

File No.: 04-1000-20-2018-149

April 27, 2018

s.22(1)

Dear s.22(1)

Re: **Request for Access to Records under the Freedom of Information and Protection of Privacy Act (the "Act")**

I am responding to your request of March 13, 2018 for:

**Copies of any and all agreements by and between the City of Vancouver and FortisBC related to the City of Vancouver landfill and projects for gas production, use or processing.**

**Date Range: January 1, 2012 to March 13, 2018.**

All responsive records are attached.

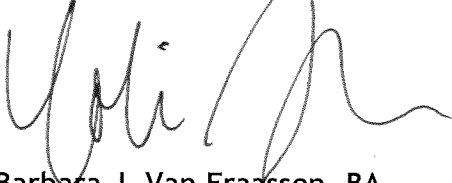
Under section 52 of the Act you may ask the Information & Privacy Commissioner to review any matter related to the City's response to your request. The Act allows you 30 business days from the date you receive this notice to request a review by writing to: Office of the Information & Privacy Commissioner, [info@oipc.bc.ca](mailto:info@oipc.bc.ca) or by phoning 250-387-5629.

If you request a review, please provide the Commissioner's office with: 1) the request number assigned to your request (#04-1000-20-2018-149); 2) a copy of this letter; 3) a copy of your original request for information sent to the City of Vancouver; and 4) detailed reasons or grounds on which you are seeking the review.

Please do not hesitate to contact the Freedom of Information Office at [foi@vancouver.ca](mailto:foi@vancouver.ca) if you have any questions.

Yours truly,

Cobi Falconer, FOI Case Manager, for

A handwritten signature in black ink, appearing to read 'Cobi Falconer', written over the typed name of the sender.

**Barbara J. Van Fraassen, BA**  
**Director, Access to Information & Privacy**

*Barbara.vanfraassen@vancouver.ca*  
*453 W. 12th Avenue Vancouver BC V5Y 1V4*  
*Phone: 604.873.7999*  
*Fax: 604.873.7419*

Encl.

:ma

20000 3830



LAW DEPARTMENT

File No.: 13-0147

MEMORANDUM

June 11, 2014

TO: Janice MacKenzie, City Clerk
cc: Nick Kassam, Director - Supply Chain Management (without enclosure)
FROM: Shawn Doyle, Solicitor, Law Department
SUBJECT: Mutual Confidentiality Agreement (Request for Proposal No. PS20130223) dated June 6, 2014 between City of Vancouver and FortisBC Energy Inc. (the "Agreement")

Enclosed please find the above-noted Agreement for filing. Please note the following:

Table with 2 columns: Field Name and Value. Fields include: TYPE OF AGREEMENT (One (1) photocopy of originally signed Agreement), DATE OF AGREEMENT (June 6, 2014), PARTIES (City of Vancouver and FortisBC Energy Inc.), CIVIC ADDRESS (N/A), LEGAL DESCRIPTION (N/A), EXPIRY DATE (June 5, 2017).

City of Vancouver, Law Department
453 West 12th Avenue
Vancouver, BC V5Y 1V4
Canada
Telephone: (604) 873-7512
Fax: (604) 873-7445

Site/Delivery Address:
401-515 West 10th Avenue
Vancouver, BC V5Z 4A8
Canada



<p><b>REMINDER DATE</b> (if there are no expiry/retention dates, THIS MUST BE FILLED IN - the lawyer can help to determine when this agreement could possibly be sent to Records - City Clerks will use this date to remind us to review the agreement to determine whether it can be sent to Records)</p>	<p>April 1, 2017</p>
<p><b>RETENTION DATE</b> (if there is an expiry date, fill in the date that the City Clerk may send this document to Records - usually one year after expiry date)</p>	<p>N/A</p>
<p><b>STAFF INVOLVED:</b> (this may be more than one person)  make sure you indicate the person's name, department (including division) and telephone number</p>	<p>Shawn Doyle Solicitor, Law Department Phone: (604) 873-7692  Nick Kassam Director - Supply Chain Management Phone: (604) 829-2097</p>
<p><b>FILE NUMBER</b> (Law Department file number)</p>	<p>13-0147</p>



Shawn Doyle

SSD:mek  
Attachment

## CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made as of June 6, 2014

BETWEEN:

**FORTISBC ENERGY INC.**, a corporation organized under the laws of the province of British Columbia and having an office at 16705 Fraser Highway, Surrey, BC, V4N 0E8

(hereinafter referred to as the "Company")

AND:

**CITY OF VANCOUVER**, a municipal corporation continued under the Vancouver Charter (British Columbia) and having an office at 453 West 12th Avenue, Vancouver, British Columbia, V5Y 1V4

(hereinafter referred to as the "City")

WHEREAS:

- A. The Company and the City are engaged in discussions regarding a potential Transaction (as defined herein); and
- B. Each of the Company and the City (each, in such capacity a "the Disclosing Party") has agreed to make available to the other party (each, in such capacity a "the Recipient") certain confidential information concerning itself and its businesses, assets and operations in furtherance of their discussions on the terms and conditions set forth in this Agreement.

In consideration of the mutual promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the City agree as follows:

### 1. Interpretation

- (a) For the purposes of this Agreement:
  - (i) "Affiliate" means, with respect to any person, any other person that controls or is controlled by or is under common control with the first mentioned person;
  - (ii) "Business Day" means a day other than a Saturday, Sunday or statutory holiday in Vancouver, British Columbia;
  - (iii) "Confidential Information" means all:

- (A) information (including orally-conveyed information) and Documents relating to the Disclosing Party or its businesses, assets or operations, which are or have been, in contemplation of a Transaction, received by the Recipient from the Disclosing Party or any of its Representatives or Affiliates; and
- (B) Notes to the extent that they contain or reflect any Confidential Information, including Notes created as a result of inspection or analyses of the Disclosing Party's businesses, assets or operations by the Recipient;

provided that "Confidential Information" will not include information: (aa) that the Recipient can prove was developed by it or was in the Recipient's possession prior to the date of this Agreement; (bb) which is now, or hereafter becomes through no wrongful act or failure to act by the Recipient or its Affiliates, part of the public domain; (cc) which hereafter comes into the possession of the Recipient from a third party which is not, to the Recipient's knowledge, after enquiry, under any obligation of confidentiality with the Disclosing Party; or (dd) which the Recipient can show was independently developed by it or its Affiliates without the use of Confidential Information;

- (iv) "**Definitive Agreement**" has the meaning set forth in Section 7;
- (v) "**Document**" means any written information other than Notes and includes any writing, instrument, agreement, letter, memorandum, chart, graph, blueprint, photograph, financial statement or data, facsimile, tape, disk (other than a computer's internal hard drive) or other electronic, digital, magnetic, laser or other recording or image in whatever form or medium;
- (vi) "**Notes**" means any written information created by the Recipient, its affiliates or any of their Representatives and includes all reports, analyses, notes, studies, forecasts, compilations or other information and regardless of the identity of the party preparing such material and in whatever form or medium;
- (vii) "**Representatives**", used with respect to a person, means the directors (or, in the case of the City, City council members), officers, officials, employees, representatives, agents, attorneys, consultants, accountants, financial and other advisors, and financiers of or to such person; and
- (viii) "**Transaction**" means a potential transaction being negotiated between the City and the Company pursuant to which the City may sell landfill gas to the Company and the City may grant the Company a license to build infrastructure on the City's land for the purpose of receiving and upgrading such gas;

- (b) An entity is affiliated with another entity if:
  - (i) the entity is controlled by such other entity; or
  - (ii) each of them is controlled by the same person.
- (c) An entity is controlled by a person if:
  - (i) a majority of the voting securities of the entity are held, other than by way of security only, directly or indirectly by or for the benefit of that person; and
  - (ii) the voting rights attached to those voting securities are entitled, if exercised, to elect a majority of the directors of the entity.

## **2. Confidential Information**

- (a) Unless permitted hereunder, the Recipient will not disclose the Confidential Information. The Recipient will take measures to protect such Confidential Information from unauthorized disclosure by exercising a standard of care no less stringent than a reasonable degree of care or the standard of care that the Recipient takes to preserve the confidentiality of its own information of a similar nature to the Confidential Information, whichever such standard is higher.
- (b) In no event shall the Recipient, its Affiliates, or its or their Representatives be deemed to have acquired any right, title, licence or interest of any kind in or to the Confidential Information.
- (c) The Recipient will not use the Confidential Information except for the purpose of the Transaction.

## **3. Disclosure of Confidential Information**

- (a) The Recipient may disclose the Confidential Information to:
  - (i) Affiliates and Representatives of the Recipient who have a bona fide need to have access to such Confidential Information and who have been notified by the Recipient of the obligations contained in this Agreement; and
  - (ii) such other persons as the Disclosing Party hereafter agrees in writing may receive such Confidential Information (which agreement may be withheld in the Disclosing Party's sole discretion).
- (b) Nothing contained in this Agreement shall be deemed to prevent disclosure of Confidential Information if such disclosure is required to be made under any applicable law (including the *Freedom of Information and Protection of Privacy Act* (British Columbia), to which the City is subject), or any applicable regulation

or legal authority (such as a rule, subpoena or order of a court, tribunal, authority or regulatory body of competent jurisdiction); provided, however, that, in each case, the Recipient shall give the Disclosing Party prior written notice (unless notice is not permitted by the applicable law, legal authority, policy, rule or regulation) before disclosing any of the Confidential Information and, in making such disclosure, the Recipient shall disclose only that portion thereof required to be disclosed.

- (c) Nothing contained in this Agreement shall be deemed to prevent City staff from reporting the identity of the Company, the fact of discussions between the City and the Company and general features of the Transaction itself (including terms of an Agreement) to Vancouver City Council, including at a public council meeting.

#### **4. Provision of Confidential Information**

- (a) The Disclosing Party shall, to the best of its ability, provide the Recipient with a sufficient amount of information of sufficient quality (as determined by the Disclosing Party, acting reasonably) to permit the Recipient to make a decision concerning the Transaction. Either party may terminate this Agreement by notice to the other party at any time prior to such party disclosing or receiving any Confidential Information under this Agreement, in which event all obligations of the parties under this Agreement shall terminate on the date of such notice.
- (b) The Disclosing Party specifically disclaims and makes no representation or warranty, express or implied, as to the accuracy, completeness, usefulness or reliability of the Confidential Information or any portion thereof, and the Recipient shall use the Confidential Information at its own risk. The Disclosing Party is under no obligation to notify the Recipient nor provide any further information to the Recipient if the Disclosing Party becomes aware of any inaccuracy, incompleteness or change in the Confidential Information. The Recipient agrees that neither the Disclosing Party nor its Representatives shall have any liability to the Recipient or any of its Representatives relating to or resulting from the use of the Confidential Information or any errors therein or omissions therefrom.

#### **5. Return of Documents**

The Disclosing Party may, upon five (5) Business Days' written notice, request the return of the Confidential Information and the Recipient shall, at its election, promptly deliver to the Disclosing Party or destroy all Documents constituting the Confidential Information furnished by the Disclosing Party and shall redact all the Recipient's Notes in such fashion as to ensure that such the Recipient's Notes thereafter no longer contain Confidential Information, provided that the Recipient may retain any Confidential Information:



- (i) to the extent it is required by a court of competent jurisdiction or pursuant to any laws, regulations, regulatory requirements or rules (including the rules of professional bodies and stock exchange rules applicable to the Receiving Party) to retain the Confidential Information;
- (ii) contained in its information management systems to the extent contained on back-up tapes or other back-up media made in the ordinary course of business that are not readily accessible and would not be commercially reasonable to destroy; or
- (iii) consisting of executed original copies of any contractual documents or other materials customarily held by the Receiving Party for the purposes of corporate governance and as legal archival materials;

provided further that, in each case, any such Confidential Information shall remain subject to the confidentiality obligations and use restrictions of this Agreement for as long as it is so retained.

#### **6. Non-Disclosure of this Agreement and Discussions**

Neither party nor any of its Affiliates or any of its or their Representatives shall, directly or indirectly, disclose to any third party the terms and conditions of this Agreement or the discussions, transactions or potential discussions or transactions that are the subject of this Agreement, without the other party's express prior written consent. Nothing contained herein shall be deemed to prevent disclosure of any of the terms and conditions of this Agreement or the discussions, transactions or potential discussions or transactions that are the subject of this Agreement to the extent that such information may, if it were Confidential Information, be disclosed in accordance with Section 3.

#### **7. Definitive Agreement**

The parties agree that unless and until a definitive written agreement with respect to the Transaction (a "**Definitive Agreement**") has been executed between them, neither of them will be compelled to continue discussions relating to the Transaction or will be under any legal obligation of any kind whatsoever with respect to the Transaction by virtue of this Agreement or any oral expression by the Recipient, the Disclosing Party or any of their respective Representatives, except for the matters expressly agreed to in this Agreement.

#### **8. Term**

Unless terminated earlier in accordance with Section 4(a), this Agreement shall terminate three years from the date of this Agreement; provided, however, that such termination shall not restrict or otherwise limit any cause of action or claim arising from any breach of or failure to perform any duty or obligation under this Agreement by the Disclosing Party or the Recipient prior to such termination.

**9. Severability**

If any term or condition of this Agreement is for any reason held to be illegal, invalid, ineffective, inoperable or otherwise unenforceable, it shall be severed and deemed to be deleted from this Agreement and the validity and enforceability of the remainder of this Agreement shall not be affected or impaired thereby. If any term or condition of this Agreement is found to be illegal, invalid ineffective, inoperable or otherwise unenforceable, but would not be so if some part of it were deleted, the term or condition shall apply with such modifications as may be necessary to make it enforceable.

**10. Governing Law**

- (a) This Agreement is governed by and must be construed in accordance with the laws of the Province of British Columbia.
- (b) This Agreement is subject to the exclusive jurisdiction of the courts in the Province of British Columbia except to the extent necessary to enforce, in another jurisdiction, any decision or judgment of any court in the Province of British Columbia.

**11. Notices**

Any demand, notice or other communication to be given in connection with this Agreement must be given in writing and will be given by personal delivery or by electronic means of communication addressed to the recipient thereof as follows:

- (a) to the City:

City of Vancouver  
453 West 12th Avenue  
Vancouver, BC V5Y 1V4

Attention: City Solicitor, and Chief Purchasing Official

Facsimile: 604-873-7445

- (b) to the Company:

FORTISBC ENERGY INC,  
16705 Fraser Highway  
Surrey, BC V4N 0E8

Attention: Kristen Mucha,  
Sr. Manager, Major Accounts and Renewable Energy

Facsimile No.: 604-592-7894

or to such other address, individual or electronic communication number as may be designated by notice given by either party to the other. Any demand, notice or other communication given by personal delivery will be conclusively deemed to have been given on the day of actual delivery thereof and, if given by electronic facsimile, on the day of transmittal thereof if given during the normal business hours of the recipient and on the day during which such normal business hours next occur if not given during such hours on any day.

## **12. Assignment and Transfer**

Neither of the parties may assign, pledge, or otherwise transfer their rights or delegate their duties or obligations under this Agreement without the prior written consent of the other party.

## **13. Entire Agreement**

- (a) This Agreement constitutes the entire understanding between the parties with respect to the subject matter thereof and supersedes:
  - (i) any rights that the Disclosing Party may have at law or equity regarding the Recipient's possession or use of the Confidential Information; and
  - (ii) all negotiations, prior discussions, or prior agreements and understandings relating to such subject matter.
- (b) Nothing contained herein will be deemed to create any partnership, joint venture or relationship of principal and agent between the parties or to provide either party with the right, power or authority, whether express or implied, to create any duty or obligation on behalf of the other party. Neither this Agreement nor the parties' performance hereunder shall be deemed to create any special relationship or obligations, including fiduciary obligations, between the parties other than those expressly set forth herein, and no implied covenants shall apply to this Agreement.

## **14. Injunctive Relief**

Each party acknowledges that a breach of any of the obligations or provisions contained in this Agreement could cause the other party to suffer loss which may not be adequately compensated for by damages and that the other party may, in addition to any other remedy or relief, enforce the performance of this Agreement by injunction or specific performance upon application to a court of competent jurisdiction without proof of actual or special damage and notwithstanding that in any particular case damages may be readily quantifiable, and such breaching Party must not plead sufficiency of damages as a defence in the proceeding for such injunctive relief.

## **15. Miscellaneous**

- (a) Pronouns in masculine, feminine, and neuter gender shall be construed to include any other gender. Words in the singular form shall be construed to include the plural, and words in the plural form shall be construed to include the singular, unless the context otherwise requires. The headings used in this Agreement are inserted for convenience only and shall be disregarded in construing this Agreement.
- (b) The use of the word “including” or “includes” followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it and the rule of construction that the specific overrides the general shall not be applied in the interpretation of such general wording or such specific example or examples.
- (c) This Agreement may not be altered or amended, nor may any rights hereunder be waived, except by an instrument in writing and executed by the party or parties to be charged with such amendment or waiver.
- (d) No waiver of any term, provision, or condition of this Agreement shall be deemed to be, or construed as, a further or continuing waiver of any such term, provision, or condition, or as a waiver of any other term, provision, or condition hereof.
- (e) To the extent the parties have deemed necessary, they have consulted with their legal, tax, financial, and accounting advisors with respect to the subject matter of this Agreement.
- (f) The Recipient acknowledges and agrees that the Recipient and the Representatives of the Recipient are bound by all applicable privacy legislation with respect to any “personal information” (as such term is defined in applicable legislation) disclosed under this Agreement.
- (g) Each party hereby represents and warrants to the other party that the person executing this agreement on behalf of such executing party has the authority to act for and to bind such party to this Agreement and that this Agreement is a valid and binding obligation of such party.
- (h) This Agreement shall be binding upon the parties hereto and, except as otherwise prohibited, their respective successors and assigns. Except for the Recipient and the Disclosing Party, and their permitted successors and assigns, nothing in this Agreement, express or implied, is intended to confer upon any other entity or person any benefits, rights, or remedies.
- (i) This Agreement may be executed in counterparts and shall become operative when each party has executed and delivered at least one counterpart.

- (j) This Agreement may be delivered by electronic, facsimile or similar transmission, and an electronic, facsimile or similar transmission evidencing execution shall be effective as a valid and binding agreement between the parties for all purposes.

**IN WITNESS WHEREOF** the parties have executed this Agreement as of the date first above written.

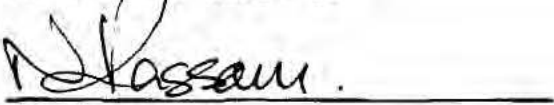
**FORTISBC ENERGY INC.**

  
Signature

John Turner  
Director, Energy Solutions

\_\_\_\_\_  
Print Name and Title

**CITY OF VANCOUVER**

  
Signature

Nick Kassam CPO & Director, SEM  
\_\_\_\_\_  
Print Name and Title



200004006

FINANCIAL SERVICES GROUP  
Supply Chain Management

**MEMORANDUM**

November 17, 2014

To: Janice MacKenzie, City Clerk  
Copy to: David Li, Lawyer, Legal Department  
From: Donabella Bersabal, Contracting Specialist, Supply Chain Management  
Date: November 17, 2014  
Subject: Fueling Station License and Use Agreement PS20140371

Attached please find the following documents for filing:

<b>TYPE OF AGREEMENT</b>	Signed Fueling Station License and Use Agreement Re: PS20140371 - CNG Fueling Facility
<b>DATE OF AGREEMENT</b> (if this date is execution date and there is more than one date, use the latest date as the date of the agreement)	November 14, 2014
<b>PARTIES</b> (complete names)	FortisBC Energy Inc. ("FEI")
<b>CIVIC ADDRESS</b> (no abbreviations - must be searchable)	16705 Fraser Highway, Surrey, B.C. V4N 0E8
<b>AGREEMENT DESCRIPTION</b> (no abbreviations - must be searchable)	Fueling Station License and Use Agreement Re: PS20140371 - CNG Fueling Facility to have FEI to supply, construct, own and maintain a fueling station
<b>EXPIRY DATE</b> (indicate N/A if there is no expiry date)	June 30, 2035
<b>RETENTION DATE -</b>	June 30, 2035

<p>(if there is an expiry date, fill in the date that the City Clerk may send this document to Records - usually one year after expiry date)</p>	
<p><b>REMINDER DATE</b></p> <p>(if there are no expiry/retention dates, THIS MUST BE FILLED IN - the employee can help to determine when this agreement could possibly be sent to Records - City Clerk=s will use this date to remind us to review the agreement to determine whether it can be sent to Records)</p>	<p>Date: November 14, 2024</p> <p>Reason:</p>
<p><b>WHO TO NOTIFY:</b></p> <p>(this may be more than one person) [make sure you indicate the person=s name, department (including division) and telephone number]</p>	<p>Donabella Bersabal, Supply Chain Management, 604-829-2081</p> <p>And Francie Connell, Director of Legal Services, 604-873-7506</p>
<p><b>FILE NUMBER</b></p> <p>(Department file number)</p>	<p>PS20140371</p>

CITYCLERK/DEPT 10:38 '14/NOV/20

**FUELING STATION LICENCE AND USE AGREEMENT**  
(Compressed Natural Gas)

**THIS AGREEMENT** is made effective as of November 14, 2014 (the "Effective Date")

**BETWEEN:**

**CITY OF VANCOUVER, 453 West 12<sup>th</sup> Avenue, Vancouver, BC V5Y 1V4**

(the "Customer")

**AND:**

**FORTISBC ENERGY INC., of 16705 Fraser Highway, Surrey, BC V4N 0E8**

("FEI")

**WHEREAS:**

- A. The Customer operates a fleet of compressed natural gas fuelled vehicles (the "Vehicles").
- B. In order to enable the Customer to fuel the Vehicles from its premises at Manitoba Yards located at 250 West 70<sup>th</sup> Avenue, Vancouver, BC (the "Lands"), the Customer wishes to have FEI supply, construct, own, operate and maintain a fueling station, including infrastructure, equipment, apparatus, conduits, lines and pipes (the "Fueling Station") on the Lands.
- C. The Customer agrees to grant a license to FEI for access over the Lands and use of a portion of the Lands for the construction, ownership, operation and maintenance of the Fueling Station to enable the use of the Fueling Station by and for the use of the Customer, all on the terms and conditions set out in this Agreement.

**NOW THEREFORE**, in consideration of the mutual promises set out herein and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged) the parties agree as follows:

**1. Term and Renewal.**

- 1.1 **Term.** The term of this Agreement shall commence on the Effective Date and shall expire on the tenth (10<sup>th</sup>) anniversary of the In-Service Date (the "Initial Term"), unless extended or renewed upon written agreement between the parties or terminated earlier in accordance with this Agreement (the "Term"), where "In-Service Date" means the first day of the fourth (4<sup>th</sup>) month after the Fueling Station becomes operational (is capable of dispensing fuel to vehicles). FEI will use commercially reasonable efforts to have the In-Service Date occur within seven (7) months following the Effective Date.
- 1.2 **Renewal.** This Agreement may be renewed on the same terms and conditions for a further term of ten (10) years (the "Renewal Term"), exercisable by the Customer upon at least six (6) months prior written notice to FEI.
- 1.3 **Effect of Expiry and Early Termination.** Upon early termination or expiry of this Agreement, the provisions set out in Schedule A shall apply.



**2. Access to and Use of Lands.**

**2.1 Grant of License and Access.** The Customer, as legal and beneficial owner of the Lands, hereby grants to FEI, at no cost:

- (a) a non-exclusive irrevocable license to those portions of the Lands on which the Fueling Station is located, as mutually agreed between the parties (the "Fueling Station Area") at all times and from time to time, with or without vehicles, machinery and equipment, for FEI and its authorized employees, contractors and agents, to excavate, install, place, construct, renew, alter, repair, maintain, use, abandon, remove or replace the Fueling Station, in whole or in part. The proposed Fueling Station Area is shown in the drawing attached as Schedule B, which schedule will be updated by way of written agreement between the parties if the Fueling Station Area changes during the course of construction; and
- (b) the free and unobstructed right to access over and across the Lands, with or without vehicles, machinery and equipment, as required from time to time, for FEI and its authorized employees, contractors and agents to access the Fueling Station; provided, however, this right shall in no way restrict or interfere with the Customer conducting its usual activities on the Lands or from maintaining, changing or improving the Lands as long as FEI and its authorized employees, contractors and agents continue to have access to the Fueling Station.

**2.2 Grant of Rights to Third Parties.** Subject to section 3.1, the grant of rights to FEI hereunder does not preclude or prevent the Customer from granting easements, statutory rights of way or other grants, leases or licences over the Lands to any other person.

**3. Use of the Lands.**

**3.1 Non-Interference.** The Customer will not do or knowingly permit to be done anything in, under, over, upon or with respect to the Lands which, in the reasonable opinion of FEI, may interfere with, diminish or injure FEI's rights hereunder or the construction, maintenance, use or operation of the Fueling Station, including but not limited to, anything which:

- (a) interrupts, endangers, impedes, disturbs or causes damage to the Fueling Station or its operation, use, security or functionality;
- (b) removes, diminishes or impairs any vertical support, lateral support or ventilation for, or causes the movement or settlement of, the Fueling Station; and
- (c) causes, permits or suffers any structure, equipment, act or function to exert any vertical load or lateral load upon or against, or impair the structural integrity of, the Fueling Station;

without the prior written consent of FEI and in accordance with any reasonable conditions FEI may specify as a condition of such consent.

**3.2 Payment of Taxes.** FEI will not be responsible for the payment of any property taxes or assessments levied against the Lands, including the Fueling Station Area.

**4. Permits and Approvals.**

- 4.1 **Definition.** "Approvals" means any consents, permits, filings, orders or other approvals from a governmental or regulatory authority, and includes building and construction permits, environmental permits, zoning changes or variances.
- 4.2 **FEI Approvals.** FEI shall obtain and maintain the Approvals required, affecting or necessary for the ownership, construction, operation and maintenance of the Fueling Station, including necessary Approvals from the British Columbia Utilities Commission (the "BCUC").
- 4.3 **Customer Approvals.** The Customer shall obtain and maintain the Approvals required, affecting or necessary for the use of the Fueling Station by the Customer.
- 4.4 **Transfer of Approvals.** Each party shall, when required by law or as otherwise appropriate or necessary, transfer or provide their Approvals to the other party.
- 4.5 **Assistance.** Each party shall, upon request, use commercially reasonable efforts to advise and assist the other party in obtaining any relevant Approvals.
- 4.6 **BCUC Approval.** The Customer acknowledges FEI is a public utility as defined in the *Utilities Commission Act (British Columbia)* and this Agreement, including all terms and conditions contained herein, is subject to BCUC Approval. If the necessary BCUC Approval is not granted or is granted subject to terms and conditions which are not reasonably satisfactory to FEI or the Customer having regard to their respective *bona fide* interests, the parties agree to negotiate in good faith to address the impacts thereof, including mitigation of costs.

**5. Construction, Ownership and Removal of Fueling Station.**

- 5.1 **Preparation of the Lands.** Prior to and during construction of the Fueling Station by FEI, the Customer shall ensure reasonable access over the Lands to the Work Area (as defined in Schedule C) and Fueling Station Area is available to the reasonable satisfaction of FEI to enable FEI to perform its obligations under this Agreement.
- 5.2 **Electrical Supply.** FEI shall, on behalf of the Customer, and as part of the cost of construction of the Fueling Station, install on the Lands any additional electrical power equipment necessary to operate the Fueling Station. Despite FEI installing such electrical equipment, FEI shall not be responsible for or own such electrical equipment. The Customer shall be responsible for and pay for the electrical consumption attributable to the Fueling Station, whether separately metered or forming part of the electrical consumption with respect to the Lands. Neither party shall be liable to the other party for any loss or damage arising from interruption in electrical power supply except where caused by the negligence of such party.
- 5.3 **Fueling Station Specifications.** Subject to amendment pursuant to section 5.4, FEI shall supply, design and construct a Fueling Station meeting the specifications set out in Schedule C (the "Specifications"). FEI will promptly rectify any non-compliance of the Fueling Station with the Specifications that was not agreed to in writing by the Customer.

**5.4 Changes to Specifications.**

- (a) If, during the course of construction of the Fueling Station, a material change is required to the Specifications, FEI will not make such change without the prior written consent of the Customer, which consent will not be unreasonably withheld. The following changes are deemed to be material changes for the purpose of this section:
- (i) a change to any of the equipment or specifications set out in Schedule C; or
  - (ii) a change that results in a greater than 10% change in a line item set out in the budget set out in Schedule C (the "Project Budget").
- (b) When, during the course of design or construction, the Customer or FEI requests changes to the Specifications, prior to implementing such changes, FEI shall advise the Customer of the impact of such changes on the Fueling Station performance, installation, schedule, budget (including impact on the contingency amount) and the Service Charges.
- (c) Upon commissioning the Fueling Station, the parties will, if necessary, amend Schedule C to reflect the Fueling Station as constructed.

**5.5 Construction.** FEI shall design and construct the Fueling Station in a good and workmanlike manner consistent with industry standards and in compliance with all applicable equipment manufacturers' requirements, Approvals, laws and regulations and the construction requirements set out in Schedule D. During construction, each party will comply with the reasonable requests of the other party for cooperation and neither party will do or permit anything to be done that may unreasonably interfere with the exercise by the other party of its rights under this Agreement including the right of the Customer to carry out its usual activities on the Lands.

**5.6 Fueling Contingency Plan.** FEI will use commercially reasonable efforts to obtain BCUC approval, if necessary, and arrange for access by the Customer to the FEI fueling station on the premises of Waste Management located at 2330 United Boulevard, Coquitlam, BC to enable the Customer to purchase compressed natural gas therefrom pursuant to the terms and conditions of a Third Party Fueling Services Agreement to be entered into between FEI and the Customer, for use by the Customer as a back-up to the Fueling Station including if Vehicles are delivered to the Customer before the In-Service Date. The Customer acknowledges and agrees that its use of such third party fueling station will be subject to the terms and conditions of the Third Party Fueling Services Agreement.

**5.7 Removal of Fueling Station.** If FEI removes or is required to remove the Fueling Station from the Lands pursuant to this Agreement, FEI will be obligated to remove the Fueling Station to surface level, excluding any concrete pad, and any portion of the Fueling Station not removed by FEI will become the property of the Customer.

**5.8 Ownership.** Except where otherwise provided in Schedule A, the Fueling Station is, and shall at all times remain, the property of FEI and freely alienable by FEI as its own property despite the degree to which the Fueling Station may be annexed or affixed to the Lands and despite any rule of law or equity to the contrary. FEI shall be entitled to install signage within the Fueling Station

Area (of a size and prominence as reasonably approved by the Customer) and notices on the Fueling Station identifying FEI's ownership of the Fueling Station.

**5.9 Corporate Branding.** In addition to any signage or notices installed pursuant to section 5.8, FEI shall be entitled to affix its corporate logo and other branding and/or marketing elements to the exterior of the Fueling Station, all of reasonable size and prominence.

**6. Maintenance of the Fueling Station.**

**6.1 Maintenance.**

- (a) FEI shall maintain the Fueling Station in good and safe working order, and keep the Fueling Station operational, in accordance with the Specifications, all applicable equipment manufacturers' requirements, industry standards, Approvals, laws and regulations and in compliance of the plans described in subsection 6.1(b). Following commissioning of the Fueling Station, each party will comply with the reasonable requests of the other party for cooperation and neither party will do or permit anything to be done that may interfere with the exercise by the other party of its rights under this Agreement including the right of the Customer to carry on its usual activities on the Lands.
- (b) Concurrently with commissioning of the Fueling Station and upon the Customer's reasonable request from time to time, FEI shall prepare, provide to the Customer and comply with a Training Plan, Preventative Maintenance Plan, a Maintenance, Repair and Service Restoration Plan and an Emergency Response Plan, and prepare, provide and comply with regular updates to such plans, to document FEI's processes, procedures and maintenance schedule with respect to the Fueling Station, which plans shall, at a minimum provide for the following:
  - (i) **Preventative Maintenance Plan:**
    - 1. FEI will inspect the Fueling Station at least once each week; and
    - 2. During periods of maintenance, FEI will minimize interruption to the Customer's use of the Fueling Station;
  - (ii) **Maintenance, Repair and Service Restoration Plan:**
    - 1. Level 1 – Maintenance or Repair Issues – FEI will use commercially reasonable efforts to respond to any maintenance or repair calls or automatic alarms within 2 hours; and
    - 2. Level 2 – Electrical Interruption Issues – The Customer will be responsible for supplying electric generators as required to power the Fueling Station, provided that, if requested by the Customer, FEI will use commercially reasonable efforts to supply electric generators on site within 6 hours, at the Customer's cost.

(iii) **Emergency Response Plan:**

1. FEI will remotely monitor the Fueling Station and if any safety malfunction/failure or emergency is detected, FEI will use commercially reasonable efforts to respond within 20 minutes; and
2. upon being notified by the Customer of an emergency, FEI will use commercially reasonable efforts to respond within 20 minutes; and

(c) FEI will not be considered to be in default under this Agreement while undertaking maintenance or repair of the Fueling Station in accordance with the terms of this Agreement and the plans described above in subsection 6.1(b).

**6.2 Vandalism and Other Damage.** Despite the foregoing, the Customer shall reimburse FEI for any reasonable costs and expenses incurred by FEI to repair any vandalism or other damage to the Fueling Station arising directly or indirectly from the acts or omissions of the Customer or its agents or other persons for whom the Customer is responsible at law.

**6.3 Cleaning and Waste Removal.** The Customer will keep the Fueling Station Area in a clean and tidy condition and not permit the Fueling Station Area to become untidy, unsightly or hazardous, or permit any waste paper, garbage, refuse or objectionable materials to accumulate on or around the Fueling Station Area. If any component or portion of the Fueling Station is locked up and inaccessible to the Customer, FEI is responsible for keeping it in a clean, tidy and safe condition.

**6.4 Dispensing of Fuel.**

(a) The Customer shall dispense the fuel to its Vehicles in accordance with the written training materials to be provided by FEI pursuant to section 6.5, all applicable Approvals, laws and regulations, and the reasonable written requirements of FEI, as established or amended from time to time and given to the Customer.

(b) The Customer shall permit only persons who have received training on dispensing fuel from the Fueling Station and safety training from FEI or a suitably qualified supervisor or manager of the Customer to dispense fuel from the Fueling Station.

**6.5 Training and Training Materials.**

(a) FEI shall provide fuel dispensing and safety training to the Customer, its employees, contractors and agents at intervals to be determined by the parties, it being the intention that following initial training by FEI upon construction of the Fueling Station, the Customer will undertake the training internally with FEI conducting remedial or refresher training from time to time. As part of training, FEI will also provide written training materials that the Customer can retain and use for internal training or reference purposes. Even where training is not being provided or has not been requested by the Customer, FEI shall provide the Customer with updates to previously supplied training materials where required by the equipment manufacturer or applicable laws or if such materials are updated by FEI for other customers using the same equipment.

(b) Despite any training provided by FEI, the Customer is and continues to be liable for any acts or omissions of its employees, contractors and agents except where the Customer's

employees, contractors and agents have complied with the training materials provided by FEI, in which case FEI will be liable and indemnify the Customer.

**6.6 Safety and Occupier's Liability.**

- (a) The Customer shall be responsible for the safety and protection of any persons using the Fueling Station or otherwise accessing the Fueling Station Area.
- (b) The Customer shall comply with all written safety procedures and requirements of FEI that were supplied to the Customer and all applicable Approvals, laws and regulations with respect to the Fueling Station and its use.
- (c) FEI shall comply with the written safety procedures and policies of the Customer that were supplied to FEI and all applicable Approvals, laws and regulations with respect to access to and use of the Lands.
- (d) Nothing contained in this Agreement will abrogate or detract from the liabilities and obligations of the Customer as the owner and occupier of the Lands unless arising from the acts or omissions of FEI or its agents or other persons for whom FEI is responsible at law.

**6.7 Security of the Fueling Station.** The Customer shall provide and maintain security, in the same manner and to the same standard as the Customer's own equipment on the Lands, satisfactory to FEI (acting reasonably) to protect the Fueling Station from vandalism and other damage.

**7. Fees and Charges.**

**7.1 Fueling Charges.** In consideration for the supply, construction, operation, maintenance and use of the Fueling Station, and, if applicable, in addition to any fees or charges related to the supply and delivery of fuel to the Customer pursuant to FortisBC Rate Schedules as established, amended and approved by the BCUC from time to time (the "Rate Schedules"), the Customer agrees to pay to FEI the service charges identified and calculated in accordance with Schedule A (the "Service Charge"), plus applicable taxes thereon, within 30 days of the billing date (except for any Service Charges disputed by the Customer in good faith), without deduction or set-off.

**7.2 Minimum Guarantee.** The Customer acknowledges and agrees the Base Rate identified in Schedule A has been calculated by FEI having regard to, among other things, the Customer's estimated fuel demand profile and the number of vehicles served by the Fueling Station, and accordingly, the Customer agrees to pay a minimum annual Service Charge (the "Minimum Guarantee") calculated by multiplying the applicable Base Rate by the minimum quantity of natural gas to be dispensed from the Fueling Station per Service Year as identified in Schedule A (the "Minimum Quantity"), where "Service Year" means the twelve month period commencing from the In-Service Date or each anniversary thereof. The obligation of the Customer to pay the Minimum Guarantee commences effective from the In-Service Date.

**7.3 Other Charges.** The Service Charge and any other charges payable by the Customer under this Agreement are in addition to any fees or charges related to the supply, delivery and transportation of fuel, including the purchase of the Fuel from FEI and the provision of transportation services by FEI, if applicable, pursuant to the terms and conditions of the Rate Schedules as established or amended from time to time.

**8. Payments and Invoicing.**

- 8.1 On or about the 15th day of each month, FEI shall deliver to the Customer a statement for the preceding month showing fuel dispensed, the Service Charges and the amount due. All amounts due (except for amounts disputed by the Customer in good faith) will be payable by the Customer within 30 days of the date of the statement.
- 8.2 Within 30 days of the end of each Service Year, FEI shall identify the aggregate fuel dispensed for such Service Year. If the aggregate amount is less than the Minimum Quantity, such statement shall identify the balance owing to FEI calculated by subtracting the amounts payable during each month of the Service Year, based on the amount of fuel dispensed, from the Minimum Guarantee.
- 8.3 Any errors in any statement shall be promptly reported to FEI. Statements shall be final and binding unless questioned within one year after its billing date.
- 8.4 Overdue payments shall be subject to a late payment charge of 1.5% per month (19.56% per annum).
- 8.5 The Customer shall have the right to review meter data and other relevant records in order to verify statements. Such review shall be conducted at the Customer's expense (provided such expenses are reasonable and FEI has submitted reasonable evidence of such expenses) unless such review discloses errors in the amount of fuel dispensed or Service Charges billed which exceed two percent (2%).

**9. Representations, Warranties and Covenants.**

- 9.1 **Mutual Representations and Warranties.** Subject to receipt of approval of this Agreement by BCUC as identified in section 4.6, each party represents and warrants to the other party that, as of the Effective Date:
- (a) it has the full right, power and authority to enter into this Agreement and all necessary corporate action has been taken to authorize and approve the execution and delivery of this Agreement and performance of obligations hereunder;
  - (b) to the best of its knowledge, this Agreement and the performance of its obligations hereunder do not breach any provisions of any other agreement or law that is binding on or applicable to such party;
  - (c) it is not party to any action, suit or legal proceeding, actual or threatened, and there are no circumstances, matters or things known to such party which might give rise to any such action, suit or legal proceeding, and there are no actions, suits or proceedings pending or threatened against such party before or by any governmental authority, which could affect its ability to perform its obligations under this Agreement.

**10. Default and Early Termination.**

**10.1 Rectification of Default.** Subject to Section 14, either party (the "Defaulting Party") shall be in default of this Agreement if the Defaulting Party is in breach of any term, covenant, agreement, condition or obligation imposed on it under this Agreement, provided that:

- (a) the other party (the "Non-Defaulting Party") provides the Defaulting Party with a written notice of such default and, in the event of a payment default, a 60 day cure period, and for any other default, a 30 day cure period (the "Cure Period"); and
- (b) the Defaulting Party fails to cure such default during the Cure Period, or if such default is not capable of being cured within the Cure Period, fails in good faith to commence the curing of such default upon receipt of notice of default and to continue to diligently pursue the curing of such default thereafter until cured.

**10.2 Effect of Material Default.** If the Defaulting Party is in default under Section 10.1 of a material term, covenant, agreement, condition or obligation, including a payment default which has not been remedied in accordance with Section 10.1, the Non-Defaulting Party may, at its option and in addition to and without liability therefore or prejudice to any other right or remedy it may have:

- (a) cease performing its obligations under the agreement, including suspending or refusing to make any payment due hereunder, until the default has been fully remedied, and no such action shall relieve the Defaulting Party from any of its obligations under this Agreement;
- (b) undertake the necessary steps to remedy the default at the Defaulting Party's expense, and such action shall not relieve the Defaulting Party from any of its obligations under this Agreement; or
- (c) terminate this Agreement immediately upon notice to the other party, whereupon the provisions of Schedule A shall apply.

**10.3 Early Termination upon Transfer of Lands.** If the Customer enters into an agreement to transfer its interest in and to the Lands to any person, the Customer shall ensure the transfer agreement excludes the Fueling Station and will forthwith notify FEI of such transfer and the completion date thereof. Effective the completion date of such transfer, unless otherwise agreed between the parties, this Agreement will be terminated and FEI will remove the Fueling Station.

**11. Insurance Requirements.**

**11.1 Insurance.** Each party shall obtain and maintain the following insurance coverage and provide proof of coverage to the other party:

- (a) Workers' Compensation Insurance in accordance with the statutory requirements in British Columbia;
- (b) Automobile Liability Insurance with a limit of not less than \$5,000,000 per occurrence in respect of bodily injury, death and property damage;



- (c) Comprehensive General Liability Insurance from Insurers registered in and licensed to underwrite insurance in British Columbia for bodily injury, death and property damage in the amount of \$5,000,000 per occurrence naming the other party as an additional insured with respect to this Agreement;
- (d) All Risks Property Insurance (including flood and earthquake) upon all property owned by each party, or in their care, custody or control, on the Lands in an amount not less than the full replacement cost thereof; and
- (e) Such other insurance as reasonably required by the other party from time to time.

Each party shall be responsible for payment of any deductibles of their policies. All such policies shall provide that the insurance shall not be cancelled or materially changed without the insurer giving at least 30 calendar days' written notice to the other party.

## 12. Environmental Provisions.

12.1 **Definition of Contaminants.** "Contaminants" means collectively, any contaminant, toxic substances, dangerous goods, or pollutant or any other substance which when released to the natural environment is likely to cause, at some immediate or future time, material harm or degradation to the natural environment or material risk to human health, and includes any radioactive materials, asbestos materials, urea formaldehyde, underground or aboveground tanks, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive or toxic substances, hazardous waste or waste of any kind, pesticides, defoliants, or any other solid, liquid, gas, vapour, odour or any other substance the storage, manufacture, disposal, handling, treatment, generation, use, transport, remediation or release into the environment of which is now or hereafter prohibited, controlled or regulated by law.

12.2 **Customer Release and Indemnity.** Despite any other provision of this Agreement, the Customer acknowledges and agrees FEI and its employees, directors and officers are not and shall not be responsible for any Contaminants now present, or present in the future, in, on or under the Lands, or that may or may have migrated on or off the Lands and hereby releases and agrees to indemnify FEI and its directors, officers, employees, successors and permitted assigns, from any and all liabilities, actions, damages, claims (including remediation cost recovery claims), losses, costs, orders, fines, penalties and expenses whatsoever (including all consulting and legal fees and expenses on a solicitor-client basis and the cost of remediation of the Fueling Station Area) arising from or in connection with:

- (a) any release or alleged release of any Contaminants at or from the Lands, including the Fueling Station Area;
- (b) the presence of any Contaminants on or off the Lands before or after the Effective Date of this Agreement;

except with respect to any Contaminants brought onto the Lands by FEI or to the extent that such release was a direct result of an act or omission of FEI, any agent of FEI or any other person for whom FEI is in law responsible in carrying out its obligations under this Agreement.

12.3 **FEI Release and Indemnity.** Despite any other provision of this Agreement, FEI shall release and indemnify the Customer and its directors, officers, employees, successors and permitted assigns,

from any and all liabilities, actions, damages, claims (including remediation cost recovery claims), losses, costs, orders, fines, penalties and expenses whatsoever (including all consulting and legal fees and expenses on a solicitor-client basis and the cost of remediation of the Lands) arising from or in connection with any release or alleged release of any Contaminants related to any act or omission of FEI, any agent of FEI or any other person for whom FEI is in law responsible in carrying out its obligations under this Agreement.

**12.4 Environmental Representations and Warranties.** The Customer represents and warrants to FEI that to the best of its knowledge there are no actions, proceedings, investigations, claims (including remediation cost recovery claims) pending, or threatened, that would interfere with FEI's use of the Fueling Station or the Fueling Station Area or access over the Lands or that relate to the presence of Contaminants in, under or migrating to or from the Fueling Station Area or the Lands.

**12.5 Environmental Compliance.** The parties acknowledge and agree they each have responsibility for environmental compliance, management and reporting pursuant to environmental laws and regulations arising from the ownership, operation, maintenance and use of the Fueling Station, including related to emissions and spills. The parties covenant and agree to co-operate with each other in co-ordinating, establishing, implementing and verifying processes and procedures to manage and address environmental impacts and ensure each party's respective compliance with environmental laws and regulations. FEI agrees to comply with the terms of its Environmental Management Plan, as may be amended from time to time, a current copy of which will be provided by FEI to the Customer from time to time.

**13. Indemnification and Limitation of Liability.**

**13.1** Unless otherwise provided in this Agreement, each party shall indemnify and hold harmless the other party and its employees, directors and officers from and against any and all adverse claims, losses, suits, actions, judgments, demands, debts, accounts, damages, costs, penalties and expenses (including all legal fees and disbursements) arising from or out of:

- (a) the acts or omissions of such party, its employees, directors, officers or contractors; or
- (b) the breach by such party of any of the provisions contained in this Agreement.

**13.2 Limitation of Liability.** Each party's liability to the other party under this Section 13 shall be limited to the payment of direct damages. In no event shall either party be responsible or liable to the other party for any indirect, consequential, punitive, exemplary or incidental damages of the other party or any third party arising out of or related to this Agreement even if the loss is directly attributable to the gross negligence or wilful misconduct of such party, its employees, or contractors.

**13.3 Duty to Mitigate.** Each party has a duty to mitigate the damages that would otherwise be recoverable from the other party pursuant to this Agreement by taking appropriate and commercially reasonable actions to reduce or limit the amount of such damages or amounts.

**14. Force Majeure and Labour Disruption.**

**14.1 Force Majeure.** No party will be in default of this Agreement by reason only of any failure in the performance of such party's obligations pursuant to this Agreement if such failure arises without the fault or negligence of such party and is caused by any event of Force Majeure (as defined

below) that makes it commercially impracticable or unreasonable for such party to perform its obligations under this Agreement and, in such event, the obligations of the parties will be suspended to the extent necessary for the period of the Force Majeure condition, save and except neither party will be relieved of or released from its obligations to make payments to the other party as a result of an event of Force Majeure. For the purpose of this section, "Force Majeure" means any cause which is unavoidable or beyond the reasonable control of any party to this Agreement and which, by the exercise of its reasonable efforts, such party is unable to prevent or overcome, including, acts of God, war, riots, intervention by civil or military authority, strikes, lockouts or other labour dispute, accidents, acts of civil or military authority, or orders of government or regulatory bodies having jurisdiction, or breakage or accident to lines of pipes, or freezing of wells or pipelines or the failure of gas supply, temporary or otherwise, from a supplier; provided however, the lack of funds or other financial cause shall not be an event of Force Majeure.

14.2 **Obligation to Mitigate.** The party whose performance is prevented by an event of Force Majeure must provide notification to the other party of the occurrence of such event as soon as reasonably possible and take commercially reasonable steps to mitigate the effect of and eliminate any such occurrence.

14.3 **Customer Labour Disruption.** In the event of a strike, lockout or other labour dispute of the work force of the Customer or its contractors or sub-contractors which will significantly reduce the Customer's use of the Fueling Station (as reasonably determined by the Parties) or prevent FEI from accessing the Lands or the Fueling Station Area (despite FEI making commercially reasonable efforts to gain access), for the duration of the dispute (the "Period of Impact"), the Parties will cooperate with each other to address the operational and financial impacts of such dispute, including, upon mutual agreement between the Parties, suspending the operation of this Agreement during the Period of Impact and, upon settlement of the dispute, extending the Term by a period equivalent to the Period of Impact.

## 15. Dispute Resolution.

15.1 Where any dispute arises out of or in connection with this Agreement, including failure of the parties to reach agreement hereunder, either party may request the other party to appoint senior representatives to meet and attempt to resolve the dispute either by direct negotiations or mediation. Unresolved disputes may be submitted for final resolution by arbitration administered by the British Columbia International Commercial Arbitration Centre under its "Shorter Rules for Domestic Commercial Arbitration" in Vancouver, British Columbia, Canada. The language of that arbitration will be English. Alternatively, the Parties may agree, within 15 days of request by a party for final resolution, to submit that dispute for final resolution by arbitration in another manner.

15.2 The parties shall continue to fulfill their respective obligations pursuant to this Agreement during the resolution of any dispute in accordance with this section.

## 16. Confidentiality.

16.1 All information or documentation received by a party (the "Receiving Party") which has been specifically marked by other party (the "Disclosing Party") as confidential (the "Information") shall be deemed to be confidential and proprietary to the Disclosing Party. Except as otherwise provided herein, the Receiving Party shall not directly or indirectly disclose the Information to

any third party without the prior written consent of the Disclosing Party. Such consent is not required where the third party is another contractor or consultant retained by the Receiving Party for the purposes contemplated in this Agreement and to the extent that such disclosure is necessary for the proper performance of this Agreement or such disclosure is required by law.

- 16.2 Despite the foregoing, the Receiving Party may use the information in the preparation of and submissions to regulatory agencies and the parties acknowledge that this Agreement, when filed with regulatory agencies, including BCUC, will not be confidential or otherwise protected from disclosure or release.
- 16.3 The obligation of confidentiality set out above shall not apply to material, data or information which is known to either party prior to their receipt thereof, which is generally available to the public or which has been obtained from a third party which has the right to disclose the same.
- 16.4 Despite the foregoing, neither party shall issue a press release or public announcement respecting any aspect of this Agreement nor the agreements contemplated herein without the consent of the other party, such consent not to be unreasonably withheld, delayed or conditioned.
17. **General.**
- 17.1 **Costs.** Except as otherwise set out in this Agreement, each party will be responsible for the payment of its own costs related to performing its obligations under this Agreement.
- 17.2 **Compliance with Laws.** Each party covenants, as a material provision of this Agreement, it will comply with all codes, statutes, by-laws, regulations or other laws in force in British Columbia during the Term.
- 17.3 **Survival.** The following sections shall survive the termination or expiration of this Agreement: Sections 12 [*Environmental Provisions*], 13 [*Indemnification and Limitation of Liability*], 15 [*Dispute Resolution*], 16 [*Confidentiality*], 17.4 [*Governing Law*] and 17.7 [*Notice*].
- 17.4 **Governing law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada. The parties hereby attorn to the jurisdiction of the courts of British Columbia and all courts competent to hear appeals therefrom.
- 17.5 **Assignment.** Neither party shall assign its rights and obligations under this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld, delayed or conditioned. Despite the foregoing, FEI may assign the Agreement, or parts thereof, to any of its affiliates. If FEI assigns or otherwise transfers its title to the Fueling Station to another party, it must also assign this Agreement in accordance with the foregoing to the assignee or transferee.
- 17.6 **No Joint Venture or Partnership.** Nothing contained in this Agreement shall be construed to place the parties in the role of partners or joint venturers or agents and no party shall have the power to obligate or bind any other party in any manner whatsoever.
- 17.7 **Notice.** Any notices or other communication required to be given or made pursuant to the Agreement shall, unless otherwise expressly provided herein, shall be in writing and shall be personally delivered to or sent by facsimile to either party at its address set forth below:

If to FEI:  
**FORTISBC ENERGY INC.**  
16705 Fraser Highway, Surrey, BC V4N 0E8

Attention: Doug Stout, Vice President, Energy  
Solutions & External Relations  
Fax Number: 604-592-7670

Copy to: Will Smith, Natural Gas Vehicles  
Account Manager  
Fax Number: 250-868-4510

If to the Customer:  
**CITY OF VANCOUVER**  
453 West 12<sup>th</sup> Avenue, Vancouver, BC V5Y 1V4

Attention: Daniel Roberge, Director,  
Departmental Services,  
Fax Number: (604) 871-6119

Copy to: Francie Connell, Director, Legal  
Services  
Fax Number: (604) 873-7445

Provided that any communications with respect to day to day and other operational matters will be sufficiently and validly given if sent to either party at the following addresses:

If to FEI:

Will Smith, Natural Gas Vehicles Account  
Manager  
Fax Number: 250-868-4510  
Email: [will.smith@fortisbc.com](mailto:will.smith@fortisbc.com) (or designate as  
identified in an "out of office" reply)

If to the Customer:

LeeAnn Letourneau  
Manager, Fleet Administration  
Fax Number: 604-326-4735  
Email: [leeann.letourneau@vancouver.ca](mailto:leeann.letourneau@vancouver.ca) (or  
designate as identified in an "out of office"  
reply)

- 17.8 **Schedules.** The schedules attached to this agreement are an integral part of this Agreement and are hereby incorporated into this Agreement as a part thereof.
- 17.9 **Amendments to be in writing.** Except as set out in this Agreement, no amendment or variation of the Agreement shall be effective or binding upon the parties unless such amendment or variation is set forth in writing and duly executed by the parties.
- 17.10 **Waiver.** No party is bound by any waiver of any provision of this Agreement unless such waiver is consented to in writing by that party. No waiver of any provisions of this Agreement constitutes a waiver of any other provision, nor does any waiver constitute a continuing waiver unless otherwise provided.
- 17.11 **Enurement.** This Agreement enures to the benefit of and is binding on the parties and their respective successors and permitted assigns.
- 17.12 **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination does not impair or affect the validity, legality or enforceability of any other provision of this Agreement.
- 17.13 **Further Assurances.** The parties shall sign such further and other documents and do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement.
- 17.14 **Remedies Cumulative.** All rights and remedies of each party under this Agreement are cumulative and may be exercised at any time and from time to time, independently and in combination.

**17.15 Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no conditions, covenants, representations, warranties or other provisions, whether express or implied, collateral, statutory or otherwise, relating to the subject matter of this Agreement except as provided in this Agreement.


**17.16 Time of the Essence.** Time is of the essence of this Agreement.

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


(Signature page follows immediately)

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

FORTISBC ENERGY INC.  
by its authorized signatory(ies):

  
\_\_\_\_\_  
DOUG STOUT  
VP, MARKET DEVELOPMENT  
AND EXTERNAL RELATIONS

CITY OF VANCOUVER, by its authorized  
signatories:

  
\_\_\_\_\_  
Nick Kassam, Director, Supply Chain  
Management

\_\_\_\_\_  
Peter Judd, General Manager, Engineering

  
\_\_\_\_\_  
Francis Connell, Director, Legal Services

**Schedules attached:**

Schedule A – Financial Terms and Termination

Schedule B – Fueling Station Area

Schedule C – Fueling Station Specifications and Project Budget

Schedule D – Construction Requirements and Work Area Zones

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

FORTISBC ENERGY INC.  
by its authorized signatory(ies):



CITY OF VANCOUVER, by its authorized signatories:

Nick Kassam, Director, Supply Chain Management



FOR Peter Judd, General Manager, Engineering

Francie Connell, Director, Legal Services

**Schedules attached:**

**Schedule A – Financial Terms and Termination**

**Schedule B – Fuelling Station Area**

**Schedule C – Fueling Station Specifications and Project Budget**

**Schedule D – Construction Requirements and Work Area Zones**



**SCHEDULE A**  
**Financial Terms and Termination**

**A. FINANCIAL TERMS**

**1. Service Charges – Initial Term.**

During the Initial Term, the Service Charges payable by the Customer for use of the Fuelling Station, calculated based on the amount of fuel dispensed per gigajoule (GJ) and subject to adjustment pursuant to section A4 of this Schedule, shall be:

- (a) \$8.400/GJ in Service Year 1, \$7.176/GJ in Service Year 2, \$7.068 in Service Year 3, and for each of Service Years 4 – 10, the rate payable in the preceding Service Year increased by 2% per year (the "Capital Rate"); plus
- (b) \$0.52/GJ representing an overhead and marketing charge (the "Overhead Rate"); plus
- (c) \$2.522/GJ in Service Year 1, \$2.557 in Service Year 2 and \$2.585 in Service Year 3, and for each of Service Years 4 – 10, the rate payable in the preceding Service Year adjusted annually by the percentage increase, if any, in the Consumer Price Index (published by Statistics Canada for the Province of British Columbia, all items, not seasonally adjusted) (the "CPI Increase") from the previous twelve month period (the "O&M Rate");

(the Capital Rate, the Overhead Rate and the O&M Rate are collectively referred to as the "Base Rate")

provided that, if more than:

- (a) 2,082 GJs of fuel per month in Service Year 1,
- (b) 2,486 GJs of fuel per month in Service Year 2, and
- (c) 2,574 GJs of fuel per month in Service Years 3 – 10,

as may be adjusted pursuant to Schedule A section 4(b), is dispensed to the Customer in any month (the "Monthly Amount"), the Service Charge payable by the Customer for the amount of fuel dispensed in excess of the Monthly Amount (the "Excess Through-Put") shall be:

O&M Rate + 50% of the Capital Rate

**2. Service Charges – Renewal Term**

During the Renewal Term, the Service Charges payable by the Customer for use of the Fuelling Station, calculated based on the amount of fuel dispensed per GJ and subject to adjustment pursuant to section A4 of this Schedule, shall be:

- (a) the Capital Rate recalculated by FEI, acting reasonably and in good faith, based upon FEI's approved cost of service inputs and methodology based on the un-depreciated capital cost of the Fuelling Station increased annually by 2% on each anniversary of the In-Service Date; plus
- (b) the Overhead Rate; plus

- (c) the O&M Rate recalculated by FEI based on forecast operating and maintenance expenses for the Renewal Term, and adjusted annually on each anniversary of the In-Service Date by the CPI Increase, if any.

**3. Determination of Service Charges**

Unless otherwise provided in this Agreement, the Service Charges shall be calculated on the amount of fuel dispensed from the Fueling Station based on meter readings.

**4. Amendment to the Service Charges**

- (a) *Change in Capital Expenditure* - The Customer acknowledges the Base Rate incorporates FEI's projected capital expenditure by FEI of \$2,182,599. If:

- i. the actual capital expenditure with respect to the Fueling Station differs by +/- 2%; or
- ii. FEI upgrades or expands the Fueling Station at the request of the Customer to meet increased demand;

FEI may amend the Base Rate accordingly, subject to BCUC approval.

- (b) *Annual Review* - The Customer has the option, exercisable once in each Service Year, to request a change to the Monthly Amount if the amount of fuel dispensed monthly to the Customer over a three (3) month period is materially greater than the Monthly Amount then in effect, in which event FEI and the Customer agree to negotiate in good faith an adjustment to the Monthly Amount, Base Rate and Minimum Quantity going forward, subject to BCUC approval, and based on historical amount of fuel dispensed and reasonable estimate of the quantities of fuel to be dispensed in the future. Despite the foregoing, during Service Year 1, the Customer shall be entitled to request a change to the Monthly Amount (and the corresponding changes to the Base Rate and Minimum Quantity) once during Service Year 1 and again on the 1<sup>st</sup> anniversary of the In-Service Date. Following the 1<sup>st</sup> anniversary of the In-Service Date, the Customer will only have the option of requesting a change to the Monthly Amount once in each Service Year.

**5. Minimum Quantity**

For the purpose of calculating the Minimum Guarantee, and subject to adjustment pursuant to section A4 of this Schedule, the minimum amount of fuel to be dispensed to the Customer per Service Year (the "Minimum Quantity") shall be:

- (a) 24,981 GJs in Service Year 1,
- (b) 29,826 GJs in Service Year 2, and
- (c) 30,888 GJs in each of Service Years 3 - 10.

**6. Obligation to give Customer Undepreciated Capital Cost Table**

FEI will submit a copy of the table setting out the undepreciated capital cost of the Fueling Station over the 20 year term (the "UCC Table"): (a) upon submitting the application to BCUC for

approval of the Fueling Station and this Agreement, (b) upon BCUC approving FEI's application (if any updates have been made to the UCC Table), and (c) upon making any updates to the UCC Table following BCUC approval.

**B. EXPIRY AND EARLY TERMINATION**

1. **Expiry of Initial Term; No Renewal.** The Customer acknowledges the Base Rate and Minimum Quantity have been calculated by FEI by applying, among other things, a 20 year term despite the Initial Term being 10 years. As a result, the Customer acknowledges and agrees that if this Agreement is not renewed after the Initial Term, the Customer may, at its option:
  - (a) require FEI to remove the Fueling Station and pay to FEI, within 30 days of invoice delivered after removal, the following amounts:
    - (i) the unrecovered un-depreciated capital cost of the Fueling Station, including the positive or negative salvage value; plus
    - (ii) FEI's costs of removing the Fueling Station, or
  - (b) purchase the Fueling Station from FEI in accordance with section B3.
2. **Early Termination.** If this Agreement is terminated for any reason (including the right of the Customer to terminate at any time for any reason) during the Initial Term, or if renewed, during the Renewal Term, the Customer may, at its option:
  - (a) require FEI to remove the Fueling Station and pay to FEI, within 30 days of invoice delivered after removal:
    - (i) except in the event of termination for FEI default, FEI's costs associated with such removal; plus
    - (ii) except in the event of termination for FEI default, the unrecovered un-depreciated capital cost of the Fueling Station (including the positive or negative salvage value); plus
    - (iii) except in the event of termination for FEI default, the earnings foregone by FEI as calculated in accordance with section B4, or
  - (b) purchase the Fueling Station from FEI in accordance with section B3, and, except in the event of termination for FEI default, pay to FEI, within 30 days of the effective date of termination, the earnings foregone by FEI as calculated in accordance with section B4.
3. **Purchase of the Fueling Station.** If the Customer purchases the Fueling Station pursuant to this Agreement, the Customer shall pay to FEI, in addition to any applicable taxes thereon, a purchase price calculated as the unrecovered un-depreciated capital cost of the Fueling Station within 30 days of the effective date of termination, and upon receipt of all amounts due and owing to FEI pursuant to this Agreement, FEI will execute and deliver any documents and records reasonably required by the Customer to effect and facilitate the transfer of the Fueling Station, including bills of sale, operation and maintenance manuals and warranties.

4. **Calculation of Earnings Foregone** – Where the Customer is required to pay to FEI an amount equal to earnings foregone by FEI, the amount payable will reflect the present value of the earnings foregone by FEI (excluding amounts relating to debt costs, overhead costs and operation and maintenance costs) to the remainder of the Initial Term or, if renewed, to the remainder of the Renewal Term as reasonably calculated by FEI in good faith based upon FEI's regulated return on invested capital as approved by BCUC.
5. **Expiry of Renewal Term.** If this Agreement is renewed pursuant to section 1.2 of the body of the Agreement and subject to section 5.7 of the body of this Agreement, upon expiry of the Renewal Term, FEI shall remove the Fueling Station from the Lands if the parties do not agree upon a further renewal of the Agreement.



**SCHEDULE C  
Fueling Station Specifications and Project Budget**

**SPECIFICATIONS**

**1 – Critical Performance Specifications**

Item	Description
1	<p><b>Metered Fast Fill</b></p> <ul style="list-style-type: none"> <li>• Two hose fast fill island capable of filling two vehicles at one time</li> <li>• Capable of fueling both heavy and light duty vehicles</li> <li>• Capable of filling 88 DLE into heavy duty truck in 9 minutes, subject to the capacity of the trucks to receive the fuel</li> <li>• Compatible with OPW LD36 fill port</li> </ul>
2	<p><b>Metered Time Fill</b></p> <ul style="list-style-type: none"> <li>• Metered time fill system capable of filling 40 vehicles sequentially or at the same time</li> <li>• Capable of filling 33 units to 88 DLE in 4.2 hours using one compressor, 2.1 hours using two compressors, subject to the capacity of the trucks to receive the fuel</li> <li>• Capable of tracking fuel added to each vehicle</li> <li>• Capable of switching back to regular non-metered time fill if requested by the Customer</li> <li>• Compatible with OPW LD36 fill port</li> </ul>
3	<p><b>Fuel Quality</b></p> <ul style="list-style-type: none"> <li>• Fuel quality will not be degraded and oil and water content will be within the limits specified by vehicle manufacturers, and will be adjusted in the event that vehicle manufacturer specifications are updated</li> </ul>
4	<p><b>Fuel Use Reporting</b></p> <ul style="list-style-type: none"> <li>• Monthly reporting</li> <li>• Fuel dispensed to be reported on individual vehicle basis as well as total fuel dispensed</li> </ul>
5	<p><b>Codes and Standards</b></p> <ul style="list-style-type: none"> <li>• CAN/CSA B108 Natural Gas Fuelling Stations Installation Standard</li> <li>• CSA B51 Parts 1 &amp; 3 – Canadian Boiler Pressure Vessel and Piping Code</li> <li>• ASME Boiler and Pressure Vessel Code</li> <li>• ASME/ANSI B31.3 Process Piping as required by CSA B51</li> <li>• CSA B149.1 Natural Gas and Propane Installation Code</li> <li>• API 520 – Sizing, Selection and Installation of Pressure-Relieving Devices in Refineries</li> </ul>

Item	Description
	<ul style="list-style-type: none"> <li>• ANSI/CSA NGV1 -- Compressed Natural Gas Vehicle Fuelling Connection Devices</li> <li>• ANSI NGV4.2-1999/CSA 12.52 -- Hoses for Natural Gas Vehicles and Dispensing Systems</li> <li>• CSA C22.1 -- Canadian Electrical Code</li> <li>• CSA Z432 -- Safeguarding of Machinery</li> <li>• Measurement Canada Weights and Measures Act and Regulations</li> <li>• BC Building Code</li> <li>• BC Fire Code</li> <li>• BC Plumbing Code</li> <li>• Vancouver Building Bylaw</li> <li>• Vancouver Zoning and Development Bylaw</li> <li>• Any other industry-accepted codes and standards</li> </ul>

## 2 – Major Equipment and Other Key Specifications

Item	Description	Qty
1.	<b>Gas Meter Set (Standard Package)</b> <ul style="list-style-type: none"> <li>• FortisBC custody transfer meter with bypass line</li> </ul>	1
2.	<b>Natural Gas Dryer (Standard Package)</b> <ul style="list-style-type: none"> <li>• Single-tower, skid mounted, non-enclosed with bypass line</li> <li>• External regeneration (not on-skid)</li> <li>• 1000 scfm minimum flow capacity</li> </ul>	1
3.	<b>ANGI CNG Compressors (Standard Package)</b> <ul style="list-style-type: none"> <li>• Single weather-enclosed skid</li> <li>• Twin 200hp electric-driven reciprocating compressors</li> <li>• 575VAC/3-ph/60Hz drive motors</li> <li>• Inlet and discharge filtration</li> <li>• Standalone PLC panel and control system (may be on or off-skid)</li> <li>• Off-skid MCC panel with electronic motor soft starters</li> <li>• Suction/Discharge Pressure: 40/4500 psig</li> <li>• Minimum flow capacity per compressor: 450 scfm @ 40 psig suction</li> </ul>	1
4.	<b>Gas Management/Priority Panel (Custom-built)</b> <ul style="list-style-type: none"> <li>• Single weather-enclosed cabinet</li> <li>• 3-line fast-filling controls</li> <li>• 3-bank storage pressure mgmt and automatic ESD isolation valves</li> <li>• Metered time-filling controls w/MicroMotion CNG050 meter</li> <li>• On-skid PLC panel and control system</li> <li>• 2000 scfm minimum flow capacity</li> </ul>	1
5.	<b>CNG Storage Cascade</b> <ul style="list-style-type: none"> <li>• 3 ASME cylindrical vessels, stacked</li> <li>• MAWP = 5000 psig with single ASME relief valve per vessel</li> <li>• 967 L water volume per vessel</li> <li>• 33,000 scf natural gas capacity @ 4500 psig</li> </ul>	1
6.	<b>2- Hose CNG Dispenser (Metered Fast-Filling)</b> <ul style="list-style-type: none"> <li>• Dual-hose, 3600 psig @ 70F temperature compensated filling</li> <li>• Single ASME relief valve per hose; MAWP = 5000 psig</li> <li>• MicroMotion CNG050 Mass flow meter per hose</li> <li>• Digital totalizer display per hose</li> <li>• Hoses mounted remotely to structural steel posts</li> </ul>	1
7.	<b>4- Hose Time-Fill Posts</b> <ul style="list-style-type: none"> <li>• 4-hose, 3600 psig @ 70F temperature compensated filling</li> <li>• Dedicated solenoid valve per hose controlled by Gas Mgmt Panel PLC</li> </ul>	10



Item	Description	Qty
8.	<b>Fuel Management System</b> <ul style="list-style-type: none"> <li>• Site computer for tracking fuel usage and billing mgmt.</li> <li>• Comm. box for interfacing to CNG dispenser and Gas mgmt. panel PLC</li> <li>• Authorizes each CNG dispenser hose via point-of-sale fuel island terminal</li> <li>• Authorizes each time-fill hose via fuel island terminals</li> <li>• Can be accessed remotely via internet</li> </ul>	1
9.	<b>Point-of-Sale Fuel Island Terminal (Metered Fast-Filling)</b> <ul style="list-style-type: none"> <li>• Weather-enclosed pedestal</li> <li>• HMI display and keypad user interface</li> <li>• Capable of fleet-card or keyfob fill authorization</li> <li>• Includes receipt printer</li> </ul>	1
10.	<b>Fuel Island Terminal (Metered Time-Filling)</b> <ul style="list-style-type: none"> <li>• Weather-enclosed pedestal</li> <li>• Keypad user interface</li> <li>• Capable of fleet-card or keyfob fill authorization</li> </ul>	2
11.	<b>De-Fuel Panel</b> <ul style="list-style-type: none"> <li>• Single weather-enclosed cabinet</li> <li>• De-fuelling regulators and heat exchanger</li> <li>• Fuel that is de-fueled from unit is fed in to supply side of compressor</li> </ul>	1
12.	<b>De-Fuel Post</b> <ul style="list-style-type: none"> <li>• Single de-fuelling hose</li> </ul>	1
13.	<b>MCC Kiosk</b> <ul style="list-style-type: none"> <li>• Pre-fab steel weather-proof enclosure w/lights and heating</li> <li>• 4 sets of double-doors</li> <li>• 600VAC service entrance and distribution switchgear</li> <li>• 120V step-down transformer and 120V panel</li> <li>• CNG compressor MCC panels</li> <li>• Space for future install of MCC panel</li> <li>• Fuel management site computer and comm. box</li> <li>• Internet connection with router for station remote monitoring and alarm notification</li> <li>• Complete with Siemens Soft Starts</li> </ul>	1
14.	<b>Seismic Automatic Gas Shut-off Valve</b> <ul style="list-style-type: none"> <li>• Pneumatic actuator</li> <li>• Fails safe (closed)</li> <li>• Interlocked with station ESD system</li> </ul>	1
15.	<b>Gas Service</b> <ul style="list-style-type: none"> <li>• Dedicated gas service tied in to 3" gas main running north-south along Manitoba Street</li> </ul>	1

Item	Description	Qty
16.	<b>Flood Plain Elevation Requirements</b> <ul style="list-style-type: none"> <li>• All components critical to station operation and subject to damage from water are to be raised to an elevation of 4.8 meters above sea level, including: <ul style="list-style-type: none"> <li>○ Compressor compound</li> <li>○ Electrical terminations and junction boxes</li> <li>○ All fast fill and time fill Fuel Authorization terminals</li> </ul> </li> <li>• The compound will be elevated with fill held back by a surrounding retaining wall</li> <li>• All in ground electrical cabling and wiring will be made impervious to water</li> </ul>	

### 3 – Project Budget

#### CITY OF VANCOUVER - MANITOBA WORKS YARD CNG STATION

PROJECT COST SUMMARY	Budget
PROJECT MANAGEMENT	\$ 82,500.00
PERMITS	\$ 17,147.00
ENGINEERING	\$ 151,650.00
EQUIPMENT	\$ 889,840.00
EQUIPMENT ADD'L	\$ 16,500.00
PIPING & MATERIALS	\$ 88,644.00
TESTING , COMMISSIONING	\$ 15,700.00
CONSTRUCTION	\$ 713,300.00
Construction Management	\$ 48,000.00
Civil Work	\$ 408,300.00
Electrical Work	\$ 225,500.00
Mechanical Work	\$ 33,500.00
Total Contingency (10%)	\$ 188,418.10
<b>GRAND TOTAL (Includes 10% contingency)</b>	<b>\$ 2,182,599.10</b>

#### BUDGET ASSUMPTIONS:

Budget based on site plan 10-072-C-000-00 R3

Based on costs to FortisBC or general contractor (GC).

Does not include costs associated with City of Vancouver administration and project management

Does not include costs for City of Vancouver Gas Permits or inspections if required

Does not include any costs associated with site-specific right-of-ways

Does not include land survey

Does not include hazardous waste removal or fill, compacting and site grading

Pipe routing is based on most direct route between equipment; utility locate is required to confirm routing

Assumes BC Hydro will authorize 600V service fed from power pole at Kent Avenue

Includes lighting at compressor compound and fast-fill area only

Does not include supply and installation of security camera equipment and wiring.

Assumes existing lights at time-fill area can be reused

Does not include site storm sewer or drainage upgrades or plumbing permit

**SCHEDULE D**  
**Construction Requirements and Work Area Zones**

**1.1 Notice with Respect to Construction Related Matters**

Despite section 17.7 of the body of this Agreement, communications with respect to day to day design, construction, commissioning and access matters will be sufficiently and validly given if sent to either party's Construction Project Manager at the email addresses provided below. Any communications sent after 5 p.m. will be considered as given the next business day:

If to FEI:

**Gary Lingle**  
Email: gary.lingle@fortisbc.com (or designate as identified from time to time or in an "out of office" reply)

If to the Customer:

**Alfredo Verdicchio, Project Manager**  
Email: alfredo.verdicchio@vancouver.ca (or designate as identified from time to time or in an "out of office" reply)

**1.2 Construction Access.**

- (a) The Customer grants to FEI, at no cost, a non-exclusive license, for FEI and its authorized employees, contractors and agents, with or without vehicles, machinery and equipment, over those locations on the Lands as mutually agreed between the parties and modified during the course of construction as necessary pursuant to subsection 1.4(b)(vi) below to enable FEI to construct, excavate, install, place, construct, and commission the Fueling Station (each such location, a "Work Area").

**1.3 Construction Safety at Work Area.**

The following provisions shall apply to the extent there are any Work Areas:

- (a) *FEI's Responsibility:* Once FEI commences construction within a Work Area and until FEI's completes construction within that Work Area, FEI shall be solely responsible for construction safety at that Work Area and for compliance with the rules, regulations and practices required by applicable construction health and safety legislation and shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with FEI's performance of its obligations under this Agreement within that Work Area.
- (b) *Prime Contractor:* Upon FEI's commencement of construction and until FEI's completion of construction in respect of a Work Area, FEI shall be and act as the prime contractor (as defined in the *Workers' Compensation Act* (British Columbia) (the "WCA")) and assume and be wholly responsible for the health and safety of all persons in that Work Area in accordance with the requirements of the WCA.
- (c) *FEI's Indemnity:* FEI shall indemnify and save harmless the Customer from any and all damages, liabilities, cost, fines, penalties, fees and expenses whatsoever including, without limitation, legal fees, charges and disbursements as between a solicitor and his own client, related to or arising out of the assignment to FEI, and FEI's assumption, of the responsibilities, obligations and liabilities of the "prime contractor" under the WCA.

with respect to a Work Area for the duration of time FEI is undertaking construction within that Work Area.

- (d) **WorkSafe Coverage:** FEI agrees that it shall at its own expense procure and carry or cause to be procured and carried and paid for, full WorkSafeBC coverage for itself and all workers, employees, servants and others engaged in or upon any work or service which is FEI's responsibility pursuant to this Agreement.

#### **1.4 Communications.**

- (a) Upon entering into this Agreement, each party will advise the other in writing of their designated Construction Project Manager for the design, construction and commissioning phases of this Agreement and all communications during this period will be directed by each party to the other's Construction Project Manager in accordance with section 1 of this Schedule.
- (b) FEI will conduct a meeting on site every two weeks (subject to the request by either party's Construction Project Manager, acting reasonably, for more frequent meetings if warranted by particular circumstances) during the procurement and construction periods to review design, construction, commissioning, site safety and site coordination issues and will invite the Customer's Construction Project Manager to attend such meetings.

At a minimum, meeting topics will include:

- (i) design and construction schedule status and update;
- (ii) review of detailed budget (dated September 18, 2014), budget status (comparison of budget to actual costs incurred) and update;
- (iii) amendments to Specifications (if any);
- (iv) current balance of Contingency Amount, accounting of drawdowns since last site meeting and any proposed drawdowns to next site meeting;
- (v) work phasing;
- (vi) adjustment (if necessary) and confirmation of Work Area boundaries until next site meeting;
- (vii) hoarding/fencing plans;
- (viii) Work Area safety plan until next site meeting;
- (ix) accommodation of Customer's operational requirements until next site meeting;
- (x) planned connection or interruption to critical utility services (electrical, water, sewer, gas etc.) with at least 3 days' notice required;
- (xi) temporary utilities;

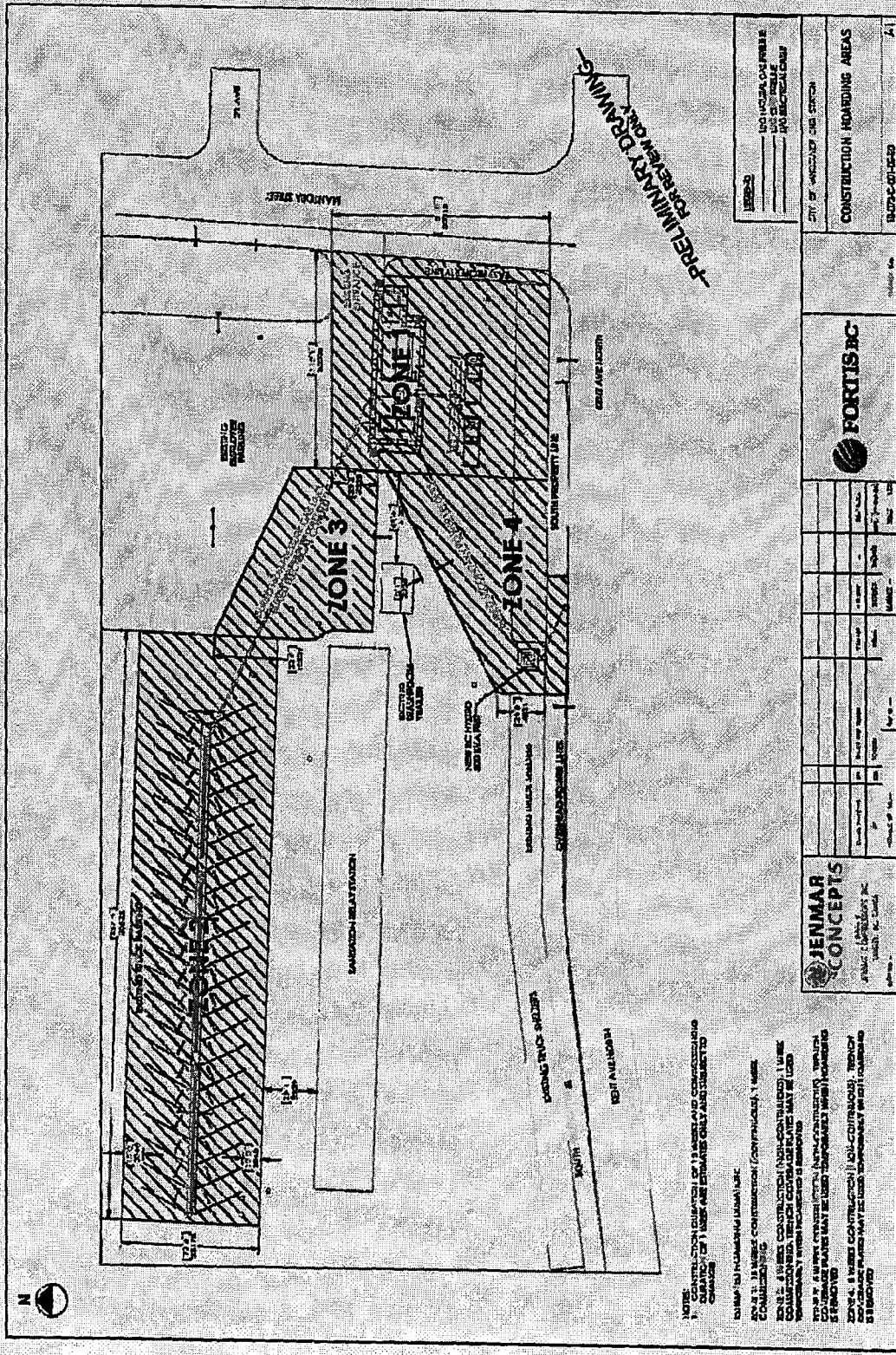
- (xii) submission by FEI of designs, drawings, plans, applications for governmental approval and other documents related to design, construction and commissioning to the Customer for review and approval; and
- (xiii) date of next site meeting.

**1.5 Customer's Review and Inspection.** To ensure compliance with the Specifications, FEI's Construction Project Manager will provide the Customer's Construction Project Manager a reasonable period of time that will not cause schedule delays to, as applicable, review the documents contemplated in section 1.4(b)(xii) above or inspect any work-in-progress or completed work. The Customer's Construction Project Manager shall, as quickly as reasonably possible without causing any schedule delays, advise FEI's Construction Project Manager of any non-compliance with this Agreement. This provision in no way releases FEI from its obligation to supply the Fueling Station and otherwise comply with its obligations in accordance with the terms of this Agreement.

**1.6 Record Drawings and Documentation**

- (a) FEI will maintain on site throughout construction one complete set of construction documents, and will record as-built conditions on the construction drawings wherever they deviate from the original.
- (b) At completion of construction, FEI will deliver to the Customer's Construction Project Manager one complete hardcopy set of as-built record drawings of the Fueling Station incorporating all deviations recorded, and will hold and maintain one complete set.

**Diagram of Defined Work Areas (Preliminary and Subject to Change per the Applicable Sections of this Agreement)**



**NOTE:**  
 1. CONSTRUCTION ZONES OF 15 METERS OR MORE ARE CONSIDERED AS CONSTRUCTION ZONES AND ARE SUBJECT TO THE CITY'S CONSTRUCTION ZONE BY-LAW.  
 2. ZONE 1: 15 METERS CONSTRUCTION (CONSTRUCTION 1) WORK COMMENCING DATE: [DATE] CONSTRUCTION 1 WORK MAY BE USED.  
 3. ZONE 2: 15 METERS CONSTRUCTION (CONSTRUCTION 2) WORK COMMENCING DATE: [DATE] CONSTRUCTION 2 WORK MAY BE USED.  
 4. ZONE 3: 15 METERS CONSTRUCTION (CONSTRUCTION 3) WORK COMMENCING DATE: [DATE] CONSTRUCTION 3 WORK MAY BE USED.  
 5. ZONE 4: 15 METERS CONSTRUCTION (CONSTRUCTION 4) WORK COMMENCING DATE: [DATE] CONSTRUCTION 4 WORK MAY BE USED.



26000 3355



Equipment Services Branch

MEMO TO: Janice MacKenzie, City Clerk  
City Clerk's Department

CC: Do H. Nguyen, Corporate Policy, Agreements & By-law Administrator

FROM: Dave Tolnai, Mechanical Engineer, 84768

DATE: February 25, 2013

SUBJECT: FortisBC Compressed Natural Gas Vehicle Purchase Incentives

Attached please find the following documents for filing:

<b>TYPE OF AGREEMENT</b>	One copy of signed Consulting Agreement Re: FortisBC Vehicle Incentive Program Contribution Agreement
<b>DATE OF AGREEMENT</b> (if this date is execution date and there is more than one date, use the latest date as the date of the agreement)	January 28 <sup>th</sup> , 2013
<b>PARTIES</b> (complete names)	City of Vancouver and FortisBC
<b>CIVIC ADDRESS</b> (no abbreviations - must be searchable)	16705 Fraser Highway Surrey, BC V4N 0E8
<b>AGREEMENT DESCRIPTION</b> (no abbreviations - must be searchable)	Agreement for FortisBC to pay the City of Vancouver incentives towards the purchase of vehicles powered by Compressed Natural Gas
<b>EXPIRY DATE</b>	December 31 <sup>st</sup> , 2013
<b>RETENTION DATE</b>	December 31 <sup>st</sup> , 2014

City of Vancouver, Equipment Services, Manitoba Yard  
453 West 12th Avenue  
Vancouver, British Columbia, Canada V5Y 1V4  
website: vancouver.ca



<b>(usually one year after expiry date)</b>	
<b>WHO TO NOTIFY:</b>	Amy Sidwell, Equipment Services Branch, Departmental Services Division, 84765 Dave Tolnai, Equipment Services Branch, Departmental Services Division, 84768
<b>FILE NUMBER</b>	N/A



**Nguyen, Do**

---

**From:** Tolnai, Dave  
**Sent:** Monday, February 25, 2013 2:55 PM  
**To:** Nguyen, Do  
**Cc:** Sidwell, Amy  
**Subject:** Signed FortisBC Vehicle Contribution Agreement  
**Attachments:** Memo - Fortis Contract.docx; Vehicle Contribution Agreement\_FEI\_CoV Jan 31 2013.pdf

Do:

Attached is a signed copy of our agreement with FortisBC for vehicle purchase incentives. As well, I have attached a completed memo with a few modifications as per our discussion. I have not sent hard copies in the mail. If this is required, please let me know.

Thanks,  
Dave

January 28<sup>th</sup>, 2013

City of Vancouver  
250 West 70<sup>th</sup> Avenue,  
Vancouver, British Columbia  
V5X 2X1

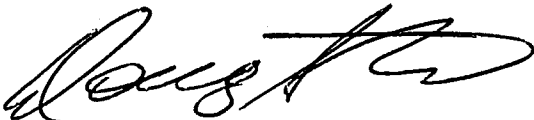
Dear Recipient:

Subject: Signed FortisBC Vehicle Incentive Program Contribution Agreement

Attached please find the signed FortisBC Vehicle Incentive Program Contribution Agreement between FortisBC Energy Inc. (FEI) and City of Vancouver.

FEI confirms that the costs of registering and discharging any security interest in the Personal Property Security Registry pursuant to section 2.9 will be borne by FEI in accordance with section 9.3. In addition, FEI agrees, to register a discharge of the security notice against each vehicle upon termination of the agreement or the end of the Service Life for such vehicle upon receipt of written request by the City of Vancouver or otherwise in accordance with the Personal Property Security Act and provide the City of Vancouver proof of such discharge.

Sincerely,



Doug Stout  
Vice President, Energy Solutions & External Relations

## NATURAL GAS VEHICLE CONTRIBUTION AGREEMENT

THIS AGREEMENT is made effective as of January 28<sup>th</sup>, 2013 (the "Effective Date")

### BETWEEN:

**City of Vancouver,**  
250 West 70<sup>th</sup> Avenue, Vancouver, British Columbia, V5X 2X1 (the "Recipient")

### AND:

**FORTISBC ENERGY INC.**  
16705 Fraser Highway, Surrey, British Columbia, V4N 0E8  
("FEI")

### WHEREAS:

- A. The Recipient wishes to purchase up to 44 powered by compressed natural gas (the "Vehicles", or individually, a "Vehicle").
- B. FEI wishes to support the use of energy sources that decrease greenhouse gas emissions and encourage the use of natural gas vehicles in commercial sectors by contributing to the purchase costs of such vehicles utilizing its Natural Gas for Transportation (NGT) incentive funding.
- C. The Recipient has applied to FEI for funding assistance and FEI has agreed to contribute to the purchase price of the Vehicles on the terms and conditions set out in this Agreement.

**NOW THEREFORE**, in consideration of the mutual promises set out herein and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged) the parties agree as follows:

#### 1. Representations and Warranties

- 1.1 **Recipient Information.** The Recipient acknowledges FEI's decision to provide funding assistance to the Recipient is based on information provided by the Recipient in its application for NGT funding and obtained by FEI during the application review process. The Recipient represents and warrants to FEI that all such information is true and accurate as of the date of execution of this Agreement. The Recipient shall immediately notify FEI of any changes to the Recipient's information or, if the representations and warranties contained in this section 1 cease to be true, at any time during the Term.
- 1.2 **Vehicle Use.** The Recipient represents and warrants to FEI the Vehicles will be primarily used in British Columbia; where primary use shall mean at least 75% of total kilometers driven in any year, or as otherwise reasonably determined by FEI.
- 1.3 **Fuel Source** – The Recipient represents and warrants to FEI the Recipient will fuel the Vehicles using a natural gas fueling source approved by FEI, acting reasonably, including:
  - (a) directly from FEI; or
  - (b) from an FEI owned fueling station;

(c) from fueling station installed on the Recipient's premises or operated by a third party, which uses natural gas purchased from FEI; or

(d) from an approved card lock service which uses natural gas purchased from FEI;

and will provide a copy of its fueling plan to FEI for approval.

1.4 **Quality and Fitness of Vehicles.** Despite any input, information or contribution made by FEI to the Recipient with respect to the purchase of the Vehicles, FEI makes no warranties or representations, express or implied, with respect to the Vehicles or natural gas vehicles in general, including but not limited to any implied warranty of merchantability, fitness for a particular purpose or durability. It is the sole responsibility of the Recipient to determine the suitability of the Vehicles for its purposes and undertake any due diligence the Recipient considers necessary and appropriate.

2. **Contribution and Payment**

2.1 **Amount of Contribution.** Subject to reduction pursuant to section 2.2 (*Maximum Contribution*) and section 2.4 (*Third Party Funding*), FEI will make a contribution to the purchase of each Vehicle in the following maximum amounts per Vehicle, based on vehicle type (the "FEI Contribution").

Vehicle	FEI Contribution, per Vehicle	Quantity	Subtotal
Street Sweepers	\$ 65,250	4	\$ 261,000
20 Yard Garbage Truck	\$ 39,840	9	\$ 358,560
Automated Side Loading Garbage Trucks	\$ 39,840	29	\$ 1,155,360
8 Yard Garbage Truck	\$ 39,840	2	\$ 79,680

Despite the foregoing, the following conditions shall apply:

- (a) FEI Contributions will be made for the purchase of up to 44 Vehicles;
- (b) the aggregate amount of the FEI Contributions shall not exceed \$1,854,600; unless otherwise agreed to by FEI in writing; and
- (c) an FEI Contribution will not be made for any Vehicles:
  - (i) ordered or purchased prior to the Effective Date; and
  - (ii) purchased after May 31<sup>st</sup>, 2013, unless otherwise agreed to by FEI in writing.

2.2 **Maximum Contribution.** If the FEI Contribution exceeds seventy five percent (75%) of the Price Differential (the "Maximum Contribution"), the Financial Contribution for such Vehicle will be reduced to equal the Maximum Contribution; where "Price Differential" means the difference between the purchase price of a comparable diesel powered vehicle and the purchase price of the Vehicle, not including taxes and PDI.

2.3 **Determination of Price Differential.** For the purpose of calculating the Price Differential, the Recipient will provide evidence, satisfactory to FEI, identifying the purchase price of a diesel powered vehicle having the same or similar attributes as the Vehicle, which evidence may include recent sales or acquisitions and quotes from dealers or manufacturers. FEI reserves the

right to independently verify the purchase price data and to calculate the Price Differential based on the evidence provided by the Recipient or as otherwise obtained by FEI.

2.4 **Third Party Funding.** This Agreement does not preclude the Recipient or FEI from applying for, soliciting or accepting grants, funding or contributions from other sources towards the purchase or operation of the Vehicles (the “Third Party Funding”), provided that if:

- (a) the Recipient accepts Third Party Funding within five (5) years of the Effective Date; and
- (b) such Third Party Funding would not otherwise be available to the Recipient in the ordinary course of business for the purchase of any vehicles; and
- (c) the FEI Contribution set out in section 2.1 plus the Third Party Funding exceeds the Maximum Contribution;

the FEI Contribution will be reduced by the amount the FEI Contribution set out in section 2.1 plus the Third Party Funding exceeds the Maximum Contribution and the Recipient will return that excess amount within five (5) business days of receipt of the Third Party Funding. The Recipient covenants and agrees to immediately provide FEI the details of any applications submitted or offers or opportunities for Third Party Funding and, upon receipt of a commitment for Third Party Funding, the details and amounts thereof. Any Third Party Funding applied for, and received by, FEI shall be incorporated into and become part of the FEI Contribution. For the purpose of this section, “Third Party Funding” does not include federal or provincial tax incentives for the acquisition and/or operation of natural gas vehicles, including any special depreciation class (“Tax Incentives”).

2.5 **Application of FEI Contribution.** The Recipient shall apply the FEI Contribution towards the purchase price of the Vehicle and not towards lease or financing payments. If the Recipient is a vehicle leasing company the FEI Contribution will accrue to the benefit of the lessee of the Vehicle and lease payments adjusted accordingly.

2.6 **Payment.** FEI shall pay the FEI Contribution to the Recipient in the following manner:

- (a) twenty-five (25%) percent within thirty (30) days following receipt of documentation satisfactory to FEI of a purchase commitment for the Vehicle and confirmation of the purchase price of a similar diesel powered vehicle in accordance with section 2.3 (*Determination of Price Differential*); and
- (b) the balance within thirty (30) days following receipt of documentation satisfactory to FEI that the purchase of the Vehicle has been completed and the Vehicle is registered and insured in the name of the Recipient;

provided that FEI may, in its discretion, and upon notice to the Recipient, adjust the payment schedule to enable payments of the FEI Contribution to be made for multiple Vehicles concurrently, including upon the completion of the purchase of all the Vehicles.

2.7 **Return of FEI Contribution.**

(a) In addition to any repayments to be made pursuant to section 2.4 (*Third Party Funding*) and section 7 (*Default*), the Recipient shall, unless otherwise agreed to by FEI in writing, return the FEI Contribution made with respect to a Vehicle, in whole or in part in accordance with subsection (b) below, and FEI will be under no obligation to make any further FEI Contribution with respect to such Vehicle, in the following circumstances (each a "Repayment Event"):

- (i) the purchase of the Vehicle does not complete within one (1) year of the Recipient entering into the purchase commitment for the Vehicle or such later date approved in writing by FEI;
- (ii) at any time prior to the end of the Service Life Term of the Vehicle as set out in the table below, which Service Life Term commences upon the completion of Vehicle registration and insurance in the name of the Recipient (the "Service Life Term"), the Recipient receives insurance proceeds as a result of the Vehicle being written off by the insurer, unless the Recipient applies the insurance proceeds to the purchase of a replacement natural gas vehicle having the same or similar attributes as the Vehicle.

Vehicle	Service Life Term (Years)
Street Sweepers	7
20 Yard Garbage Truck	9
8 Yard Garbage Truck	8
Automated Side Loading Garbage Trucks	8

- (iii) at any time prior to the end of the Service Life Term, the Recipient:
  - A. sells or otherwise transfers its right, title or interest in and to the Vehicle to any person;
  - B. removes the Vehicle from regular service, with the exception of temporary removal for the purpose of repair or maintenance;
  - C. does not use the Vehicle primarily in British Columbia;
  - D. removes or replaces the natural gas fuel system components from the Vehicle;
  - E. when fueling the Vehicles, fails to comply with applicable natural gas safety codes, standards and requirements, whether existing at law or in accordance with fueling and fuel management procedures as specified by FEI through training or otherwise or as set out in the Recipient's approved fueling plan; or
  - F. ceases to purchase natural gas through FEI for the purpose of fueling the Vehicles.

(b) The Recipient will notify FEI in writing within five (5) business days of the occurrence of a Repayment Event, and within five (5) business days following such notification, the Recipient will return to FEI:

- (i) the total FEI Contribution, where sub-section 2.7(a)(i) applies;
- (ii) a proportionate share of the insurance proceeds based on the amount of the FEI Contribution relative to the purchase price of the Vehicle, where sub-section 2.7(a)(ii) applies; or
- (iii) the FEI Contribution reduced at the rate of 1/Service Life Term for each completed year after the purchase of the Vehicle prior to one or more of the conditions set out in sub-section 2.7(a)(iii) becoming applicable.

2.8 **Overdue Payments.** If the Recipient fails to make any repayment of an FEI Contribution by its due date, such overdue payments will be subject to a late payment charge of 1.5% per month (19.56% per annum) and FEI shall be entitled to deduct such overdue amounts, plus interest thereon, from any future FEI Contribution to the Recipient.

2.9 **Security Interest.** In consideration of FEI making a financial contribution towards the purchase of the Vehicles, the Recipient hereby grants to FEI a security interest in and to the Vehicles to secure the Recipient's obligations under this Agreement and the Recipient hereby consents to the registration of such security interest by FEI in priority to any other security interest over the Vehicles, save and except any security interest granted to lenders as a purchase money security interest or registered against such Vehicles as serial numbered goods and granted to enable the purchase of the Vehicles.

### 3. Maintenance and Use of Vehicles

3.1 **Operating and Maintenance.** Except as otherwise provided in this Agreement, at all times during the Service Life Term, the Recipient is responsible for the purchase, use, operation and maintenance of the Vehicles, including any modifications or upgrades required to the Recipient's facilities to accommodate the Vehicles.

3.2 **Vehicle Data and Information.** During the Service Life Term, the Recipient shall provide to FEI all data and information reasonably requested by FEI from time to time with respect to the Vehicles, including mileage, gas consumption and hours of usage (if tracked). FEI shall be entitled to use all such data and information for statistical, marketing and other purposes, to include such data and information in any reports, publications and other records distributed by FEI from time to time and to disclose such data and information to any governmental authority, including the BCUC; provided that when disclosing such data publicly, FEI agrees not to attribute such data to the Recipient by name or in a manner which would identify the data as belonging to the Recipient, except to the extent required by law or as otherwise agreed by the Recipient in writing.

### 4. Advertising and Marketing

4.1 **Vehicle Decals.** FEI shall be entitled to affix decals to the exterior of the Vehicles incorporating FEI's corporate logo and web-site information and identifying the Vehicles as powered by natural gas by FEI, all of reasonable size and prominence as approved by the Recipient, which approval will not be unreasonably withheld, delayed or conditioned.

#### 4.2 **Public Announcements.**

- (a) Neither party shall issue a press release, public announcement, or marketing or promotional material with respect to the Vehicles or this Agreement (the "**Marketing Materials**") without the consent of the other party, such consent not to be unreasonably withheld, delayed or conditioned.
- (b) The Recipient shall acknowledge FEI's contribution towards the purchase of the Vehicles in all Marketing Materials issued by or on behalf of the Recipient.
- (c) This section shall not restrict FEI from publicly disclosing the award of funding (including the details thereof), making regulatory submissions with respect to such funding or claiming environmental attributes, without being required to obtain the Recipient's consent.

#### 5. **Environmental Attributes**

5.1 For the purpose of this Agreement, "**Environmental Attributes**" means:

- (a) all attributes associated with, or that may be derived from, the Recipient's acquisition and use of the Vehicles having decreased environmental impacts relative to the use of diesel powered vehicles including any existing or future credit, allowance, certificate, right, benefit or advantage or proprietary or contractual right whether or not tradeable;
- (b) any existing or future instrument, including any environmental emission allowances and environmental emission reduction credits, reduction right, allowance, certificate or other unit of any kind whatsoever, whether or not tradeable and any other proprietary or contractual right, whether or not tradeable, and any resulting from, or otherwise related to the actual or assumed deduction displacement or offset of emission associated with, or that may be derived from, the Recipient's acquisition and use of the Vehicles; and
- (c) all revenues, entitlement, benefits and other proceeds arising from or related to the foregoing;

but excluding Tax Incentives.

5.2 Unless the Recipient is mandated, by legislation, or regulation, to claim any Environmental Attributes that arise or accrue by virtue of the acquisition and use of the Vehicles, all right, title and interest in the Environmental Attributes that arise or accrue by virtue of the acquisition and use of the Vehicles will belong to FEI.

#### 6. **Indemnification**

6.1 **Recipient Indemnity.** The Recipient shall indemnify and hold harmless each of FEI, its affiliates and their employees, directors, representatives, agents, officers and contractors from and against any and all adverse claims, losses, suits, actions, judgments, demands, debts, accounts, damages, costs, penalties and expenses (including all legal fees and disbursements) arising from or out of:



- (a) any injury to persons (including death) or loss of or damage to property which may be or be alleged to be caused or suffered as a result of the use or operation of the Vehicles;
- (b) any claim, demand or action made by a third party against it or any of them based upon FEI's capacity as a provider of financial assistance under this Agreement; or
- (c) any breach by the Recipient, its employees, directors, officers, representatives, agents or contractors of any of the provisions contained in this Agreement.

7. **Default**

7.1 **Default by the Recipient.** If, in the opinion of FEI, the Recipient has made any misrepresentation under the terms of this Agreement, or has failed to proceed diligently with the purchase of the Vehicles or is otherwise in default on carrying out the terms and conditions of this Agreement, FEI may exercise any or all of the following remedies:

- (a) terminate this Agreement in whole or in part;
- (b) terminate its obligation to pay any FEI Contribution, whether due or accruing due at the time of such termination; and
- (c) require the Recipient to immediately repay all or any part of the FEI Contributions made by FEI to the Recipient.

8. **Dispute resolution**

8.1 Where any dispute arises out of or in connection with this Agreement, either party may request the other party to appoint senior representatives to meet and attempt to resolve the dispute either by direct negotiations or mediation. Unresolved disputes may be submitted for final resolution by arbitration administered by the British Columbia International Commercial Arbitration Centre under its "Shorter Rules for Domestic Commercial Arbitration" in Vancouver, British Columbia, Canada. The language of that arbitration will be English. Alternatively, the Parties may agree, within 15 days of request by a party for final resolution, to submit that dispute for final resolution by arbitration in another manner.

8.2 The parties shall continue to fulfill their respective obligations pursuant to this Agreement during the resolution of any dispute in accordance with this section.

9. **General**

9.1 **Term.** The term of this Agreement shall commence on the Effective Date and terminate upon the expiration of the Service Life Term of all of the Vehicles, unless terminated earlier pursuant to the terms and conditions of this Agreement (the "Term").

9.2 **Inspection and Audit.** The Recipient shall, at all times during the Term, maintain accurate and complete records of its operations, including with respect to the information provided by the

Recipient in its application for NGT funding, and the use and activities of the Vehicles (collectively, the "Records"). The Recipient agrees FEI or its authorized representative shall have access to and the right to examine and audit the Records and the operations of the Recipient at any time during regular business hours to ensure the accuracy of the Recipient's application and compliance with terms of this Agreement.

- 9.3 **Costs.** Except as otherwise set out in this Agreement, each party will be responsible for the payment of its own costs and expenses related to performing its obligations under this Agreement.
- 9.4 **Survival.** The following sections shall survive the termination or expiration of this Agreement: Sections 2.4 [*Third Party Funding*], 2.7 [*Return of FEI Contribution*], 5 [*Environmental Attributes*], 6 [*Indemnification*], 8 [*Dispute Resolution*], 9.5 [*Governing Law*] and 9.8 [*Notice*].
- 9.5 **Governing law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada. The parties hereby attorn to the jurisdiction of the courts of British Columbia.
- 9.6 **Assignment.** The Recipient shall not assign its rights and obligations under this Agreement without the prior written consent of FEI, which consent shall not be unreasonably withheld. FEI may assign this Agreement, or parts thereof, to any of its affiliated entities.
- 9.7 **Relationship.** Nothing contained in this Agreement shall be construed to place the parties in the role of partners or joint venturers or agents and no party shall have the power to obligate or bind any other party in any manner whatsoever.
- 9.8 **Notice.** Any notices or other communication required to be given or made pursuant to the Agreement shall, unless otherwise expressly provided herein, be in writing and shall be personally delivered to or forwarded by postage prepaid mail to either party at its address set forth below:

TO FEI:

**FORTISBC ENERGY INC.**  
16705 Fraser Highway  
Surrey, BC V4N 0E8

**Attention:**  
FortisBC NGT Incentive Program  
Energy Products & Services

TO THE RECIPIENT:


**City of Vancouver,**  
250 West 70<sup>th</sup> Avenue,  
Vancouver, BC, V5X 2X1


**Attention:**  
Dave Tolnai  
Equipment Engineer

- 9.9 **Amendments.** No amendment or variation of the Agreement shall be effective or binding upon the parties unless such amendment or variation is set forth in writing and duly executed by the parties.

- 9.10 **Waiver.** No party is bound by any waiver of any provision of this Agreement unless such waiver is consented to in writing by that party. No waiver of any provisions of this Agreement constitutes a waiver of any other provision, nor does any waiver constitute a continuing waiver unless otherwise provided.
- 9.11 **Enurement.** This Agreement enures to the benefit of and is binding on the parties and their respective successors and permitted assigns.
- 9.12 **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination does not impair or affect the validity, legality or enforceability of any other provision of this Agreement.
- 9.13 **Further Assurances.** The parties shall sign such further and other documents and do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement.
- 9.14 **Remedies Cumulative.** All rights and remedies of each party under this Agreement are cumulative and may be exercised at any time and from time to time, independently and in combination.
- 9.15 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no conditions, covenants, representations, warranties or other provisions, whether express or implied, collateral, statutory or otherwise, relating to the subject matter of this Agreement except as provided in this Agreement.
- 9.16 **Time is of the essence.** Time is of the essence of this Agreement.
- 9.17 **Execution.** This Agreement may be executed in counterparts, each of which shall be deemed as an original, but all of which shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile or electronic transmission hereof shall be as effective as delivery of an originally executed counterpart hereof.

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

**FORTISBC ENERGY INC.**  
 by its authorized signatory(ies):  
  
 Name: \_\_\_\_\_  
 Title: **D.L. Stout, Vice-President**  
**Energy Solutions &**  
**External Relations**

**City of Vancouver**  
 by its authorized signatory(ies):  
  
 Name: *Peter Tull*  
 Title: *City Engineer*

Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

Name: \_\_\_\_\_  
 Title: \_\_\_\_\_