



Governance and Priorities Committee Report

For the Meeting of October 9, 2014

To: Governance and Priorities Committee **Date:** September 25, 2014
From: Jason Johnson, City Manager
Subject: Natural Gas Operating Agreement – New Operating Fees

Executive Summary

For the past four years, the Association of Vancouver Island Coastal Communities has been engaged in a joint process with FortisBC to correct a historic situation whereby municipalities within AVICC were denied the opportunity to recover the costs of gas distribution lines placed within municipal streets. These costs have to-date been borne by municipal taxpayers. This process is now almost complete.

FortisBC is reducing their rates by 25% over four years starting in 2015. A new 3% operating fee is proposed to be introduced by FortisBC in March 2015. FortisBC will transfer this new fee to municipalities; the first payment would be received in March 2016. For Victoria, this equates to approximately \$750,000 annually.

In order to benefit from this new revenue stream, individual municipalities served by gas must now agree to enter into a new formal agreement with FortisBC, based upon the AVICC crafted model agreement, by the end of October 2014.

Recommendation:


1. That Council authorize the Mayor and Corporate Administrator to execute the Gas Operating Agreement between the City of Victoria and FortisBC.
2. That this recommendation be forwarded to Council for approval at the October 9, 2014 Council meeting.

Respectfully submitted,


Jason Johnson
City Manager

Report accepted and recommended by the City Manager:

Date:


October 2, 2014

Attachment:

Appendix A – Gas Operating Agreement

Purpose

To seek Council approval to enter into a gas operating agreement with FortisBC that will create a new revenue stream for the City of Victoria.

Background

For the past four years, the Association of Vancouver Island Coastal Communities (AVICC) has been engaged in a joint process with FortisBC to correct a historic situation whereby municipalities within AVICC were denied the opportunity to recover the costs of gas distribution lines placed within municipal streets. These costs have to-date been borne by municipal taxpayers.

This inequity occurred over 25 years ago, when a prohibition under the *Vancouver Island Gas Pipeline Act* to assist in project construction financing to bring natural gas to Vancouver Island was imposed. Municipalities were not consulted about this decision, but were required to forgo literally tens of millions of dollars in fees and to subsidise gas provision in a manner not required of other taxpayers outside of METRO Vancouver.

In 2011, AVICC and its member municipalities, in cooperation with FortisBC, embarked upon a three-phase strategy to reinstate the ability to recoup annual operating fees.

The strategy involved:

1. Reaching agreement on a new "Made in AVICC" model operating agreement with FortisBC.
2. FortisBC bringing in a new "postage rate" structure for gas rates: resulting in significant reductions for gas customers within AVICC, which has now been approved by the BC Utilities Commission.
3. The Province adopting new legislation removing the legislative prohibition on operating fees within AVICC.

After extensive work, two of these conditions precedent have now been achieved. In the case of the legislation, introduction is expected to occur shortly in the Fall sitting of the Legislature. Please note that the Agreement includes a clause that makes the agreement null and void should the legislation change not occur.

As a result, municipalities are in a position to have FortisBC start collecting the 3% operating fee structure based on gas volumes utilized in 2015 with the first payment to be received in March 2016.

Issues & Analysis

Implementation Timing:

In order to benefit from this new revenue stream, individual municipalities served by gas must now agree to enter into a new formal agreement with FortisBC based upon the AVICC crafted model agreement by the end of October 2014.

This very aggressive timetable is necessary in order to obtain BCUC approvals and for billing preparations to be made to begin to collect fees by March 2015 for payment a year following.

Rate Impacts:

Common rates phasing over the next several years will lower gas rates within AVICC in progressive steps beginning January 1, 2015. Because of this progressive reduction in the cost of gas, the 3% fee on gas rates will not significantly affect the very significant overall reduction in gas rates projected for residential and business customers in the future. Gas rates will drop in excess of 20% after four years for residential customers, and in excess of 30% for most small commercial customers, after including the application of the 3% fee. At the same time, the 3% fee will have a very significant positive impact for local property taxpayers.

For all municipalities within AVICC, the estimated amount of the 3% operating fee is approximately \$3.5 million per annum. For Victoria, the annual estimate is \$750,000.

Municipality	2016 to 2019 Average
Campbell River	202,794
Central Saanich	82,337
Colwood	75,609
Comox	109,988
Courtenay	156,975
Cumberland	23,215
Duncan	29,636
Gibsons	38,770
Highlands	5,190
Ladysmith	60,675
Langford	136,109
Lantzville	11,706
Metchosin	12,172
Nanaimo	574,869
North Cowichan	160,628
North Saanich	45,468
Parksville	98,910
Port Alberni	104,603
Powell River	108,653
Qualicum Beach	58,387
Saanich	470,034
Sechelt	73,210
Sidney	56,370
Sooke	23,412
Victoria	753,505
View Royal	68,795
Total	3,542,022

Required Action:

The AVICC has endorsed a model Operating Agreement (attached as Appendix A). This agreement was developed in partnership with FortisBC by a working group of municipal engineering staff working over the past four years, and has been fully vetted by Stewart McDannold Stuart with the special assistance of the City of Nanaimo and The District of Saanich.

AVICC is formally recommending this agreement to its members. The desire is that each municipality will authorize the signing of its agreement without delay and that, preferably, the BCUC can be presented with the complete suite of AVICC municipal Operating Agreements as a package. This is expected to help expedite implementation and ensure that no further available revenues are lost to municipalities.

Options & Impacts

1. Endorse the AVICC model agreement as attached.

Signed agreements will be presented to the BCUC as a package for approvals, and collection of fees will commence on March 1, 2015.

The City of Victoria would receive approximately \$750,000 annually in new revenue starting in 2016.

2. Decline to approve the agreement and enter into individual discussions with FortisBC towards another form of Agreement exclusive to Victoria

This is a decision to decline to receive operating fees since operating fees are only available under the AVICC model agreement. This also has implications for operating relationships as the model agreement's provisions are based on the assumption of off-setting fees.

Recommendations

1. That Council authorize the Mayor and Corporate Administrator to execute the Gas Operating Agreement between the City of Victoria and FortisBC.
2. That this recommendation be forwarded to Council for approval at the October 9, 2014 Council meeting.

**FINAL DRAFT OF MODEL FORM OPERATING AGREEMENT
FOR FEVI: Sep 26, 2014**

Without Prejudice

OPERATING AGREEMENT

THIS OPERATING AGREEMENT (the "Agreement") made this ____ day of _____, 20____.

BETWEEN:

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

OF THE FIRST PART

AND:

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

(hereinafter called "**FortisBC**")

OF THE SECOND PART

RECITALS:

- A. Whereas by a certificate of public convenience and necessity (CPCN), FortisBC (formerly Terasen Gas (Vancouver Island) Inc.) was granted the right to construct and operate gas distribution facilities within the Municipality;
- B. And whereas pursuant to the Community Charter, S.B.C. 2003, a Municipal council may, by resolution adopt and enter into a licensing and operating agreement;
- C. And whereas FortisBC and the Municipality are the parties to a Franchise or Operating Agreement dated the ♦ day of ♦, 20♦ which has or will expire on ♦;

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

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

1. DEFINITIONS

1.1 For the purposes of this Agreement:

- (a) “Boundary Limits” means the boundary limits of the Municipality as they exist from time to time and that determine the area over which the Municipality has control and authority;
- (b) “BCUC” means the British Columbia Utilities Commission or successor having regulatory jurisdiction over natural gas distribution utilities in British Columbia;
- (c) “CPCN” means a Certificate of Public Convenience and Necessity granted by the BCUC which allows FortisBC to operate, maintain and install Company Facilities for the distribution of Gas within the Municipality;
- (d) “Company Facilities” means FortisBC’s facilities, including pipes (live and abandoned), buildings, structures, valves, signage, storage facilities, machinery, vehicles and other equipment used to maintain, operate, renew, repair, construct and monitor a natural Gas Distribution and transmission system;
- (e) “Costs” has the meaning ascribed to it in Section 15.1;
- (f) “Distribution Pipelines” means pipelines operating at a pressure less than 2071 kilopascals (300 psi);
- (g) “Emergency Work” means any work that, in its reasonable opinion, each party carrying out the work believes is urgently required to preserve public safety or health or to preserve the safety of Company Facilities or Municipal Facilities, as the case may be, or other property;
- (h) “FortisBC Employees” means personnel employed by or engaged by FortisBC including officers, employees, directors, contractors, and agents;
- (i) “Gas” means natural gas, propane, methane, synthetic gas, liquefied petroleum in a gaseous form or any mixture thereof;
- (j) “Gas Distribution” means fixed equipment, structures, plastic and metal lines and pipe, valves, fittings, appliances and related facilities used or intended for the purpose of conveying, testing, monitoring, distributing,

mixing, storing, measuring and delivering Gas and making it available for use within the Municipality;

- (k) “Impact Service Work” means Service Line Work that:
 - (i) requires cutting of asphalted or concrete surfaces
 - (ii) impact to trees, or requires working in or near wetlands, water bodies or other areas of special environmental sensitivity,
 - (iii) requires working on a site known to have archeological significance, including those designated by the Province of British Columbia or by the Municipality as heritage sites; or
 - (iv) impacts existing Municipal or third party underground Facilities.
- (l) “Mains” means pipes used by FortisBC to carry gas for general or collective use for the purposes of Gas Distribution;
- (m) “Municipal Employees” means personnel employed by or engaged by the municipality, including officers, employees, directors, contractors and agents;
- (n) “Municipal Facilities” means any facilities, including highways, sidewalks, conduits, manholes, equipment, machinery, pipes, wires, valves, buildings, structures, signage, bridges, viaducts and other equipment within the Public Places used by the Municipality for the purposes of its public works or municipal operations;
- (o) “Municipal Supervisor” means the Municipal Engineer or other such person designated by the Municipality to receive notices and issue approval as set out in this Agreement;
- (p) “New Work” means any installation, construction, repair, maintenance, alteration, extension or removal work of the Company Facilities in Public Places except;
 - (i) routine maintenance and repair of the Company Facilities that does not require any cutting of asphalted or concrete surface;
 - (ii) Service Line Work or Impact Service Work; or
 - (iii) Emergency Work;
- (q) “Park” means land dedicated, held, managed or operated by the Municipality as a public park;
- (r) “Pipeline Markers” means post, signage or any similar means of identification used to show the general location of Transmission Pipelines and distribution pipelines or FortisBC Rights of Way;

- (s) “Planned Facilities” means those facilities not yet constructed but which have been identified by way of documented plans for Utilities, for works of third parties, where such works are identified by documented plans permitted by the Municipality;
- (t) “Public Places” means any public thoroughfare, highway, road, street, lane, alley, trail, square, bridge, right of way, viaduct, subway, watercourse or other public place in the Municipality but does not mean Parks;
- (u) “Service Line Work” means installation, construction, repair, maintenance, alteration, extension or removal work of that portion of FortisBC’s gas distribution system extending from a Main to the inlet of a meter set and, for the purposes of this Agreement, includes a service header and service stubs;
- (v) “Transmission Pipeline” means a pipeline of FortisBC having an operating pressure in excess of 2071 kilopascals (300 psi); and
- (w) “Utilities” means the facilities or operations of any water, waste water, sewer, telecommunications, energy, cable service or similar service provider located in Public Places within the Municipality.

2. INTERPRETATION

2.1 For the purposes of interpreting this Agreement:

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

3. OBLIGATION TO ACT IN GOOD FAITH

- 3.1** FortisBC and the Municipality acknowledge and agree that they will act in good faith, in carrying out the terms and conditions of this Agreement and within reasonable time frames, carry out the obligations under this Agreement.
- 3.2** FortisBC and the Municipality will at all times carry out all work and operations with the due care and attention that is necessary to safeguard the interests of the public, their own employees, and the other party's employees.

4. FORTISBC RIGHTS TO ACCESS & USE PUBLIC PLACES

4.1 Use of Public Places

The Municipality hereby acknowledges FortisBC's rights to:

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

subject to terms and conditions defined in this Agreement.

4.2 Use of Parks

- (a) The Municipality may authorize Fortis BC to use Parks for the Company Facilities. The Municipality shall not unreasonably withhold permission in circumstances where Utilities owned by third parties are already placed within the Park and the Municipality does not consider that the use of the Park by Fortis BC will materially affect the public's use of the Park or existing Utilities. Where such permission has been granted to Fortis BC, the Municipality shall grant FortisBC:

- (i) a right of way in registerable form; or
- (ii) in the case of a dedicated Park or other Park for which there is no registered title, a license or permit;

allowing FortisBC to use the Park for the Company Facilities and Fortis BC shall pay to the Municipality compensation for the fair market value of the right-of-way, the license or permit as the case may be. Fair market value shall be as agreed by the Municipality and Fortis BC based on compensation by Fortis BC or other public utilities or other municipalities in the Province of

British Columbia for similar rights-of-way, licenses or permits, as the case may be, granted with respect to similar public lands in other municipalities. Failing agreement between Fortis BC and the Municipality as to the fair market value of any right-of-way, license or permit, compensation shall be determined in accordance with the *Expropriation Act*, RSBC 1996. c125. as amended or replaced from time to time.

5. GRANDFATHERING FOR EXISTING USE OF PARKS

- 5.1** The Municipality acknowledges that Company Facilities may have been installed in Parks. Where FortisBC has existing Company Facilities in a Park, FortisBC may maintain, replace or remove such Company Facilities and enter such park from time to time as may be reasonably necessary for the same purposes, subject to the same terms and conditions defined in this Agreement with respect to FortisBC's use of Public Places, as reasonably applicable.

6. FORTISBC COMPLIANCE WITH STANDARDS FOR USE OF PUBLIC PLACES

6.1 Non-discriminatory Standards for FortisBC

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

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

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

6.2 Depth of Cover

Subject to Section 6.1 above, FortisBC shall comply with Municipal standards that establish a minimum depth of cover for the installation of Company Facilities to a maximum of 75cm depth of cover. Notwithstanding the foregoing, the Municipality may require a greater depth of cover for the installation of Company Facilities where such cover is required to accommodate Planned Facilities.

6.3 Provide emergency contacts.

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

6.4 Assist with facility locates

FortisBC will, at no cost to the Municipality, provide locations of its Company Facilities within a time frame as may be reasonably requested by the Municipality unless the reason for the request is the result of an emergency; in which case the information shall be provided forthwith. FortisBC shall provide gas locations from FortisBC records. FortisBC shall perform on site facility locates in accordance with the *Safety Standards Act – Gas Safety Regulations*, section 39.

7. FORTISBC WORK OBLIGATIONS:

7.1 New Work

7.1.1. Application for New Work

For New Work, FortisBC shall submit an application to the Municipal Supervisor for a permit when it intends to perform New Work. The application shall include:

- (a) a plan and specifications showing:
 - (i) the size and dimensions of all New Works, their proposed depth below the surface of the ground and their proposed locations related to property lines;
 - (ii) profiles for gas applications for gas mains 114 mm or greater that may impact Planned Facilities, if requested by the Municipality;
 - (iii) the edge of hard surfaces of affected roads, streets or highways or other Public Places;
 - (iv) the proposed location and/or clearances of the New Works where the New Works cross existing Utilities provided that all such locations and elevations are made available to FortisBC by the Municipality or the owner of such Utilities; and
 - (v) boundaries and legal descriptions of any private lands affected or within 1.5 meters of the proposed centre line of the New Work;
- (b) FortisBC's plans for the restoration of the Public Place affected by the New Work if FortisBC's restoration plans are different from those set out in Section 7.6.4 of this Agreement;

- (c) the name of a FortisBC representative who may be contacted for more information;
- (d) projected commencement and completion dates; and
- (e) such other information relevant to the New Work as the Municipality may reasonably require from time to time.

7.1.2. Exception for Emergency

Where FortisBC is required to carry out Emergency Work, FortisBC shall not be required to give prior notice but shall do so as soon as possible thereafter.

7.1.3. Municipal Permits for New Work

The Municipality shall use its best efforts to issue a permit for New Work within fifteen (15) days of receipt by the Municipality of an application containing all the information required under Section 7.1.1, or a time extension if large and complex. The Municipality may refuse to issue a permit for the New Work on the following grounds:

- (a) the proposed location of the New Work conflicts with existing Municipal Facilities, existing third party facilities or Planned Facilities, trees, wetlands, water bodies or other areas of special environmental sensitivity, or areas that are of archeological significance, including areas designated by the Province of British Columbia or by the Municipality as heritage sites; or
- (b) the proposed location or design of the New Work is likely to compromise public safety or does not conform with Municipal bylaws, standards or policies; or
- (c) in instances where FortisBC can delay the New Work without compromising the supply, capacity or safety of its Gas Distribution System or its customers' need for gas service and the Municipality intends within the next three (3) months to undertake work in the same location and wishes to co-ordinate both work; or
- (d) FortisBC has not provided the Municipality with the information required by Section 7.1.1;

and shall provide FortisBC with grounds for its refusal to grant the permit, provided such grounds are reasonable, no more than fifteen (15) days after receiving FortisBC's permit application for New Work, except that in the case of work that is large or complex, the Municipality may extend the time for response by a maximum of ten (10) additional days.

7.1.4. Conditions of Permit

Notwithstanding Section 7.1.3 above, the Municipality may include conditions in its permit for the New Work to address the matters set out in Subsections 7.1.3(a) and 7.1.3(b). In addition, the Municipality may require FortisBC to provide the public with notice of the New Work. Any additional terms or conditions contained in a permit for the New Work shall be of no force and effect except to the extent that such terms or conditions are consistent with the terms of this Operating Agreement.

7.1.5. Work Not to Proceed

If the Municipality

- (a) fails to provide FortisBC with a permit within fifteen (15) days of FortisBC's application of New Work or, in the case of large and complex New Work, within such extended time as may be set out in the Municipality's notice to FortisBC; or
- (b) notifies FortisBC of its objections to the New Work;

FortisBC may refer the matter to dispute resolution in accordance with Section 18. FortisBC shall not proceed with the New Work until the Municipality provides FortisBC with a permit for such work including a permit issued as a result of the resolution of a dispute by the parties.

7.2 Impact Service Work

7.2.1. Application for Impact Service Work

For Impact Service Work, FortisBC shall submit an application to the Municipal Supervisor for a permit when it intends to perform Impact Service Work. The application shall be in the form attached as Schedule A to this Agreement and shall include a sketch showing:

- (a) property lines and street addresses;
- (b) existing gas main and proposed service location offset to property;
- (c) all hard surfaces, trees, archeological or environmental areas impacted by the new service installation; and
- (d) buried utilities identified in the planning stages to be impacted by the proposed service.

7.2.2. Municipal Permits for Impact Service Work

The Municipality shall use its best efforts to issue a permit for Impact Service Work within five (5) days of receipt by the Municipality of an application containing all the information required under Section 7.2.1. The Municipality may refuse to issue a permit for the Impact Service Work on the following grounds:

- (a) the proposed location of the Impact Service Work conflicts with existing Municipal Facilities, existing third party facilities or Planned Facilities, trees, wetlands, water bodies or other areas of special environmental sensitivity, or areas that are of archaeological significance, including areas designated by the Province of British Columbia or by the Municipality as heritage sites; or
- (b) FortisBC has not provided the Municipality with the information required by Section 7.2.1;

and shall provide FortisBC with the grounds for its refusal to grant the permit, provided such grounds are reasonable, no more than ten (10) days after receiving FortisBC's permit application for Impact Service Work.

7.2.3. Conditions of Permit

Notwithstanding Section 7.2.2 above, the Municipality may include conditions in its permit for the Impact Service Work to address the matters set out in Subsection 7.2.1(a). Any additional terms or conditions contained in a permit for the Impact Service Work shall be of no force and effect except to the extent that such terms or conditions are consistent with the terms of this Operating Agreement.

7.2.4. Work Not to Proceed

If the Municipality

- (a) fails to provide FortisBC with a permit within ten (10) days of FortisBC's application of Impact Service Work; or
- (b) notifies FortisBC of its objections to the Impact Service Work;

FortisBC may refer the matter to dispute resolution in accordance with Section 18. FortisBC shall not proceed with the Impact Service Work until the Municipality provides FortisBC with a permit for such work including a permit issued as a result of a resolution of a dispute between the Parties.

7.3 Notices of Service Line Work

7.3.1 Notice

FortisBC shall provide the Municipality with notice of its intent to undertake Service Line Work. When it intends to undertake Service Line Work, FortisBC shall provide such notice in the form attached as Schedule A to this Agreement.

7.3.2 Objections

The Municipality may object to Service Line Work on the grounds set out in Subsections 7.2.2(a) and (b) above, by providing FortisBC with notice of its objections within five (5) days of receiving FortisBC's notice. If the Municipality does not provide such notice of its objections to FortisBC within five (5) days of receiving FortisBC's notice, the Municipality shall be deemed to have granted its approval of the Service Line Work.

7.3.3 Resolving Objections

If the Municipality has objections to the planned Service Line Work and if the Municipality and FortisBC are unable to agree on a resolution, then either party may refer the matter to dispute resolution in accordance with Section 18. The Municipality shall not otherwise withhold or delay its approval.

7.4 Expiry of Permit or Approval After Twelve Months

A permit or deemed approval will expire in the event that FortisBC does not carry out New Work, or Service Line Work within twelve months of the date of the permit or deemed approval.

7.5 FortisBC to Obtain Locate Information

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

7.6 Work Standards

7.6.1. Engineering Practices

All work carried out by FortisBC shall be carried out in accordance with sound engineering practices.

7.6.2. Specific Work Requirements to Remove Materials

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

7.6.3. No Nuisance

Fortis BC shall not leave any part of its gas system in such a state as to constitute a nuisance or a danger to the public through neglect, non-use and want or repair.

7.6.4. Restore Surface and Subsurface

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

Where FortisBC is required to cut pavement on a Public Place such cuts and restoration will be limited to less than 1.5 meters in width unless at the discretion of FortisBC a larger excavation is warranted due to the depth or size of the pipe or requirements of the Workers' Compensation Board or other relevant Provincial or Federal regulations. FortisBC will be responsible for any repairs and maintenance of the surface repair for a period of five (5) years. However, where pavement restoration has been conducted by the Municipality, whether or not such work was undertaken to repair cuts on FortisBC's behalf, FortisBC shall not be responsible for the repairs or maintenance of the surface repair.

7.6.5. Repair Damage to Municipal Facilities

To the extent that any of the work being done by FortisBC results in damage to Municipal Facilities or Public Places, other than the usual physical disruption to Public Places caused by the installation of Company Facilities that FortisBC shall restore in accordance with Section 7.6.4 above, FortisBC will, as soon as reasonably possible, report such damage and reimburse the Municipality for its Costs arising from such damage calculated in accordance with Section 15.1 below. Where such damage results directly from inaccurate or incomplete information supplied by Municipality, and FortisBC has complied with all applicable laws and regulations, and with instructions supplied by the Municipality, then the cost of repairing damaged Municipal Facilities or Public Places will be at the expense of the Municipality.

7.6.6. Restoration Audit

FortisBC may retain a third party, at FortisBC's expense, to carry out audits of FortisBC's repairs or restoration of Municipal Facilities, and the number and frequency of such audits shall be determined in consultation with, and with the agreement of the Municipality. The audit shall take into account different road classification, the results of previous audits and other criteria agreed upon by FortisBC and the Municipality. Notwithstanding the foregoing, the extent and the frequency of the audits will be results based and therefore, the results of any

audits will determine whether the frequency and the extent of any audits should be increased or decreased. This system of audits shall replace any testing required by the Municipality under its bylaws.

7.7 Conformity Requirement

The New Work and Service Line Work must be carried out in conformity with Municipal Permits or approved notices for New Work or Service Line Work, as the case may be, except that FortisBC may make in-field design changes when carrying out the New Work or Service Line Work to accommodate field conditions which could not have been reasonably foreseen by FortisBC. If such in-field conditions materially impact FortisBC's plans for restoration or materially change the impact of FortisBC's work on Municipal Facilities, other than in respect of projected commencement and completion dates, FortisBC shall notify the Municipality of the changes and the reasons for them prior to continuing the work.

7.8 Non-Compliance

If Company Facilities located in Public Places are later found not to be located in compliance with FortisBC's notice of New Work or Service Line Work provided in accordance with Sections 7.1 and 7.3, then any alteration or upgrading required to bring them into compliance with such notice will be at the expense of FortisBC provided that the work has not been altered, damaged or modified by the Municipality or a third party.

7.9 Prime Contractor

Where FortisBC performs any work in a Public Place, FortisBC shall act as the prime contractor or designate in writing its contractor to act as the prime contractor, within the meaning of Section 118 of the Workers Compensation Act (British Columbia) unless otherwise designated in writing by the Municipality or a third party working in such Public Place.

8. CLOSURE OR EXPROPRIATION OF PUBLIC PLACES

8.1 Closure of Public Places

Before any Public Places containing Company Facilities may be legally closed or alienated by the Municipality, the Municipality shall as soon as reasonably possible notify FortisBC of its intent to close or alienate such Public Places and either:

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

8.2 Expropriation of Public Places

If the Public Places are expropriated by an expropriating authority and FortisBC is required to remove the Company Facilities then the Municipality shall as soon as reasonably possible notify FortisBC of the expropriation. This Section 8.2 is applicable when the Municipality receives official notice of expropriation or otherwise becomes aware of expropriation through communications with the expropriating authority.

9. FACILITY CHANGES REQUIRED

9.1 By FortisBC

FortisBC may provide Notice to the Municipality that it requires Municipal Facilities to be altered, changed or relocated to accommodate its requirements. The Municipality will comply with FortisBC's requests to the extent it is reasonably able to do so and with reasonable speed and dispatch after receipt of written request. FortisBC agrees to pay for all of the Costs for changes to the affected Municipal Facilities. The Municipality shall provide estimates and invoices to FortisBC in respect of such work in accordance with Section 15 of this Agreement.

9.2 By the Municipality

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

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

10. JOINT PLANNING, COOPERATION AND COORDINATION

10.1 Conduct of Construction and Maintenance Activities

The Municipality and FortisBC agree to use reasonable efforts in carrying out their construction and maintenance activities in a manner that is responsive to the effect that it may have on the other party, as well as other users of Public Places. Such reasonable efforts include attending the planning meetings described in Section 10.2 below and reducing as much as is practical, the obstruction of access to Public Places, and interference with the facilities and activities of others in Public Places.

10.2 Communication and Coordination Activities

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

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

10.3 Municipal Planning Lead

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

10.4 Mapping Information

10.4.1. Municipal Information

The Municipality shall supply to FortisBC at no cost all record drawings and information it has for Municipal Facilities.

10.4.2. FortisBC Information

FortisBC shall supply to the Municipality at no cost all record drawings and information it has for Company Facilities within the Municipality, including abandoned mains.

10.4.3. Co-Operation

FortisBC and the Municipality shall co-operate to improve their mapping systems so they are compatible, provide the necessary information and are easily accessible to both parties.

11. MUTUAL INDEMNITY

11.1 Indemnity by FortisBC

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

(a) placing, constructing, renewing, altering, repairing, maintaining, removing, extending, operating or using the Company's Facilities on or under any Public Places; and

(b) any breach of this Agreement by FortisBC;

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

11.1.2. This indemnity expressly extends to all acts and omissions of FortisBC Employees.

11.2 Indemnity by the Municipality

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

(a) placing, constructing, renewing, altering, repairing, maintaining, removing, extending, operating or using the Municipal Facilities on or under any Public Places;

(b) any breach of this Agreement by the Municipality;

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

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

11.3 Limitations on Municipality's Liability

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

11.4 No Liability for Approval of Drawings and Plans

The Municipality shall not be liable to FortisBC as a result only of the Municipality's approval of drawings and plans in connection with notices or applications for permits provided by FortisBC to the Municipality pursuant to this Agreement.

12. OPERATING FEE

12.1 Fee Calculation

12.1.1. FortisBC agrees to pay to the Municipality a fee of three percent (3%) (the "Operating Fee") of the gross revenues (excluding taxes) received by FortisBC for provision and distribution of all gas consumed within the Boundary Limits of the Municipality, other than gas consumed by customers from whom the BCUC has not allowed FortisBC to collect the Operating Fee, provided that the Municipality is permitted by law to charge such a fee. Such amount will not include any amount received by FortisBC for gas supplied or sold for resale.

12.1.2. The Municipality will provide FortisBC with thirty (30) days prior written notice of any boundary expansion so that existing and new customers in the expanded area can be included as a part of the annual payment fee.

12.1.3. FortisBC will be responsible for adding those existing and new customers within the new Municipal boundary upon receipt of such notice from the Municipality and the revised calculation of the fee will commence effective the date that is the later of the date of actual boundary change or thirty (30) days after the notification under section 12.1.2.

12.2 Payment Date and Period

Payments by FortisBC to the Municipality will be made on the first day of March of each year of the Agreement in respect of the amount received by FortisBC during that portion of the term of this Agreement which is in the immediately preceding calendar year. By way of example only, payment made on March 1, 2015 will be the amount received during the 2014 calendar year.

12.3 BCUC Decision or Provincial Legislation

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

13. OTHER APPROVALS, PERMITS OR LICENSES

Except as specifically provided in this Agreement, the Municipality will not require FortisBC to seek or obtain approvals, permits or licenses related to FortisBC's use of the

Public Places as contemplated in this Agreement. The Municipality will not charge or levy against FortisBC any approval, license, inspection or permit fee, or charge of any other type, that in any manner is related to or associated with FortisBC constructing, installing, renewing, altering, repairing, maintaining or operating Company Facilities on any Public Places or in any manner related to or associated with FortisBC exercising the powers and rights granted to it by this Agreement (other than for repair of damage to the Municipal Facilities or Public Places in accordance with Section 15) .

If the Municipality does charge or levy fees or costs against FortisBC (other than for repair of damage to the Municipal Facilities or Public Places in accordance with Section 15) then FortisBC may reduce the annual operating fee payable to the Municipality under Section 12 by an amount equal to such charges, fees or costs or in the event no annual operating fee is payable, FortisBC will not be required to pay such charges or fees or costs.

14. MUNICIPAL OBLIGATIONS

14.1 Municipal Work

- 14.1.1.** Before the Municipality undertakes routine maintenance and repair that is likely to affect Company Facilities, it must give FortisBC as much notice as it can but not less than fifteen (15) days before commencing such construction or maintenance activity.
- 14.1.2.** Where the Municipality is required to carry out Emergency Work, the Municipality shall not be required to give prior notice but shall do so as soon as possible thereafter.
- 14.1.3.** FortisBC will be entitled to appoint at its cost a representative to inspect any construction or maintenance activity undertaken by the Municipality. The provisions of this section do not relieve the Municipality of its responsibilities under the *Gas Safety Act*, *Oil and Gas Activities Act*, and successor legislation, regulations thereunder, or the requirements of the BC Workers' Compensation Board.
- 14.1.4.** In addition, the Municipality shall provide Notice to FortisBC of any work planned that will be adjacent to, across, over or under a Transmission Pipeline or within a right-of-way for a Transmission Pipeline. To the extent that FortisBC requires that permit be issued for construction or other activities within a Transmission Pipeline right-of-way, the Municipality will submit an application for such a permit in sufficient time for the application to be reviewed and approved by FortisBC prior to the commencement of the construction or other activity.
- 14.1.5.** The Municipality shall assist FortisBC in FortisBC's efforts to reduce instances of residences being built over gas lines and other similarly unsafe building practices by third parties.

14.1.6. The Municipality shall not interfere with Transmission Pipeline markers.

14.1.7. The Municipality shall provide notice to FortisBC of any damage caused by the Municipality to Company Facilities or Transmission Pipeline Markers as soon as reasonably possible. To the extent that any of the work being done by the Municipality results in damage to the Company Facilities, the Municipality will report such damage and pay FortisBC its Costs arising from such damage in accordance with Section 15.1 below. Where such damage results directly from inaccurate or incomplete information supplied by FortisBC, and the Municipality has complied with all applicable laws and regulations, and with instructions supplied by FortisBC, then the cost of repairing the damaged Company Facilities will be at the expense of FortisBC.

14.1.8. The Municipality shall notify FortisBC of any new bylaws, standards or policies adopted or passed by the Municipality that are likely to affect FortisBC's operations in Public Places.

15. COSTS AND PAYMENT PROCEDURES

15.1 Definition of Costs

Wherever one party is required to pay the other party Costs as a result of damage caused by one party to the other's property or for facility changes required in accordance with Section 9 of this Agreement, the Costs shall be:

- (a) all direct expenses and disbursements incurred to restore such property to as good a state of repair as had existed prior to the damage;
- (b) reasonable administration and overhead charges on labour, equipment and materials;
- (c) such taxes as may be required in the appropriate jurisdiction;
- (d) the cost of the lost commodity as determined by the claiming party;
- (e) the cost for additional work related to the damage (for example, gas relights, flushing water mains); and
- (f) cost of supplying alternate or temporary service until the repair of the property is made.

15.2 Cost Claim Procedures

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

- (a) Notify the other party of the loss no later than two (2) months after incurring costs and provide an invoice to the other party no later than one year after incurring Costs;

- (b) provide detailed descriptions of the cost items, provided that claiming party may require the other party to keep sensitive business information, including third party information, confidential;
- (c) provide the time period the invoice covers;
- (d) provide a minimum of twenty-one (21) day terms for payment of the invoice; and
- (e) provide for late payment interest at the rate consistent with the party's policy for charging for late payments, which rate must be reasonable.

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

15.3 Cost Verification Procedures

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

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

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

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

16. START, TERMINATION AND CONTINUITY

16.1 Municipal Authority to Enter into Agreement

Prior to entering into this Agreement the Municipality will complete all procedures, obtain all consents and enact and bring into force all resolutions required under the *Community Charter*, and amendments thereto, and all other applicable legislation, to approve and authorize this Agreement.

16.2 Agreement Not Binding Until Conditions Met

This Agreement will not come into effect and does not bind the parties until:

- (a) FortisBC has obtained such approvals of this Agreement, or its terms, as may be required under the *Utilities Commission Act*; and
- (b) The Municipality has obtained authority permitting it to charge the operating fee set out in Section 12.1 this Agreement.

Upon executing this Agreement FortisBC shall make reasonable efforts to fulfill the condition under paragraph (a) and the Municipality shall make reasonable efforts to fulfill the condition under paragraph (b). If these conditions is not fulfilled or waived within one (1) year of the date of execution of this Agreement, then the obligation on FortisBC or the Municipality, as the case may be, to make reasonable efforts to fulfill the condition will terminate, and neither party will have any further obligation to the other under this Agreement.

16.3 Termination of Franchise Agreement

If not already terminated or expired, any franchise and operating agreement between the Municipality and FortisBC is terminated upon the effective date of this Agreement as referred to in Section 16.2 of this Agreement.

16.4 Term of Agreement

This Agreement will have a term of twenty (20) years from the date that it comes into effect and after the initial term shall continue indefinitely unless terminated in accordance with Section 16.5 below.

16.5 Termination of Agreement

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

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

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

16.5.2. Either party may terminate if other breaches any term, provision, obligation hereunder and such breach, is a material major breach, and has not been cured within sixty (60) days of receipt of Notice of such breach. A Party will not be considered to be in default if such matter is in dispute or has been referred to commercial arbitration, the outcome of which is pending, or is being resolved in good faith compliance with the dispute resolution and arbitration processes of this Agreement.

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

16.6 Amendments and Waivers

This Agreement may be amended only by an agreement in writing signed by the parties. No waiver of any provision nor consent to any exception to the terms of this Agreement shall be effective unless in writing and signed by the parties to be bound, and then only to the specific purpose, extent and instance so provided. No waiver, delay or failure to exercise any rights under this Agreement shall be construed as a continuing waiver of such right or as a waiver of any other right under this Agreement.

The parties agree to meet to discuss the operations of the Agreement within thirty (30) days of either party making the request. Such a meeting will determine whether any amendments are required to this Agreement and the parties shall discuss any proposed amendments with a view to maximizing the benefit of the relationship.

16.7 Negotiations on Termination or Expiry of this Agreement

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

16.8 Continuity In The Event No Agreement Is Settled

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

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

17. ACCOMMODATION OF FUTURE CHANGES

17.1 Outsourcing of Infrastructure Management

In the event that the Municipality assigns the task of infrastructure management to a third party:

- (a) the Municipality will ensure that its contracts for such infrastructure management contain provisions that will allow the Municipality to meet its obligations under and to comply with the terms and conditions of, this Agreement; and
- (b) FortisBC will accept the appointment of such third party as the Municipality's agent or subcontractor to enable such third party to deal directly with FortisBC so as to enable the Municipality to comply with the terms, obligations and conditions of this Agreement.

17.2 Changes to the Community Charter

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

- (a) the Municipality may within one year of the change coming into effect propose new agreement terms with respect to only those specific changes and FortisBC agrees to negotiate such terms; and
- (b) failing satisfactory resolution of the terms of the Agreement either of the parties may seek resolution through the Dispute Resolution Process, Section 18.

17.3 Changes to the Utilities Commission Act

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

- (a) FortisBC may within one year of the change coming into effect propose new agreement terms with respect to only those specific changes and the Municipality agrees to negotiate such terms; and
- (b) failing satisfactory resolution either of the parties will seek resolution through the Dispute Resolution Process, Section 18.

18. DISPUTE RESOLUTION

18.1 Mediation

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

18.2 Referral to the BCUC or Arbitration

If the parties fail to resolve the dispute through mediation, the unresolved dispute shall be referred to the BCUC if within its jurisdiction. If the matter is not within the jurisdiction of the BCUC, such unresolved dispute shall be referred to, and finally resolved or determined by arbitration under the Rules of Procedure for Commercial Arbitration of The Canadian Foundation for Dispute Resolution. Unless the parties agree otherwise the arbitration will be conducted by a single arbitrator.

18.3 Additional Rules of Arbitration

The arbitrator shall issue a written award that sets forth the essential findings and conclusions on which the award is based. The arbitrator will allow discovery as required by the *Arbitration Act* of British Columbia in arbitration proceedings.

18.4 Appointment of Arbitrator

If the arbitrator fails to render a decision within thirty (30) days following the final hearing of the arbitration, any party to the arbitration may terminate the appointment of the arbitrator and a new arbitrator shall be appointed in accordance with these provisions. If the parties are unable to agree on an arbitrator or if the appointment of an arbitrator is terminated in the manner provided for above, then any party to Agreement shall be entitled to apply to a judge of the British Columbia Supreme Court to appoint an arbitrator and the arbitrator so appointed shall proceed to determine the matter *mutatis mutandis* in accordance with the provisions of this Section.

18.5 Award of Arbitrator

The arbitrator shall have the authority to award:

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

18.6 Cost of Arbitration

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

18.7 Continuation of Obligations

The parties will continue to fulfill their respective obligations pursuant to this Agreement during the resolution of any dispute in accordance with this Section 18, provided that, neither party shall proceed with any work or activity or take any further action which is the subject matter of the dispute.

18.8 Matters Not subject to Arbitration

For certainty the conditions precedent referred to in Section 16.2 shall not be subject to arbitration.

19. GENERAL TERMS & CONDITIONS

19.1 No Liens

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

19.2 Corporate Authority

FortisBC now warrants, represents and acknowledges that:

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

19.3 Representations

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

19.4 Assignments and Enurement

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

19.5 Governing Law

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

19.6 General

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

19.7 Entire Agreement

This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter herein contained and supersedes all prior agreements and undertakings with respect thereto.

19.8 Severability

If any provision of this Agreement is held invalid by any court, governmental agency or regulatory body, the other provisions to the extent permitted by law shall remain in full force and effect. To the extent permitted by applicable law, the parties hereby waive any provision of law that renders any provision hereof prohibitive or unenforceable in any respect.

19.9 Force Majeure

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

19.10 Notice

Any notice or other written communication required, or permitted to be made or given pursuant to this Agreement (the "Notice") shall be in writing and shall be deemed to have been validly given if delivered in person or transmitted electronically and acknowledged by the respective parties as follows:

(A) If to the Municipality:



(B) If to FortisBC:

FORTISBC ENERGY (VANCOUVER ISLAND) INC.
16705 Fraser Highway
Surrey, B.C. V4N 0E8
Attention: Director, Regulatory Affairs

CITY OF _____
by its authorized signatories

Authorized Signatory

Authorized Signatory

FORTISBC ENERGY (VANCOUVER ISLAND) INC.
by its authorized signatories

Authorized Signatory

Authorized Signatory

**Gas Service Line Work
Permit Request
Vancouver Island Municipalities**

SCHEDULE A



To Municipality:	Fax/email:	Date (Yr/ Mth/ Day) / /
------------------	------------	----------------------------

FortisBC Energy (Vancouver Island) Inc. hereby gives notice of its intention to perform work on a natural gas service to the following listed addresses, and that excavations within a public place will occur at each location

Project number	Fortis Contact	Address	Service location	Impacts involved	Permit#

Instructions:

- Email is preferred
- Describe service location relative to facing front of property. i.e. Front/Left, Centre or Right: Back/Right Centre or Right
- Brief description of impact;

Impacts are:

- Public pavement
- Public trees, wetlands or other such environmentally sensitive areas
- Archeologically significant areas
- Existing municipal or third party facilities

General Conditions:

As contained in the operating agreement between the Municipality and FortisBC Energy (Vancouver Island) Inc.

Reply to:

Pre-Requisite Desk
FortisBC Energy (Vancouver Island) Inc.
16705 Fraser Highway, Surrey, BC V4N 0E8
E-mail: Pre-RequisiteDesk@FortisBC.com
Toll free tel: 1-866-771-7337
Toll free fax: 1-877-413-1152