Municipality's utilities..." now reads "...the Municipality's Utilities..."
2. **Section 6.4.1**, last line of the second paragraph, replacing "or" with "of":
  - "...non-use and want or repair." now reads "...non-use and want of repair."
3. **Section 11.1.1**, addition of clarifying language to reflect that the operating fee is not collected on revenues from Compressed Natural Gas (CNG) or Liquefied Natural Gas (LNG) services.
4. **Section 11.2**, last two lines of the paragraph, to update the years in the example to be more current:
  - "...on March 1, 2014 will be the amount received during the 2013 calendar year." now reads "...on March 1, 2019 will be the amount received during the 2018 calendar year..."
5. **Section 13.1.3**, line 4, update to current legislation
  - "...*Gas Safety Act*,..." with "...*Safety Standards Act*,..."
6. **Sections 17.1 and 17.2**, replaced reference to the Rules of Procedure of the Canadian Foundation for Dispute Resolution with the ADR Institute of Canada, Inc.

To assist the BCUC with its review, Appendix C contains a blacklined version showing all of the revisions to the FEI-Nelson Operating Agreement as compared to the Keremeos Terms.

### **Order Sought**

The existing Franchise Agreement expires on February 28, 2021, FEI requests approval from the BCUC, pursuant to section 23(1)(g) of the UCA, of the executed FEI-Nelson Operating Agreement on a permanent basis effective March 1, 2021. Should the BCUC be unable to make a determination on permanent approval before the expiry of the existing agreement, then FEI requests approval of the FEI-Nelson Operating Agreement on an interim basis, effective March 1, 2021. A draft form of final Order is provided in Appendix D.

If further information is required, please contact Ilva Bevacqua, Manager of Regulatory Compliance and Administration at (604) 592-7664.

Sincerely,

**FORTISBC ENERGY INC.**

***Original signed:***

Diane Roy

Attachments

cc (email only): City of Nelson: Kevin Cormack, C.A., [kcormak@nelson.ca](mailto:kcormak@nelson.ca)

**Appendix A**

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**FEI – CITY OF NELSON OPERATING AGREEMENT DATED  
DECEMBER 4, 2020**

## OPERATING AGREEMENT

THIS OPERATING AGREEMENT (the "Agreement") made this 4 day of December, 2020.

BETWEEN:

**THE CORPORATION OF THE CITY OF NELSON**, a municipal corporation incorporated under the laws of the Province of British Columbia

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

OF THE FIRST PART

AND:

**FORTISBC ENERGY INC.**, a body corporate duly incorporated under the laws of the Province of British Columbia, formerly known as Terasen Gas Inc., 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 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 3<sup>rd</sup> day of June, 1980 which has or will expire on February 28, 2021;
- 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**

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, 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) “Distribution Pipelines” means pipelines operating at a pressure less than 2071 kilopascals (300 psi);
- (f) “FortisBC Employees” means personnel employed by or engaged by FortisBC including officers, employees, directors, contractors, and agents;
- (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) “Mains” means pipes used by FortisBC to carry gas for general or collective use for the purposes of Gas Distribution;
- (k) “Municipal Employees” means personnel employed by or engaged by the municipality, including officers, employees, directors, contractors and agents;

- (l) “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;
- (m) “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;
- (n) “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 surface; 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;
- (o) “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;
- (p) “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;
- (q) “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;
- (r) “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 this Agreement, includes a service header and service stubs;
- (s) “Transmission Pipeline” means a pipeline of FortisBC having an operating pressure in excess of 2071 kilopascals (300 psi); and
- (t) “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**

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.

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**

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 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. 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 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.

### **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 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 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 two (2) 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 Obtain 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 of 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 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 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, as soon as reasonably possible, 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 of the changes and the reasons for them as soon as reasonably possible.

### **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 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.

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 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, temporarily shut-down, temporarily by-passed, 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 purpose 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 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 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 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 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 this Agreement 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 this Agreement 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.

## **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, excluding all compressed natural gas and liquefied natural gas distributed from fueling stations, the provision and delivery of all liquefied natural gas, and all gas consumed by customers from whom the BCUC has not allowed FortisBC to collect the fee, and 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.

**11.1.2.** 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.

- 11.1.3.** 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 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 this Agreement which is in the immediately preceding calendar year. By way of example only, payment made on March 1, 2019 will be the amount received during the 2018 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 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 this Agreement, 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 this Agreement (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 or in the event no annual operating fee is payable, FortisBC will not be required to pay such charges or 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 *Safety Standards 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 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, 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 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.

### **15.2 Agreement Not Binding Until Approved by BCUC**

**15.2.1.** This Agreement will not come into effect and does not bind the parties until FortisBC has obtained such approvals of this Agreement, or its terms, as may be required under the *Utilities Commission Act*. Upon executing this Agreement FortisBC shall make reasonable efforts to fulfill this

condition. If this condition is not fulfilled or waived within one (1) year of the date of execution of this Agreement, then the obligation on FortisBC to make reasonable efforts to fulfill this condition will terminate, and neither party will have any further obligation to the other under this Agreement.

### **15.3 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 15.2 of this Agreement.

### **15.4 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 15.5 below.

### **15.5 Termination of Agreement**

**15.5.1.** 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 20 days of the Municipality becoming aware of it.

**15.5.2.** 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.

- 15.5.3.** 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.

## **15.6 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.

## **15.7 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.

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

Upon 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 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) 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 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 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 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 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 the dispute shall be mediated pursuant to the National Mediation Rules of the ADR Institute of Canada, Inc.

### **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 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 will allow discovery as required by the *Commercial Arbitration Act* of British Columbia 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, 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 Corporate Authority**

FortisBC 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:

**THE CORPORATION OF THE CITY OF NELSON**

101 -310 Ward Street

Nelson, BC V1L 5S4

(B) If to FortisBC:

**FORTISBC ENERGY INC.**

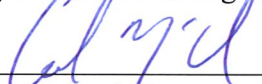
16705 Fraser Highway

Surrey, B.C. V4N 0E8

Attention: Vice President, Regulatory Affairs

**THE CORPORATION OF THE CITY OF NELSON**


by its authorized signatories

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

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

**FORTISBC ENERGY INC.**

by its authorized signatories

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

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

**Appendix B**

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**FEI – CITY OF NELSON FRANCHISE AGREEMENT DATED  
JUNE 3, 1980**

**AND**

**FEI – CITY OF NELSON FRANCHISE AMENDMENT  
AGREEMENT DATED MARCH 1, 2004**

THIS AGREEMENT made this 3rd day of June  
in the year of our Lord One Thousand Nine Hundred and Eighty-  
Nine.

BETWEEN:

THE CORPORATION OF THE CITY OF NELSON,  
a municipal corporation incorporated  
under the laws of the Province of  
British Columbia;

(hereinafter called the "Municipality")

OF THE FIRST PART

AND:

INLAND NATURAL GAS CO. LTD., 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 said Province;

(hereinafter called the "Company")

OF THE SECOND PART

WHEREAS the Company has entered into Gas Purchase  
Contracts for the supply of gas by pipeline for the purposes  
of making same available for distribution in British Columbia  
in accordance with the terms of such Contracts.

AND WHEREAS the Company was formed for the purpose  
of engaging in the business of transporting, supplying, dis-  
tributing and selling gas for industrial, commercial, domestic  
and other uses for power, heat and energy, and pursuant to the  
terms and conditions of its contracts with its supplier(s),  
has available for such uses supplies of gas for the purpose  
of making same available to the Municipality and to consumers  
or customers within, or in the environs of, the Municipality.

AND WHEREAS the Company will construct and operate all the necessary facilities, pipelines, mains and pipes for a supply of gas (which term as used in this Agreement shall include natural gas, synthetic natural gas, liquefied natural gas, liquefied petroleum gas, manufactured gas and/or other utility gases or any of them or any mixtures thereof) to the Municipality and/or such consumers or customers as are situated within the boundary limits thereof, and is willing to do so on the terms and conditions hereinafter set forth.

AND WHEREAS it is to the mutual advantage of the Company and the Municipality to extend the present Franchise Agreement, with minor modifications, all in accordance with the terms and conditions as hereinafter provided.

AND WHEREAS the Company has constructed the necessary transmission and distribution facilities, all in accordance with governmental, municipal, or other regulatory authorities having jurisdiction over same for the supply of gas to and within the Municipality.

NOW THEREFORE THIS INDENTURE WITNESSETH that in consideration of the premises and mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. The Company agrees to obtain a supply of gas subject as hereinafter provided, to distribute and sell gas within the boundary limits of the Municipality, and, subject as hereinafter provided, the Municipality insofar as and to the

extent that it is able and so empowered, hereby grants to, bestows and confers upon the Company the exclusive charter, right, franchise or privilege to supply gas by pipeline to the Municipality and its inhabitants and to consumers or customers situated within its boundary limits for the term of Twenty-one (21) years from the date of the expiry of that Franchise Agreement dated the 1st day of December, 1956, which expired on the 30th day of November, 1977.

2. The Company agrees that the gas supplied to the Municipality and its inhabitants and to consumers or customers situated within its boundary limits shall at all times be of a quality and standard conforming with the regulations for the time being in force and from time to time formulated under the provisions of the Gas Inspection Act being Chapter 129 of the Revised Statutes of Canada, 1952, and any amending statutes, and also conforming with any regulations or laws applicable thereto, whether such regulations or laws be made or issued by the Government of Canada or by the Province of British Columbia and whether now or hereafter brought in force and effect.

3. Subject as hereinafter provided, the Municipality hereby grants to the Company the authority, permission and right for the term of this Agreement as set out in Clause One (1) hereof to enter in, upon and under all public thoroughfares, highways, roads, streets, lanes, alleys, bridges, viaducts, subways, public places, squares and parks within the boundary limits of the Municipality and over which the Municipality has control and authority for such permission and right to give, and the same to use, break up, dig, trench, open up and excavate, and therein, thereon and thereunder place, construct, lay, operate, use, maintain, renew, alter,

repair, extend, relay and/or remove a distribution system which term means mains, pipes, valves and facilities for the purpose of carrying, conveying, distributing, supplying and making available for use gas within the said boundary limits of the Municipality as and in the manner herein set out, but excludes any transmission or main pipeline and appurtenances which are an integral part of the natural gas transmission system bringing gas to the boundary limits of the Municipality or through the Municipality by transmission lines to enable distribution to other areas outside its said boundary limits or to other Municipalities or other unorganized areas.

4. Before placing, constructing or laying down the distribution system, or any part thereof, the Company shall file with the Municipality, or such officer or official thereof as shall be designated from time to time for such purpose by the Municipality, detailed plans and specifications showing the size and dimensions of the mains and pipes thereof, the proposed depth thereof below the surface of the ground, and the proposed location thereof, and the same shall not be placed, constructed or laid down without the approval of the Municipality or of such designated officer or official, as the case may be, PROVIDED ALWAYS that such approval shall not be unreasonably withheld. In establishing location of mains, the Company shall endeavour to use lanes or alleys in preference to streets, where same are available and the use thereof is compatible with and conforms to the general economics and engineering of the distribution system or the relevant portion thereof.

5. The Company shall give written notice to the Municipality or such officer or official thereof as shall be designated from time to time by the Municipality for the purposes in the next preceding clause set out, of its intention to break up, dig, trench, open up or excavate any, or in or on any, public thoroughfare, highway, road, street,

lane, alley, bridge, viaduct, subway, public place, square or park within the boundary limits of the Municipality, not less than three (3) clear days before the beginning of such work, except in such cases of repair, maintenance or the like that can reasonably be deemed to be emergencies or in the interests of the health or safety of the public, or of the safety of property by whomsoever owned, or any of them, in which cases no notice need be first given but shall be given as soon as practicable thereafter. *The City shall thereupon be entitled to appoint a representative to supervise or advise in respect of such work and so long as the directions, instructions or advice of such representatives are or is followed or complied with by the Company, the Company shall be relieved from all liability in connection with any damage done to the property of the City by reason of such work.* The provisions of this clause shall apply notwithstanding the provisions of the next preceding clause and the grant of the approval or approvals therein referred to.

6. Should any of the public thoroughfares, highways, roads, streets, lanes, alleys, bridges, viaducts, subways, public places, squares or parks, under or on which any part of the distribution system of the Company lies or is constructed, be legally closed as such or alienated by the Municipality or by or under any other paramount authority, ~~written notice by prepaid registered mail shall be given to the Company,~~ the Company agrees that with all reasonable speed and dispatch after receipt of such written notice from the Municipality it will remove and (if possible or practicable) re-locate that part of its distribution system so affected by such closure or alienation, the cost of such removal and/or relocation to be at the cost and expense of the Municipality, unless such removal and/or relocation has been enforced upon the Municipality by any such other paramount authority without the Municipality having applied therefor.

7. The Company agrees with the Municipality that it will create and cause as little damage as possible in the execution of the authorities, permissions and rights to it hereby granted and will use its best endeavours to cause as little obstruction or inconvenience or danger as possible during the progress of any of the work hereinbefore set out,



and will place and maintain such warning signs, barricades, lights or flares on, at or near the site of any work in progress as will give reasonable warning thereof and protection therefrom to members of the public, and further agrees to restore without unreasonable delay the said public thoroughfares, highways, roads, streets, lanes, alleys, viaducts, bridges, subways, public places, squares and parks so broken up, dug, trenched, opened up or excavated to a state of repair or condition as nearly as possible as existed immediately before the commencement of such work.

8. The distribution system of the Company and the mains and pipes thereof shall be laid in such manner as not to interfere with any public or private sewer or any other pipe, conduit, duct, manhole or system belonging to the Municipality or which shall have been previously laid down and be then subsisting in any said public thoroughfare, highway, road, street, lane, alley, bridge, viaduct, subway, public place, square or park by, or with the permission or approval of, the Municipality or by virtue of any charter or right granted by competent government or municipal authority.

9. The Company agrees with the Municipality that it will protect, indemnify and save harmless the Municipality from and against all actions, proceedings, claims and demands of any corporation, firm or person against the Municipality and will reimburse the Municipality for all damage and expenses caused to it, in respect of or by the execution by the Company of the authorities, permissions and rights hereby to it granted or by reason of the construction, maintenance or operation of the distribution system of the Company within the boundary limits of the Municipality,

except where caused by or contributed to by the negligence or default of the Municipality or its servants or agents.

10. The Municipality agrees with the Company that before it makes any additions, repairs or alterations to any of its public services within the boundary limits of the Municipality, and which said additions, repairs or alterations may in any way affect any part of the distribution system of the Company, or any equipment thereof, it will give to the Company at its main office within the boundary limits of the Municipality, or at its Head Office in the City of Vancouver, British Columbia, not less than three (3) clear days notice thereof, except in such cases of repair, maintenance or the like that can reasonably be deemed to be emergencies or in the interests of the health or safety of the public, or of the safety of property by whomsoever owned, or any of them, in which case no notice need be first given but shall be given as soon as practicable thereafter. The Company shall thereupon be entitled to appoint a representative to supervise or advise in respect of such additions, repairs or alterations and so long as the directions, instructions or advice of such representative are or is followed or complied with by the Municipality, the Municipality shall be relieved from all liability in connection with any damage done to the property of the Company by reason of such additions, repairs or alterations.

11. Subject to the next clause hereof, the Company agrees with the Municipality that during the term of this Agreement as set out in Clause One (1) hereof and the

exclusive charter, right, franchise and privilege herein granted, but commencing only after the construction and putting into service of facilities so to do, it will supply such reasonable quantities of gas as may be required for consumption or purchase by its customers or consumers within the boundary limits of the Municipality ~~subject, however, to the terms and conditions of the service agreement between the customer or consumer and the Company~~, PROVIDED THAT such requirements are to be supplied to places or buildings lying or being on property fronting or lying alongside a main or pipe of the distribution system of the Company. The property line of such property shall be the place of delivery of all gas supplied by the Company, but the Company shall provide and install a meter suitably located on the property to be supplied with gas. The Company shall also supply and install a service pipeline from the property line to the meter on and in accordance with the costs and terms set forth in the Company's tariff and revisions thereto as filed with and approved by the British Columbia Energy Commission, from time to time. The said meter and service pipeline shall be located and installed in a manner and at a location selected by the Company, and shall remain the property of the Company. The expense and risk of utilizing and using such gas after delivery at the said property line shall be borne by the consumer or purchaser and not by the Company unless any loss or damage occasioned by such utilization or user is directly attributable to the negligence or carelessness of the Company, its servants or agents.

12. Notwithstanding anything to the contrary in this Agreement contained, and in particular notwithstanding the provisions of Clauses One (1), Two (2) and Eleven (11) hereof, the obligations, duties and covenants of the Company herein contained, and on its part to be performed and carried out,

and the performance of this Agreement, are subject from time to time to (a) fire, explosion, lightning, tempest, the elements, adverse weather or climatic conditions, acts of God, force majeure, actions or acts or restraints of enemies, foreign princes and governments (whether foreign or domestic), strikes, lockouts, riots, shortage of labour or materials, civil insurrection, delays in or shortage of transportation, impossibility or difficulty of or in manufacturing, mixing, procuring, receiving, distributing or delivering gas, or impossibility, difficulty or delay in procuring, acquiring or receiving materials or equipment required or advisable for the placing, construction, maintenance or operation of the distribution system or any pipeline or facility for bringing gas to the boundary limits of the Municipality, and generally all shortage of supply or delays in delivery caused or resulting directly or indirectly from causes beyond the reasonable control of the Company, and ~~(b) the operation of the entire natural gas transmission pipelines of its supplier(s) (including gathering lines), and (c) the construction and operation of the transmission or main pipeline and appurtenances of the Company required to bring gas from such natural gas pipeline to the boundary limits of the Municipality.~~

13. Subject as hereinafter provided, the Municipality agrees with the Company that it will not during the term of this Agreement as set out in Clause One (1) hereof, itself construct, operate or maintain a distribution system for the supplying of gas to the Municipality and/or its inhabitants and/or consumers or customers within its boundary limits, or to use the public thoroughfares, highways, roads, streets,

lanes, alleys, bridges, viaducts, subways, public places, squares or parks under its control or owned by it, or any part of them, for such purposes.

14. The Company agrees that the rates which the Company will charge for gas sold to the Municipality or other consumers or customers taking delivery in the manner aforesaid within the boundary limits of the Municipality shall be the applicable rates filed with and approved by the British Columbia Energy Commission.

~~15. Either party hereto shall have the right at any time prior to Six (6) months before the expiration of the term of Twenty-one (21) years hereinbefore in Clause One (1) set out to give to the other party notice in writing of its desire to renew this Agreement and the exclusive charter, right, franchise and privilege hereunder for a further term of Twenty-one (21) years or lesser years, and upon such terms and conditions as may be mutually agreed upon. As soon as possible after giving of such notice the parties shall, in the interest of both of them, enter into negotiations looking towards such renewal and shall use their best endeavours to bring such negotiations to a mutually satisfactory conclusion before the expiration of the first mentioned term of Twenty one (21) years.~~

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16. In the event that prior to Six (6) months before the expiration of the term of Twenty-one (21) years hereinbefore referred to neither party shall have given to the other party the notice in writing of its desire for renewal as in the next preceding clause set out, or, in the event that such a notice in writing shall have been duly given but the parties shall not have agreed on all the terms and conditions of such renewal by the expiration of the said term

of Twenty-one (21) years, then, and in either of such events, the Municipality shall have the right to purchase from the Company its whole business and undertaking within the boundary limits of the Municipality and being its distribution system and all its lands, buildings, plants, equipment, apparatus, vehicles, supply lines, supplies, stocks, tools and machinery and generally every and all its property and assets forming part of, or actually used or available for use exclusively in its undertaking or business of manufacturing, treating, processing, supply and distributing gas to consumers or purchasers within such boundary limits of the Municipality. PROVIDED THAT the Municipality shall not be entitled to purchase and the right of purchase hereinbefore given shall not cover any part of the business, undertaking or transmission or main pipelines (with appurtenances) of the Company situate either inside or outside the boundary limits of the Municipality which are an integral part of the transmission system bringing natural gas to or through the Municipality or which the Company considers necessary to it in the manufacture, mixing, transportation, storage, distribution, supply or sale of gas to other areas, corporations or persons not covered by this agreement. In the event that the Municipality shall acquire and desire to exercise the said right to purchase it shall exercise the said right by notice in writing given to the Company not later than Three (3) days after the expiration of the said term of Twenty-one (21) years, and a sale and purchase made under this clause shall become, and be deemed to have become, effective at midnight of the last day of the said term of Twenty-one (21) years.

17. In the event of a sale and purchase by the Municipality under the provisions of the next preceding clause, the purchase price payable by the Municipality to the Company for the said business and undertaking (which price is herein-

after referred to as "the price") shall be such as may be agreed in writing between the parties not later than One (1) month after the said effective time of the sale and purchase, or within such further time as the parties may decide upon in writing PROVIDED THAT in the event of failure so to agree, or in the event of failure to agree as to whether or not any item or items of property is or are parts of the undertaking being sold and purchased, the matter in dispute shall be referred to arbitration held under the provisions of the Arbitration Act of the Province of British Columbia, wherein each party hereto shall appoint one arbitrator, and the said arbitrators so appointed shall appoint a third. In determining the price, whether by negotiation or by arbitration, same shall be the fair value of the business and undertaking as a going concern at the said effective time of the sale and purchase, but it shall not include anything for any charter, franchise, right or privilege granted to the Company under this agreement, nor shall the so-called "scrap-iron" rule be applied in determining such fair value. The price shall be paid to the Company within Ninety (90) days after the determination thereof and shall carry interest at <sup>the rate of five (5%) percent</sup> ~~the prime rate of the Bank of Montreal then in effect plus One (1%) per cent per annum~~ per annum from the effective time of sale and purchase to payment of the price. In the event that after the price is determined the laws of British Columbia require the consent of the Lieutenant-Governor in Council to the sale and purchase or to any by-law that is enabling, or require the assent of the citizens, rate payers, or electors of the Municipality to the sale and purchase or the raising of money therefor, and such consent or assent is refused then the Company and the Municipality shall be released from all obligations to complete such sale and purchase pursuant to such notice, but the Municipality shall pay all expenses or costs of the Company incurred in any arbitration held, and the Company

shall be entitled to retain or be reimbursed for all profits made in the operation of the undertaking from the said effective time of sale.

18. In the event of a sale and purchase by the Municipality under the provisions of Clause Sixteen (16) hereof, the authorities, permissions, charters, privileges, rights, and franchises given to the Company by Clauses One (1) and Three (3) hereof, and the duties and obligations of the Company referred to in Clauses One (1), Two (2) and Eleven (11) hereof, shall terminate and cease at the said effective time of sale and purchase.

19. If at any time during the term of this Agreement as set out in Clause One (1) hereof, any dispute, difference or question shall arise between the parties hereto touching the construction, meaning or effect of this Agreement, or any clause thereof, or as to the extent or limit of any authority, permission, right, duty, obligation, benefit or liability of the parties hereto, then every such dispute, difference or question shall be referred to a single arbitrator appointed by the parties hereto or, in default of Agreement, by and under the provisions of the Arbitration Act of the Province of British Columbia, and the said arbitration shall be held under the provisions of that Statute.

20. The award, determination or decision made under any arbitration held pursuant to the terms of this Agreement shall be final and binding upon the parties hereto, save as in the Arbitration Act of the Province of British Columbia otherwise provided.



21. Subject always to the provisions of Clause Twelve (12) and Clause Nineteen (19) hereof, in the event of the Company making an authorized assignment or having a receiving order made against it under the Bankruptcy Act and during bankruptcy failing to comply with any of the terms or conditions of this Agreement on its part to be observed or performed, or, the Company not having made an authorized assignment or having a receiving order made against it under the Bankruptcy Act, upon any wilful failure or neglect by the Company to comply with any of the major terms or conditions of this Agreement and on its part to be observed or performed which continues for Thirty (30) days after the receipt of written demand by the Municipality for the observance or performance of such terms or conditions, the Municipality shall have the right by written notice to the Company to terminate this Agreement. The rights of the Municipality under this clause are and shall be in addition to or without prejudice to any other rights at law or in equity which it may have against the Company for or by reason of any breach by the Company of this Agreement or any part thereof.

22. Upon the termination of this Agreement at the expiration of the said term of Twenty-one (21) years as set out in Clause One (1) hereof without a sale and purchase of the business and undertaking of the Company taking place under the provisions of Clauses Sixteen (16) to Eighteen (18) inclusive, hereof or upon the termination of this Agreement by cancellation notice from the Municipality under the provisions of Clause Twenty-one (21) hereof, the distribution system of the Company shall be and be deemed always to have been and to remain its own property and as such may be used by it in its business or removed in whole or in part as it shall see fit, and for such purposes, or either of them, said

distribution system may remain in, on or under all the public thoroughfares, highways, roads, streets, lanes, alleys, bridges, viaducts, subways, public places, squares and parks within the boundary limits of the Municipality and the Company may enter in, upon and under the same and the same to use, break up, dig, trench, open up and excavate for the purpose of the maintenance, renewal, repair, removal or operation of such distribution system, or any part thereof, but not for the extension thereof, PROVIDED THAT the Company shall in so doing comply with and be bound by the provisions of Clauses Two (2), Five (5), Six (6), Seven (7) and Nine (9) hereof, mutatis mutandis, notwithstanding the termination of this Agreement.

23. As compensation for the use by the Company of the public thoroughfares, highways, roads, streets, lanes, alleys, bridges, viaducts, subways, public places, squares and parks as provided in Clause Three (3) hereof, and for the exclusive charter, right, franchise, or privilege to supply gas by pipeline as provided in Clause One (1) hereof, the Company shall pay to the Municipality on the first days of November in each of the years 1978 to and including 1998 or such earlier year in which this Agreement may expire under the provisions hereof a sum equal to Three (3%) per cent of the amount received in each immediately preceding calendar year by the Company for gas consumed within the boundary limits of the Municipality, but such amount shall not include revenues from gas supplied for resale, and, within Ninety (90) days after the twenty-first (21st) anniversary of the date of this Agreement or after such earlier date on which this Agreement may expire under the said provisions hereof the Company shall pay to the Municipality a sum equal to Three (3%) per cent of the amount received by the Company for gas consumed, save as aforesaid, within the boundary limits of the Municipality during the period from the commencement of the calendar year in which such anniversary or

earlier date falls to such anniversary or earlier date, as the case may be. Since this Agreement is an extension of that Franchise Agreement dated the 1st day of December, 1956, which expired on the 30th day of November, 1977, it is agreed therefore that the following provisions as found on Page 13, starting in Line 25 of the aforesaid agreement, shall be waived:

"...and, within ninety (90) days after the twenty-first anniversary of the date of this Agreement or after such earlier date on which this Agreement may expire or be terminated as aforesaid, the Company shall pay to the City a sum equal to three (3%) per cent of the amount received by the Company for gas consumed, save as aforesaid, within the boundary limits of the City during the period from the commencement of the calendar year in which such anniversary or earlier date falls to such anniversary or earlier date, as the case may be."

In any event, this new Agreement shall recognize that the Company shall pay to the Municipality on the 1st day of November in the year 1978 a sum equal to Three (3%) per cent of the amount received in the immediately preceding calendar year, i.e. 1977, by the Company for the gas consumed within the boundary limits of the Municipality, except as provided herein, which shall not include revenues for gas supplied for resale. The amount received by the Company in any particular period for gas so consumed, and upon which the aforesaid percentage compensation is based, shall be that amount for the equivalent period upon which the percentage tax provided under Section 333 of the Municipal Act, 1960, Revised Statutes of British Columbia, Chapter 255, as now enacted would be payable and as if said percentage compensation herein provided were a tax provided for under said section, and such compensation shall not be or be deemed to be a tax or in lieu of any taxes, rates or licence fees otherwise properly payable to the Municipality. In the event that

during the currency of this Agreement, the Company should enter into any contract or franchise agreement similar to this Agreement with another Municipality named and set out wherein under s similar clause to this Clause Twenty-three (23) the Company shall agree to pay to such Municipality, as compensation for the use by the Company of the public thoroughfares, highways, roads, streets, lanes, alleys, bridges, viaducts, subways, public places, squares and parks for like purposes as in Clause Three (3) hereof set out, a greater percentage compensation than Three (3%) per cent of revenues as herein provided, then such greater percentage shall be and be deemed to be substituted for the Three (3%) per cent in this clause provided, but only applicable to the amounts received by the Company for gas consumed within the boundary limits of the Municipality, save as aforesaid, from the effective date of such other contract or franchise agreement until the expiration of the term of this Agreement as provided in Clause One (1) hereof or until the sooner termination hereof as hereinbefore provided.

24. Any notice, demand or request required or desired to be given or made under or in respect of this Agreement shall be deemed to have been sufficiently given to or made upon the party to whom it is addressed if it is mailed at the City of Nelson, British Columbia, in a prepaid registered envelope addressed respectively as follows:

(a) If given to or made upon the Municipality:

The City Clerk  
The Corporation of the City of Nelson  
502 Vernon Street  
Nelson, B.C. V1L 4E8

(b) If given to or made upon the Company:

The Corporate Secretary  
Inland Natural Gas Co. Ltd.  
1066 West Hastings Street  
Vancouver, B.C. V6E 3G3

and any notice, demand or request so given or made shall be deemed to have been received and given or made on the day after the mailing thereof. In the event the Company changes its Head Office address, the Municipality shall be notified in writing.

25. Notwithstanding anything to the contrary in this Agreement contained, this Agreement shall be subject to the provisions of the Pipelines Act, the Gas Utilities Act and the Energy Act of the Province of British Columbia and the proper authorities and powers of the British Columbia Energy Commission, and nothing herein shall exclude, or be deemed to exclude, the application of the provisions of the said Acts or any jurisdiction thereof or of the said British Columbia Energy Commission.

26. The Company covenants and agrees with the Municipality that in the construction of any extension or extensions of its distribution system which may be made from time to time, it will insofar as it considers it practicable, and provided that the Company shall not consider in so doing that it will or might in any way be penalized in either cost or efficiency, employ labourers, workmen and artisans who reside in the Municipality and purchase in the Municipality such materials as are required for the said construction work as are available in the Municipality. The Municipality acknowledges that the construction and installation of a gas distribution system is a specialized construction project calling for the services of


artisans and technicians with special skills and experience, and that in the performance by the Company of the covenant and agreement hereinbefore in this paragraph set out, the Company shall not be deemed to be in default in performance thereof by its employing artisans or technicians who reside elsewhere than in the Municipality for any work requiring specialized skill or experience, even although there may be artisans or technicians residing in the Municipality and available who might be able to do such specialized work satisfactorily. In the event that the said distribution system or any part or parts thereof, or any extension or extensions thereof, are constructed or installed by any contractor or contractors to the Company, then the Company covenants and agrees that it will endeavor to procure a similar covenant on the part of such contractor or contractors that any such contractor or contractors carry out and perform the covenant and agreement hereinbefore set out in this paragraph in the same manner and to the same extent as if the Company itself were carrying out the work.


27. This Agreement shall be assignable by the Company to a subsidiary without consent of the Municipality but otherwise shall only be assignable by the Company with the consent in writing of the Municipality first had and obtained, such consent not to be unreasonably withheld. Subject to the foregoing, this Agreement shall enure to the benefit of and be binding on the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties hereto have hereunto caused their respective corporate seals to be affixed,

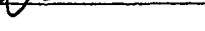
attested to by the signatures of their officers in that  
behalf, the day and year first above written.

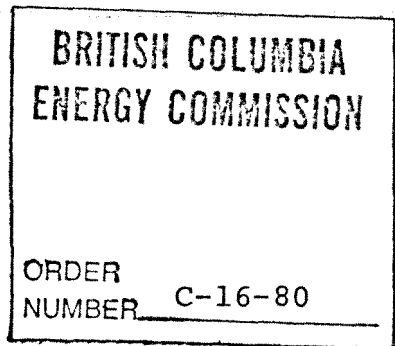
The Corporate Seal of THE  
CORPORATION OF THE CITY OF  
NELSON was hereunto affixed  
in the presence of:

  
MAYOR

  
CITY CLERK

The Corporate Seal of INLAND  
NATURAL GAS CO. LTD. was here-  
unto affixed in the presence  
of:

  
\_\_\_\_\_  
R. F. Clark



PROVINCE OF BRITISH COLUMBIA  
BRITISH COLUMBIA ENERGY COMMISSION

IN THE MATTER OF the Energy Act,  
RSBC 1979, c. 108

and

IN THE MATTER OF an Application  
by Inland Natural Gas Co. Ltd.

BEFORE: M. Taylor, )  
Chairman; )  
D.B. Kilpatrick, ) June 12, 1980  
Commissioner; and )  
J.D.V. Newlands, )  
Commissioner )

O R D E R

WHEREAS Inland Natural Gas Co. Ltd. has applied for approval of a franchise dated the 30th day of November, 1977 between Inland Natural Gas Co. Ltd. and The Corporation of the City of Nelson.

NOW THEREFORE, pursuant to Section 30 of the Energy Act, RSBC 1979, c. 108, the Commission has determined that the franchise is necessary for the public convenience and properly conserves the public interest and hereby approves the franchise and grants a Certificate of Public Convenience and Necessity which Certificate shall expire twenty-one years from the 30th day of November, 1977; provided that such determination, approval and grant shall not restrict any regulatory power of the Commission.

DATED at the City of Vancouver, in the Province of British Columbia, this 18 day of June, 1980.

BY ORDER

*M. Taylor*  
Chairman



## **FRANCHISE AMENDMENT AGREEMENT**

THIS AMENDMENT is made as of the 1<sup>st</sup> day of March, 2004.

BETWEEN:

THE CORPORATION OF THE CITY OF NELSON, a municipal corporation incorporated under the laws of British Columbia, having an office at 502 Vernon Street, Nelson, British Columbia, V1L 4E8

("City")

AND:

TERASEN GAS INC., a company having an office at 1111 West Georgia Street, Vancouver, British Columbia, V6E 4M4

("Terasen Gas")

### **RECITALS**

(A) City and Terasen Gas (then known as Inland Natural Gas Co. Ltd.) entered into the Franchise Agreement (as defined below), dated June 3, 1980 permitting Terasen Gas to operate a gas distribution system in Nelson;

(B) City and Terasen Gas have amended and renewed the Franchise Agreement from time to time;

(C) City and Terasen Gas have further agreed to renew the Franchise Agreement on the terms of this Amendment.

### **TERMS OF AGREEMENT**

NOW THEREFORE, in consideration of the mutual agreements set out in this Amendment, City and Terasen Gas agree as follows:

#### **1. DEFINITIONS AND APPENDICES**

1.1 **Definitions.** In this Amendment (including the Recitals and Appendices), the capitalized terms defined shall have the following meaning:

"Amendment" means this agreement amending the Franchise Agreement.

"Franchise Agreement" means the agreement between the City and Terasen Gas (then known as Inland Natural Gas Co. Ltd.) dated June 3, 1980, as amended and renewed.

## 2. EXTENSION

2.1 Expiry. The Franchise Agreement is hereby amended to renew the Franchise Agreement such that the expiry date is extended to February 28, 2021.

2.2 Purchase Option Terminated. The Purchase Option contained in sections 16, 17 and 18 of the Franchise Agreement is hereby terminated, by agreement of the parties.

2.3 Franchise Agreement Continues. Except as specifically altered by this Amendment, the Franchise Agreement continues in full force and effect.

2.4 New Operating Agreement. Terasen Gas and a group of BC municipalities (including the City) are discussing and settling terms of a new form of operating agreement to be used to replace existing municipal franchise agreements. Terasen Gas and the City agree that once the new form of operating agreement is settled then Terasen Gas will prepare and the parties will forthwith enter into an operating agreement using the new form (the "Terasen Gas-City Operating Agreement"). The Terasen Gas-City Operating Agreement will provide that, upon approval by the British Columbia Utilities Commission, and subject to approval of the Inspector of Municipalities, the Terasen Gas-City Operating Agreement immediately becomes effective and wholly replaces this Franchise Agreement, and that the Franchise Agreement automatically terminates.

## 3. GENERAL PROVISIONS


3.1 Enurement. This Amendment shall be binding upon and enure to the benefit of the parties to this Amendment and their respective successors and permitted assigns.

3.2 Other Agreements. The provisions of this Amendment shall not affect the rights of the parties which may subsist from time to time pursuant to any other agreements between them dated concurrently with or subsequently to this Amendment, nor relieve the parties of any obligations they may have pursuant to such agreements. There shall be no merger with this Amendment created or deemed to be created by virtue of any other agreement or agreements entered into between the parties hereto.

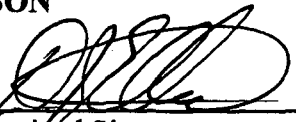
3.3 Counterparts. This Agreement may be executed in one or more counterparts and such counterparts may be transmitted by electronic facsimile, and each such counterpart shall be deemed to be an original and together such counterparts shall constitute one document.


IN WITNESS WHEREOF the parties have caused this Amendment to be duly executed.

**TERASEN GAS INC.**

Per:   
\_\_\_\_\_  
Authorized Signatory

**THE CORPORATION OF THE CITY  
OF NELSON**

Per:   
\_\_\_\_\_  
Authorized Signatory  
Mayor

Per:   
\_\_\_\_\_  
Authorized Signatory  
City Clerk

3.3 Counterparts. This Agreement may be executed in one or more counterparts and such counterparts may be transmitted by electronic facsimile, and each such counterpart shall be deemed to be an original and together such counterparts shall constitute one document.

IN WITNESS WHEREOF the parties have caused this Amendment to be duly executed.

**TERASEN GAS INC.**

Per: \_\_\_\_\_

Authorized Signatory

**THE CORPORATION OF THE CITY  
OF NELSON**

Per: \_\_\_\_\_

Authorized Signatory

Mayor

Per: \_\_\_\_\_

Authorized Signatory

City Clerk

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-3-04

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 a Franchise Amendment Agreement  
with the Corporation of the City of Nelson**

**BEFORE:** L.F. Kelsey, Commissioner )  
K.L. Hall, Commissioner ) May 13, 2004

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

**WHEREAS:**

- A. The Commission, by Order No. C-16-80, approved for Inland Natural Gas Co. Ltd. [now Terasen Gas Inc. ("Terasen Gas")] a franchise dated November 30, 1977 and granted a Certificate of Public Convenience and Necessity ("CPCN") for the provision of natural gas service in the City of Nelson ("the City") for a period of 21 years to November 30, 1998; and
- B. The parties extended the term of the original Franchise Agreement from November 30, 1998 by means of a number of short term extensions; and
- C. Commission Order No. G-4-04 approved the Lease In Lease Out ("LILO") arrangements with the City which replaced the purchase option provisions in the original Franchise Agreement; and
- D. As part of the LILO closing arrangements, the City and Terasen Gas executed a Franchise Amendment Agreement dated March 1, 2004, extending the terms of the original Franchise Agreement, with the exception of the purchase options provisions, to February 28, 2021; and
- E. On March 23, 2004, Terasen Gas applied to the Commission for approval of the Franchise Amendment Agreement; and
- F. The City and Terasen Gas have agreed that, once the terms are settled, the parties will enter into a new operating agreement which would replace the existing Franchise Agreement; and
- G. The Commission has reviewed the application and finds that approval is warranted for the public convenience and properly conserves the public interest.

**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER C-3-04**

2

**NOW THEREFORE** the Commission, pursuant to Section 45(7) of the Utilities Commission Act, approves the March 1, 2004 Franchise Amendment Agreement with the City of Nelson and grants to Terasen Gas a Certificate of Public Convenience and Necessity for the provision of natural gas service in the City of Nelson to February 28, 2021.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 18<sup>th</sup> day of May 2004.

**BY ORDER**

*Original signed by:*

Len F. Kelsey  
Commissioner

**Appendix C**

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**FEI - CITY OF NELSON OPERATING AGREEMENT  
BLACKLINED COMPARISON TO KEREMEOS TERMS**

## OPERATING AGREEMENT

THIS OPERATING AGREEMENT (the “Agreement”) made this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Deleted: 2014

BETWEEN:

THE CORPORATION OF THE CITY OF NELSON, a municipal corporation incorporated under the laws of the Province of British Columbia

Deleted: VILLAGE

Deleted: KEREMEOS

(hereinafter called the “Municipality”)

OF THE FIRST PART

AND:

**FORTISBC ENERGY INC.**, a body corporate duly incorporated under the laws of the Province of British Columbia, formerly known as Terasen Gas Inc., 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 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 3<sup>rd</sup> day of June, 1980 which has or will expire on February 28, 2021;

Deleted: 9th

Deleted: September

Deleted: 1993

Deleted: October 15

Deleted: 2014

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

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, 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) “Distribution Pipelines” means pipelines operating at a pressure less than 2071 kilopascals (300 psi);
- (f) “FortisBC Employees” means personnel employed by or engaged by FortisBC including officers, employees, directors, contractors, and agents;
- (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) “Mains” means pipes used by FortisBC to carry gas for general or collective use for the purposes of Gas Distribution;
- (k) “Municipal Employees” means personnel employed by or engaged by the municipality, including officers, employees, directors, contractors and agents;
- (l) “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;

- (m) “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;
- (n) “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 surface; 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;
- (o) “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;
- (p) “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;
- (q) “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;
- (r) “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 this Agreement, includes a service header and service stubs;
- (s) “Transmission Pipeline” means a pipeline of FortisBC having an operating pressure in excess of 2071 kilopascals (300 psi); and
- (t) “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**

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.

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**

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 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. 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 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.

### **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 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 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 two (2) 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.

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#### **6.3 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.

#### **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 of repair.

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##### **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 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 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, as soon as reasonably possible, 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 of the changes and the reasons for them as soon as reasonably possible.

## **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 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.

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 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, temporarily shut-down, temporarily by-passed, 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 purpose 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 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 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 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 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 this Agreement 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 this Agreement 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.

## **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, excluding all compressed natural gas and liquefied natural gas distributed from fueling stations, the provision and delivery of all liquefied natural gas, and all gas consumed by customers from whom the BCUC has not allowed FortisBC to collect the fee, and 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.

**11.1.2.** 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.

**11.1.3.** 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 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 this Agreement which is in the immediately preceding calendar year. By way of example only, payment made on March 1, 2019 will be the amount received during the 2018 calendar year.

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## **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 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 this Agreement, 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 this Agreement (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 or in the event no annual operating fee is payable, FortisBC will not be required to pay such charges or 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 *Safety Standards Act*, *Oil and Gas Activities Act*, and successor legislation, regulations thereunder, or the requirements of the BC Workers' Compensation Board.

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**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 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, 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 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.

#### **15.2 Agreement Not Binding Until Approved by BCUC**

**15.2.1.** This Agreement will not come into effect and does not bind the parties until FortisBC has obtained such approvals of this Agreement, or its terms, as may be required under the *Utilities Commission Act*. Upon executing this Agreement FortisBC shall make reasonable efforts to fulfill this condition. If this condition is not fulfilled or waived within one (1) year of the date of

execution of this Agreement, then the obligation on FortisBC to make reasonable efforts to fulfill this condition will terminate, and neither party will have any further obligation to the other under this Agreement.

### **15.3 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 15.2 of this Agreement.

### **15.4 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 15.5 below.

### **15.5 Termination of Agreement**

**15.5.1.** 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 20 days of the Municipality becoming aware of it.

**15.5.2.** 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.

**15.5.3.** 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.

#### **15.6 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.

#### **15.7 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.

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

Upon 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 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) 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 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 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 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 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 the dispute shall be mediated pursuant to the National Mediation Rules of the ADR Institute of Canada, Inc.

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### 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 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.

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### 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 the *Commercial Arbitration Act* of British Columbia 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, 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 Corporate Authority**

FortisBC 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:

**THE CORPORATION OF THE CITY OF NELSON**  
101-310 Ward Street  
Nelson, BC V1L 5S4

(B) If to FortisBC:

FORTISBC ENERGY INC.  
16705 Fraser Highway  
Surrey, B.C. V4N 0E8  
Attention: Vice President, Regulatory Affairs

**THE CORPORATION OF THE CITY OF NELSON**  
by its authorized signatories

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

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

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

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

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Authorized Signatory

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**ORDER NUMBER**

G-xx-xx

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

and

FortisBC Energy Inc.

Application for Approval of an Operating Agreement between the Corporation of the City of Nelson and FortisBC  
Energy Inc.

**BEFORE:**

[Panel Chair]  
Commissioner  
Commissioner

on Date

**ORDER**

**WHEREAS:**

- A. On December 9, 2020, FortisBC Energy Inc. (FEI) applied to the British Columbia Utilities Commission (BCUC) for approval of an operating agreement dated December 4, 2020, entered into between the Corporation of the City of Nelson (Nelson) and FEI (FEI-Nelson Operating Agreement or Application);
- B. FEI, through its predecessor companies Inland Natural Gas Co. Ltd. and Terasen Gas Inc., and Nelson entered into a franchise agreement dated June 3, 1980, approved by Order C-16-80, and later a Franchise Amendment Agreement, approved by Order C-3-04, which expires February 28, 2021; and
- C. The BCUC has reviewed the Application and considers the following determination is warranted.

**NOW THEREFORE** pursuant to section 23(1)(g) of the *Utilities Commission Act*, BCUC orders that the FEI-Nelson Operating Agreement, dated December 4, 2020 between FEI and Nelson, be approved on a permanent basis.

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

BY ORDER

(X. X. last name)  
Commissioner