

# Report to Council



**Date:** September 12, 2012

**File:** 1325-10

**To:** City Manager

**From:** J. Vos, General Manager, Community Services

**Subject:** Electrical Utility Restructuring Opportunity

Report Prepared By: D. Edstrom, Acting Director, Real Estate & Building Services

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## **Recommendation:**

THAT Council receives, for information, the Report from the General Manager, Community Services, dated September 12, 2012 regarding the Alternative Approval Process for Electrical Utility Restructuring Opportunity with FortisBC Inc.;

AND THAT an alternative approval process opportunity to be open to all electors within the City of Kelowna be initiated to seek approval of the electors for entry by the City of Kelowna into the Agreement to sell the City of Kelowna's electrical utility assets to FortisBC Inc., as part of the Electric Utility Restructuring Opportunity with FortisBC Inc. as outlined in the report from the General Manager, Community Services dated, September 12, 2012;

AND THAT 4pm, Friday, October 26, 2012 be set as the deadline for receipt of elector responses in the form attached to the September 12, 2012 report from the General Manager, Community Services in relation to the City of Kelowna proceeding with the Electric Utility Restructuring Opportunity with FortisBC Inc.;

AND FURTHER THAT Council direct staff to seek approval of the Inspector of Municipalities, as required under section 185(1) (b) of the Community Charter, for the acquisition of shares in Fortis Inc. from such funds as City Council may allocate for that purpose, which may include funds available out of surplus funds in its electric utility reserve account and the proceeds anticipated from the proposed sale of Kelowna's electrical utility to Fortis BC Inc.

## **Purpose:**

To approve the Asset Purchase Agreement between the City and FortisBC that, subject to the approval of the electors, will pave the way for the City to transfer ownership of its electrical utility assets to FortisBC, and to use the proceeds from the transfer to purchase common shares in Fortis Inc.

### **Kelowna Electrical Utility Restructuring Opportunity:**

The Electrical Utility Restructuring Opportunity (the "Opportunity") is an initiative that will shift the City from its current role as electrical utility operator to a new role as electrical utility investor. The key elements of the Opportunity involve the disposition of the City's electrical utility assets to FortisBC for \$55 million, and the subsequent reinvestment of these funds by the City in Fortis Inc. common shares. An additional element of the Opportunity involves the creation of a Mutual Benefits Agreement to allow the City and FortisBC to identify and pursue joint energy projects. The Mutual Benefits Agreement will focus on projects that promote energy conservation, and that make use of alternative energies.

The Opportunity was developed through a lengthy process that began with the recognition on the part of the municipality that the City's existing electrical utility business model is not sustainable. Long-term, annual financial returns to taxpayers under this model are vulnerable to certain factors, namely:

- increases in the wholesale price of electricity that the City must acquire, and subsequent pressure on the margin between wholesale and retail electricity rates
- increases in capital spending on electrical infrastructure
- increases in operating and maintenance costs for the utility

A shift in the City's role as utility operator to one of utility investor will allow the City to avoid the shortcomings of the municipal model. The transfer of the City's electrical assets to FortisBC, combined with an investment of proceeds in Fortis Inc. shares, should provide taxpayers with long-term annual returns that meet or exceed the earnings that would be possible under the City model. It will also ensure that the City's existing electricity customers are protected from any service changes or adverse impacts on rates. Service for all existing users will be seamless during and after the transfer of the system to FortisBC. Rates for residential customers will remain relatively unchanged by the transfer – the City already matches FortisBC's regulated rates for residential customers. Non-residential customers of the City will see a modest decrease in their electricity bills.

### **FortisBC**

FortisBC is an experienced owner and operator of energy utilities with close to 162,000, direct and indirect, electricity customers throughout British Columbia's southern interior. The company has a strong presence and track record in Kelowna. Since 2000, FortisBC has worked closely with the City as its electrical contractor in planning, operating and maintaining the City's electrical utility assets. The company provides electricity through its own utility to all parts of the community that are not served by City, and provides natural gas services throughout the entire municipality. FortisBC's electricity operations for the province are headquartered in Kelowna.

FortisBC runs its electrical utility through a regulated utility business model. Under this model, expenditures on system infrastructure, once approved by the British Columbia Utilities Commission, are treated as investments on which the company earns a regulated rate of return. This feature of the model supports new capital investment required to meet the needs of future users. It also helps to make FortisBC ideally suited to take responsibility for the

City's system – a system that will require in excess of \$70 million in new infrastructure investment in the next 20 years.

**Asset Purchase Agreement:**

The focus of the Opportunity at this point is the approval of the Asset Purchase Agreement (Schedule 'A') that will facilitate the transfer of the City's electrical assets to FortisBC by March 28, 2013, in exchange for the \$55 million price negotiated by the parties. FortisBC has approved the Agreement and will be submitting it to the BCUC for approval. Before FortisBC can proceed, however, the City must give its approval. Approval by the City requires the approval of Kelowna's municipal electors.

Following all approvals, but prior to March 28 transfer date, the City and FortisBC must together attend to some specific items that are identified in the Agreement. The key items relate to land rights that must be transferred, customer billing services, and pole contacts. The Asset Purchase Agreement contains mechanisms to deal with these issues and the parties will be working to settle them as quickly as possible. If the conditions around these items are not met to the parties respective satisfaction, the parties have rights to terminate the agreement.

**Third Party Review:**

As part of its due diligence in developing the Opportunity the City commissioned Deloitte & Touche LLP ("Deloitte"), an independent accounting firm, to review the Asset Purchase Agreement. The City asked Deloitte, specifically, to provide an opinion as at September 10, 2012 as to the fairness of the purchase price of \$55 million, from a financial point of view, to the existing City electricity customers and the City taxpayers as a whole. In its written report dated September 10, 2012 to the City (attached as Schedule 'B'), Deloitte makes the following concluding statement:

"Based upon and subject to the foregoing, Deloitte is of the opinion that, as at September 10, 2012, the Purchase Price is fair, from a financial point of view, to the existing COK electricity customers and COK taxpayers as a whole."

**Investment of Proceeds:**

The proceeds received by the City for its utility assets will be invested in order to generate a long-term return for taxpayers, that is equal to or greater than the return the City could earn through continued ownership of the utility. Initially, the City had anticipated investing its proceeds in Fortis Inc. debt (i.e., bonds) – this intention was communicated in the Memorandum of Understanding that the parties entered into in July 2012. In recent months, however, City staff and advisors revisited this intention and determined that FortisBC bonds do not, under current market conditions, represent the preferred option. The City examined two investment scenarios:

- investment of the sale proceeds in Fortis Inc. debt (corporate bonds)
- investment of the sale proceeds in Fortis Inc. equity (common shares)

### Fortis Inc. Debt

The investment of proceeds in Fortis Inc. debt presents four problems. First, under current market conditions growing demand for utility debt has significantly lowered the investment returns that are available from corporate bonds. Yields on Fortis Inc.'s long-term bonds, specifically, have fallen to levels at which they are considerably less attractive than was initially forecasted by the City. At present levels real returns of approximately 4% could be expected. At this rate the City would earn the same annual return it gets today from owning the utility: approximately \$2.1 million.

Second, annual payments to bond holders do not change over time (unlike annual dividend payments to shareholders). The purchase of long-term Fortis Inc. bonds would generate for taxpayers a stable and secure annual return; but it would also generate an annual return that would never increase, irrespective of the performance of the company or changing conditions in financial markets.

Third, the City would not benefit under this scenario from any increase in the value of Fortis Inc. over the 30 year period. After 30 years the City would receive back the \$55 million face value of the bonds, but would not receive any of the appreciation in the underlying value of Fortis Inc. over the same period.

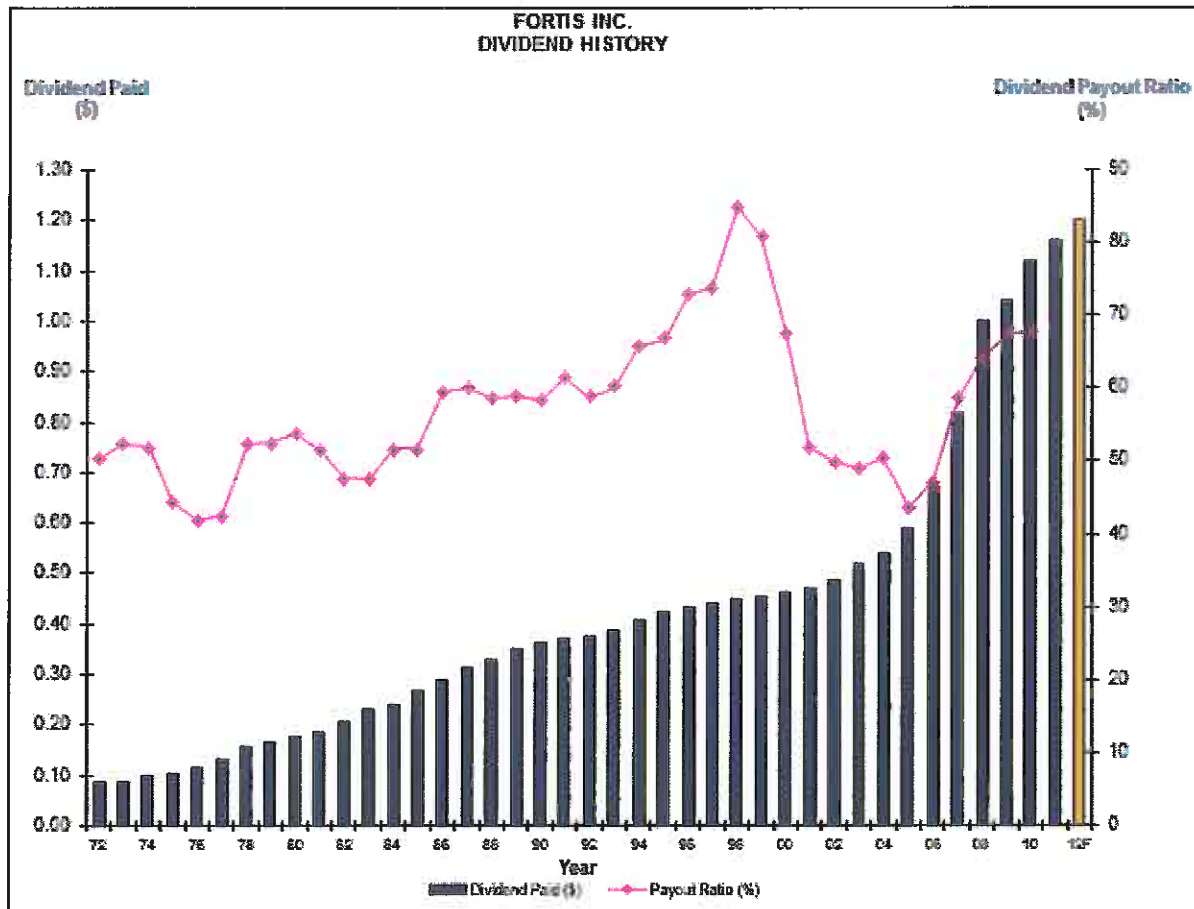
Finally, the purchase by the City of Fortis Inc. corporate bonds is not an action that is specifically contemplated or permitted as a municipal investment under the *Community Charter* (the purchase of common shares, by contrast, is permitted with the approval of the Inspector of Municipalities). Special approval from the Inspector would be required for any debt purchase. The process to obtain such approval could be quite difficult.

### Fortis Inc. Equity

The current annual dividend rate paid on Fortis Inc. common shares is essentially equal to the interest rate for long-term corporate bonds. This parity is not common in the markets, and represents an opportunity for the City. An investment by the City in common shares today would earn the same \$2.1 million annual return available under the debt option. Both of these returns would also match the current earnings generated by the City as owner operator of its utility.

Under the equity option, however, the City's investment of \$55 million would have the potential to generate returns that increase over time in tandem with increases in Fortis Inc. share value, and accompanying increases in the growth rate of dividend payments. Consider the following points:

- Since 1995, the company's share value has increased by an average of 12.7% per year. A conservative increase in future share value of 5% per year would grow the value of the City's investment to \$250 million over 30 years. Higher annual increases in share value would generate even greater value over the same period.



- Every year for the past 39 years Fortis Inc. has increased its dividend payment to shareholders (see graph) – the longest consecutive stretch of dividend payment increases among Canadian companies. Over the past 25 years, the average annual growth rate in dividends has been 5.7%. A future average annual growth rate of 5% would double the City's annual return every 14 years, taking it from \$2.1 million today to more than \$8 million per year over the 30 year assessment period. A more conservative annual dividend growth estimate of a 3% would still increase the return to taxpayers from \$2.1 million to \$4.5 million per year, over 30 years.

An additional advantage of the share purchase option is the potential for the City to realize significant capital gains – that is, to benefit not only from increasing annual returns, but also from an increase in value of the underlying assets. The historical increases in the company's share value, noted above, provide a good case for assuming that the City's initial investment of \$55 million will grow in value over 30 years.

Finally, it is worth pointing out that an investment in equities would be much more "liquid" than an investment in debt. The equity option would give the City considerable flexibility to change course if required, or desired. It should be noted that past performance is no

guarantee of future results and the City cannot be guaranteed the past results Fortis has achieved.

### Conclusion

The City's analysis suggests that the sale of the assets to FortisBC, coupled with the investment of proceeds in Fortis Inc. common shares, is the preferred option for City taxpayers. Using conservative estimates of future dividend growth, the option could generate annual earnings for taxpayers that would increase from \$2.1 million to \$4.5 million over 30 years. The option also has the potential to provide taxpayers with capital gains on the City's initial, \$55 million investment.

### **Elector Approval:**

The sale of the City's utility assets to FortisBC requires the approval of Kelowna's electors (electoral approval is not required for the investment in Fortis Inc. equity). The City intends to seek approval using the alternative approval process (attached Schedule 'C'), as outlined in the *Community Charter* (section 86). Under this process all registered municipal voters within the City must be given an opportunity to object to the City's proposed transfer.

Approval of the electors will be obtained if the number of elector responses received by the end of the alternative approval process is less than 10% of the number of electors within the City of Kelowna (9, 484).

Staff recommends that Council initiates the alternative approval process. The process will begin with public notification in local print media. Electors will then be given a thirty day period – September 26 to October 26 – during which to register their opposition. As stipulated in the *Community Charter*, electors who choose to object must make use of an official petition form issued by the City Clerk. Elector response forms will be available at City Hall and posted on the City website.

It is important that all citizens and groups within the community have the chance to review the Agreement, and – more importantly – to learn about the Opportunity and what it would mean for electricity customers, City taxpayers and the community as a whole. To that end, the City has developed a variety of information materials, and has planned a number of public events, to accompany the alternative approval process. The following points identify the resources and events available:

- The City's website ([www.kelowna.ca](http://www.kelowna.ca)) remains the definitive source of information on the Opportunity. The site explains the Opportunity in detail and the need for change, and presents the anticipated benefits to taxpayers, electricity customers and the community. A calendar identifies the key dates and public events that are planned. An email and phone number are provided for feedback and questions;
- A hard-copy Overview document on the Opportunity is available for pick-up at City Hall, as are copies of various Fact Sheets on key aspects of the initiative and other pertinent background information;

- City staff will be contacting key stakeholder groups in the community to offer presentations on the Opportunity. Groups will include the neighbourhood associations that represent areas within the City's existing utility service area, the Downtown Kelowna Association, Chamber of Commerce and Economic Development Commission. Any group in the City that is not contacted but that wishes to receive more information need only call the City;
- The City will be hosting two Public Open Houses on the Opportunity. The first will take place on Tuesday, September 25 from 4:00 pm until 6:30 pm; the second will occur two days later on Thursday, September 27, also from 4:00 pm until 6:30 pm. The venue for the Open Houses will be advertised closer to the dates. Both events will feature a self-review of poster boards, a presentation by staff and a Q&A session. The events will be identical to one another in terms of information provided; the purpose for having two events is simply to give interested citizens a choice of evening to attend;
- Customers of the City's existing electrical utility will receive a letter in early October to explain what the Opportunity means to them;

#### **Other Approvals:**

The Inspector of Municipalities at the British Columbia Ministry of Community, Sport & Cultural Development must approve the City's decision to purchase common shares in Fortis Inc. The City is responsible for obtaining this approval.

The BCUC must approve the inclusion of the utility assets in FortisBC's rate base (i.e., the pool of assets on which FortisBC's regulated electricity rates are based). If Kelowna's electors approve the transaction, FortisBC will submit its application to the BCUC in late October, 2012. FortisBC is responsible for obtaining this approval.

#### **Legal/Statutory Authority:**

Section 86 *Community Charter*, alternative approval process

Section 174 *Community Charter*, establishing the limit on borrowing and other liabilities.

Section 179 *Community Charter*, long term borrowing.

#### **Legal/Statutory Procedural Requirements:**

Pursuant to Section 86 of the *Community Charter*, Council is required to approve the elector response form as attached to this report for an alternative approval process and establish the deadline for receipt of elector responses, which must be at least thirty days after the second publication of the alternative approval process notice.

Notice requirements for the alternative approval process are set by Section 94 of the *Community Charter*. Notices will be posted on the public notice board at City Hall, advertised in the Capital News Thursday, September 20 and Tuesday, September 25, 21012 and posted on the City's website.

**Internal Circulation:**

- City Clerk
- Director, Financial Services
- Director, Civic Operations
- Director, Communications
- Acting General Manager, Corporate Sustainability

**Considerations not applicable to this report:**

**Existing Policy:**

**Financial/Budgetary Considerations:**

**Personnel Implications:**

**External Agency/Public Comments:**

**Communications Comments:**

**Alternate Recommendation:**

**Submitted by:**



J. Vos, General Manager, Community Services

**Approved for inclusion:**



R. Mattiussi, City Manager

cc: City Clerk  
Director, Financial Services  
Director, Civic Operations  
Director, Communications  
Acting General Manager, Corporate Sustainability



Schedule 'A'

**CITY OF KELOWNA**

**as Vendor**

- and -

**FORTISBC INC.**

**as Purchaser**

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**CITY OF KELOWNA ELECTRIC UTILITY  
ASSET PURCHASE AGREEMENT**

**Dated \_\_\_\_\_, 2012**

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## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT made as of the \_\_\_ day of \_\_\_\_\_, 2012,

BETWEEN:

**CITY OF KELOWNA**, a municipality incorporated under the laws of the Province of British Columbia, having its offices at 1435 Water Street, Kelowna, British Columbia, V1Y 1J4

(the “Vendor”)

AND:

**FORTISBC INC.**, a company incorporated under the laws of the Province of British Columbia, having its offices at Suite 100, 1975 Springfield Road, Kelowna, British Columbia, V1Y 7V7

(the “Purchaser”)

WHEREAS:

- A. The Vendor is the owner of the COK Assets (as hereinafter defined).
- B. The Purchaser wishes to acquire from the Vendor, and the Vendor wishes to sell to the Purchaser, the COK Assets.

NOW THEREFORE in consideration of the premises and the mutual covenants and agreements herein contained, each of the Parties covenants and agrees as follows:

### ARTICLE 1 INTERPRETATION

#### 1.1 DEFINED TERMS

In addition to those terms used and defined elsewhere in this Agreement (including, without limitation, in the recitals) and as used in this Agreement, including any schedule hereto, the following terms have the following meanings:

- (a) “**Affiliate**” in the case of a corporation, has the meaning specified in the *Canada Business Corporations Act* and in the case of any other Person, means a Person that controls or is controlled by such other Person or is under the same or common control as that Person. A Person shall be deemed to control a Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise; and the term “controlled” shall have a similar meaning.

- (b) **“Agreement”** means this City of Kelowna Electric Utility Asset Purchase Agreement and all schedules and attachments hereto and instruments in amendment or confirmation of it; and the expressions **“Article”** and **“Section”** followed by a number mean and refer to the specified Article or Section of this Agreement.
- (c) **“Allocation”** has the meaning specified in Section 2.2(b).
- (d) **“Applicable Laws”** means, at any given time, all applicable federal, state, provincial, municipal, local and foreign statutes, codes, ordinances, decrees, rules, regulations and by-laws, and judicial, executive, arbitral, administrative, ministerial, departmental or regulatory judgments, decrees, decisions, rulings, awards, policies, requirements, standards, guidelines, permits, licences, authorizations, approvals and orders, and all applicable common law, in each case having the force of law and in effect at that time, including without limitation, all Environmental Laws.
- (e) **“Assumed Contracts”** means those Material Contracts identified as Assumed Contracts on Schedule 1.1(tt).
- (f) **“Assumed Liabilities”** means any and all obligations and liabilities (whether present, future, absolute or contingent) relating to the ownership, operation or maintenance of the COK Assets, whether before or after the Closing Date, that arise or become due or payable after the Closing Date, except for the following:
  - (i) any obligations and liabilities arising under Material Contracts which are not Assumed Contracts;
  - (ii) operating costs relating to the COK Assets payable in the Ordinary Course, whether arising under the Assumed Contracts, Governmental Authorizations or otherwise, to the extent relating to the period up to and including the Closing Date;
  - (iii) Taxes relating to the COK Assets to the extent relating to the period up to and including the Closing Date;
  - (iv) those liabilities and obligations for which the Vendor is responsible pursuant to Section 7.8(a)(iii)
  - (v) any obligations or liabilities with respect to employees of the Vendor; and
  - (vi) any indebtedness for borrowed money of the Vendor.
- (g) **“Balance Sheet”** has the meaning specified in Section 3.1(j).
- (h) **“BCUC”** means the British Columbia Utilities Commission or any successor entity.
- (i) **“BCUC Acceptance”** means a final order approving the Transaction made by the BCUC on terms satisfactory to the Purchaser, acting reasonably, that would not, in the opinion of the Purchaser, do any of the following:

- (i) prohibit or limit the ownership or operation by the Purchaser of any portion of the COK Assets;
  - (ii) compel the Purchaser to dispose of, hold or treat separate any portion of the COK Assets, customers or any other business or assets;
  - (iii) prohibit the Purchaser from effectively controlling in any respect the COK Assets or any other business or operations of the Purchaser; or
  - (iv) impose any condition or restriction that would be burdensome to, or cause any material adverse financial effect on, the Purchaser or its operations or business.
- (j) **“Board Approval”** means the due authorization and approval by the Board of Directors of the Purchaser to enter into and perform its obligations under this Agreement and all the transactions contemplated hereby.
- (k) **“Buildings and Fixtures”** means all plant, buildings, structures, conduits, support structures, erections, improvements, appurtenances and fixtures (including fixed machinery and fixed equipment).
- (l) **“Business Day”** means any day of the year except Saturdays, Sundays and any statutory holiday in the Province of British Columbia.
- (m) **“Canadian GAAP”** means accounting principles generally accepted in Canada from time to time, including generally accepted accounting principles as recommended by the Public Sector Accounting Board of the Canadian Institute of Chartered Accountants.
- (n) **“Charter”** means the *Community Charter*, S.B.C. 2003 c. 26.
- (o) **“Closing”** means the completion of the Transaction.
- (p) **“Closing Date”** means the tenth (10th) Business Day following satisfaction of the conditions set out in Sections 6.1(d), 6.1(e), 6.1(h), 6.1(i), 6.1(k), 6.2(c) and 6.2(f), or such earlier or later date as the Parties may agree in writing.
- (q) **“Closing Time”** means 10:00 a.m. in the City of Vancouver on the Closing Date or such other time on the Closing Date as the Parties may agree upon as the time at which the Closing shall take place.
- (r) **“COK Assets”** means, collectively, all property, inventory, assets, equipment, parts, and undertaking of the Vendor of every nature and kind, real, personal or mixed, and whether tangible or intangible and wheresoever situate, owned and used by the Vendor in the operation and maintenance of the City of Kelowna’s electric utility assets (except for Excluded Assets), including the following:
- (i) the Real Properties;
  - (ii) the Buildings and Fixtures located on, in or under the Real Properties;



- (iii) the Personal Property;
  - (iv) the Intellectual Property Rights;
  - (v) the Assumed Contracts;
  - (vi) the Governmental Authorizations;
  - (vii) the Prepaid Expenses, other than to the extent that any of them comprise Excluded Assets;
  - (viii) the Electrical ROWs;
  - (ix) a license to use the Catch-All ROWs;
  - (x) access to or use of those assets used, though not exclusively, in the provision of electric service to the City of Kelowna pursuant and subject to the Shared Use & Services Agreement; and
  - (xi) those assets listed on Schedule 1.1(r).
- (s) **“COK GIS Mapping System”** means the GIS Mapping System of the City of Kelowna used for various purposes, and not exclusively in respect of the City of Kelowna’s electrical utility system.
- (t) **“Competition Act”** means the *Competition Act* (Canada), as amended from time to time.
- (u) **“Consents”** means all consents from and acts of Governmental Entities required to complete the Transaction, including the transfer of the Vendor’s interest in Governmental Authorizations to the Purchaser, and all consents of counterparties to Assumed Contracts and other COK Assets to assign such Assumed Contracts and other COK Assets to the Purchaser or to amend the Material Contracts, in each case as required for the completion of the Transaction.
- (v) **“Crown”** means Her Majesty in the Right of the Province of British Columbia or Her Majesty in Right of the Government of Canada.
- (w) **“Customer Care Agreement”** means an agreement with the Vendor or a third party to provide Customer Care Services.
- (x) **“Customer Care Services”** means, in respect of residential, commercial and industrial electric service customers served by the City of Kelowna’s electrical utility system:
- (i) metered services billing;
  - (ii) unmetered services billing;
  - (iii) accounts receivable, payment processing and revenue transfer;

- (iv) credit and collections;
  - (v) account management;
  - (vi) customer service;
  - (vii) customer contact, call center;
  - (viii) scheduling and service orders;
  - (ix) application of rates and tariffs;
  - (x) interfaces; and
  - (xi) management reports.
- (y) “**Damages**” has the meaning specified in Section 9.1.
- (z) “**Electrical Utility Customer Information/Data**” means, in respect of residential, commercial and industrial electric service customers served by the City of Kelowna’s electrical utility system, all personal information regarding a customer and their account, including but not limited to their name, address, billing number, account number, credit information and payment history.
- (aa) “**Electoral Approval**” means the approval of the electors of the City of Kelowna required pursuant to Section 28(4) of the Charter for the disposition of the COK Assets, obtained by the alternative approval process described in Section 86 of the Charter.
- (bb) “**Encumbrance**” means whether or not registered or registrable or recorded or recordable, and regardless of how created or arising, any:
- (i) mortgage, charge, pledge, lien, hypothec, assignment by way of security, lease, conditional sale or title retention agreement (including without limitation any capital lease), security created under the *Bank Act* (Canada) or any other encumbrance or security interest, howsoever created or arising, whether absolute or contingent, fixed or floating, legal or equitable, perfected or otherwise, and any other interest in property or assets that secures payment or performance of any obligation;
  - (ii) claim, interest or estate against or in assets or property (whether real, personal, mixed, tangible or intangible), including, without limitation, easements, rights-of-way, servitudes or other similar rights in property granted to or reserved or taken by any Person;
  - (iii) option or other right to acquire, or to acquire any interest in, any assets or property (whether real, personal, mixed, tangible or intangible); and
  - (iv) any agreements to create, or right capable of becoming, any of the foregoing.

- (cc) **“Environment”** includes the air (including all layers of the atmosphere), land, (including soil, sediment deposited on land, fill, and lands submerged under water), and water (including oceans, lakes, reservoirs, rivers, streams, groundwater and surface water).
- (dd) **“Environmental Contaminants”** means any substance or material, the storage, manufacture, disposal, treatment, generation, use, transport, remediation, or release of which into the Environment is prohibited, regulated, controlled, or licensed by any Governmental Entity under any Environmental Laws including without limitation, any contaminant, pollutant, hazardous, corrosive or toxic substance, flammable material, explosive material, radioactive material, dangerous goods or substance, gas, waste, urea formaldehyde, mercury, asbestos materials, hydrocarbon contaminant, deleterious substance, noxious substance, and compounds known as chlorobiphenyls, and hazardous waste, provided however, for purposes of this definition, water shall be considered an Environmental Contaminant only to the extent that it contains, or is itself a deleterious substance for purposes of Environmental Laws.
- (ee) **“Environmental Laws”** means, at any given time, any and all statutes, laws, regulations, orders, bylaws, standards, permits, licences, authorizations, approvals, orders and other lawful requirements of any international, federal, provincial, state, municipal, or other Governmental Entity, in each case having the force of law and in effect at that time with respect to (i) the protection of the Environment; (ii) plant species or wildlife (including without limitation, birds, land-based, and aquatic species) including the health or preservation thereof; (iii) human health including occupational health and safety; or (iv) the transportation of dangerous goods.
- (ff) **“Excluded Assets”** means the assets and property of the Vendor listed in Schedule 1.1(ff) and any rights and claims associated therewith.
- (gg) **“Financial Statements”** has the meaning specified in Section 3.1(j).
- (hh) **“First Nations”** means, for the purposes of this Agreement, any band, band council, tribal council, aboriginal treaty nation and/or other aboriginal group or aboriginal governing body, however organized and established by aboriginal people within their traditional territory in British Columbia, whether or not identified by the Crown as a band, band council, aboriginal treaty nation and/or other aboriginal group or aboriginal governing body, with which contact, consultation with, notification of and/or accommodation of regarding this Agreement and the transactions contemplated hereby is required in accordance with Applicable Laws.
- (ii) **“Governmental Authorizations”** means those permits, licences and other authorizations from, or with Governmental Entities listed in Schedule 1.1(ii).
- (jj) **“Governmental Entity”** means (i) any multinational, federal, provincial, state, municipal, local or other government or governmental or public department (including an official exercising a statutory power of decision), central bank, court, commission, board, bureau, agency or instrumentality, domestic or foreign, (ii) any subdivision or authority

of any of the foregoing, or (iii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the above.

- (kk) “**HST**” means the harmonized services tax levied under the *Excise Tax Act* (Canada).
- (ll) “**Indemnified Party**” has the meaning specified in Section 9.4(a).
- (mm) “**Indemnifying Party**” has the meaning specified in Section 9.4(a).
- (nn) “**Intellectual Property Rights**” means directly or indirectly, owning, licensing or otherwise having legally enforceable rights to use, or acquire on reasonable terms and without material expense, all patents, patent rights, trademarks, trade names, service marks, copyrights and any applications therefor, technology, know-how, computer software and applications and tangible or intangible proprietary information or materials, that are material to and used in the Ordinary Course of the ownership, operation and use of the COK Assets as presently conducted.
- (oo) “**Interim Period**” means the period between the time of execution by the Purchaser of this Agreement and the Closing.
- (pp) “**ITA**” means the *Income Tax Act* (Canada), as amended from time to time.
- (qq) Intentionally deleted.
- (rr) “**Master Services Agreement**” means the Amended and Restated Master Agreement made the 1<sup>st</sup> day of October, 2007, between the City of Kelowna and Fortis Pacific Holdings Inc.
- (ss) “**Material Adverse Change**” means any one or more changes, events or occurrences which either individually or in the aggregate are material and adverse to the COK Assets, the value of the COK Assets, or to Purchaser’s ability to operate and use the COK Assets after the Closing as heretofore operated and used; provided however, that no Material Adverse Change shall occur solely from the fact that the Purchaser will not have the benefit after the Closing of those Material Contracts that are not Assumed Contracts.
- (tt) “**Material Contracts**” means those contracts and agreements listed in Schedule 1.1(tt).
- (uu) “**Meter Data Files**” means, in respect of residential, commercial and industrial electric service customers served by the City of Kelowna’s electrical utility system, meter numbers, consumption data of customers, meter location and meter type.
- (vv) “**Municipal Council Approval**” means approval of this Agreement by the City of Kelowna municipal council, by way of adoption of a bylaw or resolution, following the Electoral Approval process.
- (ww) “**Ordinary Course**” means, with respect to an action taken by a Person, that such action is consistent with the past practices of the Person and is taken in the ordinary course of the normal day-to-day operations of the Person; provided that, unless otherwise indicated

in this Agreement, an action will be considered to be in the Ordinary Course of the Vendor if it is taken pursuant to or as part of the completion of this Transaction.

- (xx) **"Parties"** means the Vendor and the Purchaser and any other Person who may become a party to this Agreement, and a **"Party"** shall mean any one of them.
- (yy) **"Permitted Encumbrances"** means any one or more of the following:
  - (i) Encumbrances for Taxes, assessments or governmental charges or levies which are not delinquent;
  - (ii) Encumbrances for Taxes, assessments or governmental charges or levies, the validity of which is being contested at the time by the Vendor in good faith by proper legal proceedings if, in the Purchaser's reasonable opinion, adequate provision has been made for their payment;
  - (iii) inchoate or statutory Encumbrances of contractors, subcontractors, mechanics, workers, suppliers, material men, carriers and others in respect of the construction, maintenance, repair or operation of the COK Assets, provided that such Encumbrances are related to obligations not due or delinquent, are not registered against title to any COK Assets and in respect of which adequate holdbacks are being maintained by the Vendor as required by Applicable Laws;
  - (iv) the right reserved to or vested in any Governmental Entity pursuant to the original grant of title to the real properties, by any statutory provision of any Governmental Authorization including rights to terminate any such Governmental Authorization or to require annual or other payments as a condition of their continuance; and
  - (v) Encumbrances listed and described in Schedule 1.1(yy).
- (zz) **"Person"** means an individual, legal personal representative, corporation, body corporate, firm, partnership, trust, trustee, syndicate, joint venture, unincorporated organization, association or Governmental Entity.
- (aaa) **"Personal Property"** means, collectively, all personal property of Vendor of every nature and kind, whether tangible or intangible and wheresoever situate, owned and used by the Vendor exclusively in the operation and maintenance of the City of Kelowna's electric utility assets (except for Excluded Assets), including the Electrical Utility Customer Information/Data and Meter Data Files and those chattels and items listed in Schedule 1.1(aaa).
- (bbb) **"Prepaid Expenses"** means all prepaid expenses of the Vendor incurred in the Ordinary Course of the ownership, operation and use of the COK Assets, determined in accordance with Canadian GAAP.

- (ccc) **“Privacy Legislation”** means applicable provincial and federal privacy legislation currently in force, or passed into law during the term of this Agreement and all regulations made thereunder as may be amended from time to time.
- (ddd) **“Proceeding”** has the meaning specified in Section 9.4(b).
- (eee) **“Public Statement”** has the meaning specified in Section 10.3.
- (fff) **“Purchase Price”** has the meaning specified in Section 2.2(a).
- (ggg) **“Purchaser’s Consents”** means those Consents to be obtained by the Purchaser, as set out in Schedule 1.1(ggg).
- (hhh) **“Purchaser’s Indemnified Persons”** has the meaning specified in Section 9.1.
- (iii) **“Real Properties”** means the lands and premises owned by the Vendor and listed and described in Schedule 1.1(iii).
- (jjj) **“Release”** means any release, spill, leak, emission, discharge, leach, dumping, migration, pumping, pouring, emitting, emptying, injecting, spraying, burying, abandoning, incinerating, seeping, escape, disposal or similar or analogous act contrary to any Environmental Laws.
- (kkk) **“Required Notices”** means the notices required to be given to any Person under Applicable Laws or pursuant to any Material Contract or other obligation to which the Vendor is a party or by which the Vendor is bound or which is applicable to the COK Assets in connection with the execution and delivery of this Agreement or the completion of the Transaction, as set out in Schedule 1.1(kkk).
- (lll) **“Shared Use & Services Agreement”** means an agreement:
  - (i) governing the use of COK Assets that
    - (A) are used, though not exclusively, in the provision by the City of Kelowna of electric service to customers in the City of Kelowna; or
    - (B) are located on City of Kelowna streets (not registered Real Properties unless assets are on a statutory right of way street area rather than a dedicated street); and
  - (ii) giving the Purchaser a license to use the Catch-All ROWs; and
  - (iii) governing the continued provision, by the Purchaser to the Vendor, of various non-electrical utility services that are currently provided pursuant to the Master Services Agreement.
- (mmm) **“Tax”** and **“Taxes”** means any or all Canadian federal, provincial, local or foreign (i.e., non-Canadian) income, gross receipts, real property gains, goods and services, license,

payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add on minimum, or other taxes, levies, governmental charges or assessments of any kind whatsoever, including, without limitation, any estimated tax payments, interest, penalties or other additions thereto, whether or not disputed.

- (nnn) **“Third Party Contact Agreements”** means agreements or arrangements with third party telecommunications companies that have assets or facilities contacting or attaching to or on COK Assets.
- (ooo) **“Transaction”** means the transaction of purchase and sale provided for and contemplated in this Agreement at the Purchase Price.
- (ppp) **“Transfer Taxes”** means all sales taxes, sales and use taxes, value added taxes, goods and services taxes, property transfer taxes, harmonized sales taxes and other transfer taxes and similar charges required to be reported upon or paid to any Governmental Entity in respect of a transaction for the sale or transfer or provision of property, goods or services, and all interest and penalties on any of them, whether initially or as a result of reassessment.
- (qqq) **“Unassigned Interests”** has the meaning specified in Section 7.5.
- (rrr) **“Vendor’s Consents”** means those Consents to be obtained by the Vendor, as set out in Schedule 1.1(rrr).
- (sss) **“Vendor’s Indemnified Persons”** has the meaning specified in Section 9.2.

## **1.2 GENDER AND NUMBER**

Any reference in this Agreement to gender includes all genders, and words importing the singular number only shall include the plural and vice versa.

## **1.3 HEADINGS, ETC.**

The provision of a table of contents, the division of this Agreement into Articles and Sections and the insertion of headings are for convenient reference only and are not to affect its interpretation.

## **1.4 CURRENCY**

All references in this Agreement to dollars, unless otherwise specifically indicated, are expressed in Canadian currency.

### **1.5 CERTAIN PHRASES, ETC.**

In this Agreement (i) the words “including” and “includes” mean “including (or includes) without limitation”, and (ii) the phrase “the aggregate of”, “the total of”, “the sum of”, or a phrase of similar meaning means “the aggregate (or total or sum), without duplication, of”, and (iii) in the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word “from” means “from and including” and the words “to” and “until” each mean “to but excluding”.

### **1.6 KNOWLEDGE**

Where any representation or warranty contained in this Agreement is expressly qualified by reference to the knowledge of the Vendor, it shall be deemed to refer to the actual knowledge of one or more of those individuals identified on Schedule 1.6 in connection with the Vendor at the time the representation or warranty is being made after, in each case, having made reasonable inquiry with respect to the subject matter of such representation or warranty. For purposes of Section 3.2, Section 3.4 and Section 5.1, the knowledge of the Purchaser shall be deemed to refer to the actual knowledge of the individuals identified on Schedule 1.6 in connection with the Purchaser, having made reasonable inquiry with respect to the subject matter of Section 3.2, Section 3.4 and Section 5.1.

### **1.7 ACCOUNTING TERMS**

All accounting terms not specifically defined in this Agreement shall be interpreted in accordance with Canadian GAAP.

### **1.8 INCORPORATION OF SCHEDULES**

The schedules and attachments attached to this Agreement shall, for all purposes of this Agreement, be incorporated by reference into this Agreement and form an integral part of it.

### **1.9 CALCULATION OF TIME PERIODS**

If the last day of a time period is not a Business Day, the time period shall end on the next Business Day.

### **1.10 STATUTORY INSTRUMENTS**

Unless otherwise specifically provided in this Agreement, any reference in this Agreement to any Applicable Laws shall be construed as a reference to such Applicable Laws as amended or re-enacted from time to time or as a reference to any successor thereto.



## **ARTICLE 2 PURCHASE AND SALE AND PURCHASE PRICE**

### **2.1 PURCHASE AND SALE**

Subject to the terms and conditions of this Agreement, the Vendor shall sell to the Purchaser, and the Purchaser shall purchase from the Vendor, all of the Vendor's right, title and interest in and to the COK Assets free and clear of all Encumbrances (other than Permitted Encumbrances), at the Closing Time on the Closing Date.

### **2.2 PURCHASE PRICE**

- (a) The aggregate purchase price payable by the Purchaser in connection with the Transaction is the amount of \$55 million (the "**Purchase Price**") and exclusive of any applicable Transfer Taxes payable by the Purchaser hereunder.
- (b) The allocation of the Purchase Price among the assets comprising the COK Assets (the "**Allocation**") shall be prepared by the Purchaser and, except to the extent otherwise required by Law, the Parties will file all Tax returns in a manner consistent with the Allocation and will not make any inconsistent statement or adjustment on any returns or during the course of any Tax audit.
- (c) The Purchaser shall pay the Purchase Price at Closing by certified cheque, bank draft or wire transfer of immediately available funds to the Vendor's solicitors to be held and disbursed by them in accordance with Section 7.4.

### **2.3 TRANSFER TAXES**

The Purchaser shall pay all Transfer Taxes arising out of or in connection with the purchase of the COK Assets by the Purchaser, including any interest and penalties thereon resulting from the non-payment by the Purchaser of such Transfer Taxes, provided that, for greater certainty, the Purchaser shall not be responsible for or required to pay any capital gains Tax, income Tax or similar Tax incurred by, assessed upon or otherwise sustained by the Vendor in connection with the sale of the COK Assets to the Purchaser. Any Transfer Taxes required to be collected and remitted by the Vendor shall be paid to the Vendor on Closing.

## **ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF THE PARTIES**

### **3.1 REPRESENTATIONS AND WARRANTIES OF THE VENDOR**

The Vendor represents and warrants to the Purchaser that as of the date hereof (except where otherwise specified):

- (a) **Incorporation and Qualification.** It is a municipal corporation existing under the Applicable Laws of its jurisdiction, has the corporate power and capacity to own and

operate its property (including the COK Assets), carry on its business and enter into and perform its obligations under this Agreement and all documents, instruments and agreements required to be delivered by it pursuant to this Agreement.

- (b) **Due Authorization, Absence of Conflict.** The execution, delivery and performance by it of this Agreement and all documents, instruments and agreements required to be delivered by it pursuant to this Agreement:
- (i) have been duly authorized by all necessary corporate and municipal action on its part;
  - (ii) do not (and would not with the giving of notice, the lapse of time or the happening of any other event or condition) result in a breach or a violation of or default under, or conflict with any of the terms or provisions of, or allow any other Person to exercise any rights under or terminate or cancel, its constating documents or by-laws or any contracts (including the Material Contracts) or instruments to which it is a party or pursuant to which any of its assets or property may be affected (subject in each case to obtaining those Consents set forth on Schedules 1.1(ggg) and 1.1(rrr), and to the disclosure set out in Schedules 3.1(d), 3.1(e) and 3.1(o)) or any judgment, order, writ, injunction or, to the best of its knowledge, any decree of any Government Entity having jurisdiction over it;
  - (iii) to the knowledge of the Vendor, will not result in a breach or contravention of, or cause the termination, revocation, suspension or adverse alteration of, any Governmental Authorization (subject to obtaining those Consents set forth on Schedules 1.1(ggg) and 1.1(rrr));
  - (iv) will not result in the violation of any Applicable Laws (subject to obtaining those Consents set forth on Schedules 1.1(ggg) and 1.1(rrr));
  - (v) will not give any Person the right to remove any of the COK Assets, or result in the creation or imposition of any Encumbrance, except for Permitted Encumbrances, on any of the COK Assets, except such as may be created or imposed pursuant to this Agreement or any documents, instruments and agreements required to be delivered pursuant to this Agreement, or result in the crystallization of any floating charge on the COK Assets; and
  - (vi) will not result in any fees, duties, Taxes, assessments or other amounts becoming due or payable in the Interim Period or upon Closing to a Governmental Entity relating to the COK Assets other than Transfer Taxes.
- (c) **Enforceability.** This Agreement and all documents, instruments and agreements required to be delivered by it pursuant to this Agreement constitute legal, valid and binding obligations, enforceable against it in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction.

- (d) **Compliance with Applicable Laws.** To the knowledge of the Vendor, except as disclosed in Schedule 3.1(d), the Vendor has owned, and permitted the operation and use of the COK Assets in compliance with all Applicable Laws, except for acts of non-compliance which, in the aggregate, would not constitute a Material Adverse Change.
- (e) **Title and Exclusivity to COK Assets.** The Vendor is the registered and beneficial owner of the COK Assets and, except as disclosed in Schedule 3.1(e), has the exclusive right to use, possess and occupy the COK Assets, and subject to obtaining the consents set out in Section 6.2(f) and all those Consents set forth on Schedules 1.1(ggg) and 1.1(rrr) with respect to the Material Contracts and Governmental Authorizations, the Vendor has good and marketable title thereto, and the right to dispose thereof, free and clear of all Encumbrances (except for Permitted Encumbrances).
- (f) **Governmental Authorizations.**
  - (i) All of the Governmental Authorizations (except for the Measurement Canada certification and "Permits" under the Master Services Agreement as set forth in Schedule 1.1(ii)) are validly issued, are in full force and effect, are in good standing and are being complied with in all material respects, and no notice of breach or default or defect in respect of any of their terms has been received by the Vendor and to the knowledge of the Vendor there are no matters which could give rise to any such notice. There are no proceedings in progress, pending or, to the knowledge of the Vendor, threatened in writing which could result in the cancellation, revocation, suspension or adverse alteration of any Governmental Authorization; and
  - (ii) to the knowledge of the Vendor, the Measurement Canada certification and "Permits" under the Master Services Agreement, as set forth in Schedule 1.1(ii), are validly issued, are in full force and effect, are in good standing and are being complied with in all material respects, and no notice of breach or default or defect in respect of any of their terms has been received by the Vendor and to the knowledge of the Vendor there are no matters which could give rise to any such notice.
- (g) **Consents and Notices under Governmental Authorizations.** Except as disclosed in Schedules 1.1(ggg), 1.1(rrr) and 1.1(kkk) no authorization, approval, consent, order or any other action of, or any registration, declaration, filing or notice with or to, any Governmental Entity or any other Person is required under or in respect of any such Governmental Authorizations in order for the Vendor to complete the Transaction.
- (h) **Material Contracts.** Except as disclosed in Schedule 1.1(tt), each Material Contract is valid, subsisting and in good standing, and the Vendor is not in material default or breach of any such Material Contract and to the knowledge of the Vendor, no proceeding is pending or has been threatened in writing to revoke or limit any such Material Contract. Except as disclosed in Schedule 1.1(tt), no event, condition or occurrence exists which, after notice or lapse of time or both, could constitute a default by the Vendor (or, to the

knowledge of the Vendor, a default by any other party) under any of the Material Contracts or which would detrimentally affect the entitlement of the Vendor to the benefits of such Material Contracts. Except as disclosed in Schedule 1.1(tt) all of the Material Contracts are enforceable in accordance with their terms against the Vendor and the other parties thereto and none of the Material Contracts has been amended. The Material Contracts are all of the contracts and agreements to which the Vendor is a party that meet any of the following criteria:

- (i) any agreement related to the COK Assets entered into by the Vendor with any Affiliate or non-arms length party;
  - (ii) any agreement related to the COK Assets which involves a cost, expenditure, obligation or liability of the Vendor of \$100,000 or more for each such agreement;
  - (iii) any agreement (but for certainty, not Governmental Authorizations) that contains a non-competition, non-solicitation, exclusivity, most favored nation or similar provision, or which otherwise expressly restricts the ability to operate the COK Assets or conduct the business related thereto in a specific manner;
  - (iv) any agreement which includes a commitment to make capital expenditures or to acquire or construct fixed assets in respect of the COK Assets;
  - (v) any leases or subleases, either as lessee or sublessee, lessor or sublessor, of equipment, personal property or intangibles related to the COK Assets;
  - (vi) any agreements of agency, representation or distribution related to the COK Assets which cannot by their terms be cancelled by the Vendor without payment or penalty of more than \$100,000;
  - (vii) any agreement related to the COK Assets for sale, purchase, or exchange or for future delivery of capacity and/or energy, hedging contract, forward contract, swap agreement, futures contract, or other derivative agreement or option or any rate protection agreement or option that could reasonably be expected to impact the Vendor's obligations pursuant to this Agreement, or any other Material Contract;
  - (viii) any agreement related to the COK Assets that has not been entered into in the Ordinary Course; and
  - (ix) any agreement related to the COK Assets which is required for the ongoing operation of the COK Assets in a manner consistent with past practice where the agreement provides for payment in excess of \$100,000.
- (i) **Consents and Notices under Material Contracts.** Except as disclosed in Schedules 1.1(ggg), 1.1(rrr), 1.1(ii), and 1.1(kkk) no authorization, approval, consent, order or any other action of, or any registration, declaration, filing or notice with or to, any Person is

required under or in respect of any of the Material Contracts in order for the Vendor to complete the Transaction.

- (j) **Financial Statements.** Schedule 3.1(j) contains an unaudited consolidated balance sheet (the “**Balance Sheet**”), income statement and cash flow statement of the Vendor in respect of the COK Assets as of December 31, 2011 prepared by City of Kelowna management in accordance with Canadian GAAP applied on a consistent basis during the period involved, except as otherwise disclosed therein (the “**Financial Statements**”). The Financial Statements (i) are in accordance with the books and records of the Vendor in respect of the COK Assets, (ii) contain and reflect all necessary adjustments for fair presentation of the results of operations and the financial condition of the business of the Vendor in respect of the COK Assets for the periods covered thereby, (iii) contain and reflect adequate provision or allowance for all reasonably anticipated liabilities, expenses and losses of the Vendor in respect of the COK Assets, and (iv) fairly present, in all material respects, the consolidated financial position, results of operations and cash flows of the Vendor in respect of the COK Assets as of the respective dates thereof and for the respective periods covered thereby, subject, in the case of unaudited financial statements, to normal, recurring audit adjustments, none of which are or will be material, individually or in the aggregate. From December 31, 2011, there has been no change by the Vendor in its accounting policies, methods, practices or principles that are material to the Financial Statements, except as described in the notes thereto.
- (k) **Absence of Certain Changes.** Since December 31, 2011, the Vendor has, in respect of the COK Assets, conducted its business only in the Ordinary Course in a manner consistent with past practice and there has been no Material Adverse Change with respect to the COK Assets or any event, occurrence or development which would be reasonably expected to have a Material Adverse Change with respect to the COK Assets or which materially and adversely affects the ability of the Vendor to consummate the transactions contemplated hereby or to restrict, hinder, impair or limit the ability of the Vendor to carry on the business relating to the COK Assets as and where they are now being carried on or as contemplated to be carried on as disclosed by the Vendor to the Purchaser.
- (l) **Partnerships or Joint Ventures.** The Vendor is not a partner or participant in any partnership, joint venture or profit sharing arrangement with respect to the COK Assets.
- (m) **Environmental Matters.** Except as disclosed in Schedule 3.1(m), to the Vendor’s knowledge:
  - (i) All of the COK Assets are in compliance in all material respects with all Environmental Laws and no condition exists or event has occurred which, with or without notice or the passage of time or both, would constitute a violation of or give rise to liability under any applicable Environmental Laws.
  - (ii) There are no Environmental Contaminants located on or in or under the surface of any Real Properties in material contravention of Applicable Laws, and no Release of any Environmental Contaminants has occurred on, in or from any Real

Properties or has resulted from the operation of the COK Assets in material contravention of Applicable Laws.

- (iii) All Environmental Contaminants used in whole or in part in the operation of the COK Assets have been disposed of, treated and stored in compliance with all Environmental Laws in all material respects.
- (iv) The Vendor has provided or made available to the Purchaser true and complete copies of all environmental audits, evaluations, assessments, studies or tests and all material correspondence with any Governmental Entity relating to the COK Assets regarding Environmental Contaminants or any non-compliance with Environmental Laws of which the Vendor have possession or control.
- (n) **Environmental Charges.** The Vendor has never been charged with or convicted of any offence for non-compliance with Environmental Laws in connection with the operation and/or ownership of the COK Assets and the Vendor has not received any notices of judgment or commencement of proceedings of any nature related to the COK Assets and, except as disclosed in Schedule 3.1(m), to the knowledge of the Vendor, there are no actions or proceedings pending or threatened in writing related to any non-compliance, by any Person, with Environmental Laws in connection with the ownership or operation of the COK Assets.
- (o) **Adverse Proceedings.** There are no material actions, suits or proceedings, at law or in equity, judicial or administrative, by any Person, or any arbitration, prosecution, compliance directive, or administrative or other proceeding by or before any Governmental Entity affecting any of the COK Assets, and to the knowledge of the Vendor there are no such suits or proceedings pending or threatened in writing, or investigations by or before any Governmental Entity materially affecting any of the COK Assets, and except as disclosed in Schedule 3.1(o), to the knowledge of the Vendor, there is no basis for any such suits, proceedings or investigations arising from or related to the COK Assets.
- (p) **Disclosure.** Except for any documents prepared by consultants or other third parties for the Vendor in anticipation of a sale of the COK Assets, the Vendor has provided or made available to the Purchaser all material documents, data and information (written or unwritten) relating to the condition or operation of, and title to, the COK Assets, the Excluded Assets and the Material Contracts, known to it or in its possession or control, that are reasonably expected to be material to the Purchaser, including without limitation technical reports, operating data, reports and data and the Vendor's existing agreement for Customer Care Services (which was provided in redacted form).
- (q) **No Rights to COK Assets.** Except for Permitted Encumbrances, or as disclosed in Schedule 1.1(tt), there is no agreement, contract, option, commitment or other right in favour of, or held by, any Person other than the Purchaser to acquire or lease any of the COK Assets, to possess, attach or make contact with any of the COK Assets or to occupy any part of the Real Properties.

- (r) **Property Taxes on Real Properties.** All property, municipal, general and special taxes, rates, assessments, local improvements charges, frontage taxes, business taxes, development cost charges, other subdivision charges and costs and other levies which are chargeable against the Real Properties have been paid in full unless the same are not due and payable.
- (s) **Encroachment on Real Properties.** To the knowledge of the Vendor (and except as disclosed in Schedule 3.1(d) or 3.1(e)):
  - (i) the COK Assets do not infringe upon or contravene the provisions of any easement, right of way or encumbrance registered against or otherwise affecting any of the Real Properties;
  - (ii) the tangible COK Assets are wholly situated within the boundaries of the Real Properties and the City of Kelowna; and
  - (iii) there are no buildings, fixtures, improvements or facilities on any adjoining lands, whether public or private, that encroach on any of the Real Properties.
- (t) **Personal Property.** The Personal Property is a true and complete list, in all material respects, of the tangible personal property owned or leased by the Vendor and used in connection with the COK Assets.
- (u) **Tax Affairs.** No circumstances exist in relation to the Tax affairs of the Vendor which will give rise to an Encumbrance (whether prospectively or retroactively) on the COK Assets.
- (v) **Residence of the Vendor.** The Vendor is not a non-resident of Canada within the meaning of the ITA.
- (w) **No Seizure.** To the knowledge of the Vendor, there is no appropriation, condemnation, expropriation or seizure of any of the COK Assets that is pending or has been threatened in writing.
- (x) **Insurance.** The Vendor maintains the general policy of insurance against the Vendor's assets, cover notes in respect of which are attached as Schedule 3.1(x), and:
  - (i) the Vendor is not in default with respect to any of the provisions contained in such insurance policy, nor has the Vendor failed to give any notice or present any claim relating to the COK Assets under such insurance policy in a due and timely fashion, and the Vendor is entitled to all rights and benefits thereunder; and
  - (ii) no notice of cancellation or non-renewal with respect to, nor disallowance of any claim under such insurance policy has been received by the Vendor, and all premiums due in connection with such policy have been paid.
- (y) **Competition Act.** Neither the aggregate value of the COK Assets in Canada, nor the annual gross revenues from sales in or from Canada generated from the COK Assets, as

calculated in accordance with the Competition Act, exceed the applicable thresholds for notifiable transactions under Part IX of the *Competition Act*.

- (z) **Intellectual Property.** Schedule 3.1(z) includes a list of all Intellectual Property Rights. The Vendor owns or otherwise holds the Intellectual Property Rights free and clear of any Encumbrances, except as disclosed in Schedule 3.1(z). The Vendor has adequate rights to the use of the Intellectual Property Rights or the material covered thereby in connection with the services or products in respect of which such Intellectual Property Rights are being used. The Vendor has not received any written notice or claim, nor has it received any other information, stating that the manufacture, sale, licensing, or use of any of COK Assets as now manufactured, sold, licensed or used or proposed for manufacture, sale, licensing or use by the Vendor in the Ordinary Course of the ownership, operation and use of the COK Assets infringes on any copyright, patent, trademark, service mark or trade secret of a other Person. The Vendor has not received any written notice or claim, nor has it received any other information, stating that the use by it of any trademarks, service marks, trade names, trade secrets, copyrights, patents, technology or know-how and applications used in the Ordinary Course of the ownership, operation and use of the COK Assets infringes on any other Person's trademarks, service marks, trade names, trade secrets, copyrights, patents, technology or know-how and applications. The Vendor has not received any written notice or claim, nor has it received any other information, challenging the ownership by it, or the validity of, any of the Intellectual Property Rights. All registered patents, trademarks, service marks and copyright held by the Vendor and used in the Ordinary Course of the ownership, operation and use of the COK Assets are subsisting. To the knowledge of Vendor, there is no unauthorized use, infringement or misappropriation of any of the Intellectual Property Rights by any other Person, including any employee or former employee of the Vendor. No Intellectual Property Right is subject to any known outstanding decree, order, judgment, or stipulation restricting in any manner the licensing thereof by the Vendor.
- (aa) **Electoral Approval.** This Agreement has been submitted for Electoral Approval and Electoral Approval has been received.
- (bb) **Municipal Council Approval.** This Agreement has been submitted for Municipal Council Approval and Municipal Council Approval has been received.
- (cc) **First Nations.** There are no impact benefit agreements or memoranda of understanding or similar agreements with any First Nations that impose current obligations on the Vendor in respect of the COK Assets, nor is there any obligation to contact, consult with, notify and/or accommodate any First Nations in connection with this Agreement or the Transaction.
- (dd) **No Other Representations and Warranties.** Except for the representations and warranties contained in Section 3.1 of this Agreement, as supplemented by the lists contemplated in Section 4.1, the Vendor makes no express or implied representation or warranty as to the COK Assets and the Vendor hereby disclaims any such representation or warranty with respect to the execution and delivery of this Agreement and the consummation of the Transaction.



### 3.2 REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

The Purchaser represents and warrants to the Vendor that as of the date hereof:

- (a) **Incorporation and Qualification.** It is a corporation duly incorporated or amalgamated and validly existing under the Applicable Laws of its jurisdiction of incorporation or amalgamation. It has the corporate power and capacity to own and operate its property, carry on its business and enter into and perform its obligations under this Agreement and all documents, instruments and agreements required to be delivered by it pursuant to this Agreement.
- (b) **Due Authorization, Absence of Conflict.** The execution, delivery and performance by it of this Agreement and all documents, instruments and agreements required to be delivered by it pursuant to this Agreement:
  - (i) have, except as contemplated in Section 6.1(k), been duly authorized by all necessary corporate action on its part;
  - (ii) do not (and would not with the giving of notice, the lapse of time or the happening of any other event or condition) result in a breach or a violation of or default under, or conflict with any of the terms or provisions of, or allow any other Person to exercise any rights under or terminate or cancel, its constating documents or by-laws or any contracts (including the Material Contracts to which it is a party) or instruments to which it is a party or pursuant to which any of its assets or property may be affected (subject in each case to obtaining those Consents set forth on Schedules 1.1(ggg) and 1.1(rrr)) or any judgment, order, writ, injunction or, to the best of its knowledge, any decree of any Government Entity having jurisdiction over it;
  - (iii) will not result in the violation of any Applicable Laws (subject to obtaining those Consents set forth on Schedules 1.1(ggg) and 1.1(rrr)) and
  - (iv) will not give any Person the right to remove any of the COK Assets, or result in the creation or imposition of any Encumbrance on any of the COK Assets, except such as may be created or imposed pursuant to this Agreement or any documents, instruments and agreements required to be delivered pursuant to this Agreement, or result in the crystallization of any floating charge on the COK Assets.
- (c) **Governmental Authorizations.** The Purchaser does not know that the Closing of the Transaction will, in and of itself, result in a breach or contravention of or cause the termination, revocation, suspension or material adverse alteration of any Governmental Authorization (subject to obtaining those Consents set forth on Schedules 1.1(ggg), 1.1(rrr) and 1.1(kkk)).
- (d) **Enforceability.** This Agreement and all documents, instruments and agreements required to be delivered by it pursuant to this Agreement constitute legal, valid and binding obligations, enforceable against it in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights

of creditors generally and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction.

- (e) **GST/HST Registration.** The Purchaser is registered for the purposes of GST/HST under registration number 10564 5642 RC0001.

### **3.3 SURVIVAL OF REPRESENTATIONS, WARRANTIES AND COVENANTS**

All representations and warranties and covenants made by each of the Parties in this Agreement or in any certificate delivered pursuant to this Agreement shall survive the Closing for a period of 24 months, except that (i) all representations and warranties of the Vendor contained in Sections 3.1(a), 3.1(b)(i), 3.1(b)(v), 3.1(c), 3.1(e), 3.1(q) and 3.1(s) shall survive indefinitely and (ii) all representations and warranties of the Vendor contained in Sections 3.1(r) and 3.1(u) shall survive until the sixtieth (60<sup>th</sup>) day following the expiration of the applicable statute of limitations (including any extension thereof). Each of the Parties acknowledges and confirms that the other Parties are relying upon the representations and warranties contained in this Agreement in connection with the completion of the Transaction. After the expiration of the applicable period referred to in this Section 3.3, no Party shall have any further liability to any other Party with respect to such representations, warranties and covenants except with respect to claims properly made in accordance with Article 9 within such time period (subject to Section 9.3(c)).

### **3.4 PURCHASER'S ACKNOWLEDGMENTS**

The Purchaser hereby represents and warrants to the Vendor that the Purchaser has no knowledge of any information which renders the representations and warranties provided in this Agreement untrue and the Purchaser agrees that it will immediately advise the Vendor in writing if and when it becomes aware prior to the Closing Date that any of the information contained in representations and warranties of the Vendor herein is untrue and the particulars of the facts known to the Purchaser which indicates that such representations or warranties contain untrue statements of fact.

## **ARTICLE 4 COVENANTS OF THE PARTIES**

### **4.1 CONDUCT PRIOR TO CLOSING**

- (a) Prior to November 15, 2012, without in any way limiting any other obligations of the Parties hereunder, the Purchaser and Vendor shall, acting reasonably:
  - (i) jointly compile a complete list, to the extent possible, of all statutory rights of way, easements, or other land interests/charges owned by or registered in favour of the Vendor, that are:
    - (A) used solely for the purposes of the City of Kelowna electrical utility and that constitute COK Assets (the “**Electrical ROWs**”);

- (B) used for the purposes of the City of Kelowna electrical utility and other purposes of the Vendor (the “Catch-All ROWs”): and
  - (I) such list shall set out the location of the interest/charge to the extent possible;
  - (II) in order to facilitate compilation of such list, the Purchaser shall provide to the Vendor and review with the Vendor its “one line drawings” and GIS and other mapping systems; and
  - (III) each of the Parties shall share with the other such electrical utility records and documents as are in their respective possession and reasonably necessary to facilitate compilation of such list; and
- (ii) jointly compile a complete list, to the extent possible, of all tangible COK Assets located on private property or Vendor property without any right of way, license, or other agreement in place and governing the same, and:
  - (A) such list shall set out the location of the applicable COK Asset, to the extent possible;
  - (B) in order to facilitate compilation of such list, the Purchaser shall provide to the Vendor and review with the Vendor its “as built drawings” and GIS and other mapping systems; and
  - (C) each of the Parties shall share with the other such electrical utility records and documents as are in their respective possession and reasonably necessary to facilitate compilation of such list; and
- (iii) jointly compile a complete list of all third party telecommunications assets or facilities contacting or attaching to or on COK Assets, and such list shall set out the location of the applicable COK Asset, to the extent possible; and
- (b) During the Interim Period, without in any way limiting any other obligations of the Vendor hereunder, the Vendor shall:
  - (i) in all material respects, operate, use and maintain the COK Assets in the Ordinary Course;
  - (ii) in all material respects, maintain in full force and effect all policies of insurance or renewals thereof now in effect, with such changes thereto as may be reasonable in the Ordinary Course;
  - (iii) make all reasonable commercial efforts to facilitate the acquisition of rights of way, licenses or other agreements with any third parties or over private property, with respect to COK Assets identified pursuant to Section 4.1(a)(ii) hereof, whether in the name of the Vendor (to be assigned at Closing if constituting

Electrical ROWs, or licensed at Closing if constituting Catch-All ROWs) or in the name of the Purchaser;

- (iv) to the extent possible, maintain all Electrical ROWs and Catch-All ROWs; and
- (v) subject to compliance with Privacy Legislation, the Vendor shall cause the Electrical Utility Customer Information/Data and Meter Data Files to be provided to the Purchaser within 20 days of a request for same by the Purchaser.

#### **4.2 REASONABLE ACCESS**

Subject to any Applicable Laws, the Vendor shall permit the Purchaser and its employees, agents, counsel, accountants or other representatives during the Interim Period, without undue interference to the ordinary conduct of the businesses of the Vendor, to have reasonable access on a supervised basis during normal business hours and upon reasonable notice to the COK Assets for the purposes of completing and confirming reasonable transition planning activities. The Purchaser and the Vendor will comply with all applicable Privacy Legislation with regards to the use, protection, disclosure and transfer of the personal information (as such term is defined in the Privacy Legislation applicable to each Party).

#### **4.3 FILINGS AND CONSENTS**

Each of the Parties hereto, as promptly as practicable after the execution and delivery of this Agreement, will to the extent such steps have not already been undertaken (i) make, or cause to be made, all such filings and submissions under all Applicable Laws (including Required Notices), as may be required for it to purchase or sell the COK Assets, as applicable, in accordance with the terms of this Agreement and consummate the Transaction, (ii) use all its commercially reasonable efforts to obtain, or cause to be obtained, and secure all Consents necessary or advisable to be obtained by it in order to consummate the Transaction as soon as reasonably practicable, and (iii) use all reasonable efforts to take, or cause to be taken, all other actions necessary, proper or advisable in order for it to fulfill its obligations under this Agreement including fulfilling as soon as is practicable any reasonable requests for additional information. Subject to any Applicable Laws, the Vendor on the one hand, and the Purchaser on the other hand, will coordinate and co-operate with one another in exchanging such information and supplying such assistance as may be reasonably requested by each in connection with the foregoing including, without limitation, providing each other with all notices and information supplied or filed with any Governmental Entity and all notices and correspondence received from any Governmental Entity.

#### **4.4 BCUC ACCEPTANCE**

After the execution and delivery of this Agreement the Purchaser shall submit a filing (the "Filing") to the BCUC in pursuance of the BCUC Acceptance and shall continue to use all reasonable commercial efforts to obtain the BCUC Acceptance. The Vendor shall cooperate with and support the Purchaser's efforts to obtain the BCUC Acceptance, including making available to the BCUC such information as is reasonably necessary to support the Filing as requested by the Purchaser and the Vendor shall not take any action inconsistent with obtaining the BCUC Acceptance.

#### **4.5 VENDOR'S CONDUCT POST-CLOSING**

Following Closing, the Vendor shall:

- (a) assist the Purchaser in transferring any management functions relating to the COK Assets to the Purchaser, which shall include, but not be limited to, Customer Care Services, and for greater certainty the Vendor's assistance in carrying out the foregoing will be limited to internal management support and the Vendor will not be required to incur any third party costs or other costs on behalf of the Purchaser;
- (b) take all reasonable steps as may be necessary to assist the Purchaser in assuming and asserting such management functions after Closing, which assistance may include executing whatever documents or agreements may be necessary or convenient to vest all such management functions in the Purchaser;
- (c) use commercially reasonable best efforts to maintain all Catch-All ROWs until they are no longer required by the Purchaser to operate the COK Assets; and
- (d) provide 30 days' written notice to the Purchaser prior to making effective any decision on the part of the Vendor to surrender, abandon, modify or discharge any Catch-All ROW.

#### **4.6 MASTER SERVICES AGREEMENT**

Upon the Closing of the Transaction, the Purchaser and the Vendor shall take all such actions, steps and proceedings as are reasonably within their control to terminate the Master Services Agreement, provided that:

- (a) any obligations, indemnities or other provisions expressly indicated in the Master Services Agreement as surviving the termination or expiry thereof shall survive in accordance with their terms; and
- (b) the Purchaser shall cause the services set forth in the Shared Use & Services Agreement to continue to be provided to the Vendor, at rates to be agreed upon by the Vendor and the Purchaser.

#### **4.7 DISCRETION NOT FETTERED**

- (a) The Parties acknowledge and agree that nothing in this Agreement shall be construed so as to fetter the discretion of the Board of Directors of the Purchaser or to require the Board of Directors of the Purchaser to act in a particular manner with respect to any of the subject matters of this Agreement.
- (b) The Parties acknowledge and agree that nothing in this Agreement shall be construed so as to fetter the discretion of the City of Kelowna municipal council, or to require the City of Kelowna municipal council to act in a particular manner with respect to any of the subject matters of this Agreement.

## ARTICLE 5 RELIANCE

### 5.1 RELIANCE

The Vendor acknowledges and agrees that the Purchaser is entitled to rely on the representations, warranties, covenants and obligations of the Vendor contained in this Agreement notwithstanding any information conveyed in any oral communication from the Vendor or its representatives and that no information which is now known or should be known or which may hereafter become known to the Purchaser or its employees, representatives or agents solely as a consequence of such oral communication will limit or extinguish the rights of the Purchaser with respect to any misrepresentation or breach of any representation, warranty, covenant or obligation of the Vendor. The Purchaser acknowledges and agrees that, notwithstanding anything else contained herein, the Vendor will not have any liability (for indemnification or otherwise) for any breach or inaccuracy of any representation or warranty given by the Vendor in this Agreement to the extent that at the time such representation or warranty was given, the Purchaser had actual knowledge (as defined in Section 1.6) of any breach or inaccuracy of such representation or warranty, unless such actual knowledge was acquired solely as a consequence of an oral communication with the Vendor or their representatives as referred to above. The Vendor acknowledges and agrees that the Purchaser will not have any liability (for indemnification or otherwise) for any breach or inaccuracy of any representation or warranty given by it in this Agreement to the extent that, at the time such representation or warranty was given, the Vendor had actual knowledge (as defined in Section 1.6) of any breach or inaccuracy of such representation or warranty.

## ARTICLE 6 CONDITIONS OF CLOSING

### 6.1 CONDITIONS FOR THE BENEFIT OF THE PURCHASER

The obligation of the Purchaser to complete the purchase and sale of the COK Assets as described herein is subject to the following conditions to be fulfilled or performed, to the Purchaser's satisfaction, on or before the date specified, or if no date is specified prior to or contemporaneous with Closing, which conditions are for the exclusive benefit of the Purchaser and may be waived, in whole or in part, by the Purchaser in its sole discretion:

- (a) **No Material Adverse Change.** There shall not have been any Material Adverse Change in the COK Assets, including but not limited to the physical condition thereof, or with respect to the Material Contracts or Governmental Authorizations.
- (b) **Truth of Representations and Warranties.** The representations and warranties of the Vendor made in this Agreement shall be true and correct as of the date of this Agreement and as of the Closing (except for such representations and warranties that are made as of a specific date, which shall speak only as of such date), except where the failure of such representations and warranties to be true and correct has not had and would not be reasonably like to have, individually or in the aggregate, a Material Adverse Change.

- (c) **Performance of Covenants.** The Vendor shall have fulfilled or complied with all of its covenants contained in this Agreement in all material respects, and the Vendor shall have executed and delivered to the Purchaser a certificate, executed by a senior officer(s) on behalf of such Party to that effect.
- (d) **BCUC Acceptance.** BCUC Acceptance shall have been issued, and in the 30 days following the issuance of the BCUC Acceptance, no appeal, review, claim, proceeding, suit, reconsideration or investigation shall have been initiated or threatened by or before any Governmental Entity (including the BCUC) or any court of competent jurisdiction in the Province of British Columbia in respect of the BCUC Acceptance.
- (e) **Deliveries.** The Vendor shall have delivered or cause to be delivered to the Purchaser the documents specified in Section 7.2.
- (f) **No Insolvency Proceedings.** The Vendor shall have initiated material proceedings with respect to a compromise or arrangement with its creditors or for its winding up, liquidation or dissolution. No receiver shall have been appointed in respect of the Vendor or any of their assets and no execution or distress shall have been levied upon any of their assets.
- (g) **No Adverse Proceedings.** No directives, orders, judgments or decrees of a Governmental Entity shall have been withdrawn, varied or granted to any Person (other than the Purchaser or its Affiliates) to enjoin, restrict or prohibit the Transaction or the right of the Purchaser to operate and use the COK Assets after Closing on substantially the same basis as heretofore operated and used (except pursuant to Material Contracts that are not Assumed Contracts).
- (h) **Consents.** All Consents having been obtained on terms acceptable to the Purchaser acting reasonably.
- (i) **Waivers.** The Purchaser shall have received waivers from each counterparty to a Material Contract identified on Schedule 1.1(tt) as requiring a waiver, addressed to the Vendor and the Purchaser, and otherwise in such form and content as the Purchaser may reasonably require.
- (j) **Release of Encumbrances.** The Vendor shall have obtained the release or discharge of all Encumbrances over and against the COK Assets, except for Permitted Encumbrances.
- (k) **Board Approval.** Board Approval shall have been given.
- (l) **First Nations Consultations.** No event or circumstance having occurred that gives rise to reasonable grounds on which to determine that completion of the Transaction would result in:
  - (i) a duty on the part of either Party to contact, consult with, notify and/or accommodate any First Nations in connection with this Agreement or the transactions contemplated hereby; or

- (ii) a dispute between the Vendor or the Purchaser and any First Nations.

## 6.2 CONDITIONS FOR THE BENEFIT OF THE VENDOR

The obligation of the Vendor to complete the purchase and sale of the COK Assets as described herein is subject to the following conditions to be fulfilled or performed, to the reasonable satisfaction of the Vendor, on or before the date specified, or if no date is specified prior to or contemporaneous with the Closing, which conditions are for the exclusive benefit of the Vendor and may be waived, in whole or in part, by the Vendor in its sole discretion:

- (a) **Truth of Representations and Warranties.** The representations and warranties of the Purchaser made in this Agreement shall be true and correct as of the date of this Agreement and as of the Closing (except for such representations and warranties that are made as of a specific date, which shall speak only as of such date), except where the failure of such representations and warranties to be true and correct has not had and would not be reasonably like to have, individually or in the aggregate, a Material Adverse Change.
- (b) **Performance of Covenants.** The Purchaser shall have fulfilled or complied with all of its covenants contained in this Agreement in all material respects, and the Purchaser shall have executed and delivered to the Vendor a certificate, executed by a senior officer(s) on behalf of such Party to that effect.
- (c) **Deliveries.** The Purchaser shall have delivered or cause to be delivered to the Vendor the documents specified in Section 7.3.
- (d) **No Insolvency Proceedings.** The Purchaser shall not have initiated material proceedings with respect to a compromise or arrangement with its creditors or for its winding up, liquidation or dissolution. No receiver shall have been appointed in respect of the Purchaser or any of its assets and no execution or distress shall have been levied upon any of its assets.
- (e) **No Adverse Proceedings.** No directives, orders, judgments or decrees of a Governmental Entity shall have been withdrawn, varied, or granted to any Person (other than the Vendor or its Affiliates) to enjoin, restrict or prohibit the Transaction or the right of the Vendor to operate and use the COK Assets after Closing on substantially the same basis as heretofore operated and used.
- (f) **Consents.** All Consents having been obtained on terms acceptable to the Vendor acting reasonably.

## 6.3 ACTIONS TO SATISFY CLOSING CONDITIONS.

- (a) The Vendor shall take all such actions, steps and proceedings as are reasonably within its control as may be necessary to ensure that all of the conditions set forth in Section 6.1 are fulfilled at or before the time specified in such Section.



- (b) The Purchaser shall take all such actions, steps and proceedings as are reasonably within its control as may be necessary to ensure that all of the conditions set forth in Section 6.2 are fulfilled at or before the time specified in such Section.

## **ARTICLE 7 CLOSING**

### **7.1 DATE, TIME AND PLACE OF CLOSING**

The Closing shall take place at the Vancouver offices of the Purchaser's legal counsel, at the Closing Time on the Closing Date or at such other place, on such other date and at such other time as may be agreed upon in writing between the Vendor and the Purchaser.

### **7.2 VENDOR'S CLOSING DELIVERIES**

On or before the Closing, the Vendor shall deliver or cause to be delivered to the Purchaser the following documents:

- (a) certified copies of the relevant resolution or bylaw of the municipal council of the City of Kelowna, as Vendor, authorizing entry into the Agreement by the Vendor and the sale of the COK Assets;
- (b) a certificate of the Vendor executed by a senior officer of the Vendor:
  - (i) confirming that the conditions set forth in Sections 6.1(a), 6.1(b) and 6.1(c) have been satisfied (if not waived); and
  - (ii) confirming that Electoral Approval and Municipal Council Approval have been received;
- (c) all Vendor's Consents;
- (d) if the Purchaser has made the election referred to in Section 7.6(a), the Customer Care Agreement referred to in Section 7.6(a), executed by the Vendor;
- (e) if the Purchaser has made an election under Section 7.6(b) or Section 7.6(c), evidence, satisfactory to the Purchaser, acting reasonably, that the Vendor has terminated its agreement with any third party that provides Customer Care Services for the Vendor, without recourse to the Purchaser;
- (f) if the Purchaser has made an election under 7.7(a), duly executed assignment and assumption agreements for Third Party Contact Agreements with the applicable third party telecommunications companies;
- (g) if the Purchaser has made an election under Section 7.7(b) or Section 7.7(c), evidence, satisfactory to the Purchaser, acting reasonably, that the Vendor has terminated its agreements with any third party telecommunications company that has assets or facilities contacting or attaching to or on COK Assets and which the Purchaser has not either (A)

taken assignment of such contract(s) in accordance with Section 7.7(a), or (B) entered into its own contract in accordance with Section 7.7(b), in either case without recourse to the Purchaser;

- (h) all deeds, bills of sale, conveyances, transfers, assignments, instruments and other documents which are necessary to assign, sell and transfer the COK Assets to the Purchaser, each effective as of the Closing Time on the Closing Date as contemplated by this Agreement in such form and content as the Purchaser may reasonably require to give effect to the Transaction, duly executed by the Vendor, as applicable, including, without limitation:
  - (i) assignments of the Electrical ROWs contemplated in Section 4.1(a)(i) and 4.1(b)(iii); and
  - (ii) licenses to use any Catch-All ROWs identified under Section 4.1(a)(i) and 4.1(b)(iii);
- (i) the Shared Use & Services Agreement;
- (j) all other agreements, certificates and other instruments to be delivered or given pursuant to this Agreement, duly executed by the Vendor thereto;
- (k) the Required Notices, whether delivered prior to the Closing or to be delivered following Closing, duly executed by the Vendor (where required); and
- (l) an opinion of counsel to the Vendor regarding this Agreement and the Vendor's closing deliveries with respect to capacity, authority, execution, and delivery, in the form settled by counsel to the Parties, acting reasonably.

### **7.3 PURCHASER'S CLOSING DELIVERIES**

On or before the Closing, the Purchaser shall deliver or cause to be delivered to the Vendor the following documents and payments:

- (a) certified copies of resolutions of the directors of the Purchaser approving the completion of the Transaction including, without limitation, the purchase of the COK Assets, and the execution and delivery of this Agreement and all documents, instruments and agreements required to be delivered by it pursuant to this Agreement;
- (b) a certificate of the Purchaser executed by a senior officer of the Purchaser confirming that the conditions set forth in Sections 6.2(a) and 6.2(b) have been satisfied (if not waived);
- (c) all Purchaser's Consents;
- (d) if the Purchaser has made the election referred to in Section 7.6(a), the Customer Care Agreement referred to in Section 7.6(a), executed by the Purchaser;

- (e) if the Purchaser has made an election under 7.7(a), duly executed assignment and assumption agreements for Third Party Contact Agreements with the applicable third party telecommunications companies;
- (f) all deeds, bills of sale, conveyances, transfers, assignments, instruments and other documents which are necessary to assign, sell and transfer the COK Assets to the Purchaser, each effective as of the Closing Time on the Closing Date and for the Purchaser to assume the Assumed Liabilities as contemplated by this Agreement in such form and content as the Vendor may reasonably require to give effect to the Transaction, duly executed by the Purchaser;
- (g) the Shared Use & Services Agreement;
- (h) ten days prior to Closing, the Allocation;
- (i) all other agreements, certificates and other instruments to be delivered or given pursuant to this Agreement, duly executed by the Purchaser;
- (j) the Purchase Price and any Transfer Taxes required to be collected and remitted by the Vendor in immediately available funds pursuant to and in accordance with this Agreement; and
- (k) an opinion of counsel to the Purchaser regarding this Agreement and the Purchaser's closing deliveries with respect to capacity, authority, execution, and delivery, in the form settled by counsel to the Parties, acting reasonably.

#### **7.4 CLOSING PROCEDURE**

On the Closing Date, if all documents and funds have been delivered as provided in Sections 7.2 and 7.3, all documents and funds will be held in escrow with the exception of the transfer(s) of the Real Properties, which shall be tendered for registration in the appropriate Land Title Office. Upon acceptance for registration thereof and receipt by Purchaser of a post-filing index search indicating that in the normal course of Land Title Office routine, title to the COK Assets in the Real Properties will be issued in the name of Purchaser subject only to the Permitted Encumbrances, the escrow shall terminate and the balance of the Vendor's closing deliveries shall be released to the Purchaser and the Purchaser's closing deliveries shall be released to the Vendor.

#### **7.5 UN-ASSIGNABLE ASSUMED CONTRACTS AND GOVERNMENTAL AUTHORIZATIONS**

With respect to interests in Assumed Contracts and Governmental Authorizations that form part of the COK Assets for which Consents are not received on or before Closing (collectively, the "Unassigned Interests"), then only if the Parties proceed to complete the Transaction notwithstanding the absence of those Consents, the transfer and assignment of the Unassigned Interests will not be effective in each case until the applicable Consent has been received, and such Unassigned Interests will be held by the Vendor following the Closing in trust (to the extent permitted by Applicable Laws) for the benefit and exclusive use of the Purchaser. The Vendor

and Purchaser shall continue to use their commercially reasonable efforts to obtain those Consents set forth on Schedules 1.1(ggg) and 1.1(rrr) and until such time as they are received, the Vendor shall only make use of any Unassigned Interests in accordance with the lawful directions of the Purchaser that do not conflict with the terms of such Unassigned Interests. The Purchaser will reimburse the Vendor for all out-of-pocket liabilities, costs and expenses incurred by the Vendor from and after the Closing Date at the direction of the Purchaser arising out of the Vendor's performance of their respective obligations under this Section 7.5.

## 7.6 CUSTOMER CARE AGREEMENT

On or before January 15, 2013, the Purchaser may elect to either:

- (a) enter a Customer Care Agreement with the Vendor prior to Closing for the provision of the Customer Care Services by the Vendor to the Purchaser until December 31, 2013, which services are to be provided by the Vendor to the Purchaser at the direct cost of such services to the Vendor, without markup, and otherwise on terms satisfactory to the Purchaser and the Vendor, each acting reasonably;
- (b) enter a Customer Care Agreement with a third party; or
- (c) not enter into an agreement with the Vendor or a third party in respect of Customer Care Services;

and:

- (d) upon the Purchaser making an election under 7.6(a), 7.6(b) or 7.6(c), the Purchaser shall so notify the Vendor on or before January 15, 2013, and:
- (e) upon the Purchaser making an election under 7.6(b), the Vendor shall, within 30 days of receiving the Purchaser's election, elect, acting reasonably, to either:
  - (i) effective on Closing, terminate its agreement with any third party that provides Customer Care Services for the Vendor, without recourse to the Purchaser, and in such case the Vendor shall have no obligation to deliver a Customer Care Agreement or provide or arrange for Customer Care Services for the Purchaser following Closing; or
  - (ii) terminate this Agreement without penalty, in which case this Agreement shall be null and void, and thereafter neither party will have any further obligations to the other hereunder, except for their obligations in respect of extending the Master Services Agreement (as contemplated in a separate agreement) which shall survive,

provided however, that the Vendor shall elect, or absent the Vendor making an election it will be deemed to elect, under Section 7.6(e)(i) if it is provided with a copy of the Customer Care Agreement with the third party (subject to the Purchaser's confidentiality obligations thereunder) and it is satisfied, acting reasonably, that such agreement provides for delivery by the third party to the Vendor, on Closing, of a release of all

obligations and liability of the Vendor under any agreements for Customer Care Services that the Vendor was, immediately prior to Closing, party to, upon payment by the Vendor of all outstanding amounts due to the third party upon Closing; and

- (f) upon the Purchaser making an election under 7.6(c), the Vendor shall, within 30 days of receiving the Purchaser's election, elect, acting reasonably, to either:
  - (i) effective on Closing, terminate its agreement with any third party that provides Customer Care Services for the Vendor, without recourse to the Purchaser, and in such case the Vendor shall have no obligation to deliver a Customer Care Agreement or provide or arrange for Customer Care Services for the Purchaser following Closing; or
  - (ii) terminate this Agreement without penalty, in which case this Agreement shall be null and void, and thereafter neither party will have any further obligations to the other hereunder, except for their obligations in respect of extending the Master Services Agreement (as contemplated in a separate agreement) which shall survive,

provided however, that the Vendor shall elect, or absent the Vendor making an election it will be deemed to elect, under 7.6(f)(i) if it is satisfied, acting reasonably, that the Purchaser's election under 7.6(c) does not impose unacceptable risk or liability onto the Vendor.

#### **7.7 THIRD PARTY CONTACT AGREEMENTS**

The Purchaser shall be entitled to negotiate directly with all third party telecommunications companies that have assets or facilities contacting or attaching to or on COK Assets to enter into Third Party Contact Agreements, and, on or before January 15, 2013, the Purchaser may elect to either:

- (a) take assignment of any or all of the Vendor's existing agreements with third party telecommunications companies that have assets or facilities contacting or attaching to or on COK Assets;
- (b) enter into its own Third Party Contact Agreements with any or all third party telecommunications companies that have assets or facilities contacting or attaching to or on COK Assets; or
- (c) not enter into Third Party Contact Agreements with any or all third party telecommunications companies that have assets or facilities contacting or attaching to or on COK Assets;

and:

- (d) upon the Purchaser making an election under 7.7(a), 7.7(b), or 7.7(c), the Purchaser shall so notify the Vendor on or before January 15, 2013; and

- (e) upon the Purchaser making an election under either 7.7(b) or 7.7(c), the Vendor shall, within 30 days of receiving the Purchaser's election, elect, acting reasonably, to either:
- (i) effective on Closing, terminate its agreements with any third party telecommunications company that has assets or facilities contacting or attaching to or on COK Assets and which the Purchaser has not either (A) taken assignment of such contract(s) in accordance with Section 7.7(a), or (B) entered into its own contract in accordance with Section 7.7(b), in either case without recourse to the Purchaser; or
  - (ii) terminate this Agreement without penalty, in which case this Agreement shall be null and void, and thereafter neither party will have any further obligations to the other hereunder, except for their obligations in respect of extending the Master Services Agreement (as contemplated in a separate agreement) which shall survive,

provided however, that the Vendor shall elect, or absent the Vendor making an election it will be deemed to elect, under 7.7(e)(i) if: (A) the Vendor is provided with copies of any contract(s) the Purchaser has entered or proposes to enter into under 7.7(b) with the third party(ies) (subject to the Purchaser's confidentiality obligations thereunder) and the Vendor is satisfied, acting reasonably, that such contract(s) provide for delivery by the third party(ies) to the Vendor, on Closing, of a release of all obligations and liability of the Vendor under any Third Party Contact Agreements the Vendor was, immediately prior to Closing, party to, upon payment by the Vendor of all outstanding amounts due to the third party(ies) upon Closing; and, (B) the Vendor is satisfied, acting reasonably, that the Purchaser's election under 7.7(c) as to any Third Party Contact Agreements does not impose unacceptable risk or liability onto the Vendor.

## 7.8 GENERAL ADJUSTMENTS

- (a) Ten days prior to Closing, the Vendor shall deliver to the Purchaser an interim statement of adjustments to adjust for the following items as of the Closing Date (the "**Interim Statement of Adjustments**"):
- (i) payment by the Purchaser to the Vendor of all receivables, billed and unbilled, from or relative to the COK Assets pertaining to the period up to and including the Closing Date;
  - (ii) payment by the Vendor to the Purchaser of all receivables, billed and unbilled, from or relative to the COK Assets pertaining to the period after the Closing Date;
  - (iii) subject to Section 7.8(a)(vi), payment by the Vendor to FortisBC Pacific Holdings Inc. of any outstanding amounts under the Master Services Agreement pertaining to the period up to and including the Closing Date;
  - (iv) without duplication, payment by the Purchaser to the Vendor for any Prepaid Expenses for obligations expressly assumed by the Purchaser hereunder and pertaining to the period after the Closing Date;

- (v) without duplication, payment by the Vendor to the Purchaser of all security deposits held by the Vendor in respect of the electrical utility customers, subject to any obligations of the Vendor return deposits to such individual customers (in which case the Vendor shall return such deposits, and the Purchaser shall arrange for new ones directly with the applicable customers); and
- (vi) without duplication, payment by the Vendor to the Purchaser for any amounts outstanding as at the Closing for capital expenditures and work-in-progress under the Master Services Agreement, subject to the following:
  - (A) the Purchaser will provide to the Vendor, on or before October 1, 2012, a forecasted figure (acceptable to the Vendor, acting reasonably) for capital expenditures for the entirety of the Interim Period and for work-in-progress as at the Closing; and
  - (B) the Vendor's obligation to pay for the foregoing shall be limited to the lesser of:
    - (I) the forecasted amount (less any amounts already paid) plus 5%; and
    - (II) the actual costs incurred (less any amounts already paid),

and the Parties shall approve the Interim Statement of Adjustments on or before the Closing, acting reasonably. The Parties shall deliver to each other, promptly upon request, all documents and information that may be required in connection with the preparation of the Interim Statement of Adjustments.

- (b) The Parties acknowledge that the Interim Statement of Adjustments is being prepared prior to Closing and that final figures as at the Closing will not be available at Closing. Within 75 days after the Closing, the Vendor shall prepare and deliver to the Purchaser a final statement of adjustments (the "**Final Statement of Adjustments**"), to reflect final figures and correct any error or omission in the Interim Statement of Adjustments, for review and approval pursuant to Section 7.8(c) hereof. Once approved, payment shall be made by the appropriate party to the other in accordance with the Final Statement of Adjustments within 10 days of approval thereof under Section 7.8(c).
- (c) The Vendor will cause the Final Statement of Adjustments to be completed as soon as practicable following the Closing Date (and in any event within 75 days), and shall provide the same to the Purchaser for review and comment. The Parties further agree as follows:
  - (i) in the event that the Purchaser and the Vendor are unable to resolve any dispute as to the Final Statement of Adjustments then either party may, within 10 days after receipt of the Final Statement of Adjustments, deliver notice in writing (the "**Dispute Notice**") detailing the basis and reason for such dispute and the amount which is in dispute and:

- (A) during the 10 day period following the date after the delivery of the Dispute Notice, the Purchaser and the Vendor shall attempt to resolve such dispute between themselves; and
- (B) if at the end of the 10 day period specified in paragraph (A) above, the Parties shall have failed to reach agreement with respect to such dispute, the matter shall be finally determined by a mutually agreed independent third party, whose determination shall constitute approval of the amount owing, if any, for the purposes of Section 7.8(b). The costs of such determination shall be borne by the party in whose favour the independent third party did not decide.

## **ARTICLE 8 TERMINATION**

### **8.1 TERMINATION BY PURCHASER**

If any of the conditions set forth in Section 6.1 have not been fulfilled or waived on or, before the Closing Time other than as a result of any failure of the Purchaser to perform or fulfil, in all material respects, any of its covenants under this Agreement to be performed or fulfilled on or before the Closing Time, the Purchaser may terminate this Agreement by notice in writing to the Vendor, and in such event the Purchaser and the Vendor shall be released from their respective obligations hereunder except for their obligations in respect of extending the Master Services Agreement (as contemplated in a separate agreement), which shall survive.

### **8.2 TERMINATION BY VENDOR**

If any of the conditions set forth in Section 6.2 have not been fulfilled or waived on or before the Closing Time, other than as a result of any failure of the Vendor to perform or fulfil, in all material respects, any of its covenants under this Agreement to be performed or fulfilled on or before the Closing Time, the Vendor may terminate this Agreement by notice in writing to the Purchaser, and in such event the Vendor and the Purchaser shall be released from their respective obligations hereunder except for their obligations in respect of extending the Master Services Agreement (as contemplated in a separate agreement), which shall survive.

### **8.3 TERMINATION ON MARCH 31, 2013**

If, by March 31, 2013, the Transaction has not completed, the Purchaser may elect to terminate this Agreement by notice in writing to the Vendor, and in such event the Vendor and the Purchaser shall be released from their respective obligations hereunder, except for their obligations in respect of extending the Master Services Agreement (as contemplated in a separate agreement), which shall survive.

### **8.4 EFFECT OF TERMINATION**

Each Party's right of termination under this Article 8 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an



election of remedies. Except as otherwise expressly provided in this Article 8, nothing in this Article 8 shall limit or affect any other rights or causes of action any Party may have with respect to the representations, warranties, covenants and indemnities in its favour contained in this Agreement.

## **ARTICLE 9 INDEMNIFICATION AND LIMITATION OF LIABILITY**

### **9.1 INDEMNIFICATION IN FAVOUR OF THE PURCHASER**

Subject to Sections 9.3 and 9.4, the Vendor shall indemnify and save the Purchaser, its Affiliates, and each of their respective directors, officers, employees and agents (collectively, the “**Purchaser’s Indemnified Persons**”) harmless of and from any loss, liability, claim, damage (specifically excluding indirect, incidental or consequential damage) or expense (whether or not involving a third-party claim) including legal expenses (collectively, “**Damages**”) suffered by, imposed upon or asserted against any of the Purchaser’s Indemnified Persons to the extent they are the result of, in respect of, connected with, or arising out of, under, or pursuant to:

- (a) any failure of the Vendor to perform or fulfil any of its covenants under this Agreement;
- (b) subject to Section 5.1 and Section 3.4, any breach or inaccuracy of any representation or warranty given by the Vendor in this Agreement; and
- (c) any and all obligations and liabilities (whether present, future, absolute or contingent) relating to the ownership, operation or maintenance of the COK Assets that are not Assumed Liabilities.

### **9.2 INDEMNIFICATION IN FAVOUR OF THE VENDOR**

Subject to Sections 9.3 and 9.4, the Purchaser shall indemnify and save the Vendor, and its directors, officers, employees and agents (collectively, the “**Vendor’s Indemnified Persons**”) harmless of and from any Damages suffered by, imposed upon or asserted against any of the Vendor’s Indemnified Persons to the extent they are the result of, in respect of, connected with, or arising out of, under or pursuant to:

- (a) any failure of the Purchaser to perform or fulfil any of its covenants under this Agreement;
- (b) subject to Section 5.1, any breach or inaccuracy of any representation or warranty given by the Purchaser in this Agreement; and
- (c) any failure of the Purchaser to pay, discharge or perform any of the Assumed Liabilities or the Vendor being subject to any of the Assumed Liabilities.

### **9.3 LIMITATIONS**

- (a) Subject to Section 9.3(c), and except with respect to any breach by the Vendor in respect of its obligation to pay, discharge or perform obligations and liabilities (whether present,

future, absolute or contingent) relating to the ownership, operation or maintenance of the COK Assets that are not Assumed Liabilities, the Vendor will have no liability (for indemnification or otherwise) with respect to the matters described in Section 9.1, until the total of all Damages with respect to such matters exceeds \$500,000; provided that, once the total of all Damages with respect to such matters exceeds such amount, the Vendor shall be liable for the full amount of such Damages without reduction or deduction.

- (b) Except with respect to any breach by the Purchaser in respect of its obligation to pay, discharge or perform the Assumed Liabilities, or to deliver the Purchase Price and any Transfer Taxes required to be collected and remitted by the Vendor in immediately available funds pursuant to and in accordance with this Agreement to the Vendor on Closing, the Purchaser will have no liability (for indemnification or otherwise) with respect to the matters described in Section 9.2 until the total of all Damages with respect to such matters exceeds \$500,000; provided that, once the total of all Damages with respect to such matters exceeds such amount, the Purchaser shall be liable for the full amount of such Damages without reduction or deduction.
- (c) Notwithstanding any provision in this Agreement to the contrary, any claim made under this Agreement by the Purchaser which is based upon or relates to any intentional misrepresentation or fraud by the Vendor may be made or brought by the Purchaser at any time after the Closing Date and is not subject to any limitations set forth in this Section 9.3.
- (d) Notwithstanding any provision in this Agreement to the contrary, any claim made under this Agreement by the Vendor which is based upon or relates to any intentional misrepresentation or fraud by the Purchaser may be made or brought by the Vendor at any time after the Closing Date and is not subject to any limitations set forth in this Section 9.3.

#### 9.4 PROCEDURE FOR INDEMNIFICATION - THIRD PARTY CLAIMS

- (a) Promptly after receipt by an indemnified party (an “**Indemnified Party**”) of a notice of the commencement of any proceeding against it by a third party for which it wishes to seek indemnification under Section 9.1 or 9.2, the Indemnified Party will give notice to the indemnifying party (an “**Indemnifying Party**”) of the commencement of such claim and the particulars of the basis and amount of such claim to the extent known to the Indemnified Party. The failure to so notify the Indemnifying Party will not relieve the Indemnifying Party of any liability that it may have to any Indemnified Party, except to the extent that the Indemnifying Party demonstrates that the defense of such action is prejudiced by the Indemnified Party’s failure to give such notice.
- (b) If any proceeding referred to in Section 9.4(c) (a “**Proceeding**”) is brought against an Indemnified Party and it gives notice to the Indemnifying Party in accordance with Section 9.4(a), the Indemnifying Party will, unless the claim involves Taxes, be entitled to participate in the Proceeding. Subject to the next following sentence, to the extent that the Indemnifying Party wishes to assume the defense of the Proceeding with counsel

satisfactory to the Indemnified Party, acting reasonably, it may do so provided the Indemnifying Party first acknowledges in writing to the Indemnified Party the Indemnifying Party's liability for the claim that is the subject of such Proceeding and reimburses the Indemnified Party for all of its out-of-pocket expenses arising prior to or in connection with such assumption. The Indemnifying Party may not assume defense of the Proceeding if (i) the Indemnifying Party is also a party to the Proceeding and the Indemnified Party determines in good faith that joint representation would be inappropriate, or (ii) the Indemnifying Party fails to provide reasonable assurance to the Indemnified Party of its financial capacity to defend the Proceeding and provide indemnification with respect to the Proceeding. After notice from the Indemnifying Party to the Indemnified Party of its election to assume the defense of the Proceeding, the Indemnifying Party will not, as long as it diligently conducts such defense, be liable to the Indemnified Party under this Section 9.4(b) for any fees of other counsel or any other expenses with respect to the defense of the Proceeding, in each case subsequently incurred by the Indemnified Party in connection with the defense of the Proceeding, other than reasonable costs of investigation approved in advance by the Indemnifying Party. If the Indemnifying Party assumes the defense of a Proceeding (i) it will be conclusively established for purposes of this Agreement that the claims made in that Proceeding are within the scope of, and subject to, indemnification, (ii) no compromise or settlement of such claims may be made by the Indemnifying Party without the Indemnified Party's consent acting reasonably unless (y) there is no finding or admission of any violation of Applicable Laws or any violation of the rights of any Person and no effect on any other claims that may be made against the Indemnified Party, and (z) the sole relief provided is monetary damages that are paid in full by the Indemnifying Party, and (iii) the Indemnified Party will have no liability with respect to any compromise or settlement of such claims effected without its consent. If notice is given to an Indemnifying Party of any Proceeding in accordance with Section 9.4(a) and the Indemnifying Party does not, within thirty (30) days after receipt of such notice, give notice to the Indemnified Party of its election to assume the defense of the Proceeding, the Indemnifying Party will be bound by any determination made in the Proceeding or any compromise or settlement effected by the Indemnified Party.

- (c) Notwithstanding the foregoing, if an Indemnified Party determines in good faith that there is a reasonable probability that a Proceeding may adversely affect it or its Affiliates other than as a result of monetary damages for which it would be entitled to indemnification under this Agreement, the Indemnified Party may, by notice to the Indemnifying Party, assume the exclusive right to defend, compromise, or settle the Proceeding. In such case, the Indemnifying Party will not be bound by any determination of a Proceeding so defended or any compromise or settlement effected without its consent (which may not be unreasonably withheld).
- (d) Where the defense of a Proceeding is being undertaken and controlled by the Indemnifying Party, the Indemnified Party will use all reasonable efforts to make available to the Indemnifying Party those employees whose assistance, testimony or presence is necessary to assist the Indemnifying Party in evaluating and defending any such claims. However, the Indemnifying Party shall be responsible for the expense associated with any employees made available by the Indemnified Party to the

Indemnifying Party pursuant to this Section 9.4(d), which expense shall be equal to an amount to be mutually agreed upon per person per hour or per day for each day or portion thereof that the employees are assisting the Indemnifying Party and which expenses shall not exceed the actual cost to the Indemnified Party associated with the employees.

- (e) With respect to any Proceeding, the Indemnified Party shall make available to the Indemnifying Party or its representatives on a timely basis all documents, records and other materials in the possession of the Indemnified Party, at the expense of the Indemnifying Party, reasonably required by the Indemnifying Party for its use in defending any such claim and shall otherwise co-operate on a timely basis with the Indemnifying Party in the defense of such claim, provided that Indemnified Party and the Indemnifying Party shall use reasonable best efforts (which shall not require the expenditure of money, the curbing of any business activities or the commencement of litigation) to avoid production of confidential information (consistent with such Party's exiting obligations of confidentiality and Applicable Laws) and to cause all communications among employees, counsel and others representing any Party to a Proceeding to be made so as to preserve any applicable solicitor-client or work-product privileges.
- (f) With respect to any reassessment for income, corporate, sales, excise, or other Tax or other liability enforceable by Encumbrance against the property of the Indemnified Party, the Indemnifying Party's right to so contest shall only apply after payment of the reassessment or the provision of such security as is necessary to avoid an Encumbrance being placed on the property of the Indemnified Party.

#### **9.5 PROCEDURE FOR INDEMNIFICATION - OTHER CLAIMS**

A claim for indemnification for any matter not involving a third-party claim may be asserted by notice to the Party from whom indemnification is sought, setting out the nature of the claim in reasonable detail.

#### **9.6 OTHER REMEDIES**

No Party shall have the right to bring any proceeding against any other Party for damages, compensation or any other relief for which such Party could, or could but for limitations contained in this Article 9, seek relief pursuant to this Article 9, provided however, that the obligations of the Parties with respect to the indemnities provided in this Article 9 shall not limit their ability to seek relief for breach of contract in the alternative except that the limitations and exceptions set out in this Article 9 shall apply equally to all such proceedings.

## ARTICLE 10 MISCELLANEOUS

### 10.1 NOTICES

Any notice, direction or other communication given under this Agreement shall be in writing and given by delivering it or sending it by facsimile or other similar form, unless otherwise provided, of recorded communication addressed:

(a) To the Purchaser at:

FortisBC Inc.  
Suite 100, 1975 Springfield Road  
Kelowna, B.C. V1Y 7V7  
Attention: Dennis Swanson  
Fax: 1-866-435-5144

With a copy to:

Farris, Vaughan, Wills & Murphy LLP  
25th Floor, 700 West Georgia Street  
Vancouver, B.C. V7Y 1B3  
Attention: Bo. L. Rothstein  
Fax: (604) 661-9349

(b) To the Vendor at:

City of Kelowna  
1435 Water Street  
Kelowna, B.C. V1Y 1J4  
Attention: John Vos  
Fax: (250) 862-3399

With a copy to:

Owen Bird Law Corporation  
Suite 2900, 595 Burrard Street  
Vancouver, BC V7X 1J5  
Attention: Christopher P. Weafer  
Fax: (604) 632-4482

Any such communication shall be deemed to have been validly and effectively given (i) if personally delivered, on the date of such delivery if such date is a Business Day and such delivery was made prior to 4:00 p.m. (Vancouver time) and otherwise on the next Business Day, or (ii) if transmitted by facsimile or similar means of recorded communication on the date of such transmission if such date is a Business Day and such delivery was made prior to 4:00 p.m. (Vancouver time) and otherwise on the next Business Day. Any Party may change its address for service from time to time by notice given in accordance with the foregoing and any subsequent notice shall be sent to such Party at its changed address.

## **10.2 TIME OF THE ESSENCE**

Time shall be of the essence of this Agreement and every provision hereof, including without limitation those relating to Closing hereunder.

## **10.3 ANNOUNCEMENTS**

Any press release or public statement or announcement (a "**Public Statement**") with respect to the execution of this Agreement or the completion of the Transaction shall be made only with the prior written consent and joint approval of the Vendor and the Purchaser unless such Public Statement is required by Law, to obtain BCUC Acceptance or is required by any stock exchange, in which case the Party required to make the Public Statement shall use reasonable efforts to consult with the other Party as to the form, nature and extent of the disclosure. For certainty, (i) testimony given by any witness before the BCUC and responses to questioning at any workshop or other meeting held in connection therewith shall not be considered to be a Public Statement for purposes of this Section 10.4, and each Party shall only be required to consult with the other Party in advance of filing any such information or giving any such testimony if such filing or testimony directly and adversely affects the interests of the other Party and (ii) information contained in Public Statements that have already been made public by either of the Parties is not subject to the preceding sentence.

## **10.4 EXPENSES**

Except as otherwise expressly provided in this Agreement all costs and expenses (including the fees and disbursements of legal counsel, investment advisers and accountants) incurred in connection with the Transaction shall be paid by the Party incurring such expenses.

## **10.5 AMENDMENTS**

This Agreement may only be amended, supplemented or otherwise modified by written agreement signed by the Parties.

## **10.6 WAIVER**

No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar); nor shall such waiver be binding unless executed in writing by the Party to be bound by the waiver. No failure on the part of any Party to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right; nor shall any single or partial exercise of any such right preclude any other or further exercise of such right or the exercise of any other right.

## **10.7 NON-MERGER**

Except as expressly provided in this Agreement, the covenants, representations and warranties shall not merge on and shall survive the Closing and, notwithstanding such Closing or any investigation made by or on behalf of any Party, shall continue in full force and effect. Closing shall not prejudice any right of one Party against any other Party in respect of anything done or omitted under this Agreement or in respect of any right to damages or other remedies.

#### **10.8 ENTIRE AGREEMENT**

This Agreement together with all ancillary agreements referred to herein constitutes the entire agreement among the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties. There are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise, between the Parties in connection with the subject matter of this Agreement except as specifically set forth herein and therein and none of the Parties has relied or is relying on any other information, discussion or understanding in entering into and completing the Transaction. If there is any conflict or inconsistency between the provisions of this Agreement and the provisions of any documents, instruments and agreements required to be delivered by it pursuant to this Agreement, the provisions of this Agreement shall govern, unless such other agreement or document expressly provides that it shall govern.

#### **10.9 EXECUTION AND DELIVERY OF AGREEMENT**

This Agreement shall not become effective until it has been executed and delivered by the Purchaser and the Vendor, which must occur, if at all, on or before 5:00 p.m. (Kelowna, British Columbia time) on November 5, 2012, after which time, if it has not been so executed by both Parties, it will be null and void. Notwithstanding that this Agreement has been executed by the Purchaser before it has been executed by the Vendor, the Purchaser may, at any time prior to its execution and delivery by the Vendor, elect not to proceed with this Agreement, without penalty, obligation or liability to either Party.

#### **10.10 SUCCESSORS AND ASSIGNS**

- (a) Following execution and delivery of this Agreement by both Parties in accordance with Section 10.9, this Agreement shall be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns.
- (b) Neither this Agreement nor any of the rights or obligations under this Agreement shall be assignable or transferable by any Party without the prior written consent of the other Parties hereto.

#### **10.11 SEVERABILITY**

If any provision of this Agreement shall be determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, that provision shall be severed from this Agreement and the remaining provisions shall continue in full force and effect.

#### **10.12 GOVERNING LAW**

This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein. Each Party hereby irrevocably attorns to the non-exclusive jurisdiction of the courts of the Province of British Columbia with respect to any matter arising under or related to this Agreement.

### 10.13 DISPUTE RESOLUTION

- (a) Except for disputes specifically required to be resolved pursuant to any other provision of this Agreement, should any dispute or disagreement of any kind arise at any time with respect to this Agreement (or a document or instrument to be executed and delivered pursuant to this Agreement), its interpretation or application, its performance by the Parties, or in respect of any defined legal relationship associated therewith or derived therefrom, the Parties agree that good faith negotiations shall take place between the Parties with the objective of resolving such dispute or disagreement. If such good faith negotiations have not resolved the dispute or disagreement within a period of ten (10) Business Days, the dispute or disagreement shall be referred to the Parties' respective designates who shall attempt in good faith to resolve such dispute or disagreement.
- (b) If within the next following ten (10) Business Days the dispute or disagreement shall not have been resolved to the satisfaction of the Parties, any Party may refer the dispute to a court of competent jurisdiction or final and binding arbitration. Matters referred to final and binding arbitration pursuant to this Agreement shall be arbitrated in accordance with the Commercial Arbitration Act of British Columbia in accordance with the following procedures:
  - (i) the arbitration shall be conducted by a single arbitrator appointed by mutual agreement of the Parties or in the event of failure to reach agreement within fifteen (15) days, any Party may apply to a judge of the British Columbia Supreme Court to appoint an arbitrator;
  - (ii) the arbitrator shall be qualified by education and training to pass upon the matter to be decided;
  - (iii) the arbitrator shall be instructed that time shall be of the essence in proceeding with the determination of the dispute;
  - (iv) the arbitration shall be conducted in Vancouver, British Columbia; and
  - (v) the arbitration decision shall be in writing and shall be final and binding upon the Parties, not subject to any appeal except as provided below and shall deal with the question of costs of arbitration.
- (c) The Parties agree that good faith negotiations and arbitration shall all be without recourse to the courts and that the award of the arbitrator shall be final and binding, except that:
  - (i) any Party may appeal an arbitration award to the courts of the Province of British Columbia on a question of law; and
  - (ii) any Party may apply to a court of competent jurisdiction:
    - (A) for an interim measure of protection; or



- (B) for any order for equitable relief which the arbitrator does not have the jurisdiction to provide.

#### **10.14 FURTHER ASSURANCES**

From time to time after the Closing Date, each Party shall, at the request and cost of any other Party, execute and deliver such additional conveyances, transfers and other assurances as may be reasonably required to effectively transfer the COK Assets to the Purchaser and to otherwise carry out the intent of this Agreement or any documents, instruments and agreements required to be delivered by it pursuant to this Agreement.

#### **10.15 COUNTERPARTS**

This Agreement may be executed in any number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same instrument, and may be delivered by facsimile or electronic copy.

*[Remainder of page left intentionally blank]*

**IN WITNESS WHEREOF** each of the Parties has executed and delivered this Agreement.

**CITY OF KELOWNA**

By: \_\_\_\_\_

By: \_\_\_\_\_

I/We have authority to bind the City of Kelowna

**FORTISBC INC.**

By:  \_\_\_\_\_

Name: John Walker

Title: President and Chief Executive Officer

I have authority to bind the corporation

*Execution Copy*

**Disclosure Schedules to the  
CITY OF KELOWNA ELECTRIC UTILITY  
ASSET PURCHASE AGREEMENT  
(the "Agreement")**

**Dated \_\_\_\_\_, 2012**

**between**

**CITY OF KELOWNA  
(as Vendor)**

**- and -**

**FORTISBC INC.  
(as Purchaser)**

**Unless the context otherwise requires, all capitalized terms used in these Disclosure Schedules shall have the respective meanings assigned to them in the Agreement.**

**SCHEDULE 1.1(r)**

**COK ASSET LIST**

<b>Asset Id</b>	<b>Asset Description</b>	<b>Location</b>
65A	Richter St Sub Station	Richter St
66B	Richter St Sub Station	Richter St
	Richter/Recreation Power Pole Stg	Richter St
	Recreation/Richter Substation	Richter St
	<b>Land Total</b>	
	Spall Substation, Land owned by FortisBC	Spall Rd.
	Saucier Substation; Land owned by FortisBC	Saucier Ave.
	Recreation Substation	- 1010 Recreation Ave
	<b>Substation Total</b>	
	Electrical Meters	
	Electrical Meters	
	Electrical Meters	
	Electrical Meters	
	Electrical Meters	
	Electrical Meters	
	Electrical Meters	
	Electrical Meters	
	Electrical Meters	
	Electrical Meters	
	Electrical Meters	
	Hydro Meters	
	Hydro Meters	
	Hydro Meters	
	Hydro Meters	
	Electrical Meters	
	<b>Electrical Meters Total</b>	
	Distribution Components	
	Distribution Components	
	Distribution Components	
	Distribution Components	
	Distribution Components	
	Distribution Components	
	Distribution Components	
	Distribution Components	
	Distribution Components	



Asset Id	Asset Description	Location
	Distribution Components	
	<b>Distribution Components Total</b>	
	Main Switcher Replacement - 08 WIP	
	Main Switcher Replacement	
	Switcher 79MS046	
	Switcher-79MS037	
	Switcher -79MS017 Grand	
	Switcher -79MS051	
	79MS037-Main Switcher Replacement	
	Madison Tower -Main Switcher Replacement	
	79MS053 Water & Bernard -Main Switcher Replacement	
	79MS007 Capri -Main Switcher Replacement	
	79MS042 - Lake & Riverside -Main Switcher Replacement	
	79MS013-Main Switcher Replacement	
	79MS028-Main Switcher Replacement- Richter & Rose	
	Cost recovery	
	Switcher 79MS046 2010 WIP	
	Switcher 79MS021 2010 WIP	
	Switcher 79MS066 2010 WIP	
	Switcher - 79MS017 Grand 2010 WIP	
	Switcher - 79MS051 2010 WIP	
	79MS053 Water & Bernard -Main Switcher Replacement 2010 WIP	
	79MS007 Capri-Main Switcher Replacement	
	79MS042 - Lake & Riverside -Main Switcher Replacement	
	79Ms013 Main switcher replacement 2010 WIP	
	79MS046 Gordon & Lawrence	
	79MS038 Main switcher replacement	
	Main switcher replacement	
	<b>Main Switcher Replacements Total</b>	
	Copper Replacement Program	
	Bowes- Copper Replacement	
	Ethel/Bay Cooper Wire	
	Wardlaw, Kinnear & Raymer - Copper Reple	
	Grenfel- copper reple	
	Elliot -Copper Replacement Program	
	Gore-Copper Replacement Program	
	Herbert/broadway-Copper Replacement Program	
	Kelview-Copper Replacement Program	

Asset Id	Asset Description	Location
	Pheasant-Copper Replacement Program	
	High/Kennedy-Copper Replacement Program	
	Burne/ Cadder Copper Replacement Program	
	Laurel -Copper Replacement Program	
	Birch-Wardlaw (richter)-Copper Replacement Program	
	Sutherland-Copper Replacement Program	
	Copeland-Copper Replacement Program	
	Lane behind Town Center Mall-Copper Replacement Program	
	Bowes- Copper Replacement	
	Ethel/Bay Cooper Wire	
	Wardlaw, Kinnear & Raymer - Copper Reple	
	Grenfel- copper replc	
	Elliot -Copper Replacement Program	
	Gore-Copper Replacement Program	
	Manhattan-Copper Replacement Program - 09 WIP	
	Manhattan-Copper Replacement Program	
	Pheasant-Copper Replacement Program	
	Clement & Highland-Copper Replacement Program - 09 WIP	
	Clement & Highland-Copper Replacement Program	
	Burne/ Cadder Copper Replacement Program	
	Laurel -Copper Replacement Program	
	Birch-Wardlaw (richter)-Copper Replacement Program	
	Sutherland-Copper Replacement Program	
	Copeland-Copper Replacement Program	
	Lane behind Town Center Mall-Copper Replacement Program	
	Copper Replacement Program	
	Gore-Copper Replacement Program Gore & Osprey	
	Kelview-Copper Replacement Program	
	Manhattan Copper replacement program	
	Clement & Highland-Copper Replacement Program	
	Overloaded transformers and copper replacement	
	<b>Copper Replacements Total</b>	
	Electrical Undergrounding (2007 WIP)	
	Electrical Undergrounding	
	Underground Cable Upgrades	
	Coopland -upgrade -U/G Subd Cable Replacements	

Asset Id	Asset Description	Location
	Richter & hiway 97-upgrade -U/G Subd Cable Replacements	
	Broadview -U/G Cable Replacements	
	Nassau Cr-U/G Cable Replacements	
	St Andrews-U/G Cable Replacements	
	Montrose -U/G Subd Cable Replacements	
	Monterey -U/G Subd Cable Replacements	
	Clifton/Richard Pl Aged Cable	
2383E	Capacity Driven U/G work - 08 WIP	
2383E	Capacity Driven U/G work - 09 WIP	
	Spall - Sutherland - City Infrastructural Work - 09 WIP	
	Feeder back-up Mains Richter, Roweliff Buckland	
	SAU REC UG Feeder part 2 Hwy 97	
	<b>Electrical Undergrounding Total</b>	
2384E	Feeder Back-Up Mains	
	HWY 97 Spall - Sutherland-Feeder Back-Up Mains	
2384E	feeder Back-Up Mains	
	<b>Feeder Back-Up Mains Total</b>	
	Feeder Condition Upgrades	
	Feeder Condition Upgrades	
	<b>Feeder Condition Upgrades Total</b>	
	Capacity Driven O/H Upgrades	
2476E	City Infrastructural Work - 08 WIP	
	Lane North of Lawrence (Electrical)	
	Capacity Driven O/H Upgrades	
	Rec/spall Tie OID 2010 WIP	
	Rec/Saucier Feeder tie - capacity driven 2010 Wip	
	<b>Capacity Driven O/H Upgrades Total</b>	

**Grand Total**



## **SCHEDULE 1.1(ff)**

### **EXCLUDED ASSETS**

- All Catch-All ROWs.
- All City of Kelowna streets.
- All street lights and street light poles, including those to which COK Assets (e.g. wires) are affixed.
- Any third party equipment (e.g. wires) affixed to COK Assets (e.g. poles).
- Parking lots located at 1408 and 1414 St. Paul Street (formerly used for electrical utility purposes).
- COK GIS Mapping System.
- Any “Intellectual Property” (as defined in the Master Agreement dated the 31st day of January, 2006 between the City Of Kelowna and Terasen Utility Services Inc., as amended and extended by a letter agreement dated March 30, 2011 (the “**Corix Master Agreement**”)).

## **SCHEDULE 1.1(ii)**

### **GOVERNMENTAL AUTHORIZATIONS**

- Electoral Approval.
- Municipal Council Approval.
- BCUC Acceptance.
- City of Kelowna Rate Bylaw and all other municipal bylaws applicable to the electrical utility.
- Measurement Canada certification for meters and meter services.
- All “Permits,” as that term is defined in the Master Services Agreement, that constitute Governmental Authorizations.

## **SCHEDULE 1.1(tt)**

### **MATERIAL CONTRACTS AND ASSUMED CONTRACTS**

#### **Material Contracts**

- Corix Master Agreement.
- Tolko Wheeling Agreement.
- Fortis Wholesale Customer Tariff and Power Supply Agreement.
- Master Services Agreement.
- Telus Pole Agreement as to Telus contacts on City of Kelowna poles and City of Kelowna contacts on Telus poles, effective January 1, 1997, plus verbal/electronic mail agreements extending same (collectively, the “**Telus Pole Agreement**”).
- Arrangements with Shaw as to contacts on City of Kelowna poles (“**Shaw Arrangement**”).
- Wire Crossing Agreements with the Canadian National Railway Company, Canadian National Telegraph Company or Kelowna Pacific Railway Ltd. (collectively, the “**Railway Agreements**”).
- City of Kelowna Rate Bylaw (provides for various rates to be charged to consumers).
- Revised Cost Sharing Agreement between the Ministry of Transportation and Highways (Province of British Columbia) and the City of Kelowna dated effective January 1, 1995.

#### **Assumed Contracts**

- The Telus Pole Agreement (if the Purchaser makes the election in Section 7.7(a) to take assignment of the Telus Pole Agreement).
- The Shaw Arrangement (if the Purchaser makes the election in Section 7.7(a) to take assignment of the Shaw Arrangement).
- The Railway Agreements.

#### **Disclosure under Section 3.1(q)**

The Corix Master Agreement provides that Corix and Vendor shall negotiate an agreement on the ownership of any “Intellectual Property” (as defined in the Corix Master Agreement) developed during the term of the Corix Master Agreement by Corix and the Vendor.

#### **For Waiver**

The Corix Master Agreement.

## **SCHEDULE 1.1(yy)**

### **PERMITTED ENCUMBRANCES**

- All legal notations and charges registered against title to the Real Properties, as set out in the attached title searches.
- Any agreement as to ownership of “Intellectual Property” (as defined in the Corix Master Agreement) developed during the term of the Corix Master Agreement by Corix and the Vendor, in accordance with Corix Master Agreement, to the extent that same constitutes an Encumbrance.
- Telus contacts on any COK Assets pursuant to Third Party Contact Agreements, unless the Vendor is required to terminate the Telus Pole Agreement pursuant to Section 7.7(e)(i).
- Shaw contacts on any COK Assets pursuant to Third Party Contact Agreements, unless the Vendor is required to terminate the Shaw Arrangement pursuant to Section 7.7(e)(i).
- Any additional encumbrances on COK Assets that: (i) are set forth on the lists to be provided pursuant to Section 4.1, (ii) specifically state that they are encumbrances to be added to this Schedule 1.1(yy) and (iii) can reasonably be identified as Permitted Encumbrances.

Date: 31-Jul-2012  
Requestor: (PYS2800)  
Folio: 18551/15

TITLE SEARCH PRINT  
OWEN BIRD LAW CORPORATION  
TITLE - KR18306

Time: 13:50:11  
Page 001 of 001

KAMLOOPS LAND TITLE OFFICE TITLE NO: KR18306  
FROM TITLE NO: H43203

APPLICATION FOR REGISTRATION RECEIVED ON: 01 MARCH, 2001  
ENTERED: 05 MARCH, 2001

REGISTERED OWNER IN FEE SIMPLE:  
CITY OF KELOWNA  
1435 WATER ST.  
KELOWNA, BC

TAXATION AUTHORITY:  
CITY OF KELOWNA

DESCRIPTION OF LAND:  
PARCEL IDENTIFIER: 006-057-861  
LOT 1 DISTRICT LOT 139 OSOYOOS DIVISION YALE DISTRICT PLAN 24283

LEGAL NOTATIONS: NONE

CHARGES, LIENS AND INTERESTS:

NATURE OF CHARGE  
CHARGE NUMBER DATE TIME

STATUTORY RIGHT OF WAY  
LB358057 2009-12-14 12:13

REGISTERED OWNER OF CHARGE:

FORTISBC INC.  
LB358057

REMARKS: INTER ALIA

"CAUTION - CHARGES MAY NOT APPEAR IN ORDER OF PRIORITY. SEE SECTION 28, L.T.A."

DUPLICATE INDEFEASIBLE TITLE: NONE OUTSTANDING

TRANSFERS: NONE

PENDING APPLICATIONS: NONE

\*\*\* CURRENT INFORMATION ONLY - NO CANCELLED INFORMATION SHOWN \*\*\*

Date: 31-Jul-2012  
Requestor: (PY52800)  
Folio: 18551/15

TITLE SEARCH PRINT  
OWEN BIRD LAW CORPORATION  
TITLE - KRI8307

Time: 13:50:33  
Page 001 of 001

KAMLOOPS LAND TITLE OFFICE TITLE NO: KRI8307  
FROM TITLE NO: H43203

APPLICATION FOR REGISTRATION RECEIVED ON: 01 MARCH, 2001  
ENTERED: 05 MARCH, 2001

REGISTERED OWNER IN FEE SIMPLE:  
CITY OF KELOWNA  
1435 WATER ST.  
KELOWNA, BC

TAXATION AUTHORITY:  
CITY OF KELOWNA

DESCRIPTION OF LAND:  
PARCEL IDENTIFIER: 006-057-870  
LOT 2 DISTRICT LOT 139 OSOYOOS DIVISION YALE DISTRICT PLAN 24283

LEGAL NOTATIONS: NONE

CHARGES, LIENS AND INTERESTS:

NATURE OF CHARGE  
CHARGE NUMBER DATE TIME

STATUTORY RIGHT OF WAY  
LB358057 2009-12-14 12:13  
REGISTERED OWNER OF CHARGE:  
FORTISBC INC.  
LB358057  
REMARKS: INTER ALIA

"CAUTION - CHARGES MAY NOT APPEAR IN ORDER OF PRIORITY. SEE SECTION 28, L.T.A."

DUPLICATE INDEFEASIBLE TITLE: NONE OUTSTANDING

TRANSFERS: NONE

PENDING APPLICATIONS: NONE

\*\*\* CURRENT INFORMATION ONLY - NO CANCELLED INFORMATION SHOWN \*\*\*

**SCHEDULE 1.1(aaa)**

**PERSONAL PROPERTY**

- Tangible Personal Property.

*See assets listed on Schedule 1.1(r) and attached inventory and WIP list.*

- Electrical Utility Customer Information/Data.
- Meter Data Files.
- Those assets listed on Schedule 1.1(r).

**CITY OF KELOWNA**  
**ELECTRICAL FUND**  
**WIP - Engineering Structures Acct no 1715**  
**December 31, 2011**

<b>2010 Balance Forward</b>	0.00
2380 Customer Driven Line Extension	1,735.98
238004 Customer Driven Line Extension	242,173.91
238006 Customer Forced System Upgrades	261,452.55
238010 Customer Driven Upgrades Transformers	115,450.04
2380E Customer Driven Line Extension	433,018.64
2469 Feeder Condition Upgrades	20,292.04
246901 79TB014- 1490 Grodon Dr -Feeder Condition Upgrades	58,496.52
2476 City Instructure	35,615.53
247601 Lane North of Lawrence (Electrical)	23,012.14
247604 City Instructure- Ellis UG Feeder	115,770.69
247605 City Instructure-Parkinson Rec Corridor- Sutherland	42,957.93
247606 Abbott St Rec Corridor Ph 2	160,484.09
247608 City Instructure- Ethel St Cawston to BCTTP- KPR crossing	42,055.67
247609 City Infrastructure- Bernard Revitalization	9,422.85
2671 PCB Testing	139,433.29
2797 U/G Subd Cable Replacements	92,962.34
279701 Coopland -upgrade -U/G Subd Cable Replacements	277.37
279705 St Andrews-U/G Cable Replacements	227,646.40
279706 Montrose -U/G Subd Cable Replacements	13,787.49
279707 Monterey -U/G Subd Cable Replacements	120,284.22
279709 U/G Subd Cable Replacements - Van St	134,733.44
279710 U/G Subd Cable ReplacementsSecondary Upgrade 1700 block, Smithson Drive	21,086.10
279711 U/G Subd Cable Replacements-	168,056.58
2949 Reliability Driven Fedder Upgrades	187,869.22
294901 Reliability Driven Fedder Upgrades-OH Knox Mtn Park	22,854.44
294902 Parkinson Rec Cable Replc-Reliability Driven Fedder Upgrades	63,618.36
2951 Feeder Capacity Upgrades	162,836.57
295101 Install 750MCM to Extend Saucier Subt Feeder #7	333,371.83
295102 Tap Recreation #2 Feeder at Switch 79MS020	245,073.06
295103 RE Feed Pull Box 79JN033 with 350 MCM -Feeder Capacity Upgrades	122,049.74
295104 Replace 79N330 to 79MS021 -Feeder Capacity Upgrades	20,566.60
2956 Fault Indicator Installation	16,013.21
<b>2011 Ending balance</b>	<u><u>3,654,458.84</u></u>



**CITY OF KELOWNA**  
**GENERAL OPERATING FUND**  
**Inventory - Electric Meters**  
**As at December 31, 2011**

Date	Trans. No	Description	Amount	Ref Action Items
12/31/11		Cost of stocked electrical meters on hand	451,852.64	
12/31/11		variance due to posting error in JV# 900795	1.92	
GL Balance as at December 31, 2011			451,854.56	

Manager Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Preparer Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**SCHEDULE 1.1(ggg)**

**PURCHASER'S CONSENTS**

- BCUC Acceptance
- Consent to the transfer of any "Permits," as that term is defined in the Master Services Agreement with the Purchaser.

**SCHEDULE 1.1(iii)**

**REAL PROPERTIES**

- Richter/Recreation Power Pole Stg located at 1000 Richter St.; PID 006-057-861, Lot 1 District Lot 139 Osoyoos Division Yale District Plan 24283
- Richter/Recreation Substation located at 1008 Richter St.; PID 006-057-870, Lot 2 District Lot 139 Osoyoos Division Yale District Plan 24283

## **SCHEDULE 1.1(kkk)**

### **REQUIRED NOTICES**

- Land Sale Notices under s. 26 of *Community Charter*.
- Notices pursuant to Electoral Approval process.
- Any required notices to Measurement Canada or any other entity that has issued “Permits,” as that term is defined in the Master Services Agreement.

## **SCHEDULE 1.1(rrr)**

### **VENDOR'S CONSENTS**

- Electoral Approval.
- Municipal Council Approval and adoption of bylaw or resolution as applicable.
- Consent to the assignment of the Railway Agreements.
- Any additional Consents that: (i) are set forth on the lists to be provided pursuant to Section 4.1, (ii) specifically state that they are Consents to be added to this Schedule 1.1(rrr) and (iii) can reasonably be identified as Consents.

**SCHEDULE 1.6**

**INDIVIDUALS WITH KNOWLEDGE**

**Vendor Individuals**

John Vos

David Craig

**Purchaser Individual**

Dennis Swanson

## **SCHEDULE 3.1(d)**

### **COMPLIANCE WITH APPLICABLE LAWS**

Any incidences of non-compliance with Applicable Laws that: (i) are set forth on the lists to be provided pursuant to Section 4.1, (ii) specifically state that they are incidences of non-compliance with Applicable Laws to be added to this Schedule 3.1(d) and (iii) can reasonably be identified as incidences of non-compliance with Applicable Laws as described in Section 3.1(d).

**SCHEDULE 3.1(e)**

**EXCEPTIONS TO TITLE AND EXCLUSIVITY**

Any exceptions to title and exclusivity that: (i) are set forth on the lists to be provided pursuant to Section 4.1, (ii) specifically state that they are to be added to this Schedule 3.1(e) and (iii) can reasonably be identified as exceptions to title and exclusivity as described in Section 3.1(e).



**SCHEDULE 3.1(j)**  
**FINANCIAL STATEMENTS AND BALANCE SHEET**

*See attached.*

**CITY OF KELOWNA**

**Electrical Utility Fund - Statement of Operations and Accumulated Surplus  
As at December 31, 2011**

**Statement M**

	Budget 2011	Actual 2011	Actual 2010
<b>Revenue</b>			
Sales of services			
Energy	\$ 26,746,020	29,495,211	\$ 25,603,954
Energy - to own municipality	1,806,710	1,997,882	1,825,250
Connection and service charges	89,000	153,554	152,837
Interest earned	123,630	142,151	36,828
Other	21,340	162,477	108,792
	<u>28,786,700</u>	<u>31,951,275</u>	<u>27,727,661</u>
<b>Expenditures</b>			
Purchase of electrical energy	19,445,000	20,983,944	18,332,856
Administration	2,146,661	1,836,842	1,543,377
Professional & Admin	-	1,408,366	-
Maintenance and operation	1,509,988	1,245,463	1,016,375
TCA operating expense	11,270	166,901	504,288
Amortization Expense	-	1,117,882	1,129,595
	<u>23,112,919</u>	<u>25,350,132</u>	<u>22,526,491</u>
<b>Excess Revenue Over Expenditures</b>	<b>5,673,781</b>	<b>6,601,143</b>	<b>5,201,170</b>
Transfer from General Operating Fund	-	-	-
Transfer from Water Operating Fund	-	-	-
Transfer to General Capital Fund	31,500	3,930	-
Transfer to General Operating Fund	2,152,575	2,115,025	2,112,424
Transfer (to) from other funds	(2,184,075)	(2,118,955)	(2,112,424)
Capital expenditures	(5,343,630)	(7,665,592)	(2,727,119)
Transfer from Non Financial assets	-	1,117,882	1,129,595
<b>Increase (decrease) in fund balance</b>	<b>\$ (1,853,924)</b>	<b>(2,065,522)</b>	<b>\$ 1,491,222</b>
Consolidated fund balance, beginning of year	-	9,592,077	8,100,855
	<u>\$ (1,853,924)</u>	<u>7,526,555</u>	<u>\$ 9,592,077</u>
<b>Check Increase (Decrease) in Fund Balances:</b>			
Total all revenue\expense accounts	-	64,119	855,671
Adjust for Appropriations to reserves	(2,362,560)	(2,129,643)	635,551
Adjust for Budget Surplus\Deficit	508,636	0	0
<b>Increase (Decrease) in Fund Balances</b>	<b>(1,853,924)</b>	<b>(2,065,524)</b>	<b>1,491,222</b>
<b>Variance to Income Statement Totals</b>	<b>-</b>	<b>2</b>	<b>0</b>

See accompanying notes to the financial statements.

Keith Grayston, CGA  
Director of Financial Services

## CITY OF KELOWNA

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### Electrical Utility Fund - Statement of Financial Position As at December 31, 2011

### Statement L

	<u>Actual</u> <u>2011</u>	<u>Actual</u> <u>2010</u>
<b>Financial Assets</b>		
Cash and temporary investments	\$ 4,471,178	\$ 1,992,249
Accounts receivable - trade	4,338,489	3,771,227
Accounts receivable - Federal Government	360,727	403,823
	<u>9,170,394</u>	<u>6,167,299</u>
<b>Liabilities</b>		
Accounts payable		
Provincial government	46	92,541
Trade	2,095,649	27,889
	<u>2,095,695</u>	<u>120,430</u>
<b>Net Financial Assets</b>	7,074,699	6,046,869
<b>Non Financial Assets</b>		
Inventory	451,855	397,776
Work-in-Progress, at cost	3,654,459	3,364,694
Capital assets	29,223,756	26,059,299
	<u>33,330,070</u>	<u>29,821,769</u>
<b>Net Financial Position</b>	\$ 40,404,769	\$ 35,868,638
<b>Fund Position</b>		
Fund balance	7,526,553	9,592,077
Equity in capital assets	32,878,215	26,276,560
	<u>\$ 40,404,768</u>	<u>\$ 35,868,637</u>

*See accompanying notes to the financial statements.*

Keith Grayston, CGA  
Director of Financial Services

**SCHEDULE 3.1(m)**

**ENVIRONMENTAL MATTERS**

Any:

- incidents of non-compliance with Environmental Laws, or conditions or events which might constitute a violation of or give rise to liability under any applicable Environmental Laws;
- discovery of Environmental Contaminants or incidents of Release; or
- other environmental concerns in respect of the COK Assets,

that: (i) are set forth on the lists to be provided pursuant to Section 4.1, (ii) specifically state that they are to be added to this Schedule 3.1(m) and (iii) can reasonably be identified as environmental matters as described in Section 3.1(m).

**SCHEDULE 3.1(o)**

**ADVERSE PROCEEDINGS**

Any basis for suits, proceedings or investigations arising from or related to COK Assets that (i) are set forth on the lists to be provided pursuant to Section 4.1, (ii) specifically state that they are to be added to this Schedule 3.1(o) and (iii) can reasonably be identified as adverse proceedings as described in Section 3.1(m).

**SCHEDULE 3.1(x)**

**INSURANCE**

*See attached insurance cover notes.*

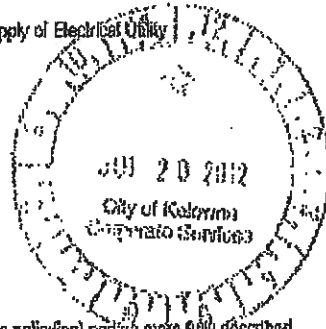
ITEM 9

Ref. No. 320006589393

CERTIFICATE OF INSURANCE

Aon Reed Stenhouse Inc.  
70 O'Leary Avenue  
Suite 100  
St. John's NL A1B 2C7  
tel 709-739-1000 fax 709-739-1001

Re: Contract for the Supply of Electrical Utility



City of Kelowna  
Attention : City Clerk  
1435 Water Street  
Kelowna, BC V1Y 1J4

Insurance as described herein has been arranged on behalf of the Insured named herein under the following policy(ies) and as more fully described by the terms, conditions, exclusions and provisions contained in the said policy(ies) and any endorsements attached thereto.

Insured

FortisBC Inc.  
1975 Springfield Road, Suite 100  
Kelowna, BC V1Y 7V7

Coverage

<b>Commercial General Liability</b>	<b>Insurer</b>	<b>Zurich Insurance Company Ltd</b>	
Policy #	8833868		
Effective	01-Jul-2012	Expiry	01-Jul-2013
Limits of Liability	Bodily Injury & Property Damage, Each Occurrence \$3,000,000 Policy may be subject to a general aggregate and other aggregates where applicable		
<b>Property</b>	<b>Insurer</b>	<b>Charis Insurance Company of Canada; Aegis Insurance Services, Inc.; Arch Insurance Company; Lloyd's Underwriters; Northbridge Indemnity Insurance Corporation; Royal &amp; Sun Alliance Ins Co of Canada; Westport Insurance Corporation</b>	
Policy #	14567		
Effective	01-Jul-2012	Expiry	01-Jul-2013
Perils Insured	Property of Every Description \$100,000,000		

Additional Insured

Only with respect to the above and arising out of the Named Insured's operations are the following name (s) added to the policy as Additional Insured(s). The policy limits are not increased by the addition of such Additional Insured (s) and remain as stated in this Certificate.

City of Kelowna where required by written contract or written agreement with respect to Commercial General Liability

Terms and / or Additional Coverage

THE POLICY CONTAINS A CLAUSE THAT MAY LIMIT THE AMOUNT PAYABLE  
OR, IN THE CASE OF AUTOMOBILE INSURANCE,

THE POLICY CONTAINS A PARTIAL PAYMENT OF LOSS CLAUSE



Ref. No. 320006589393

CERTIFICATE OF INSURANCE

Commercial General Liability - Products and Completed Operations, Personal Injury, Contingent Employer's Liability, Broad Form Property Damage, Non-Owned Automobile Liability, Cross Liability Clause (completed operations coverage to continue for a period of 24 months after completion of work)

Property - Limit covers all FortisBC's equipment, owned or leased or for which it may otherwise be responsible for. Includes Waiver of Subrogation

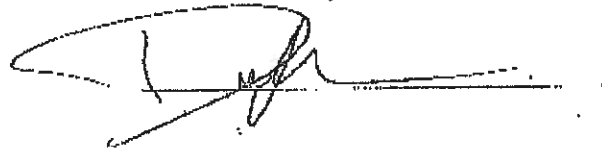
**Cancellation / Termination**

The Insurer will endeavour to provide THIRTY (30) days written notice of cancellation/termination to the addressee except that statutory or policy conditions (whichever prevails) will apply for non-payment of premium.

THIS CERTIFICATE CONSTITUTES A STATEMENT OF THE FACTS AS OF THE DATE OF ISSUANCE AND ARE SO REPRESENTED AND WARRANTED ONLY TO City of Kelowna OTHER PERSONS RELYING ON THIS CERTIFICATE DO SO AT THEIR OWN RISK.

Aon Reed Stenhouse Inc.

Dated: 11-July-2012  
Issued By:  
Tel:



THE POLICY CONTAINS A CLAUSE THAT MAY LIMIT THE AMOUNT PAYABLE  
OR, IN THE CASE OF AUTOMOBILE INSURANCE,  
THE POLICY CONTAINS A PARTIAL PAYMENT OF LOSS CLAUSE



# INSURANCE COVER NOTE No. 8934

This Cover Note evidences that, in consideration of payment to be made by the Insured of the premium specified the insurance stated below has been placed with the Insurer(s) named. This insurance may be terminated by the Insurer or Insured in accordance with the relevant provision of the Insurer's usual policy for this type of risk unless otherwise specified below.

## Name and Mailing Address of Insured:

City of Kelowna (As on File with Insurers)  
1435 Water Street  
Kelowna, BC V1Y 1J4

Period:                      **From:** November 1, 2011                      **To:** November 1, 2012  
Both Dates to 12:01 am Standard Time at the address of the Insured as shown above.

## Interest Insured & Limits of Liability:

### A. Property & Business Interruption:

\$ 700,912,500. Total Insured Values

### Including:

\$ 500,000. Valuable Papers  
\$ 500,000. Accounts Receivable  
\$ 500,000. Extra Expense  
\$ 500,000. Electronic Data Processing Media/Software  
\$ 1,340,000. Business Interruption - Rental Income - 12 Month Indemnity Period

**(AS MORE FULLY DESCRIBED AND ON FILE WITH INSURERS)**

### **Conditions:**

- As per Insurer's Standard Policy Wordings
- "All Risks" including Earthquake, Sewer Backup & Flood
- Permission to Make Additions, Alterations or Repairs
- Replacement Cost Valuation including Increased Cost due to Civic By-Laws
- Co-Insurance Waived
- Underground tanks, flues, pipes or drains & their contents are included as covered Property
- Same Site Exclusion deleted
- Transit Cover (Full Policy Limit)
- Newly Acquired Property Cover (Full Policy Limit)
- Debris Removal Cover (including Pollution Clean-up)
- Replacement of Historical or Unique Buildings with materials as similar as possible to preserve their heritage
- Dock, Wharfs & Boat Launches has an exclusion w/r/t Damage or Loss caused by ice formations including spring break-up

### **Deductibles:**

Earthquake:                      10%, subject to \$100,000. Minimum  
Flood:                                      \$ 100,000.  
All Other Losses:                      \$ 100,000.

### B. Boiler & Machinery Coverage:

\$ 50,000,000. Limit per Accident - Comprehensive  
\$ 500,000. Extra Expense  
\$ 500,000. Water Damage  
\$ 500,000. Ammonia Contamination  
Included Expediting Expenses  
\$ 500,000. Hazardous Substance (including PCB Contamination)  
\$ 1,000. Loss of Arena Revenues - Daily Indemnity  
\$ 90,000. Loss of Arena Revenues - Total Limit of Loss  
\$ 840,000. Business Interruption - Rent and Rental Value (Ellis Library)

\$ 50,000. Spoilage – Goods under Refrigeration  
 \$ 500,000. Professionals Fees  
 \$ 10,000.. Data Restoration  
 Included By-Law Cover  
 \$ 100,000. Errors & Omissions  
 2 Weeks Denial of Access

**Deductibles:** \$100,000

**Loss Payable(s):**

Montrose Mortgage Corporation Ltd.  
 1100 – 200 Graham Avenue, Winnipeg, Manitoba R3C 4L5  
 \* 1<sup>st</sup> Mortgagee with respect to the Kelowna Library situated at 1380 Ellis St., Kelowna

Finning International Inc.  
 1714 Kalamalka Road, Box 4549, Vernon, BC V1T 6M4  
 \* With respect 2006 CAT 836H Refuse Compactor, s/n OBXD00383

TyAlta Industries Inc.  
 Box 758, Crossfield, Alberta TOM 0S0  
 \* With respect to 2007 MCB 733 RE Trommel Screener #12807

Woodland Equipment Inc.  
 1801 Kosmina Drive, Vernon, BC V1T 8T1  
 \* With respect to 2008 Hyundai HL760-7A Wheel Loader, s/n LC0410286

JC Office Trailers Limited  
 260 Neave Road, Kelowna, BC V1V 2L9  
 \* With respect to Leased 10x40 Field Office, s/n 104008184309, Unit No. DM810

Pollard Equipment (Kamloops) Ltd.  
 1850 Kelly Douglas Road, Kamloops, BC V2C 5S5  
 \* With respect to Leased 2000 Komatsu Front-end Loader, Model No. WA380-3, s/n AF1223

CIT Financial Ltd.  
 c/o ABIC Insurance Service Centre  
 P.O. Box 7400, Kingston, ON L7L 0A3  
 \* With respect to Leased OCE FX 2080 Copier, Lease No. 78004345001

The CAT Rental Store  
 \* With respect to short term rented/leased equipment

**C. Crime Coverage:**

\$ 1,000,000. Commercial Blanket Bond  
 Included Money Orders & Counterfeit Paper Currency  
 Included Depositor's Forgery  
 \$ 100,000. Maximum Audit Expense Sublimit  
 \$ 100,000. Broad Form Money & Securities – Blanket Any Location  
 \$ 200,000. Computer Fraud or Funds Transfer Fraud

**D. Municipal Conflict of Interest Insurance:**

90% Percentage of Legal Fees and Expenses  
 \$ 100,000. Maximum Limit

- Conditions:**
- Coverage is provided in respect of each individual Insured's claim to the maximum limit specified
  - Separate limit of insurance applies to this coverage
  - No annual aggregate limit applies
  - Coverage is extended to include any member of a Board, Commission, or Committee of the Insured as defined in the Local Government Act
  - Coverage is also included for any subsequent proceedings under this Act
  - The Insured selects and instructs legal counsel with no intervention by the insurer

E. Legal Expense Insurance:

90% Percentage of Legal Fees and Expenses up to \$100,000  
\$ 250,000. Annual Aggregate for all Claims

- Conditions:**
- Broad form Definition of Insured applies, including: Councillors, Employees, Statutory Officers, Firefighters, Volunteers, Boards, Commissions and Committees
  - Separate limits of insurance applies to this coverage
  - Coverage applies to both 'guilty' and 'not guilty' outcomes if applicable
  - The Insured selects and instructs Legal Counsel with no intervention by the Insurer

<u>Schedule of Subscribing Insurers:</u>	<u>Interest</u>	<u>Section</u>	<u>Policy No.</u>	<u>Premium</u>
The Guarantee Company of North America	55%	A. Property	FC39942	\$344,767
Lombard General Insurance Company	20%			\$125,370
Temple Insurance Company	20%			\$125,370
Underwriters at Lloyd's under Contract No. BA0221	5%			\$31,342
			<b>Total</b>	<b><u>\$626,849</u></b>
The Boiler Inspection & Insurance Company of Canada	100%	B. Boiler	8508714	\$10,597
			<b>Total</b>	<b><u>\$10,597</u></b>
The Guarantee Company of North America	55%	C. Crime	CA80452	\$3,713
Lombard General Insurance Company	25%			\$1,687
Temple Insurance Company	20%			\$1,350
			<b>Total</b>	<b><u>\$6,750</u></b>
The Guarantee Company of North America	55%	D. Conflict of Interest	CA80452	\$220
Lombard General Insurance Company	25%			\$100
Temple Insurance Company	20%			\$80
			<b>Total</b>	<b><u>\$400</u></b>
The Guarantee Company of North America	55%	E. Legal Expense	CA80452	\$3,845
Lombard General Insurance Company	25%			\$1,747
Temple Insurance Company	20%			\$1,398
			<b>Total</b>	<b><u>\$6,990</u></b>
			<b>TOTAL OF ALL PREMIUMS:</b>	<b><u>\$651,586</u></b>

This document confirms that the insurance described herein has been affected. Said insurance is subject to all conditions, limitations and exclusions of the policy which will be issued by the Insurer in replacement of this Cover Note. In the event of any discrepancy, the terms of such policy shall prevail.

Authorized Representative

**CMW Insurance Services Ltd.**

700-1901 Rosser Avenue

Burnaby, BC V5C 6R8

cmwinsurance.com

Telephone: 604-294-3301

Facsimile: 604-294-3303

Toll Free: 1-800-263-3313

CITYO-4/RIC/KTUR

## INSURANCE COVER NOTE No. 8916

This Cover Note evidences that, in consideration of payment to be made by the Insured of the premium specified the insurance stated below has been placed with the Insurer(s) named. This insurance may be terminated by the Insurer or Insured in accordance with the relevant provision of the Insurer's usual policy for this type of risk unless otherwise specified below.

### Name and Mailing Address of Insured:

City of Kelowna and all Subsidiary, Affiliated, Related, or Allied Companies, Corporations, Firms or Organizations (as they are now are or may hereafter be constituted) for which the City of Kelowna has the responsibility of placing insurance and for which more specific coverage is not otherwise provided  
1435 Water Street  
Kelowna, BC V1Y 1J4

Period:                      **From:** November 1, 2011                      **To:** November 1, 2012  
Both Dates to 12:01 am Standard Time at the address of the Insured as shown above.

### Interest Insured & Limits of Liability:

#### A. Environmental Impairment Liability Insurance:

\$ 5,000,000. Per Claim  
\$ 5,000,000. Annual Aggregate  
\$ 500,000. On-Site Sudden Clean Up excluding Waste Sites (Part of Total Limit, not in addition to)

**Conditions:** As per Insurer's Standard Policy Wordings, Terms and Conditions  
Claims Made Form  
Compost Facility and 8 Underground Tanks (as on file with Insurer) are covered under this policy  
Third Party Cover on Recycle & Waste Water Treatment Plants

**Retention:** All Losses, except:                      \$ 5,000.  
Landfill losses:    \$ 100,000.

<u>Schedule of Subscribing Insurers:</u>	<u>Interest</u>	<u>Policy No.</u>	<u>Premium</u>
Various Underwriters as arranged by Elliott Special Risks LP	100%	EILT0106	\$38,806
		<b>Total:</b>	<b><u>\$38,806.</u></b>

This document confirms that the insurance described herein has been affected. Said insurance is subject to all conditions, limitations and exclusions of the policy which will be issued by the Insurer in replacement of this Cover Note. In the event of any discrepancy, the terms of such policy shall prevail.

CITYO-4/RIC/KTUR

#### Authorized Representative

#### CMW Insurance Services Ltd.

700-1901 Rosser Avenue                      Telephone: 604-294-3301  
Burnaby, BC V5C 6R6                      Facsimile: 604-294-3303  
cmwinsurance.com                      Toll Free: 1-800-263-3313

## **SCHEDULE 3.1(z)**

### **INTELLECTUAL PROPERTY**

#### **List of Intellectual Property Rights**

- The “Intellectual Property” as defined and governed by the Corix Master Agreement, but expressly subject to the division of ownership and licensing of same, as set out in the Corix Master Agreement.
- Without duplication, any Intellectual Property Rights listed or included in Personal Property.
- All “Intellectual Property” as defined and governed by the Master Services Agreement.

#### **Disclosed Exceptions**

COK GIS Mapping System.

Any “Intellectual Property” (as defined in the Corix Master Agreement) that is indicated to be owned by Corix under the terms of the Corix Master Agreement is not included in the COK Assets.

**Schedule 'B'**



Deloitte & Touche LLP  
2800 - 1055 Dunsmuir Street  
4 Bentall Centre  
P.O. Box 49279  
Vancouver BC V7X 1P4  
Canada

Tel: 604-669-4466  
www.deloitte.ca

September 10, 2012

City of Kelowna  
1435 Water Street  
Kelowna BC V1Y 1J4  
Canada

Dear Sirs/Mesdames:

**Subject: Fairness opinion related to a proposed transaction involving the local electricity distribution assets of City of Kelowna**

Deloitte & Touche LLP (“Deloitte”) understands that the City of Kelowna (“COK” or the “Seller”) is selling the COK’s local electricity distribution utility assets (the “Utility”) for cash consideration of \$55 million<sup>1</sup> (the “Purchase Price”) to FortisBC Inc. (“FortisBC” or the “Purchaser”) pursuant to an Asset Purchase Agreement (“APA”) (the “Proposed Transaction”). The sale of the Utility remains subject to the execution of a definitive APA and a number of conditions.

The City of Kelowna has retained Deloitte to provide an opinion as to the fairness of the Purchase Price, from a financial point of view, to the existing COK electricity customers and COK taxpayers as a whole (the “Fairness Opinion”). The effective date of the Fairness Opinion is September 10, 2012 (the “Opinion Date”). Deloitte has not been engaged to prepare a valuation of the Utility and the Fairness Opinion should not be construed as such.

### **Engagement**

Pursuant to an engagement letter dated August 21, 2012 (the “Engagement Agreement”), COK formally engaged Deloitte to provide the Fairness Opinion. The terms of the Engagement Agreement provide that Deloitte is to be paid a fee based on time required at Deloitte’s hourly billing rates. In addition, Deloitte is to be reimbursed for its reasonable out-of-pocket expenses and indemnified by the COK in certain circumstances. No part of Deloitte’s fee is contingent upon the conclusions reached in this Fairness Opinion or upon the successful completion of the Proposed Transaction. The principal valuator and other staff involved in the preparation of the Fairness Opinion acted independently and objectively in completing this engagement.

Deloitte understands that the Fairness Opinion and/or a summary thereof may be included in documents to be provided to COK Council relating to the Proposed Transaction and, subject to the terms of the Engagement Agreement, Deloitte consents to such disclosure.

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<sup>1</sup> Execution copy of “City of Kelowna Electric Utility Asset Purchase Agreement” between City of Kelowna and FortisBC Inc. (undated) provided to Deloitte on September 9, 2012. Note: the purchase price excludes the working capital of the Utility.

### **Relationship with interested parties**

Deloitte and its affiliates are not the auditors of COK nor of Fortis. There are no commitments, agreements or understandings involving COK, Fortis, or any of their respective associated entities or affiliated entities under which Deloitte or any of its affiliates has a material financial interest in future business. Deloitte or its affiliates may, in the future, in the ordinary course of their respective businesses, provide financial advisory or other services to COK, Fortis or any of their respective associated entities or affiliate entities.

We performed an internal search for any potential conflicts based on the following parties:

1. City of Kelowna;
2. Fortis Inc.; and
3. The Councilors of the City of Kelowna, as follows:
  - a) Robert Hobson;
  - b) Gail Given;
  - c) Colin Basran;
  - d) Andre Blanleil;
  - e) Luke Stack;
  - f) Mohini Singh;
  - g) Maxine DeHart; and
  - h) Gerry Zimmermann.

We inform you that, based on our conflicts search, we have or may have provided professional services to Fortis Inc. but are not engaged by Fortis Inc. at this time. We do not believe that the prior, current or future provision of professional services to one or more of the individuals listed above impacts our ability to act independently and impartially in this matter.

### **Credentials of Deloitte**

Deloitte is one of the world's largest and most reputable professional services organizations with approximately 195,000 people in over 150 countries. In Canada, Deloitte is one of the country's leading professional services firms and provides audit, tax, financial advisory and consulting services through more than 8,000 people in 56 offices.

Deloitte's professionals have significant experience in providing advisory services for various purposes, including fairness opinions, mergers and acquisitions, corporate finance, business valuations, litigation matters and corporate income tax, amongst other things.

As a global market leader with over 125 valuation professionals in Canada and over 500 valuation professionals globally, Deloitte has a leading valuation practice with international delivery capabilities, deep financial and accounting acumen and robust industry experience. Our valuation services group includes finance professionals, many of whom have earned professional designations including Chartered Business Valuator (CBV), Chartered Financial Analyst (CFA), Chartered Accountant (CA), Certified Public Accountant (CPA) and Accredited Senior Appraiser (ASA).



### **Definition of value**

In providing our Fairness Opinion, we have been guided by the definition of fair market value. Fair market value is defined as the highest price, expressed in terms of cash equivalents, at which property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arm's length in an open and unrestricted market, when neither is under compulsion to buy or sell and when both have reasonable knowledge of the relevant facts. As discussed herein, the fairness of the Purchase Price, from a financial point of view, to the existing COK electricity customers and COK taxpayers as a whole will be assessed in the context of the fair market value of the Utility.

### **Currency of Fairness Opinion**

Unless otherwise noted, all currency amounts shown in this Fairness Opinion are expressed in Canadian dollars.

### **Scope of review**

In connection with preparing and rendering this Fairness Opinion, Deloitte has reviewed and relied upon, among other information, the following:

1. Audited financial statements and annual reports of the COK for the fiscal year ended December 31, 2011;
2. Unaudited Electrical Utility Fund – Statement of Financial Activities, Statement of Financial Position, and Statement of Operations and Accumulated Surplus, for the fiscal years ended from December 31, 2007 to 2011;
3. Unaudited projected financial information for the Utility, as prepared by management and/or staff of the COK (“Management”), for the years ending December 31, 2012 to 2040 (the “Management Projections”);
4. Draft City of Kelowna Distribution Systems Plan 2011-2030 dated September 21, 2010 prepared by Primary Engineering provided by Management;
5. Due Diligence Request List – COK Response provided by Management;
6. City of Kelowna – TA650 Properties Report provided by Management;
7. Execution copy of “City of Kelowna Electric Utility Asset Purchase Agreement”, between the City of Kelowna and FortisBC Inc. (undated) provided to Deloitte on September 9, 2012;
8. Information contained on the COK website;
9. Discussions with Management and the COK’s consultant, Mr. David Craig, regarding various aspects of the Proposed Transaction and the Utility;
10. Amended and restated master agreement and schedules between the City of Kelowna and Fortis Pacific Holdings Inc. dated October 1, 2007;
11. Master Agreement dated January 31, 2006 between COK and Terasen Utility Services Inc. (now known as Corix Utilities Inc.);

12. Letters between COK and Corix Utilities Inc. relating to the extension of the Master Agreement dated January 31, 2006 between COK and Terasen Utility Services Inc.;
13. Relevant financial and other information relating to the electricity utility industry, the Utility and the Proposed Transactions provided by Management and COK's consultant, Mr. David Craig, and/or as contained in our files;
14. Public information with respect to other business transactions considered by Deloitte to be relevant, including annual reports and financial information concerning other transactions; and
15. A letter of representation obtained from Management wherein they confirmed the accuracy of certain facts, and confirmed certain representations and warranties that they have made to us including a general representation that they had no information or knowledge of any facts or material information not specifically noted in this Fairness Opinion which, in their view, would reasonably be expected to affect our conclusion as to the fairness of the Purchase Price in the Proposed Transaction.

Deloitte's procedures consisted primarily of inquiry, review, analysis and discussion of this information. Deloitte has not, to the best of its knowledge, been denied access by COK to any information requested by Deloitte.

#### **Prior valuations**

COK has represented to Deloitte that there have not been any prior valuations of the Utility or its material assets in the past twenty-four months.

#### **Restrictions and limitations**

The Fairness Opinion is subject to the following restrictions, limitations and qualifications, changes to which could have a significant impact on Deloitte's assessment of the fairness of the Proposed Transaction:

1. The Fairness Opinion has been prepared for the use of the COK and may not be used by any other person or relied upon by any other person other than the COK without the express prior written consent of Deloitte. The Fairness Opinion is not to be used for any purpose other than as stated herein and, except as provided in the last sentence of this paragraph, is not intended for general circulation, nor is it to be published or made available to other parties in whole or in part without Deloitte's prior written consent in each specific instance. We do not assume any responsibility or liability for losses incurred by any parties as a result of the circulation, publication, reproduction, or use of the Fairness Opinion contrary to the provisions of this paragraph. Subject to the terms of the Engagement Agreement, Deloitte offers no guarantee or warranty that the Fairness Opinion will be accepted by any third parties. Deloitte understands that the Fairness Opinion and a summary thereof may be included in documents to be filed and/or presented by the COK relating to the Proposed Transaction and, subject to the terms of the Engagement Letter, Deloitte consents to such disclosure.
2. No opinion, counsel or interpretation is intended in matters that require legal or other appropriate professional advice. It is assumed that such opinions, counsel or interpretations have been or will be obtained from the appropriate professional sources.

3. This Fairness Opinion is rendered on the basis of economic and general business and financial conditions prevailing as at the date hereof and the conditions and prospects, financial and otherwise, of the Utility as they were reflected in the information and documents reviewed by Deloitte and as they were represented to Deloitte in discussions with COK and its consultant
4. The Fairness Opinion is effective on the date hereof and Deloitte disclaims any undertaking or obligation to advise any person of any change in any fact or matter affecting this Fairness Opinion which may come or be brought to Deloitte's attention after the date hereof. Without limiting the foregoing, in the event that there is a material change in any fact or matter affecting this Fairness Opinion after the date hereof, Deloitte reserves the right to change, modify or withdraw the Fairness Opinion.
5. The preparation of a fairness opinion is a complex process and is not necessarily susceptible to partial analysis or a summary description. Accordingly, Deloitte's analysis must be considered as a whole and the selection of portions of the analysis or factors considered, without considering all factors and analyses together, could create a misleading view of the approaches underlying the Fairness Opinion.
6. The Fairness Opinion is not to be construed as a recommendation to the COK to support or reject the Proposed Transaction. The Fairness Opinion does not provide assurance that the Purchase Price represents the best possible price that could be obtained.
7. The Fairness Opinion does not constitute a Calculation Valuation Report, an Estimate Valuation Report, or a Comprehensive Valuation Report, as defined by the practice standards of the Canadian Institute of Chartered Business Valuators ("CICBV"). In preparing this Fairness Opinion, we were guided by CICBV Practice Standards No. 510, 520 and 530 pertaining to fairness opinions.

### **Major assumptions**

Deloitte has relied upon and assumed the completeness, accuracy and fair presentation of all the financial and other information, data, advice, opinions, representations and other material obtained by it from public sources or provided to us by, on behalf of, or at the request of COK and this Fairness Opinion is conditional upon such completeness, accuracy and fair presentation. Deloitte has not independently verified the accuracy and completeness of the financial and other information supplied to it by COK.

In addition, Deloitte has relied upon the following major assumptions in preparing this Fairness Opinion:

1. The Proposed Transaction will be completed on the terms contemplated in the draft APA provided to Deloitte and all of the conditions required to complete the Proposed Transaction will be satisfied.
2. The financial statements referred to under "Scope of Review" are complete in all material respects and contain all and reflect only, those revenues, expenses, assets and liabilities of the Utility.
3. With respect to the current financial projections provided to us and relied upon in our analysis, we have assumed that they have been prepared on a reasonable basis reflecting current best assumptions, estimates and judgments of COK, having regard to plans, financial condition and prospects. This includes the assumption that the operating contract with FortisBC will be extended upon its expiration and will contain similar terms and conditions as the current contracts and the billing management contract with Corix will be extended upon its expiration and will contain similar terms and conditions as the current contracts. However, we understand that as at the date hereof, no such extensions have been signed and that the terms may ultimately differ from those assumed in the Management Projections.

4. The assessed values of the properties located at 1000 Richter Street and 1008 Richter Street, Kelowna, BC of \$582,000 and \$165,000, respectively, approximate fair market value.
5. The book value of capital assets of the Utility approximated \$36.2 million as at the date hereof.
6. There are no material costs to be incurred by COK to remedy issues prior to the execution of the APA, which include issues relating to right of ways, third party pole contracts and the billing management contract with Corix. We recognize that COK may otherwise be responsible for the costs of perfecting its rights.
7. The title to all Utility assets, properties, or business interests purportedly owned by COK is good and marketable and there are no adverse interests, encumbrances, engineering, environmental, zoning, planning or related issues associated with these interests and that the subject assets, properties, or business interests are free and clear of any and all liens, encumbrances and encroachments, other than as disclosed to us.
8. There were no material contingent or unrecorded liabilities, environmental liabilities, litigation pending or threatened other than in the ordinary course of business.
9. There were no written offers from third parties to purchase COK's respective assets during the preceding 24 months except for the proposed transaction with FortisBC.

Should any of the above assumptions not be accurate or should any of the other information provided to us not be factual or correct, our Fairness Opinion, as expressed herein, could be different. In completing this Fairness Opinion, Deloitte has made certain assumptions in addition to those noted herein which it considered to be reasonable and appropriate in the circumstances.

#### **Overview of the Proposed Transaction**

The Proposed Transaction contemplates that ownership of COK's electrical utility assets would be transferred to FortisBC. FortisBC would assume responsibility for all utility planning, infrastructure development, operation and maintenance. FortisBC would also assume all risks associated with these functions. We are advised that under FortisBC ownership, the Utility would be regulated by the British Columbia Utilities Commission ("BCUC") in the same way that FortisBC's existing electrical utility is regulated.

Further, we understand that the COK will collect property taxes, where it previously did not for its own utility infrastructure, of approximately \$350,000 per year, which we are advised will largely offset amounts it currently receives from the utility for internal overhead. Further, the COK will pay market rates for its own electricity use (historically, COK buildings benefited from slightly decreased power rates).

Although the Utility is not regulated by the BCUC, we are advised that COK has historically set its residential rates to match FortisBC's regulated rates. This practice of parity with FortisBC's regulated rates does not apply, at present, to non-residential rates. However, upon the completion of the Proposed Transaction, we understand that the differences between COK's non-residential rates and FortisBC's non-residential rates would be eliminated and would be subject to the same BCUC regulated rates as apply to the FortisBC Inc. non-residential customers.

## **Overview of the Utility**

Currently, the COK is responsible for distributing electricity through the Utility to approximately 15,000 residential, commercial, industrial and institutional customers in the central part of the municipality. The Utility has a service area that covers approximately one-third of Kelowna; the remaining two-thirds of the municipality receive electricity directly from FortisBC. As a distribution utility, the Utility buys power at wholesale rates from FortisBC and then resells the power to its individual customers at retail rates.

As owner of the Utility, COK is responsible for ensuring that all electrical system planning, expansion, operation and maintenance occurs as required. However, since 2000, COK contracted out functions associated with the utility. FortisBC was selected as COK's primary electrical contractor to oversee all planning, expansion, operation and maintenance of the Utility. The utility operating contract with FortisBC expires in late 2012. COK has also contracted out meter management and billing services to Corix Utilities Inc. ("Corix") since early 2000. The extended billing management contact with Corix expires on December 31, 2013.

## **Overview of FortisBC Inc.**

FortisBC is wholly owned by Fortis Inc. FortisBC is an experienced owner and operator of electrical utilities serving close to 162,000 electricity customers throughout British Columbia's southern interior with 550 employees and \$6.9 billion invested in energy assets.

As noted previously, FortisBC has served as COK's electrical contractor since 2000. FortisBC also provides electricity through its own utility to all parts of COK that are not served by the Utility, and provides natural gas services throughout the entire municipality.

FortisBC runs its electrical utility using a regulated utility business model, meaning expenditures on system infrastructure (once approved by BCUC) are treated as investments on which the company earns a regulated rate of return. All FortisBC's rates are regulated by the BCUC.

## **Fairness analysis**

### ***Approach to Fairness***

In considering the fairness of the Purchase Price specified in the APA, from a financial point of view, to the existing COK electricity customers and COK taxpayers as a whole, Deloitte relied upon a comparison of the enterprise value multiple of book value of invested capital or rate base implied by the Purchase Price to an analysis of precedent transactions (the "Precedent Transactions Analysis") and a comparison of the Purchase Price to the results of a discounted cash flow analysis ("DCF").

### ***Precedent Transactions Analysis***

Deloitte reviewed the available public information with respect to precedent transactions involving electricity distribution assets in Canada. Deloitte notes, however, that none of the precedent transactions reviewed are directly comparable to the Proposed Transaction, as each transaction is unique in terms of the type of assets, condition of assets, geographic location and regulatory environment.

For the purposes of this analysis, Deloitte determined that the transactions set forth below are most comparable to the Proposed Transaction. The primary criteria used in analyzing these transactions are enterprise value multiples of book value of invested capital and rate base assets.

The table below provides a summary of our analysis of the precedent transactions.

Precedent transactions analysis  
C\$ millions

Target	Acquirer	Close date	Interest acquired	Consideration	Implied 100% consideration = equity or asset value	Implied enterprise value Note 1	Book value of invested capital, Note 2	Rate base assets	Implied EV / Book value of invested capital	Implied EV / Rate base assets	
Collingwood (COLLUS) Power	PowerStream Inc.	8/2012	50%	14.0	28.0	30.0	12.8	16.0	2.35	1.88	
Great Lakes Power Distribution Inc.	FortisOntario Inc.	10/2009	100%	75.0	75.0	73.0	56.0	57.9	1.30	1.26	
E.L.K. Energy Inc.	Town of Essex	9/2008	62%	12.8	20.6	21.6	14.8	10.2	1.46	2.11	
Gravenhurst Hydro Electric Inc.	Veridian Connections Inc.	11/2005	100%	11.9	11.9	12.0	8.5	8.4	1.40	1.43	
Middlesex Power Distribution Corporation	Chatham-Kent Energy Inc.	6/2005	100%	7.5	7.5	11.8	7.6	9.4	1.55	1.25	
Scugog Hydro Energy Corporation	Veridian Connections Inc.	6/2005	100%	3.5	3.5	3.5	2.0	2.0	1.75	1.75	
Princeton Light & Power Co. Ltd.	Fortis Inc.	5/2005	100%	3.7	3.7	7.8	6.5	6.2	1.20	1.25	
St. Catharines Hydro	Horizon Utilities	3/2005	100%	55.1	55.1	78.3	62.9	56.5	1.24	1.39	
									Minimum	1.20	1.25
									Maximum	2.35	2.11
									Mean	1.53	1.54
									Median	1.43	1.41
City of Kelowna's electricity utilities, Note 3			100%	55.0	55.0	55.0	36.2	n/a	1.52	n/a	

Notes

1. Implied enterprise value = implied equity value + preferred equity + total debt + other long-term liabilities - cash & equivalents  
Based on target's financial statements available in public domain prior to the transaction date and/or purchase price allocation note in the buyer's financial statements.
2. Book value of invested capital = book value of equity + long term debt + other long-term liabilities - cash & equivalents.
3. Estimated book value of capital assets as at the date hereof based on balances as at December 31, 2011, adjusted for the following:

Capital assets balance at December 31, 2011	29.2
Work-in-progress, at costs at December 31, 2011	3.7
Capital additions from January to August 31, 2012	3.5
Estimated amortization from January to August 2012	(0.9)
Estimated land value - Richter St. 1000 and 1008 according 2012 assessed values	0.7
<b>Adjusted capital assets book balance</b>	<b>36.2</b>

After taking into consideration the factors described above, Deloitte concluded that the multiples implied by the Purchase Price under the Proposed Transaction are consistent with multiples paid in the precedent transactions reviewed by Deloitte.

### Discounted cash flow analysis

The DCF approach takes into account the amount, timing and relative certainty of projected unlevered free cash flows expected to be generated by the Utility over its life. The DCF approach requires that certain assumptions be made regarding, among other things, future cash flows and discount rates applied to those future cash flows. The possibility that some of the assumptions will prove to be inaccurate is one factor involved in the determination of the discount rates to be used.

### Assumptions

For the DCF analysis, projected unlevered after-tax cash flows on a nominal basis were prepared for the period from 2012 to 2040, inclusive, and a residual for the period thereafter. As a basis for the development of the projected future cash flows, Deloitte reviewed the Management Projections. Deloitte generally accepted the assumptions of the Management Projections, although we considered certain adjustments related to property taxes and income taxes (as FortisBC and other prospective purchasers would generally be taxable entities). Further, we note that the assumptions in the Management Projections generally reflect the manner in which the Utility is operated as at the date hereof and do not reflect an adjustment to forecast scenarios for new circumstances that may occur should the Proposed Transaction not proceed.

### Sensitivity analysis

In completing our DCF analysis, Deloitte did not rely on any single series of projected cash flows but performed a variety of sensitivity analyses using the aforementioned Management Projections with Deloitte's adjustments. Variables sensitized included revenue, wholesale power purchase costs, operating expenses, capital expenditures and discount rates. The results of these sensitivity analyses are reflected in our judgement as to the fairness of the Purchase Price from a financial point of view.

### Discount rates

Deloitte selected discount rates to apply to the projected unlevered free cash flows by utilizing the Capital Asset Pricing Model ("CAPM") approach to determine an appropriate weighted-average cost of capital ("WACC"). This approach calculates the WACC based on an assumed optimal capital structure for the company. The company's optimal capital structure was chosen based upon a review of the capital structures of somewhat comparable public companies as well as the deemed capital structure specified by the BCUC for regulated electric distribution utilities in BC. The CAPM approach calculates the cost of equity capital as a function of the risk-free rate of return, the volatility of equity prices in relationship to a benchmark ("beta") and a premium for equity risk. The cost of debt was determined based on market rates for comparable companies. Based on the foregoing analysis, and considering the sensitivity analyses on the variables selected above, Deloitte used a discount rate in the range of 6.0% to 7.0%.

### Summary of discounted cash flow analysis

The DCF approach, including taking into account sensitivity analyses as described above, generates results that are consistent with the Purchase Price.

### **Fairness considerations**

The assessment of the fairness of the Purchase Price, from a financial point of view, must be determined in the context of the particular transaction. Deloitte based its conclusions in the Fairness Opinion upon a number of qualitative and quantitative factors including, but not limited to:

1. Comparing the Purchase Price to our analysis of implied enterprise multiples from our analyses of precedent transactions;
2. Comparing the Purchase Price to the results of our DCF analysis and the associated sensitivity analyses;
3. Other potential benefits (not quantified by the COK or Deloitte) that may accrue to the customers of the Utility and the taxpayers of the COK, as discussed with COK's consultant, Mr. David Craig, including the following:
  - a) The ability of Fortis to recover future Utility infrastructure upgrades and expansion costs from an expanded customer base;
  - b) Potential electricity rate reduction for non-residential customers;
  - c) Taxation benefits; and
  - d) FortisBC efficiency gains on acquiring the Utility, a portion of which would accrue to the customers of the Utility.

4. Other factors or analyses, which we have judged, based on our experience in rendering such opinions, to be relevant.

**Fairness conclusion**

Based upon and subject to the foregoing, Deloitte is of the opinion that, as at September 10, 2012, the Purchase Price is fair, from a financial point of view, to the existing COK electricity customers and COK taxpayers as a whole.

Yours truly,

A handwritten signature in black ink that reads "Deloitte & Touche LLP". The signature is written in a cursive, slightly stylized font.

Deloitte & Touche LLP



**Schedule 'C'**



Office of the City Clerk  
 1435 Water Street  
 Kelowna, BC V1Y 1J4  
 250 469-8645  
 kelowna.ca

# Alternative Approval Elector Response Form

Electric Utility Restructuring Opportunity

I am **OPPOSED** to the City of Kelowna entering into an Agreement with FortisBC Inc. which will sell the City's assets comprising its electrical utility distribution system to FortisBC Inc.

A full copy of the Agreement is available in the office of the City Clerk, 3<sup>rd</sup> Floor, City Hall, 1435 Water Street, Kelowna, BC.

Note: You **MUST** reside or own property within the municipal boundaries of the City of Kelowna in order to sign this alternative approval process elector response form.

**INSTRUCTIONS**

**If you are opposed to the Agreement outlined above, and you qualify as an elector of the City of Kelowna, you may sign an alternative approval process elector response form**

- If you are not opposed to the Agreement outlined above, you need do nothing
- Accurate copies of the alternative approval process elector response forms may be made and each alternative approval process elector response form, or accurate copy, may be signed by one or more electors
- To sign an alternative approval process elector response form you **MUST** meet the following criteria for either a Resident Elector OR a Non-resident (Property) Elector:

I, the undersigned, hereby certify that:

- ▶ I am eighteen years of age or older; and
- ▶ I am a Canadian citizen; and
- ▶ I have resided in British Columbia for at least six months; and
- ▶ I have resided in the City of Kelowna for at least thirty days OR I have been the registered owner of real property, and have been designated as the elector in regard to that property, in the City of Kelowna for at least thirty days (may only sign an alternative approval process elector response form once, no matter how many parcels the person might own within the City of Kelowna); and
- ▶ I am not disqualified by the Local Government Act or any other enactment or otherwise disqualified by law from voting in local elections; and
- ▶ I am entitled to sign this alternative approval process elector response form and have not previously signed an alternative approval process elector response form for the proposed Agreement.

All alternative approval process elector response forms must be received by the City Clerk, 3<sup>rd</sup> Floor City Hall, 1435 Water Street, Kelowna, BC, V1Y 1J4 on or before 4 pm Friday, October 26, 2012.

Elector's Full name: <i>(Print - NO initials)</i>	Residential Address: <i>(or address of real property in Kelowna owned by elector if not resident)</i>	Signature of Elector:

**You must meet the requirements above in order to sign this form.**

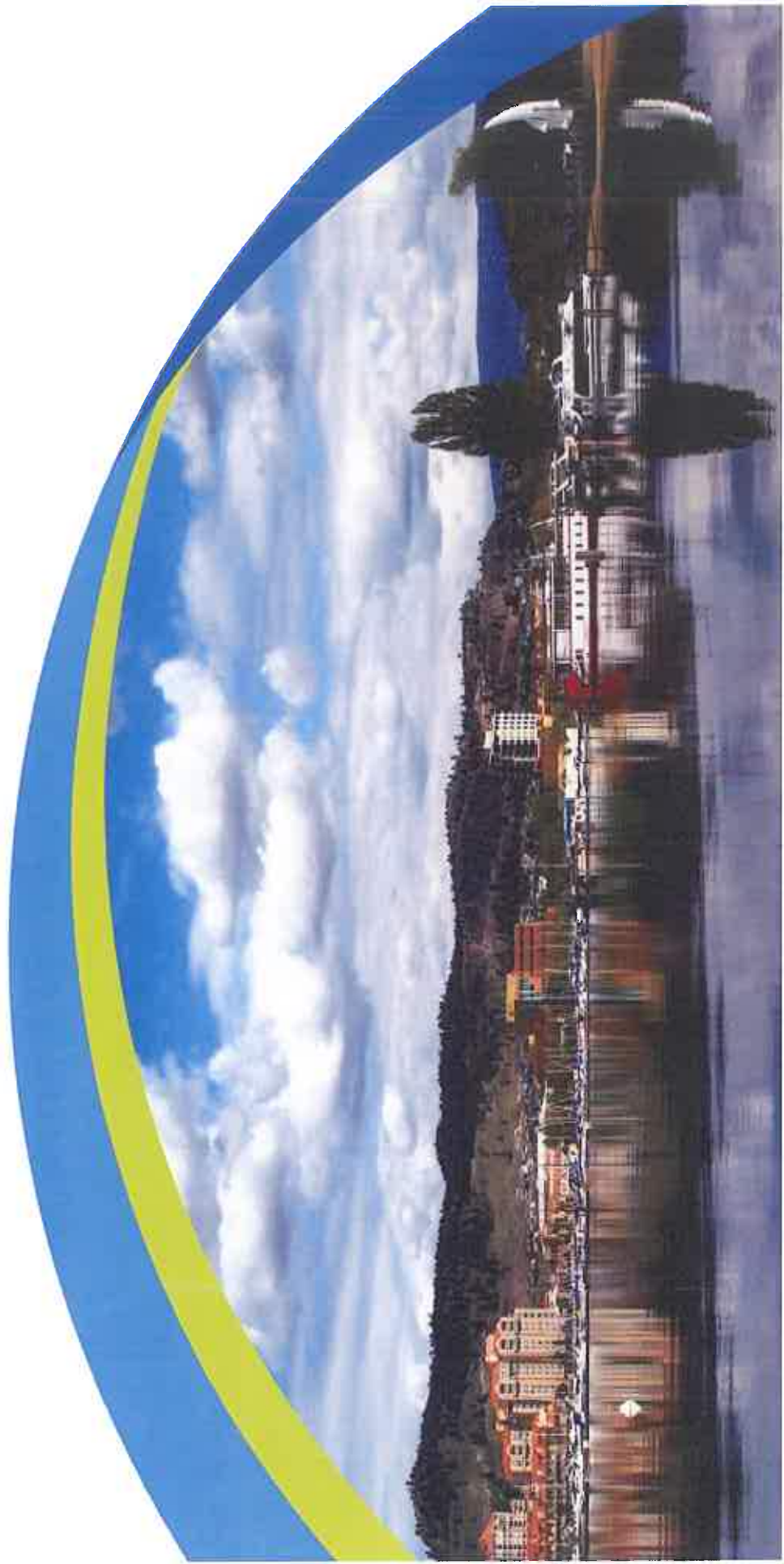
**NOTE:** A person must not sign any alternative approval process elector response form more than once and may not withdraw his or her name from the alternative approval process elector response form after the deadline for submission of the petitions has passed.

The number of eligible electors of the City of Kelowna is estimated to be 94, 845. If 10% (9,484) of the estimated number of electors of the City of Kelowna sign an alternative approval process elector response form opposing the noted transactions, City Council will not be able to proceed without then receiving the assent of the electors by referendum.

Personal information gathered on this form is collected under the authority of the *Community Charter* and *Freedom of Information and Protection of Privacy Act* and will be used only by Legislative Services Branch staff to verify the validity of the petition.

# ELECTRICAL UTILITY RESTRUCTURING OPPORTUNITY

September 2012



## STRATEGIC MOVE

City restructuring to be a utility  
investor instead of a utility  
operator

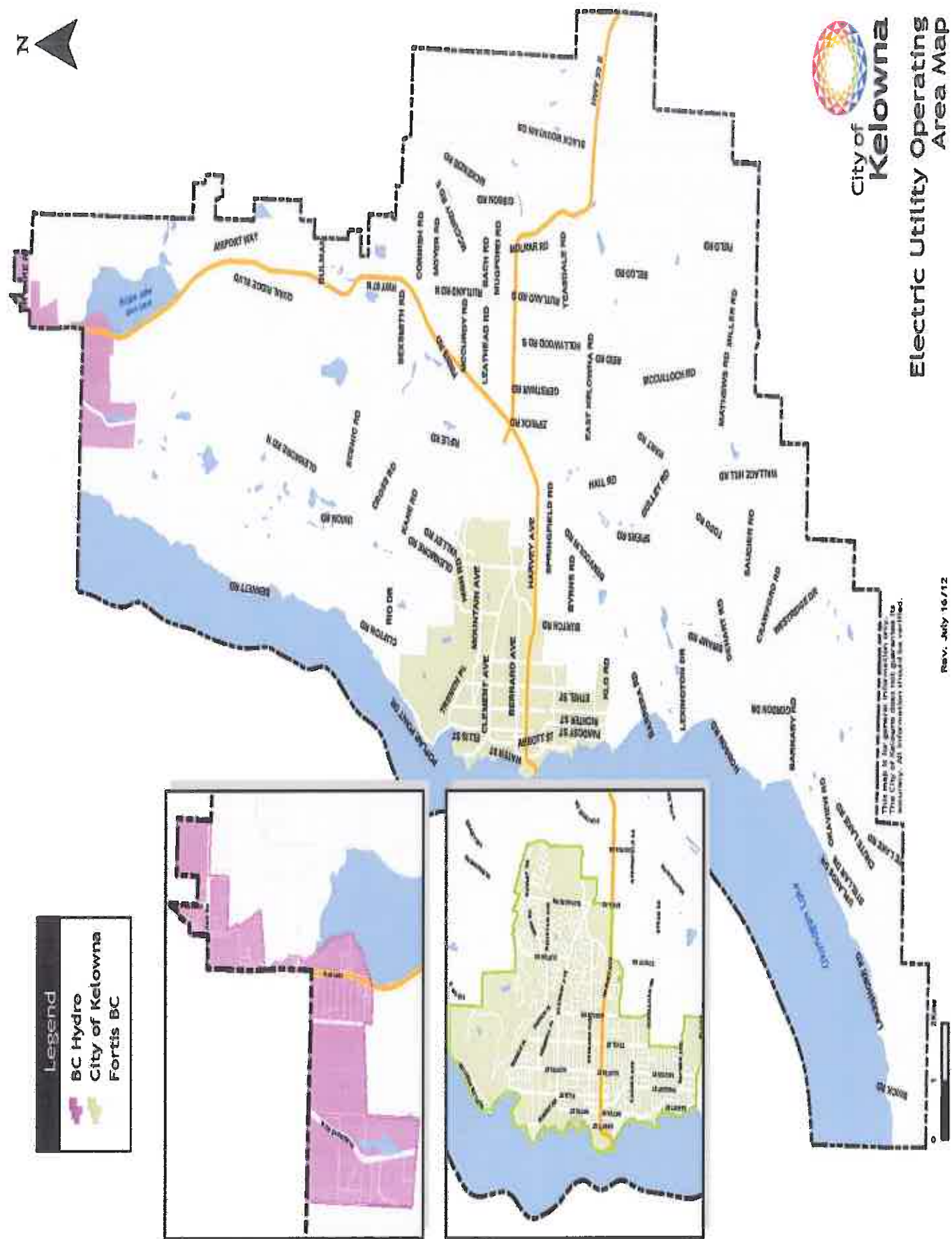
Focus on core services and expertise

## ELECTRICAL UTILITY

- ▶ One of six municipal utilities in BC
- ▶ Old boundary areas of Kelowna

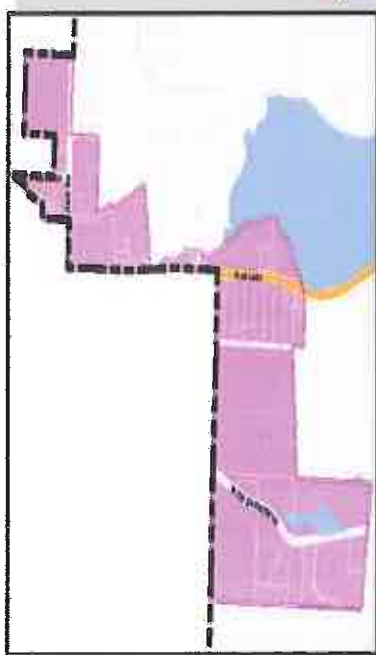


# Electric Utility Operating Area Map



**Legend**

- BC Hydro
- City of Kelowna
- Fortis BC



This map is for general information only. It is not intended to be used for legal purposes. All information is subject to change without notice.

Rev. July 16/12



## BACKGROUND

- ▶ Operated by City employees until late 1990s
- ▶ Strategic review identified
  - ▶ Cost efficiencies
  - ▶ Improved resources available in a partnership
- ▶ RFP process
  - ▶ Electric utility
  - ▶ Customer care services

## BACKGROUND

- ▶ One employee
- ▶ Fortis
  - ▶ Maintenance
  - ▶ Operations
  - ▶ Capital improvements
- ▶ Corix
  - ▶ Billing
- ▶ Current structure is not sustainable



## BACKGROUND

- ▶ Rates similar to Fortis
- ▶ Contributes
  - ▶ \$2.1m to general fund
  - ▶ \$370k to administrative overhead
  - ▶ \$200k street light power
  - ▶ Late payment fines
  - ▶ Demand power at large Civic facilities
- ▶ Infrastructure replacement
  - ▶ ~\$70 million over 20 years
- ▶ Wholesale power cost increasing
- ▶ Contractor costs increasing
- ▶ Fortis contract ends September 2012

## BACKGROUND

- ▶ Infrastructure replacement
  - ▶ ~\$70 million over 20 years
- ▶ Wholesale power cost increasing
  - ▶ Discrepancy in non-residential rate
- ▶ Contractor costs increasing
- ▶ Fortis contract ends September 2012

## BACKGROUND

- ▶ 2010 strategic review
- ▶ Current contract no longer providing same benefit
- ▶ Increased costs
  - ▶ BCUC transfer pricing changes
  - ▶ Contract costs

## BACKGROUND

- ▶ Previous Council authorize negotiations with Fortis BC
  - ▶ Services balance of city
  - ▶ Provides current utility management
  - ▶ LILLO agreement
  - ▶ Landfill gas to pipeline
  - ▶ District Energy
  - ▶ Team created

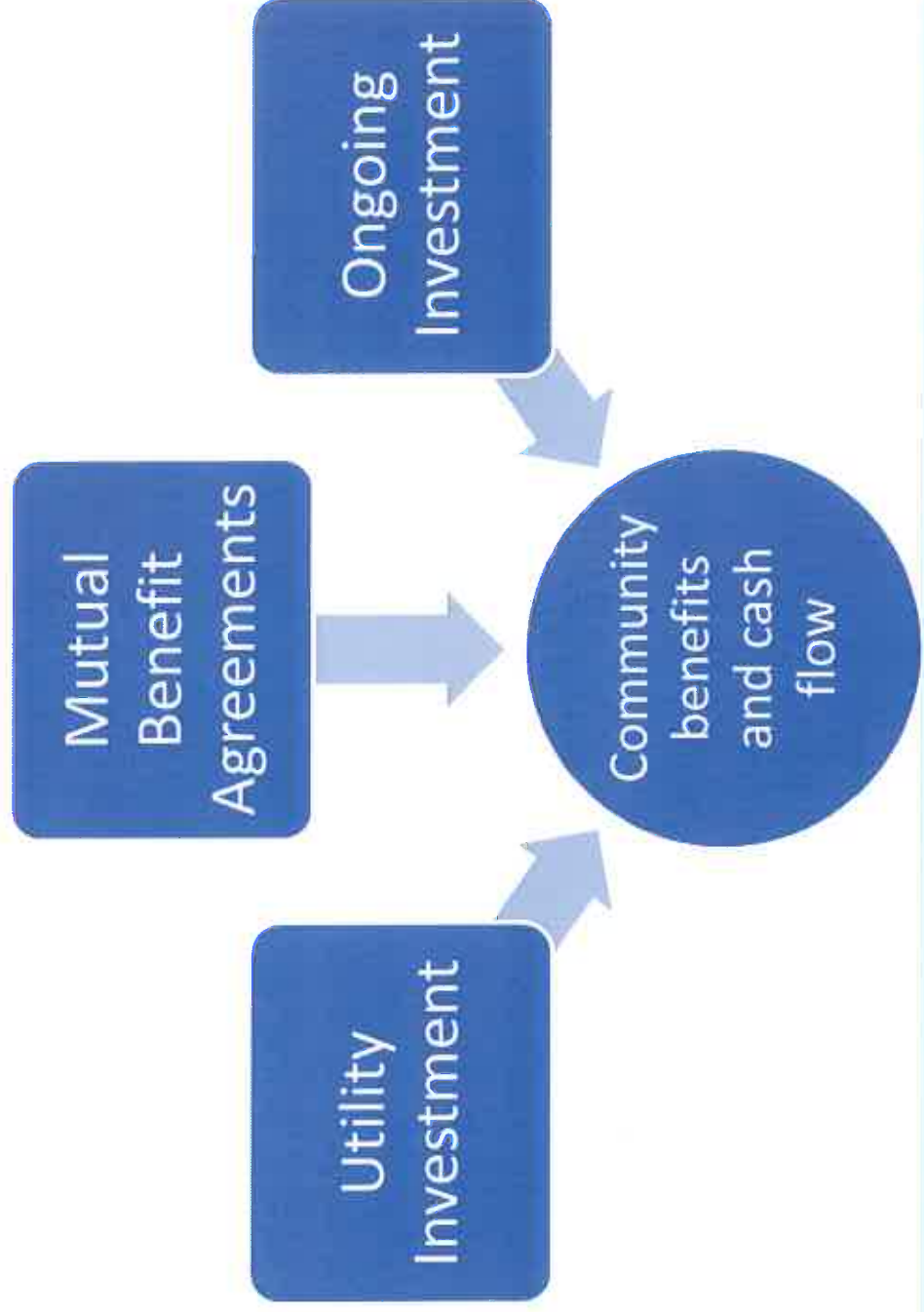
## OPPORTUNITY - GUIDING PRINCIPLES

- ▶ Long range plan
- ▶ Return in perpetuity
- ▶ Fair, balanced, and transparent
- ▶ Transfer of risk

## OPPORTUNITY - GUIDING PRINCIPLES

- ▶ Build on successes
- ▶ Investor in utility services
- ▶ Significant mutual benefit
- ▶ Additional energy partnerships

## MEMORANDUM OF UNDERSTANDING



## ASSET PURCHASE AGREEMENT

- ▶ \$55m transfer price
- ▶ Extensive negotiations and valuation
- ▶ No harm to existing customers
- ▶ Property taxes ~\$350k
- ▶ March 28, 2013 closing date



## ASSET PURCHASE AGREEMENT

- ▶ Items being attended to:
  - ▶ land rights
  - ▶ customer billing services
  - ▶ pole contacts

The Parties have various right in the asset purchase agreement to terminate the agreement if the above issues are not satisfactorily resolved

## ASSET PURCHASE AGREEMENT

- ▶ Fortis signed agreement
  - ▶ Requires BCUC approval
    - ▶ If the BCUC approval of the transaction is not satisfactory to FortisBC, they may terminate the agreement
- ▶ City alternative approval process
  - ▶ Open to all electors
  - ▶ Elector response deadline October 26, 2012
  - ▶ Forms available online or at City Clerks office

## DISCLOSURE FOR ELECTORS

- ▶ City website
- ▶ Overview and fact sheets
- ▶ Community group presentations
- ▶ Public open houses
- ▶ City rate payer notices
- ▶ City Clerk office document file
- ▶ Relevant documents

## INDEPENDENT THIRD PARTY REVIEW DELOITTE & TOUCHE LLP (“DELOITTE”)

“Based upon and subject to the foregoing, Deloitte is of the opinion that, as at September 10, 2012, the Purchase Price is fair, from a financial point of view, to the existing COK electricity customers and COK taxpayers as a whole.”

## OPPORTUNITY

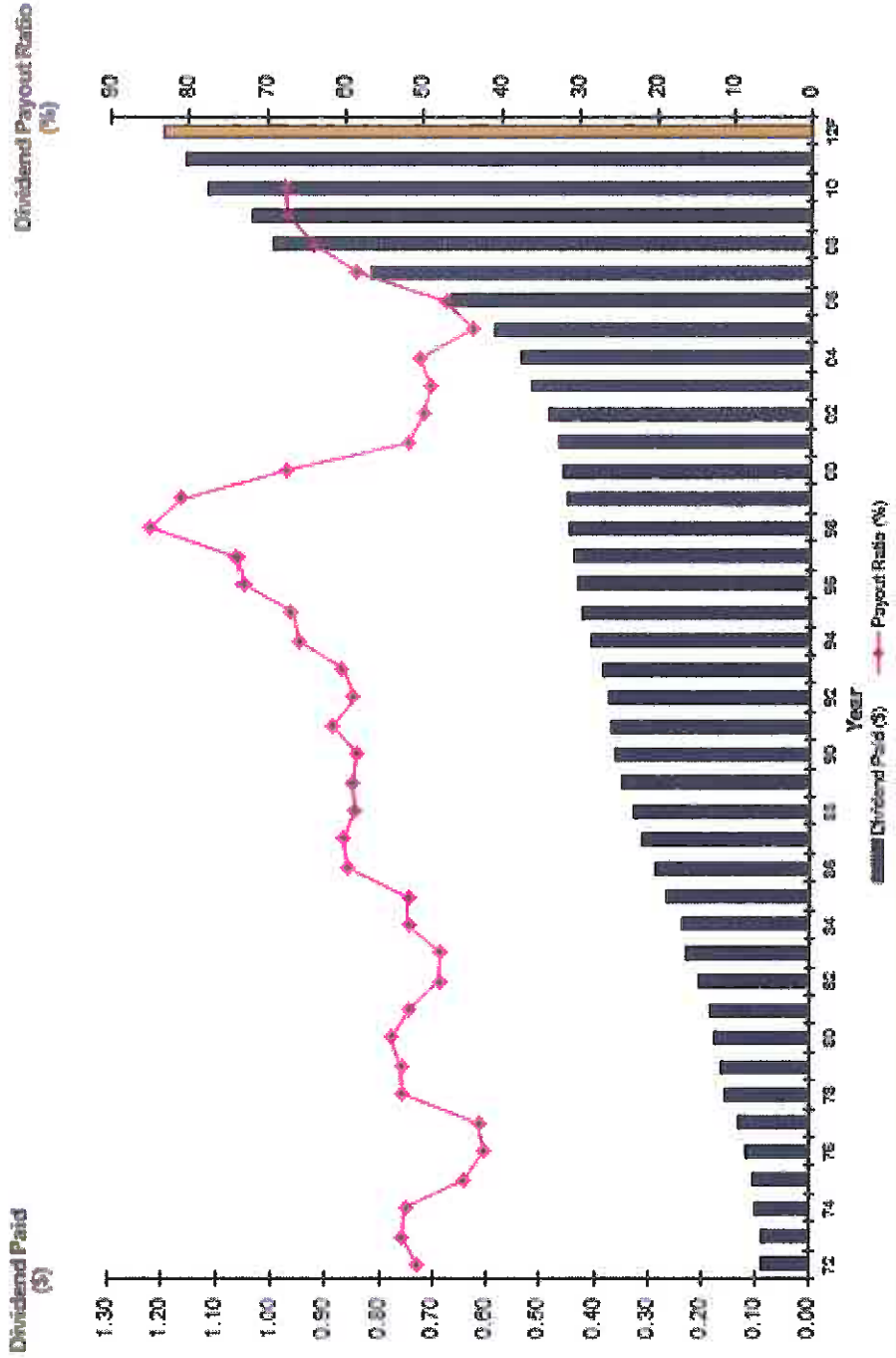
- ▶ Ongoing investment opportunities
  - ▶ Legacy LILLO funds
  - ▶ Investment of surplus funds
  - ▶ Potential utility investment funds \$85m-100m
- ▶ Focus on equity investment in Fortis Inc.
  - ▶ Dividend income plus growth potential similar to owner
  - ▶ Requires municipal inspector approval

## BENEFITS OF UTILITY INVESTOR

- ▶ Perpetual dividend income
- ▶ Move from utility direct owner to utility equity owner
- ▶ Known capital expenditures
- ▶ No staffing or operation concerns
- ▶ Transparent cost of service model
- ▶ Continually increase investment

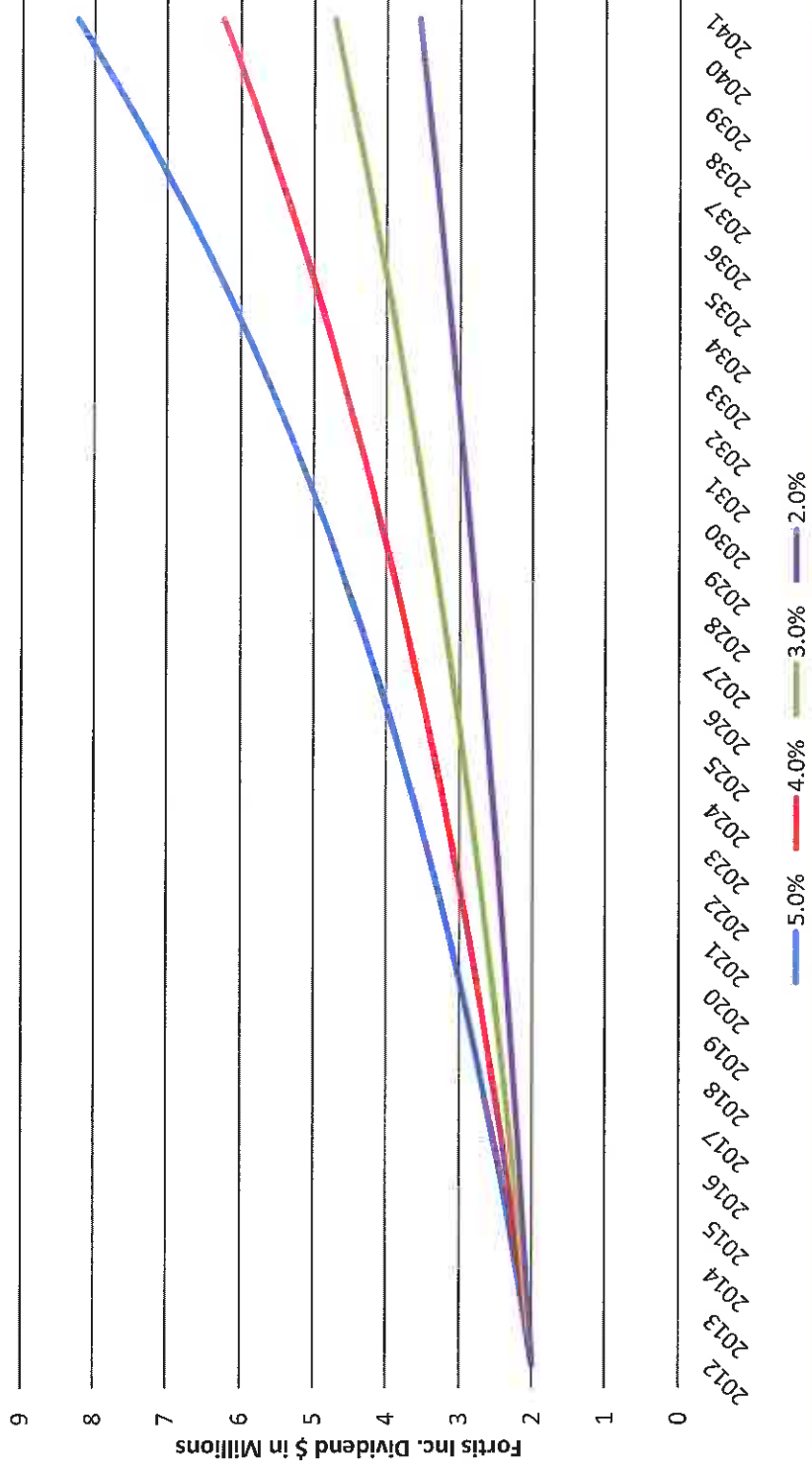
# TRANSFER UTILITY TO FORTISBC INVEST IN FORTIS INC. - DIVIDENDS

## FORTIS INC. DIVIDEND HISTORY



# TRANSFER UTILITY TO FORTISBC INVEST IN FORTIS INC. - DIVIDEND GROWTH PROPERTY TAX REDUCTIONS

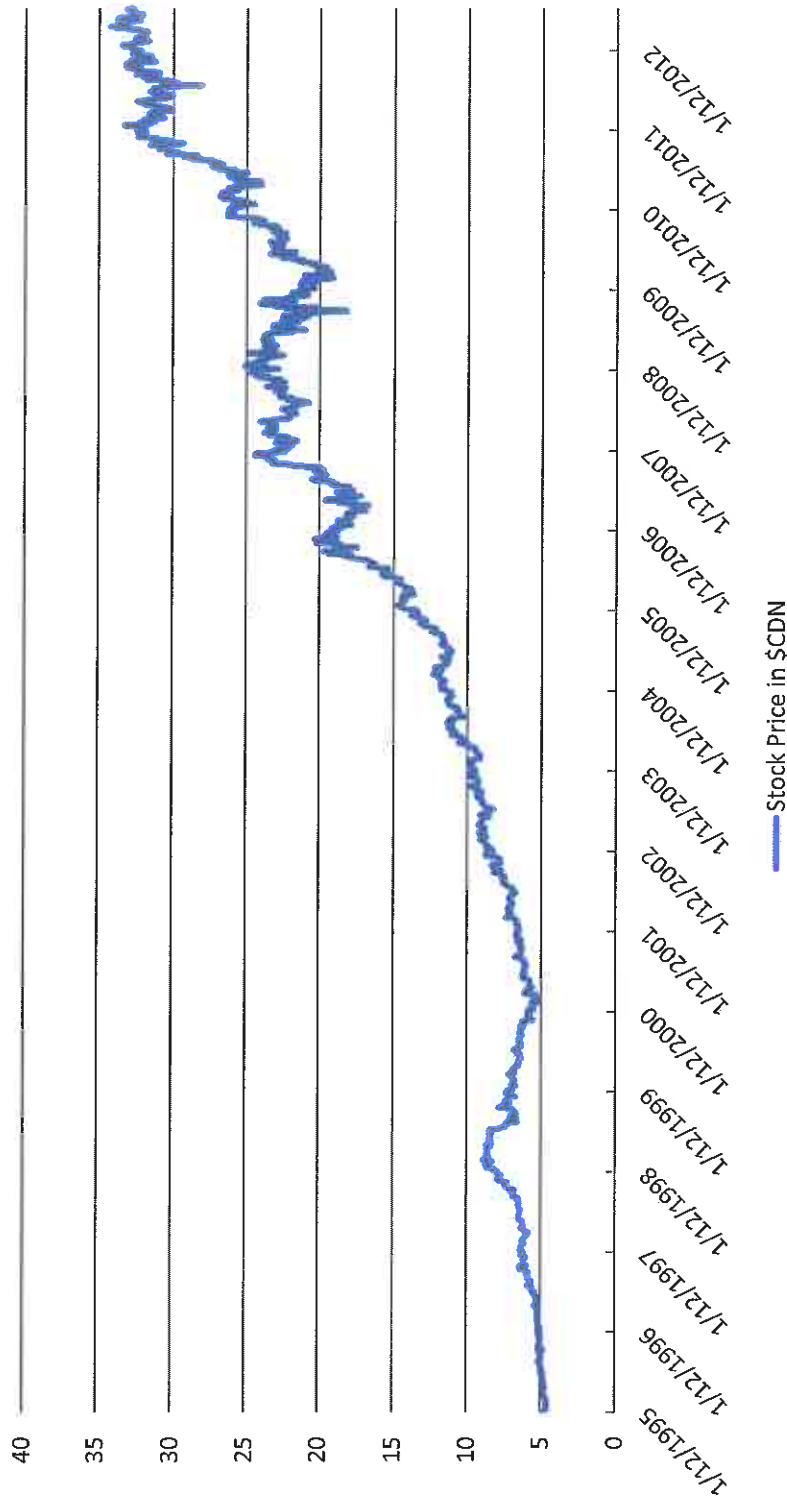
Fortis Inc. Dividend at % Appreciation





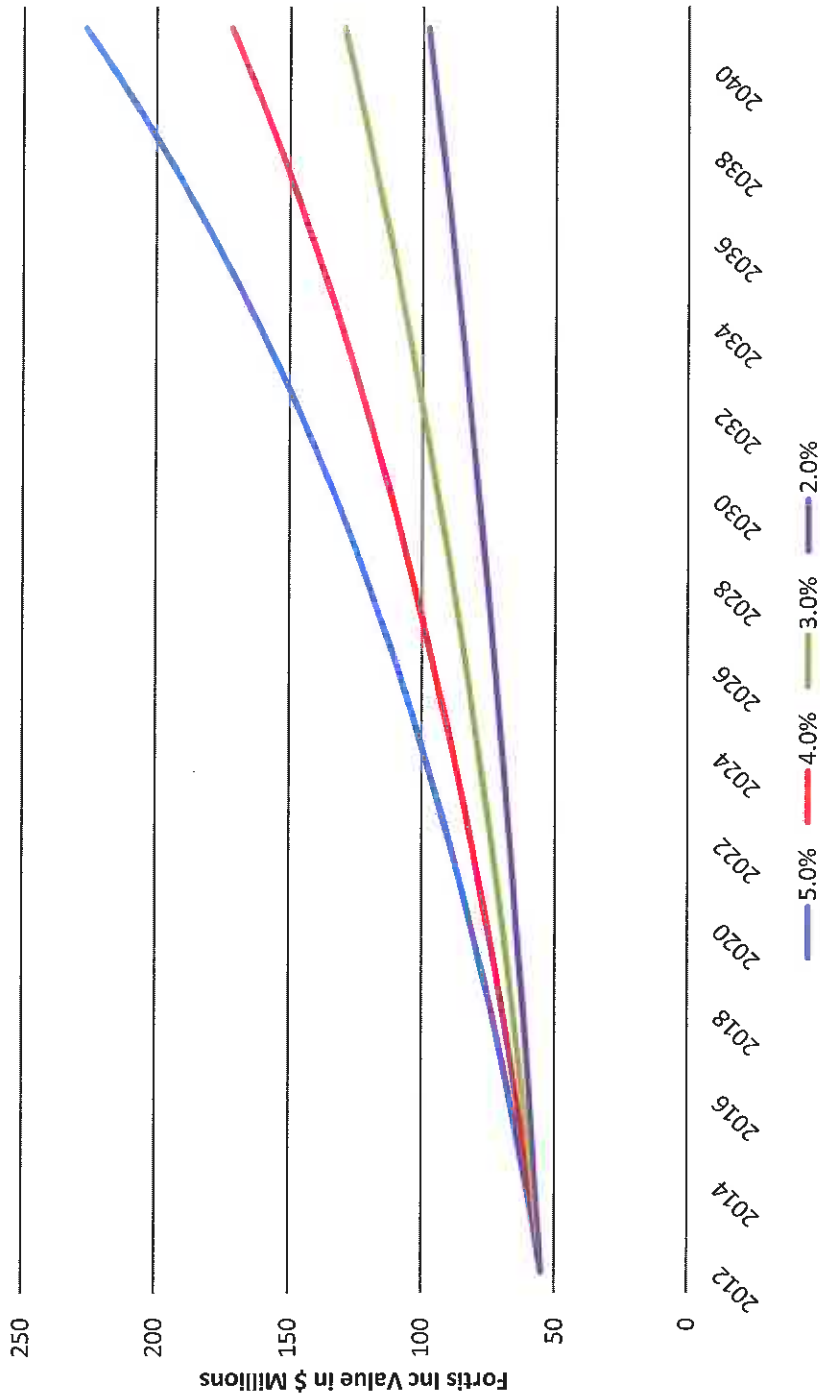
# TRANSFER UTILITY TO FORTISBC INVEST IN FORTIS INC.- SHARE VALUE

Fortis Inc. Stock Price History – 12.7%/year Growth



# TRANSFER UTILITY TO FORTISBC INVEST IN FORTIS INC - VALUE APPRECIATION

Fortis Inc. Value at % Appreciation Rates



# INVESTMENT OF PROCEEDS - EQUITY

Capital Value of Electric Utility – Growth at 5%/year



## OPPORTUNITY

- ▶ Mutual Benefit Agreements
  - ▶ Services
- ▶ Promote sustainable initiatives
  - ▶ District energy
  - ▶ Landfill gas to pipeline
  - ▶ Conservation and efficiency
- ▶ Utility growth
- ▶ Address multiple bottom line

## MULTIPLE BOTTOM LINE

- ▶ **Social**
  - ▶ Significant engagement and collaboration
  - ▶ Quality of life
- ▶ **Cultural**
  - ▶ Integrated with community sustainable initiatives
  - ▶ Municipal leadership
- ▶ **Environmental**
  - ▶ Direct contributions to sustainability
  - ▶ GHG Reductions
  - ▶ Air Quality Improvement
- ▶ **Economic**
  - ▶ Legacy financial benefits for citizens and City

## **BENEFITS OF FORTIS BC PARTNER**

- ▶ **Serves 2/3rds of Kelowna**
- ▶ **Seamless service change**
- ▶ **Professional management**
- ▶ **Kelowna office**
- ▶ **Partnership opportunities**
- ▶ **BCUC Cost of service model**
- ▶ **Energy security**
- ▶ **Financial strength**
- ▶ **35% of all efficiency benefits to FortisBC go to Kelowna ratepayers**

## CONSIDERATIONS

RISK	MITIGATE	BENEFIT
Disposition completion	Diligence process	Close prior to HST transition
Utility business	Same	Professional management
Contractual	Resolution mechanisms	Initiative funding
BCUC approval	Early communication	Cost of service model
Municipal Inspector approval	Early communication	Higher earnings
Equity investment	BCUC regulated utility	Operational benefit
Dividend growth	Historical raises	Higher earnings

## TIMELINE - PHASE 2

Phase 1:  
Summer 2012

- PHASE 1- COMPLETED
- MOU
- Legal agreements
- Third party review and consultation

Phase 2:  
Fall 2012

- Public information sessions
- Alternative approval process

Phase 3:  
Winter 2012

- BCUC process
- Possible transfer to Hold Co.
- Complete March 2013



# QUALIFICATION OF FINANCIAL PROJECTIONS

- ▶ Financial projections made in this Presentation are simply mathematical extrapolations of assumptions to be use only as a quantified way of informing the decision makers judgment. The projections are not predictions and are not promises.
- ▶ Past performance referenced is not a guarantee of future performance which must be judged in light of the uncertainties inherent in the markets, businesses and enterprises involved.



City of  
**Kelowna**

**END**