

CITY OF PRINCE GEORGE

BYLAW NO. 8296

A Bylaw to authorize the City of Prince George to enter into an energy supply agreement with Lakeland Mills Ltd.

WHEREAS Council of the City of Prince George may pursuant to sections 22 and 175(2) of the *Community Charter*, by bylaw, and with approval of the electors, enter into an energy supply agreement in connection with the construction of a district energy system;

AND WHEREAS pursuant to sections 84 and 86 of the *Community Charter*, Council of the City of Prince George has authorized approval of the electors to be obtained by the alternative approval process for final reading and adoption of this Bylaw;

NOW THEREFORE the Council of the City of Prince George, in open meeting assembled, **ENACTS AS FOLLOWS:**

1. City Council is hereby authorized to enter into the Energy Supply Agreement with Lakeland Mills Ltd. in the form attached to this Bylaw as Schedule "A" (the "Energy Supply Agreement").
2. The Mayor and the Corporate Officer are authorized on behalf of City Council to sign the Energy Supply Agreement.
3. The Energy Supply Agreement forms a part of this Bylaw.
4. The Mayor and Corporate Officer are hereby empowered to do all things necessary to give effect to this Bylaw.
5. This Bylaw may be cited for all purposes as "Lakeland Energy Supply Agreement Bylaw No. 8296, 2010".

READ A FIRST TIME THIS THE **7th** DAY OF **JUNE** , **2010.**

READ A SECOND TIME THIS THE **7th** DAY OF **JUNE** , **2010.**

READ A THIRD TIME THIS THE **7th** DAY OF **JUNE** , **2010.**

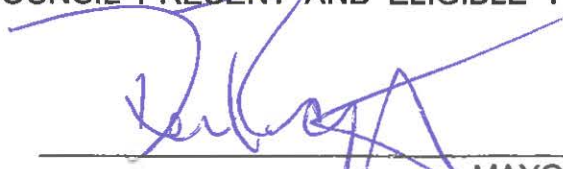
All three readings passed by a **unanimous** decision of Members of City Council present and eligible to vote.

I hereby certify that this Bylaw has received three readings by City Council as outlined herein.



CORPORATE OFFICER

ADOPTED THIS THE 9th DAY OF August, 2010, BY A DECISION OF ALL MEMBERS OF CITY COUNCIL PRESENT AND ELIGIBLE TO VOTE.



MAYOR



CORPORATE OFFICER

Schedule "A" to Lakeland Energy Supply Agreement Bylaw No. 8296, 2010

ENERGY SUPPLY AGREEMENT

Dated for reference the 7th day of June, 2010.

BETWEEN:

LAKELAND MILLS LTD.,
a British Columbia company having
an address for delivery at
1385 River Road,
Prince George, B.C. V2L 5S8

("Lakeland")

OF THE FIRST PART;

AND:

CITY OF PRINCE GEORGE,
a municipality having an address for delivery at
1100 Patricia Boulevard,
Prince George, B.C. V2L 3V9

(the "City")

OF THE SECOND PART;

WHEREAS:

- A. the City proposes to construct and operate a district energy system (the "DES") which will make thermal energy in the form of hot water available to customers in the downtown area of Prince George, B.C.;
- B. the DES will include a central plant (the "DES Plant") and an underground hot water distribution system. The DES Plant will contain all necessary pumping and control systems necessary to operate the DES;
- C. Lakeland owns and operates a timber processing facility in Prince George B.C. that generates wood residue, which in turn is used to fire an onsite boiler;
- D. the parties wish to enter into a long term agreement providing for the supply by Lakeland of thermal energy to the City for use in the DES and various other matters related thereto; and
- E. the electors of the City have approved the execution of this Agreement by the City to the extent required under sections 22 and 175 of the *Community Charter* (B.C.).

NOW THEREFORE this Agreement witnesses that in consideration of the premises and the mutual covenants and agreements herein contained, the Parties hereby covenant each with the other as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions - In this Agreement, unless otherwise expressly stated herein:

“business day” means any day other than a Saturday, Sunday or statutory holiday within the Province of British Columbia;

“City Put Option” has the meaning ascribed thereto in section 3.4;

“Contract Year” means any 12 month period during the Term which commences on the First Supply Date or on an anniversary of the First Supply Date;

“Default”, “Defaulting Party” and “Non-Defaulting Party” have the respective meanings ascribed thereto in Article 7;

“Depreciated Value” of the Leased Equipment means all out-of-pocket costs incurred by the City in acquiring and installing the Leased Equipment, depreciated to the date of termination of the Lease Term using the depreciation rates described in Part 2 of Schedule “B”;

“DES” means the district energy system to be constructed by the City, as such system may be modified, expanded or replaced from time to time;

“DES Plant” means the central plant to be constructed by the City as part of the DES, as such plant may be modified, expanded or replaced from time to time;

“ETS” means the Energy Transfer Station to be installed within the Lakeland Facility and through which thermal energy from the Lakeland Energy Plant will be transferred to the DES;

“First Supply Date” has the meaning ascribed thereto in section 2.2;

“Forced Outage” means an unplanned and immediate removal from service of a Party’s Plant during the Term as a result of a cause beyond the reasonable control of such Party, including any act of God, act of the public enemy, riot, war, insurrection or civil strife, blockade or other act of civil disobedience, sabotage, fire, storm, flood, explosion, lightning or earthquake, but does not include strike or labour unrest, a lack of financial means, withdrawal by a lender of credit facilities, adverse market conditions (including a material curtailment or shutdown of the Lakeland Facility due to a shortage of raw materials, lack of markets for Lakeland’s products, or uneconomic conditions adversely affecting Lakeland’s business, operations or financial condition);

“Lakeland Facility” means the timber processing facility presently owned by Lakeland and situate on the Lakeland Lands, as such facility may be modified, expanded or replaced from time to time;

“Lakeland Lands” means the lands and premises described in Schedule “A” hereto;

“Lakeland Option” has the meaning ascribed thereto in section 3.3;

“Lakeland Energy Plant” means those portions of the Lakewood Facility required to supply thermal energy to the DES Plant;

“Lease”, “Lease Term” and “Leased Equipment” have the respective meanings ascribed thereto in section 3.1;

“MWt” means a megawatt of thermal energy, and “MWh” means a megawatt hour of thermal energy;

“Option Price” has the meaning ascribed thereto in section 3.3;

“Parties” means the parties to this Agreement, and “Party” means one of them, as the context requires;

“Plant” means either the Lakeland Energy Plant or the DES Plant, as the context requires;

“Project” means the establishment and operation of the DES by the City, and includes the long term supply of thermal energy by Lakeland to the City for use in the DES as contemplated by this Agreement;

“Prime Rate” means the annual rate of interest announced from time to time by Royal Bank of Canada as a reference rate then in effect for determining interest rates on Canadian dollar commercial loans in Canada (as to which rate the certificate of any officer of a branch of Royal Bank of Canada shall be taken as conclusive evidence thereof); provided that the Prime Rate during each calendar month shall be deemed to be fixed at the Prime Rate in effect on the first business day of such month;

“Scheduled Outage” means a period of time during the Term during which there is a planned removal from service of all or part of a Party’s Plant for the purposes of inspection, maintenance, repair or general overhaul; and

“Term” means the term of this Agreement, as more particularly described in section 2.3; and

“wood residue” means any wood, sawdust or bark remnants produced in the course of log sorting or timber processing operations.

1.2 Extended Meanings - In this Agreement:

- (a) “this Agreement”, “hereof”, “herein”, “hereunder” and similar expressions refer to this Agreement as a whole, and any reference herein to an Article, section, subsection, paragraph or Schedule followed by a number or letter shall be deemed to be a reference to the specified Article, section, subsection, paragraph or Schedule of this Agreement;
- (b) words importing the singular number only include the plural and *vice versa*, words importing any gender include all genders and words importing persons include individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures and governmental authorities;
- (c) “including” means “including without limiting the generality of the foregoing”;
- (d) “interruption” includes a material reduction or lessening;
- (e) “surrender” of personal property by a Party means to make such property available for repossession at such Party’s principal place of business for a reasonable period of time following notice of such surrender being given to the other Party; and
- (f) “third party” means any person who is not a Party.

1.3 Headings - The headings and subheadings in this Agreement have been inserted for convenience of reference only, and do not define, enlarge or limit the scope or intent of any provision hereof.

1.4 No Contra Proferentum - The language in all parts of this Agreement shall in all cases be construed as a whole and neither strictly for nor strictly against either of the Parties.

1.5 Statutes - Any reference in this Agreement to a statute includes the regulations made pursuant thereto, all amendments made to such statute or regulations and in force from time to time, and any statute or regulations in force from time to time that have the effect of supplementing or superseding such statute or regulations.

1.6 Currency - All references in this Agreement to money amounts are expressed in Canadian currency unless otherwise indicated.

1.7 Governing Law - This Agreement shall be governed by and construed in accordance with the laws in force in the Province of British Columbia, and the laws of Canada applicable therein.

1.8 Schedules - Attached hereto and incorporated by reference into this Agreement and deemed to be a part hereof are the following schedules:

Schedule “A” – Description of Lakeland Lands

Schedule "B" – Part 1: Description of Leased Equipment;

Part 2: Depreciation of Leased Equipment

Part 3 : Policies and Procedures re. Procurement and Installation of
Leased Equipment

Schedule "C" – Methodology for Determining Energy Price During Renewal Term

ARTICLE 2

ENERGY SUPPLY

2.1 Energy Supply – Subject to the conditions set forth in Article 4, Lakeland hereby agrees to supply thermal energy to the City at the ETS, and the City agrees to accept and pay for such energy, upon the terms set forth herein.

2.2 First Supply Date – The City shall keep Lakeland apprised on a timely basis of its efforts to construct the DES (including commencement of construction) and shall give Lakeland at least ninety (90) days prior notice of substantial completion thereof. Lakeland shall make thermal energy available to the DES as soon as reasonably practicable following substantial completion of the DES, and in any event within ninety (90) days following the date of such substantial completion. The City shall not be obliged to purchase such thermal energy until Lakeland demonstrates by reasonable testing over a period of five (5) consecutive days that the Lakeland Energy Plant is capable of supplying thermal energy to the ETS without interruption and as otherwise contemplated herein. Such testing shall be conducted at Lakeland's sole expense, and the City shall not be required to pay for any thermal energy supplied by the Lakeland Energy Plant to the DES prior to the successful completion of such testing. The "First Supply Date" shall be the first business day following the satisfactory completion of such testing.

2.3 Term - The term during which Lakeland is obliged to supply, and the City is obliged to accept, thermal energy under this Agreement (the "Term") shall commence upon the First Supply Date and, subject to earlier termination or extension as provided for herein, shall terminate upon the tenth (10th) anniversary thereof.

2.4 Extension of Term - The Term shall automatically be extended at the expiration of the initial ten year Term for one further period of ten (10) years unless either Party has, at least six (6) months (and not more than one (1) year) prior to the expiration of the initial ten year Term, given written notice of such Party's intention not to renew this Agreement.

2.5 Capacity – The peak capacity of thermal energy required to be made available by Lakeland to the DES during the Term (the "Contract Capacity") is 5.0 MWt, all of which shall be generated from the combustion of wood residue in the Lakeland Facility. Such thermal energy shall be supplied in the form of fresh water heated to approximately 120 degrees centigrade and pumped to the ETS at a pressure which is below the pressure on the DES side of the ETS.

2.6 **ETS Control** – Except as specifically provided herein, the City shall be entitled to exclusive control over the operation of the ETS, and in connection therewith shall be entitled to determine the amount of thermal energy transferred from the ETS to the DES from time to time and the relevant temperature set points. The City shall ensure that the temperature of water returning from the DES side of the ETS to the ETS is at least 75 degrees centigrade. Notwithstanding the foregoing, Lakeland shall be entitled to have its authorized personnel obtain access to the ETS area as reasonably necessary for the purposes of:

- (a) inspecting and maintaining those portions of the Lakeland Energy Plant which are on the supply side of the ETS;
- (b) monitoring the operation of the ETS; and
- (c) implementing appropriate damage avoidance measures in cases of emergency in accordance with any jointly developed operating protocols.

2.7 **Price** – The price payable by the City for thermal energy supplied by Lakeland to the DES under this Agreement during the initial ten year Term will be as follows:

<u>Contract Year</u>	<u>Price (\$ / MWht)</u>
1	20.35
2	21.36
3	22.43
4	23.55
5	24.73
6	25.97
7	27.27
8	28.63
9	30.06
10	31.57

Any applicable sales tax or goods and services tax will be in addition to the above charges. The price payable by the City for thermal energy supplied under this Agreement during any renewal of the Term will be determined in the manner set forth in Schedule “C”.

2.8 Metering Equipment – Lakeland will install and maintain metering equipment satisfactory to the City (acting reasonably) on Lakeland’s side of the ETS. Such metering equipment shall measure the amount of thermal energy supplied by Lakeland to the DES with an accuracy of within 1%. The City shall be entitled to install and maintain equipment within the immediate vicinity of the ETS which enables the City to remotely interrogate the aforesaid metering equipment, and Lakeland shall not tamper with, disconnect or remove such remote monitoring equipment without the prior written consent of the City.

2.9 Invoicing and Payment – Lakeland will invoice the City on a monthly basis for all energy charges accruing due under this Agreement. Each such invoice shall show the amount of thermal energy supplied to the DES during the month in question and any other information which the City may reasonably require. Such invoices shall be payable within thirty (30) days following receipt, and interest shall accrue on any overdue invoice at the Prime Rate plus 2% per annum.

2.10 Record Review – During the Term, Lakeland shall from time to time at the City’s request and upon reasonable notice, make available for inspection or copying by the City and its representatives all operating logs, maintenance records and other records of any kind or description whatsoever within the possession or control of Lakeland and relating either to the operation or maintenance of the Lakeland Energy Plant or to the supply of thermal energy under this Agreement. Such right of inspection and copying by the City shall be exercised during normal business hours and in a manner which minimizes any disruption to Lakeland’s operations.

2.11 Maintenance and Security by Lakeland – Lakeland shall be responsible for maintaining any infrastructure and equipment required to facilitate the supply of thermal energy from the Lakeland Facility to the ETS during the Term. Lakeland’s obligations herein shall not extend to remedying any defect, malfunction or deficiency in the ETS or on the DES side of the ETS. Lakeland shall also be responsible for implementing reasonable security measures to prevent access by unauthorized persons to any portions of the Lakeland Facility where equipment or controls relevant to the supply of thermal energy to the DES are located. Such security measures may include requiring all persons wishing to obtain access to such areas to produce reasonable identification.

2.12 Maintenance and Security by City – The City shall be responsible for installing and maintaining the ETS and all other portions of the DES which are on the load side of the ETS.

2.13 Responsibility for Damage – Each Party (in this section, the “Indemnitor”) shall indemnify and save the other Party (in this section, the “Indemnitee”) harmless from and against any damage to the Indemnitee’s Plant or other property caused by a defect or malfunction in equipment required to be maintained by the Indemnitor under this Agreement, or caused by any negligence by the Indemnitor in the operation, maintenance or repair of such equipment.

2.14 Reliability – The following reliability provisions shall apply to the supply of thermal energy contemplated by this Article:

- (a) each Party will operate and maintain its Plant in accordance with all customary and prudent procedures and in compliance with all applicable codes and legislation;
- (b) if either Party (in this section, a “Non-Performing Party”) becomes either wholly or partly unable after the First Supply Date to perform an obligation under this Article by reason of a Forced Outage of the Non-Performing Party’s Plant, and promptly and reasonably establishes that fact and notifies the other Party thereof, then the obligation of the Non-Performing Party to perform such obligation shall be deemed to be suspended; provided however that:
 - (i) such suspension shall be of no greater scope and of no longer duration than reasonably required to remedy the inability arising from such Forced Outage; and
 - (ii) the Non-Performing Party shall make all reasonable efforts to promptly restore its Plant to full operation and otherwise remedy its inability to perform such obligation;
- (c) if the City finds it necessary to procure auxiliary or replacement sources of thermal energy owing to an interruption in the supply of thermal energy from the Lakeland Energy Plant during the Term, and such interruption was not caused by:
 - (i) any fault or neglect of the City, or any defect or malfunction of the DES Plant; or
 - (ii) a Forced Outage of either Plant; or
 - (iii) a Scheduled Outage of the Lakeland Energy Plant complying with subsection (d),Lakeland shall reimburse the City upon request for any reasonable costs so incurred;
- (d) Lakeland shall notify the City at least seven (7) days in advance of each Scheduled Outage of the Lakeland Energy Plant, and shall ensure that there are no more than two (2) Scheduled Outages per year, each lasting no more than seven (7) days in duration with the first occurring during the months of April or May and the second occurring during the months of September or October; and
- (e) notwithstanding any other term of this Agreement, in no event shall either Party be liable for any indirect or consequential loss or damage suffered by the other Party as a result of an interruption in the supply of thermal energy under this Agreement.

2.15 Termination after Extended Outage – If any Forced Outage of a Party’s Plant continues for more than ninety (90) days, or if any Scheduled Outage of a Party’s Plant continues for ninety (90) days longer than scheduled, the other Party may upon not less than ten (10) business days’ notice accelerate the expiration of the Term, and in such event the Term shall be deemed to have expired on the expiration date specified in such notice.

2.16 Compensation for Unused Energy – If in any Contract Year the aggregate volume of thermal energy supplied to the City under this Agreement is less than 6,000 MWt hours, then if and to the extent such shortfall was not attributable to:

- (a) a Forced Outage; or
- (b) a defect in the Lakeland Energy Plant; or
- (c) a breach by Lakeland of its obligations under this Agreement,

the City shall, within thirty (30) days following the end of such Contract Year and upon Lakeland’s request, pay to Lakeland a sum equal to the amount of such shortfall multiplied by the applicable energy price set forth in section 2.7.

2.17 Access – Commencing upon satisfaction or waiver of the conditions set forth in subsections 4.1(a) through (d) inclusive and continuing throughout the Term, Lakeland will permit the City and its agents and contractors to have reasonable access, with or without vehicles or equipment, to the Lakeland Lands and the Lakeland Energy Plant for any purposes reasonably incidental to this Agreement, including the installation, inspection, adjustment, calibration , servicing, replacement or removal of the ETS, any underground piping connecting the ETS to the rest of the DES and any related infrastructure. The City will use its reasonable best efforts to minimize any disruption to Lakeland’s operations arising from such activities of the City.

2.18 Easements - At the City’s request and expense, Lakeland will execute and deliver to the City in registrable form (where applicable) such licenses, easements and statutory rights of way as the City may reasonably require in order to better recognize the City’s right to install, maintain, reconstruct and utilize its equipment and infrastructure in, on or under the Lakeland Lands for the purposes of this Agreement. The term of any such licenses, easements or statutory rights of way shall be for the Term plus one year, and shall not require the payment of any fee to Lakeland.

2.19 Supply of Utilities to ETS Building - The Parties acknowledge that the ETS will be located in a new building to be constructed on the Lakeland Lands near the property line, and that the City shall be entitled to house its DES Plant within such building. Such building shall be serviced by such electrical, water and sewer connections as are reasonably necessary for the City to operate the DES Plant, and the cost of installing such connections shall be borne by the City. If any electricity or water supplied to such building is supplied from the Lakeland Facility and is not separately metered, the City shall from time to time upon request by Lakeland reimburse Lakeland for the cost of any electricity or water consumed by the DES Plant.

2.20 Title to ETS - Lakeland hereby acknowledges that it shall not have any right, title or interest in or to the ETS or any other infrastructure or equipment installed by the City on the

Lakeland Lands. Following the expiration or sooner termination of the Term, Lakeland shall at the City's request and in accordance with subsection 3.1(h), promptly detach and surrender to the City the ETS and any other infrastructure and equipment installed by the City on the Lakeland Property, excluding however any underground hot water piping which may be left in place. If Lakeland fails to effect such detachment or surrender, the City and its agents may do so and in such event the City shall repair any damage thereby caused to the Lakeland Energy Plant; provided however that in no event shall the City be obliged to replace any equipment or infrastructure lawfully removed, or make any modifications to the Lakeland Energy Plant to reduce any adverse impact necessarily resulting from such removal. Any costs reasonably incurred in detaching any infrastructure or equipment pursuant to this section shall be borne by Lakeland unless such detachment follows:

- (a) an unlawful termination of the Term by the City; or
- (b) a lawful termination of the Term by Lakeland owing to a default by the City; or
- (c) the expiration of the initial ten year Term following an election by the City pursuant to section 2.4 not to renew this Agreement;

in any of which events such costs shall be borne by the City.

2.21 Emissions from Lakeland Facility – During the Term, Lakeland shall ensure that energy particulate emissions from the Lakeland Facility do not exceed:

- (a) 20 micrograms per cubic nanometer at 8% oxygen; or
- (b) 6,700 kilograms per year,

or such lesser amount as may be permitted from time to time under any applicable licenses or permits. Lakeland will measure such emissions and report to the City regarding its compliance with this section:

- (c) on a quarterly basis, during the first twelve (12) months following the First Supply Date, and during the twelve (12) months immediately following the date of any such report indicating non-compliance with this section;
- (d) on a yearly basis, in all other circumstances; and
- (e) such additional measurements as the City may from time to time request (in this section, a "Supplemental Measurement").

Each such report shall have attached thereto all relevant stack emission monitoring data for the period to which such report relates and such other performance data as the City may reasonably request. The cost of measuring stack emissions for the purpose of reporting to the City as required under this section shall be borne equally by the Parties, except as follows:

- (f) the cost of at least one annual measurement shall be borne exclusively by Lakeland;

- (g) the cost of any measurement which is:
 - (i) required by law or under the terms of any permit or license held by Lakeland; or
 - (ii) has been made necessary only by an event of non-compliance by Lakeland with this section,shall be borne exclusively by Lakeland; and
- (h) the cost of any Supplemental Measurement shall be borne exclusively by the City.

2.22 Particulate Reduction Credits – Any environmental credits, benefits or other rights from time to time arising from the reduction or displacement of airborne particulate emissions from the Lakeland Facility in connection with the installation of any precipitator(s) included within the Leased Equipment shall be the exclusive property of Lakeland, and the City acknowledges and agrees that it shall not have any right, title or interest therein.

2.23 Greenhouse Gas Credits – Any environmental credits, benefits or other rights from time to time arising from the reduction or displacement in emissions of greenhouse gases in connection with the supply of thermal energy to the DES as contemplated by this Agreement shall be the exclusive property of the City, and Lakeland acknowledges and agrees that it shall not have any right, title or interest therein.

2.24 Approvals – Lakeland shall be responsible for obtaining all permits, licenses and approvals from any governmental authorities required in order to modify and operate the Lakeland Facility as contemplated by this Agreement.

ARTICLE 3 **LEASE OF EQUIPMENT**

3.1 Lease – Subject to the conditions in Article 4, the City will purchase and make available for lease to Lakeland the equipment described in Part 1 of Schedule “B” hereto (the “Leased Equipment”). Lakeland shall assist and participate in the procurement and installation of the Leased Equipment in accordance with the policies and procedures set forth in Part 3 of Schedule “B”. The terms applicable to such lease (the “Lease”) shall be as follows:

- (a) the term of the Lease (the “Lease Term”) shall coincide with the Term;
- (b) the rent payable under the Lease shall be \$1.00 per Contract Year, payable in advance;
- (c) the Leased Equipment shall be installed in the Lakeland Facility and shall be diligently maintained by Lakeland during the Lease Term;
- (d) Lakeland shall bear all risk of loss or damage to the Leased Equipment during the Term, save and except only reasonable wear and tear. If during the Term any

item included within the Leased Equipment is damaged or destroyed, or suffers a premature failure, Lakeland shall at its sole expense either repair such item or replace it with one of comparable pre-loss value;

- (e) Lakeland shall ensure that its property and liability insurance policies provide coverage for Lakeland's obligations under subsection (d) above, to the extent such coverage is reasonably available, and shall from time to time at the City's request obtain and supply a certificate from the applicable insurers confirming the terms of such coverage and that such policies remain in good standing;
- (f) the City shall be entitled during normal business hours and upon reasonable prior notice to Lakeland to enter the Lakeland Energy Plant with one or more professional consultants and to inspect the Leased Equipment;
- (g) within ten (10) business days following termination of the Lease Term, the City shall advise Lakeland of the Depreciated Value of the Leased Equipment; and
- (h) subject to the exercise of the Lakeland Option or the City Put Option, Lakeland will within sixty (60) days following termination of the Lease Term, detach and surrender to the City the Leased Equipment in good condition, reasonable wear and tear only excepted. The costs of such detachment shall be borne in the manner described in section 2.20.

3.2 Priority – Lakeland shall from time to time at the City's request obtain from each creditor of Lakeland who holds a security interest or other financial encumbrance charging either the Lakeland Facility or any personal property situated thereon, a disclaimer of any security interest in the Leased Equipment, and shall provide a copy of such disclaimer to the City promptly following receipt thereof.

3.3 Lakeland Option – Upon termination of the Lease Term for any reason other than a default by Lakeland of this Agreement, Lakeland shall have the option (the "Lakeland Option") of purchasing all, but not less than all, of the Leased Equipment for a price (the "Option Price") equal to the Depreciated Value thereof, plus all applicable sales taxes. The Lakeland Option may only be exercised by delivering notice (in this section, the "Option Notice") of Lakeland's election to exercise the Lakeland Option to the City within thirty (30) days following termination of the Lease Term. Upon such exercise, this Agreement and the Option Notice shall thereupon become a binding agreement for the purchase and sale of the Leased Equipment upon the terms and conditions set forth section 3.5. Failure of Lakeland to exercise the Lakeland Option in the manner and within the time specified above shall result in the Lakeland Option terminating.

3.4 City Put Option – Upon termination of the Lease Term for any reason other than a default by the City of this Agreement, the City shall have the option (the "City Put Option") of requiring Lakeland to purchase all, but not less than all, of the Leased Equipment for the Option Price. The City Put Option may only be exercised by delivering notice (in this section, the "Put Option Notice") of the City's election to exercise the City Put Option to Lakeland within thirty (30) days following termination of the Lease Term. Upon such exercise, this Agreement and the Put Option Notice shall thereupon become a binding agreement for the purchase and sale of the

Leased Equipment upon the terms and conditions set forth section 3.5. Failure of the City to exercise the City Put Option in the manner and within the time specified above shall result in the City Put Option terminating.

3.5 Closing of Option Sale – The closing of any agreement of purchase and sale arising out of the exercise of the Lakeland Option or the City Put Option (in this section, the “Closing”) shall be completed at the offices of Lakeland’s solicitors at 1:30 p.m. (Pacific Standard Time) on the twentieth (20th) business day following such exercise, or at such other place and time as Lakeland and the City may agree to in writing. At such Closing, the City shall be deemed to represent and warrant that the City is the legal and beneficial owner of the Leased Equipment, free and clear of any encumbrances (except encumbrances arising from any acts or omissions of Lakeland). All other representations or warranties relating the Leased Equipment (including any implied warranties as to merchantability, fitness or condition) shall be deemed to be expressly excluded. At the Closing, the City shall deliver to Lakeland a bill of sale in form prepared by Lakeland’s solicitors and transferring title to the Leased Equipment to Lakeland, and Lakeland shall deliver to the City a certified cheque or bank draft payable to the City in the amount of the Option Price plus all applicable taxes.

ARTICLE 4 **CONDITIONS PRECEDENT**

4.1 Conditions - The obligations of the Parties to proceed with the transactions contemplated herein shall be subject to the following conditions being satisfied or waived by the dates noted below:

- (a) by August 10th, 2010, Lakeland shall have provided the City with a budget for acquisition and installation of the Leased Equipment in the Lakeland Facility and a description of all other proposed modifications to the Lakeland Facility, and the City shall have approved such descriptions and budget;
- (b) by August 31st, 2010, the Parties shall have agreed on:
 - (i) any specifications for the Leased Equipment which are not set specifically forth in Schedule “B” and which are reasonably required to order such equipment;
 - (ii) the location and depth of any underground piping to be installed by the City on the Lakeland Lands; and
 - (iii) a detailed design for the placement, configuration and interconnection of the ETS within the Lakeland Energy Plant;
- (c) by September 30th, 2010, Lakeland’s secured lenders shall have agreed in writing with the City to provide the disclaimer of interest referred to in section 3.2;

- (d) by January 31st, 2011, an environmental assessment of the Project pursuant to the *Canadian Environmental Assessment Act* (Canada) shall have been completed at the City's expense, and such assessment shall have concluded that the Project will not detrimentally affect the environment; and
- (e) by September 30th, 2011, the First Supply Date shall have occurred.

The conditions in subsections (a), (b) and (e) above are for the benefit of both Parties, and may only be waived by both Parties; provided that no Party may rely on any failure to satisfy the condition in subsection (e) if such failure is attributable to a default by such Party of its obligations under this Agreement. Each of the conditions in subsections (c) and (d) above are for the sole benefit of the City, and may be waived by notice to Lakeland provided such notice of waiver is delivered before the applicable deadline for meeting such condition.

ARTICLE 5

INSURANCE AND RELEASES

5.1 Insurance – During the Term, each of the Parties (in this section, an “Insured”) shall at its sole expense:

- (a) maintain the following insurance policies (in this section, the “Policies”) with insurers and in form subject to such deductibles and exclusions as may be acceptable to the other Party, acting reasonably;
 - (i) comprehensive general liability insurance with respect to errors or omissions of the Insured in relation to its obligations and liabilities under this Agreement, in an amount of not less than \$1.0 million; and
 - (ii) statutory motor vehicle liability insurance covering all of the Insured's licensed motor vehicles (owned and leased), including any provisionally licensed motor vehicles while operating on the public highway;
- (b) ensure that each of the Policies contains, to the extent reasonably available, a waiver of subrogation as against the other Party and those for whom the other Party is responsible in law;
- (c) ensure that each of the Policies requires the applicable insurer to give not less than 14 days' written notice to the other Party prior to any material change, cancellation or expiry of such Policy;
- (d) from time to time at the other Party's request, obtain and supply to the other Party a copy of the Policies and a certificate from the applicable insurers confirming that the Policies remain in good standing; and
- (e) not do, omit or permit to be done anything that causes the Policies to be cancelled, unless the cancelled insurance is immediately replaced with comparable insurance from another insurer.

5.2 Disclaimer and Release of Liability - Each Party (in this section, the “Releasor”) hereby releases the other Party (in this section, the “Releasee”) and its directors, officers, servants and agents, of and from any liability, whether in tort, contract or otherwise, in respect of any loss suffered by the Releasor due to any cause whatsoever related to the performance of this Agreement, except to the extent that such loss is directly attributable to a breach of this Agreement by the Releasee or to the tortious act or willful default of the Releasee or any person for whom the Releasee is responsible in law.

5.3 Survival - The obligations of the Parties under this Article shall survive the expiration or sooner termination of this Agreement.

ARTICLE 6

OPERATION BY CITY OF LAKELAND ENERGY PLANT

6.1 Entitlement of City to Operate Facility – During any period in which:

- (a) the supply of thermal energy by Lakeland under Article 2 has been suspended for more than twenty (20) business days; and
- (b) such suspension of supply is not attributable to:
 - (i) any default by the City of this Agreement;
 - (ii) a Forced Outage of, or defect in, the DES Plant; or
 - (iii) any loss of, damage to or malfunction in the Lakeland Energy Plant which is being diligently remedied by Lakeland,

the City and its duly appointed representatives and consultants may, upon one business day’s notice to Lakeland, enter upon the Lakeland Lands and take any steps reasonably required to operate the Lakeland Energy Plant to the extent necessary to restore such supply. Such steps shall include using any wood residue located on the Lakeland Lands to fire Lakeland’s boiler and, if such wood residue is insufficient, importing and using the City’s own wood residue.

ARTICLE 7

Default

7.1 Default – If any Party (in this Article, the “Defaulting Party”) defaults in the performance or observance of any of its obligations under this Agreement, such event shall constitute a “Default” by such Party.

7.2 Remedies for Default - If a Default occurs, the Party not in Default (in this Article, the “Non-Defaulting Party”) may do one or more of the following:

- (a) pursue any remedy available in law or equity (it being acknowledged by both Parties that specific performance, injunctive relief and other equitable remedies are reasonable in the circumstances);

- (b) take any action in its own or in the name of the Defaulting Party as may necessarily and reasonably be required to cure the Default, in which event all payments, costs and expenses reasonably incurred in relation to the Default shall be payable by the Defaulting Party to the Non-Defaulting Party upon demand;
- (c) terminate this Agreement by notice to the Defaulting Party, if the Default is not cured by the Defaulting Party within thirty (30) days of receiving notice from the Non-Defaulting Party specifying such Default and requiring the Defaulting Party to cure such Default; provided that if such Default is of a nature that reasonably requires more than thirty (30) days to cure, is capable of being fully cured within a reasonable time, and the Defaulting Party diligently proceeds with effecting such cure and actually cures such Default within a reasonable time, then the Non-Defaulting Party shall not be entitled to terminate the Agreement in respect thereof; or
- (d) waive the Default; provided however that any waiver of a particular Default shall not operate as a waiver of any subsequent or continuing Default.

ARTICLE 8

DISPUTE RESOLUTION

8.1 Dispute Resolution – The following terms shall apply to the resolution of each unresolved dispute or disagreement between the Parties arising out of or relating to this Agreement (in this section, a “Dispute”):

- (a) Arbitration – subject to subsection (b) below, each Dispute shall be resolved by arbitration before a single arbitrator pursuant to the *Commercial Arbitration Act* of B.C., and the determination of such arbitrator shall be final and binding upon the Parties;
- (b) Mediation – prior to submitting any Dispute to arbitration, the following procedure shall be observed unless the Parties otherwise agree:
 - (i) both Parties will use their best efforts to arrange a meeting between senior officers of each Party with a view to discussing and resolving such dispute or disagreement;
 - (ii) if the Dispute is not resolved by the aforesaid negotiation within ten (10) business days of any Party attempting to arrange such meeting, then the Parties will appoint a mediator to assist them in resolving the Dispute. The following terms shall apply to such appointment:
 - A. if the Parties are unable to agree upon the choice of such mediator within five (5) business days of attempting to do so, the mediator will be appointed by a Judge of the Supreme Court of B.C. upon motion by any Party; and

- B. the fees and expenses of the mediator will be borne by the Parties equally;
- (iii) if the Dispute is not resolved by agreement of the Parties within twenty (20) business days following the mediator's appointment, then either of the Parties may refer the dispute to arbitration;
- (c) Arbitration Procedure - any arbitration relating to a Dispute shall be commenced by one Party delivering to the other Party a notice of arbitration setting out the particulars of the Dispute. If and to the extent the Parties have not agreed in writing within ten (10) business days of a notice of arbitration being delivered as to the single arbitrator to be appointed, the rules and procedures to be used in conducting the arbitration, or the location of the proceedings, then the following shall apply:
 - (i) the arbitration proceedings shall be conducted in Prince George, B.C.;
 - (ii) the arbitrator shall be selected by a Justice of the Supreme Court of British Columbia upon motion of the Party requesting the arbitration;
 - (iii) the rules of procedure to be used in the arbitration shall be the rules of the B.C. International Arbitration Centre as may be amended from time to time, except that the Centre shall not administer the arbitration unless agreed to by all of the Parties to such dispute; and
 - (iv) the costs of the arbitration (including any legal costs incurred by the Parties) shall be borne by the Parties in such manner as the arbitrator may direct.

ARTICLE 9

CONFIDENTIALITY AND COMMUNICATIONS

9.1 Confidentiality – Each of the Parties acknowledges that during the course of the Project such Party may obtain access to confidential information or documents relating to the business, property or affairs of the other Party (collectively, the “Confidential Information”). No Party will publish or disclose any such Confidential Information or permit any other person under its direction or control to do so; provided however that the aforesaid restrictions shall not apply to:

- (a) any disclosure to agents, contractors or employees of such Party where such disclosure is reasonably required to further the Project and such agents, contractors or employees agree to respect the confidential nature of the information received;
- (b) any disclosure to an actual or potential lender or underwriter or other financial institution which has a bona fide need to be informed and who agrees to respect the confidential nature of the information received;

- (c) disclosure of any information which is, either at the date of this Agreement or at some later date, publicly known under circumstances involving no breach of this Agreement;
- (d) any disclosure required by law, court order, court proceedings or the rules or policies of any stock exchange or government or regulatory authority having jurisdiction in the matter; or
- (e) any disclosure consented to in writing by the other Party.

9.2 External Communications - Except as required by law or as specifically permitted herein, no public announcement or press release concerning the Project or any matter related thereto shall be made by either of the Parties without the prior consent and approval of the other Party. Notwithstanding the foregoing, the Parties acknowledge that:

- (a) the City (including members of City Council and City staff members) shall be entitled to make such public comments and disclosures of non-confidential information regarding the Project, and the City's participation therein, as is reasonably required to solicit informed electorate approval of the Project to the extent required by law, and to generally to keep the public adequately informed regarding the City's participation in the Project; and
- (b) information relating to the Project and this Agreement may not be exempt from disclosure under the *Freedom of Information Act* (Canada) or the *Protection of Privacy Act* (B.C.)

9.3 Survival - The obligations of the Parties under this Article shall survive the expiration or sooner termination of this Agreement.

ARTICLE 10

GENERAL

10.1 Notice – Any notice required or permitted to be given hereunder by any Party shall be in writing and shall be given by personal delivery, facsimile transmission or by a nationally recognized overnight or express courier service, in each case addressed to the other Party (in this section, the “Recipient”) at its address herein contained or such other address as the Recipient may from time to time designate to the other Party by notice delivered in accordance with this section. Any notice delivered or transmitted as aforesaid prior to 4:30 p.m. (local time for the Recipient) on a business day shall be deemed to have been received on such day, and otherwise shall be deemed to have been received on the next business day following the date of such delivery or transmission.

10.2 Waiver - The failure of any Party to insist on the strict performance of any provision of this Agreement, or to exercise any right, power or remedy following a breach hereof, shall not constitute a waiver of any provision of this Agreement nor limit such Party's right thereafter to enforce any provision or exercise any right. No waiver by or behalf of any Party of any breach

of any of the terms of this Agreement shall take effect or be binding upon such Party unless the same is expressed in writing under the authority of such Party, and any waiver so given shall extend only to the particular breach so waived and shall not limit or affect any rights with respect to any other or future breach.

10.3 Indemnity - Except as otherwise expressly provided in this Agreement, each Party will indemnify and save the other Party harmless from and against any and all loss, damage, costs (including legal fees and disbursements on a solicitor and own client basis), actions, suits and liability arising out of or in any way connected to any breach by such first Party of any representation, warranty, covenant or agreement made by it in favour of the other Party and contained in this Agreement. The obligation of each Party under this section shall survive the termination of this Agreement.

10.4 Remedies Cumulative - Except as otherwise expressly provided in this Agreement, any remedy provided for in this Agreement shall be in addition to, and not in substitution for, any other remedy available at law or in equity.

10.5 Transferees to be Bound – During the Term, the City will not sell, lease, transfer or otherwise dispose of its interest in the DES, and Lakeland will not sell, lease, transfer or otherwise dispose of its interest in the Lakeland Facility, without ensuring that the transferee of such interest agrees in writing with the other Party to be bound by the provisions of this Agreement.

10.6 City may assign to Subsidiary - The City shall be entitled upon notice to Lakeland to assign all of its rights and obligations herein to a company controlled by the City, and effective upon such company agreeing with Lakeland to be bound by the provisions of this Agreement, such assignment shall be deemed to be a novation and the City shall cease to have any further obligations under this Agreement.

10.7 Authorized Representative of City – Lakeland hereby acknowledges having been advised by the City that the only representative of the City authorized to make or give any agreement, consent or approval by the City under this Agreement is the City's General Manager of Development and Operations, or his delegate authorized as such in writing.

10.8 No Judicial Review - Where the City is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the City shall be under no public law duty of fairness or natural justice in that regard and may do any of such things in the same manner as if it were a private party and not a public body. Lakeland hereby agrees that it shall not seek judicial review of any act or omission of the City in connection with this Agreement where the basis of such review is alleged non-compliance with any public law duty of fairness or natural justice.

10.9 Effect of Termination - Except as otherwise expressly provided in this Agreement, the termination of this Agreement shall not terminate any liability or obligation which accrued prior to the date of such termination.

10.10 Entire Agreement - This Agreement sets forth the entire Agreement between the Parties respecting the subject matter hereof, and supersedes all prior understandings and communications between the Parties or any of them.

10.11 No Implied Relationship – Nothing in this Agreement shall be interpreted or construed as creating a relationship of partnership, agent and principal, master and servant, settlor and trustee or joint venturers between the Parties, and no Party will have any right to obligate or bind any other Party in any manner, and shall not hold itself out to any third party as having such authority.

10.12 Compliance with Applicable Laws – Each Party will comply with all applicable federal, provincial and local laws, regulations and bylaws in performing its obligations under this Agreement. Except as otherwise specifically provided herein, each Party will also obtain all necessary licences, permits, consents and/or approvals that may be required by law to carry out such obligations.

10.13 Amendment - No amendment of this Agreement shall be effective or valid unless made in writing and duly executed by each of the Parties hereto.

10.14 Further Assurances - The Parties shall execute and deliver such further and other documents and instruments, and to do such further acts and things, as may be necessary or desirable to carry out the full intent and meaning of this Agreement; provided however that nothing herein shall be interpreted or construed as obliging the City to grant any license, permit or approval to Lakeland in connection with the Project.

10.15 Severability - Should any part of this Agreement be declared or held to be invalid for any reason, such invalidity shall not affect the validity of the remainder of this Agreement which shall continue in full force and effect and be construed as if this Agreement had been executed without the invalid portion.

10.16 Enurement - This Agreement shall enure to the benefit of and be binding upon each of the Parties and their respective successors and permitted assigns.

10.17 Counterparts and Facsimile - This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts shall constitute one and the same instrument and notwithstanding the date of execution shall be deemed to bear date as of the date of this Agreement. A facsimile transcribed copy of this Agreement, signed by a Party in counterpart or otherwise, shall be deemed to be and to constitute a properly executed, delivered and binding document of the Party so signing, notwithstanding any variation in the dates of execution.

Signature page follows.

Executed by LAKELAND MILLS LTD. on
the ____ day of _____, 2010.

LAKELAND MILLS LTD.

per:

Keith Andersen, President

Executed by CITY OF PRINCE GEORGE on
the ____ day of _____, 2010.

CITY OF PRINCE GEORGE

per:

Authorized Signatory

Authorized Signatory

SCHEDULE "A"

DESCRIPTION OF LAKELAND LANDS

Those certain lands located at 1325 Foley Crescent and 855 River Road, Prince George, B.C., and more particularly described as:

1. PARCEL IDENTIFIER: 007-737-319
LOT 1 DISTRICT LOTS 343 662 1511 CARIBOO DISTRICT PLAN 32219

SCHEDULE "B"

PART 1 – DESCRIPTION OF LEASED EQUIPMENT

<u>Item #</u>	<u>Description</u>	<u>Particulars</u>
1.	Flue gas to water/glycol heat exchanger.	One (1) HR-01, rated at 1.758 MW (6 MM Btu/hr).
2.	Thermal oil to water/glycol heat exchanger.	One (1) HX-01, rated at 5.862 MW (20 MM Btu/hr).
3.	Glycol/water to water heat exchanger.	Two (2) HX-02, each rated at 3.81 MW (13 MM Btu/hr).
4.	All required interconnecting ducting.	
5.	Flue gas exchanger soot blowing system.	One (1) rotary soot blower.
6.	Flue gas exchanger ash collection system.	Includes airlock and conveyor.
7.	Electrostatic precipitator.	One (1) Wellons size 7, emissions rated at 20 mg/dscm.
8.	Water/glycol circulation	Two (2) pumps, with one (1) diesel back-up pump
9.	Heat dump.	Rated at 1.76 MW (6 MM Btu/hr)
10.	Hot water piping.	1400 feet total.
11.	Thermal oil pumps and all related piping.	
12.	Pre-engineered enclosures as required.	
13.	Ladders, stairways, platforms and walkways.	
14.	Motor control centre ("MCC").	
15.	All required instrumentation and controls.	

PART 2 – DEPRECIATION OF LEASED EQUIPMENT

If the Lease Term expires or is otherwise terminated by reason of:

- (a) the City delivering notice of the City’s intention not to renew the Term of this Agreement in accordance with section 2.4; or
- (b) a breach by the City of its obligations under this Agreement,

then the depreciation rate for the following Leased Equipment shall be a straight line method over ten (10) years calculated from the First Supply Date:

- the building to be constructed near the property line of the Lakeland Lands in order to house the ETS (the “ETS Building”), including all related civil and site preparation;
- all piping and piping supports interconnecting the Lakeland Energy Plant with the ETS Building;
- the following equipment to be installed in the ETS Building:
 - two HX-02 heat exchangers;
 - all control valves and metering equipment (regulating and measuring the supply of energy from the Lakeland Energy Plant to the ETS); and
 - all electrical systems incidental to the above;
- all costs of installing and commissioning the above.

In every other circumstance, the depreciation rate for the above Leased Equipment shall be a straight line method over twenty (20) years calculated from the First Supply Date.

The depreciation rate for all other Leased Equipment shall be a straight line method over twenty (20) years calculated from the First Supply Date.

PART 3 – POLICIES AND PROCEDURES **RE. PROCUREMENT AND INSTALLATION OF LEASED EQUIPMENT**

The Leased Equipment will be supplied and installed pursuant to a turnkey construction agreement (the “Construction Agreement”) between the City, Lakeland and a general contractor acceptable to both Lakeland and the City (the “General Contractor”). The terms of the Construction Agreement shall be subject to the prior approval of both Lakeland and the City, but unless otherwise agreed shall reflect the following key principles:

1. Lakeland will be responsible for providing all required directions to the General Contractor, and except as noted below, Lakeland shall be deemed to be the agent of the City for the purpose of so instructing the General Contractor.

2. Neither Lakeland nor the City shall have authority to approve any material amendments to the Construction Agreement or any material changes to the scope of the work to be performed, all of which shall require the written agreement of both Lakeland and the City.
3. The City shall be entitled to have its representatives attend at the worksite from time to time for the purpose of inspecting the progress of the work, subject only to observing all normal safety guidelines established by Lakeland and/or the General Contractor.
4. The City's property interest in any equipment to be installed (to the extent contemplated by the Energy Supply Agreement to which this Schedule is appended) shall be reflected in the Construction Agreement.
5. The price payable under the Construction Agreement (the "Contract Price") shall be borne by the City up to a specified amount (corresponding to the amount agreed to be borne by the City in the approved project budget), and the balance (if any) of the Contract Price shall be borne by Lakeland. The General Contractor shall have no recourse against the City except for the aforesaid specified amount. The City's share of any Contract Price installments which have become due shall be remitted to Lakeland, who shall be responsible for disbursing all funds to the General Contractor under the Construction Agreement.
6. The Contract Price shall be paid in accordance with the following schedule:
 - (a) 10% upon execution of the Construction Agreement;
 - (b) 10% upon issuance of approval of drawings for equipment and foundations;
 - (c) 20% upon completion of foundations;
 - (d) 20 % upon completion of first substantial shipment;
 - (e) 15 % upon final substantial shipment;
 - (f) 15 % upon substantial completion of the work; and
 - (g) 10% upon the later of the expiration of all applicable lien periods and the satisfactory completion of all testing procedures reasonably necessary to confirm conformity of the work with the specifications set forth in the Construction Agreement.

SCHEDULE "C"

METHODOLOGY FOR DETERMINING ENERGY PRICE DURING RENEWAL TERM

The price payable by the City for each megawatt hour of thermal energy supplied by Lakeland to the DES under this Agreement during the first year of the renewal Term shall be calculated in accordance with the following formula:

$$A \times 0.814,$$

where "A" is the Market Value (as hereinafter defined) of one tonne of biomass, determined as of the ninth (9th) anniversary of the First Supply Date and otherwise in accordance with this Schedule. On the eleventh and subsequent anniversaries of the First Supply Date, the price payable by the City for each megawatt hour of thermal energy supplied by Lakeland to the DES under this Agreement for the ensuing twelve month period shall be increased by 5 %.

In this Schedule, "Market Value" means the market value of one tonne of biomass in the Prince George region, determined using the following methodology:

- (a) if a generally recognized benchmark price for biomass in the Prince George region is then available, and such benchmark price is based upon an average of verifiable transactions, then Market Value shall be deemed to be equal to such price; and
- (b) if there is no such benchmark price, Market Value shall be the average price then being paid for biomass in the Prince George region between informed prudent parties, acting at arm's length and under no compulsion to act.

The Parties shall initiate discussions regarding the Market Value within 30 days following the ninth anniversary of the First Supply Date. Any failure of the Parties to agree on the Market Value by the end of the sixth month following the ninth anniversary of the First Supply Date shall be considered a Dispute for the purposes of Article 8 and shall be resolved in the manner therein set forth.