

# FORT HILLS LEASE SUBSTITUTION AGREEMENT

made this \_\_\_ day of March 2009

## BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA, as  
represented by the Minister of Energy (the "Province")

- and -

FORT HILLS ENERGY CORPORATION, a corporation  
incorporated under the laws of Alberta ("Fort Hills")

## PREAMBLE:

Fort Hills has requested that the Province extend the term of two oil sands leases while re-aligning the provisions of those leases with the Province's current standard form oil sands lease. In consideration of an undertaking by Fort Hills to either upgrade in Alberta certain Bitumen production or generate certain incremental upgrading capacity in Alberta, and also in consideration of challenges imposed by current economic conditions, the Province has agreed to issue to Fort Hills two new oil sands leases in substitution of the currently held oil sands leases.

The Province and Fort Hills therefore agree as follows:

### 1. DEFINITIONS AND INTERPRETATION

#### 1.01 Definitions

In this Agreement, the following expressions have the following meanings (and where applicable their plurals have corresponding meanings):

"3<sup>rd</sup> Year", "4<sup>th</sup> Year", "5<sup>th</sup> Year" and "6<sup>th</sup> Year" respectively mean the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> calendar years following the calendar year in which First Bitumen occurs;

"3<sup>rd</sup> Year Bitumen Volume", "4<sup>th</sup> Year Bitumen Volume", "5<sup>th</sup> Year Bitumen Volume" and "6<sup>th</sup> Year Bitumen Volume" respectively mean the aggregate commercial bitumen production from the Phase II Mine for the 3<sup>rd</sup> Year, 4<sup>th</sup> Year, 5<sup>th</sup> Year and 6<sup>th</sup> Year;

"Affiliate" means any Person (i) that controls a Party, (ii) that is controlled by a Party, or (iii) that is controlled by the same Person that controls a Party; it being understood and agreed that for purposes of this definition the terms "controls" and "controlled by" shall mean the power to direct or cause the direction of the management and policies of another Person whether through the ownership of shares or partnership interest, a contract, trust arrangement or any other means, either directly or indirectly, that results in control in fact and without restricting the generality of the foregoing includes, with

respect to the control of or by a corporation or a partnership, the ownership of shares or partnership interest carrying not less than 50% of the voting rights regardless of whether such ownership occurs directly or indirectly, as contemplated above;

“**Alberta Upgrader**” means a facility, located in Alberta, for upgrading bitumen;

“**Applicable Volume**” means, subject to Section 3.05 regarding royalty in kind, the 3<sup>rd</sup> Year Bitumen Volume, the 4<sup>th</sup> Year Bitumen Volume, the 5<sup>th</sup> Year Bitumen Volume or the 6<sup>th</sup> Year Bitumen Volume, as applicable;

“**BPD**” means barrels of bitumen per calendar day;

“**First Bitumen**” means the date on which sustained commercial production of bitumen from the Phase II Mine first occurs;

“**Fort Hills Project**” means the oil sands mining and upgrading project intended to be carried out by Fort Hills on certain lands, including the lands specified in the New Oil Sands Leases, and includes the Phase I Mine, the Phase II Mine and the Fort Hills Sturgeon Upgrader;

“**Fort Hills Sturgeon Upgrader**” means the upgrader approved pursuant to Decision 2009-002 of the Energy Resources Conservation Board issued January 20, 2009, and any amendments to such approval;

“**Incremental Upgrading Capacity**” has the meaning set out in Section 3.01(a);

“**Intra-Alberta Upgrading**” has the meaning set out in Section 3.01(b);

“**Liquidated Damages**” has the meaning set out in Section 4.01

“**New Oil Sands Leases**” means the two oil sands leases, in the form of the Appendix attached to and forming part of this Agreement, to be issued by the Province to Fort Hills pursuant to Section 2.01, in substitution for Oil Sands Lease T05 and Oil Sands Lease T52 ;

“**Oil Sands Lease T05**” means Oil Sands Lease No. 7598060T05 dated August 12, 1998, between the Province and Fort Hills, as amended;

“**Oil Sands Lease T52**” means the Oil Sands Lease No. 7281020T52 dated February 19, 1981, between the Province and Fort Hills, as amended;

“**Party**” means the Province or Fort Hills;

“**Person**” means an individual, partnership, limited partnership, body corporate, trust or any other entity or organization;

“**Phase I Mine**” means the first mine phase of the Fort Hills Project, and generally means commercial production from two mine trains contemplated to produce the first 160,000 BPD from the Fort Hills Project as authorized by the Phase I Mine Approval;

**“Phase I Mine Approval”** means Approval No. 9241 of the Alberta Energy and Utilities Board, in connection with Decision 2002-089 issued October 22, 2002 and amended October 27, 2008;

**“Phase II Mine”** means the second mine phase of the Fort Hills Project, and generally means commercial production from additional mine trains or an expansion approved by the Energy Resources Conservation Board, or its successor, that results in volumes materially greater than the first 160,000 BPD approved by the Phase I Mine Approval;

**“Production Year”** means the 3rd Year, the 4th Year, the 5th Year or the 6th Year, as applicable, of bitumen production from the Phase II Mine;

**“Related FH Party”** means Fort Hills Energy L.P. and the partners from time to time in Fort Hills Energy L.P., and their respective Affiliates;

**“Upgrading Capacity”** means bitumen upgrading capacity in Alberta held by Fort Hills or a Related FH Party; and

**“Upgrading Commitment”** has the meaning set out in Section 3.01.

## **1.02 Interpretation**

In this Agreement:

- (a) a word, phrase or expression that is not defined in this Agreement but has an accepted meaning in the usage or custom of the business of oil sands mining or the upgrading of bitumen, shall have that meaning;
- (b) “including” means “including without limitation”, and “includes” has a corresponding meaning;
- (c) any reference to “knowledge” or “knowing” in respect of Fort Hills or Related FH Parties means actual knowledge on the part of the officers of such organizations, and does not connote or infer any obligation to make inquiry or investigation; and
- (d) all references to dollar amounts in this Agreement are to Canadian currency.

## **1.03 Section References**

References in this Agreement to Sections of this Agreement are to the corresponding numbered provisions of this Agreement.

## **1.04 Entire Agreement**

This Agreement, including the attached Appendix that sets out the form of the New Oil Sands Leases, is the entire agreement between the Province and Fort Hills regarding the subject-matter of this Agreement, and supersedes any previous agreements, negotiations and understandings between the Province and Fort Hills or any Related FH Party regarding such subject-matter. There are no agreements, representations, warranties, terms, conditions or commitments regarding the subject-matter of this Agreement as expressed in this Agreement.

## 2. SUBSTITUTION OF OIL SANDS LEASES

### 2.01 Issuance of New Oil Sands Leases

Immediately upon execution of this Agreement, and as a condition precedent to this Agreement taking effect, the Province will issue the New Oil Sands Leases in substitution for Oil Sands Lease T05 and Oil Sands Lease T52, pursuant to section 8(1)(f) of the *Mines and Minerals Act* (Alberta).

### 2.02 Termination of Leases T05 and T52

Upon issuance of the New Oil Sands Leases in substitution for Oil Sands Lease T05 and Oil Sands Lease T52 (in this Section 2.02 the “**Terminated Leases**”), the Terminated Leases and any obligations of the Parties that arose under the Terminated Leases shall be terminated and thereupon shall cease to have any force or effect whatsoever.

## 3. UPGRADING COMMITMENT

### 3.01 The Commitment

In consideration of the Province issuing the New Oil Sands Leases, FHEC undertakes (the “**Upgrading Commitment**”), in respect of each Production Year, to:

- (a) add upgrading capacity in Alberta (“**Incremental Upgrading Capacity**”, as more particularly defined and described in Section 3.02); or
- (b) upgrade in Alberta (“**Intra-Alberta Upgrading**”, as more particularly defined and described in Section 3.03) bitumen production from the Phase II Mine;

that in aggregate is equal to (as more particularly determined by reference to Section 3.04) the total bitumen production from the Phase II Mine in each of those Production Years.

### 3.02 Incremental Upgrading Capacity

For each Production Year, Fort Hills shall be considered to have added Incremental Upgrading Capacity to the extent that Fort Hills or a Related FH Party holds Upgrading Capacity potentially available for upgrading of Applicable Volumes (without any obligation on the part of Fort Hills to demonstrate that such Upgrading Capacity is actually used for the upgrading of Applicable Volumes), subject to the following:

- (a) Newly constructed Upgrading Capacity shall be considered to have come on stream when it first achieves sustained commercial operation; and expansions to existing facilities shall be considered to have come on stream when the expanded facility first achieves sustained commercial operation.
- (b) Where Upgrading Capacity comes on stream or is acquired by Fort Hills or a Related FH Party during a Production Year, then for that Production Year the Incremental Upgrading Capacity shall be determined by pro-rating such Upgrading Capacity based on the number of calendar days remaining in that Production Year as of the date the Upgrading Capacity comes on stream or is acquired by Fort Hills or a Related FH Party.

- (c) Upgrading Capacity that comes on stream on or before January 1, 2009 shall not in any event constitute Incremental Upgrading Capacity.
- (d) Subject to clause (e) of this Section, Upgrading Capacity shall be considered to be held by Fort Hills or a Related FH Party through any of the following means that generates access to facilities potentially available for upgrading of Applicable Volumes:
  - (i) direct ownership of facilities;
  - (ii) equity held in a corporate body, trust or partnership, or an interest in a joint venture;
  - (iii) an agreement, having a fixed term (without early termination rights in the absence of a default or force majeure) of 10 years or longer, securing upgrading capacity in an Alberta Upgrader.
- (e) In the case of Upgrading Capacity held by a Related FH Party independently of FHELP and the Fort Hills Project, that Upgrading Capacity will constitute Incremental Upgrading Capacity only to the extent of the Related FH Party's percentage ownership interest (either directly or, in the case of an Affiliate, indirectly) in Fort Hills for that Production Year (pro-rated as applicable if such interest or any portion of it is acquired or divested during that Production Year).
- (f) Where Upgrading Capacity is acquired after January 1, 2009 by Fort Hills or a Related FH Party, but at the time of acquisition the Upgrading Capacity is not potentially available for upgrading Applicable Volumes because the Upgrading Capacity is fully utilized, such Upgrading Capacity shall constitute Incremental Upgrading Capacity during any Production Year only to the extent that it has become and is available during that Production Year for upgrading Applicable Volumes (without any obligation on the part of Fort Hills to demonstrate that such Upgrading Capacity was actually used for the upgrading of Applicable Volumes).
- (g) Incremental Upgrading Capacity shall not include Upgrading Capacity that is acquired after January 1, 2009 under an agreement contemplated by subclause (iii) of clause (d) of this Section, entered into by Fort Hills or a Related FH Party knowing that the agreement will be likely (which probability shall be assessed on a reasonable basis) to have the effect of causing material volumes of bitumen to be upgraded outside Alberta that, but for the agreement, would likely have been upgraded in Alberta.
- (h) Incremental Upgrading Capacity shall not be reduced by reason of any achieved Incremental Upgrading Capacity ceasing, due to any event of the following nature, to be potentially available for the upgrading of Applicable Volumes:
  - (i) the event was beyond the reasonable control of, and would not have been prevented by reasonably prudent measures on the part of, Fort Hills and Related FH Parties;
  - (ii) the event prevents the utilization of Upgrading Capacity that otherwise was potentially available for upgrading of Applicable Volumes; and

- (iii) the event is not a shutdown or loss of Upgrading Capacity for planned maintenance or that occurs due to a lack of funds or other financial cause attributable to Fort Hills or a Related FH Party.

### **3.03 Upgrading in Alberta**

For each Production Year, Applicable Volumes shall be considered to have been upgraded in Alberta (and thus constitute Intra-Alberta Upgrading) to the extent that Applicable Volumes (or any comparable bitumen volumes acquired in exchange for Applicable Volumes through any kind of swap or exchange) are delivered to an Alberta Upgrader for upgrading, subject to the following:

- (a) Intra-Alberta Upgrading shall not include bitumen delivered to an Alberta Upgrader to the extent that Fort Hills has knowledge that (i) the bitumen was not upgraded at the Alberta Upgrader, or (ii) the bitumen caused other bitumen that would otherwise have been upgraded at that Alberta Upgrader to be upgraded outside of Alberta.
- (b) Intra-Alberta Upgrading shall not include bitumen delivered to upgrading facilities owned by Fort Hills or a Related FH Party as of January 1, 2009 except to the extent Fort Hills establishes that volumes of bitumen that would otherwise have been upgraded at those facilities have not been displaced other than to another Alberta Upgrader.
- (c) Fort Hills may claim as Intra-Alberta Upgrading Applicable Volume that it would have delivered, but because of an event of the following nature did not deliver, to an Alberta Upgrader for upgrading:
  - (i) the event was beyond the reasonable control of, and would not have been prevented by reasonably prudent measures on the part of, Fort Hills and Related FH Parties;
  - (ii) the event prevents the utilization of Upgrading Capacity that otherwise would have been used for upgrading of Applicable Volumes; and
  - (iii) the event is not a shutdown or loss of Upgrading Capacity for planned maintenance or that occurs due to a lack of funds or other financial cause attributable to Fort Hills or a Related FH Party.

### **3.04 Aggregation**

The Parties intend that the Upgrading Commitment may be met in part through Incremental Upgrading Capacity and in part through Intra-Alberta Upgrading, but without double-counting; and the Parties therefore agree that if for any Production Year Fort Hills seeks to rely in part on Incremental Upgrading Capacity and in part on Intra-Alberta Upgrading, then Fort Hills shall be required to establish that Applicable Volumes claimed as Intra-Alberta Upgrading were not upgraded through Incremental Upgrading Capacity.

### **3.05 Royalty In Kind**

In the event that the Province takes bitumen from the Phase II Mine as a royalty in kind pursuant to applicable laws, the royalty in kind volume taken by the Province during a

Production Year shall be excluded from the determination of the Applicable Volume for that Production Year.

### **3.06 Regulatory Prohibition**

The Upgrading Commitment shall be suspended in respect of any Applicable Volumes produced during any period when enactment or implementation or amendment (including any change in policy or practice governing enforcement or application) of any applicable law or regulation or international treaty or trade agreement prohibits, or is tantamount to a prohibition of, upgrading in Alberta, or otherwise has a material negative impact on the viability of upgrading in Alberta; provided that no such enactment, implementation or amendment effected on or before the Effective Date shall be considered as having a material negative impact on the viability of upgrading in Alberta.

### **3.07 Onus of Demonstrating Upgrading Commitment Has Been Met**

The onus shall be on Fort Hills to demonstrate that it has met the Upgrading Commitment through documentation or such other evidence (which may include or be supplemented by certificates of corporate officers where appropriate) as is reasonably available to Fort Hills that establishes, to a commercially reasonable standard having regard to the nature and purposes of this Agreement, facts and circumstances pertinent to the Upgrading Commitment. Without limiting the generality of the foregoing:

- (a) On or before March 15 of each calendar year following a Production Year, Fort Hills shall provide to the Province a statement setting out, in respect of that Production Year, each of the following:
  - (i) the Applicable Volume;
  - (ii) the quantity of Incremental Upgrading Capacity;
  - (iii) the quantity of Intra-Alberta Upgrading of the Applicable Volume;
  - (iv) a calculation of the extent to which the Upgrading Commitment has been met in respect of the Applicable Volume;

in each case with all documentation and other evidence required to reasonably establish all pertinent facts and circumstances.

- (b) Within 30 days after receiving a statement under clause (a) of this Section, the Province shall advise Fort Hills of the extent, if any, to which the Province accepts the documentation and other evidence as reasonably establishing that the Upgrading Commitment has been met.
- (c) Upon receiving a response from the Province under clause (b) of this Section, Fort Hills shall within 30 days thereafter (i) accept the Province's assessment of the extent to which the Upgrading Commitment has been met, (ii) provide additional documentation and evidence (which shall be deemed to be a new statement under clause (a) of this Section), or (iii) submit the matter to dispute resolution pursuant to Section 6.01.
- (d) Except to the extent that the Province accepts that the Upgrading Commitment has been met, or it is established, through the dispute resolution procedure

established by Section 6.01 or by a final judgment of a Court after all rights of appeal have expired or been exhausted, that the Upgrading Commitment has been met, then the Upgrading Commitment shall be considered not to have been met.

- (e) Without limiting the effect of clause (d) of this Section, the Province must act reasonably in assessing whether and to what extent Fort Hills has established that the Upgrading Commitment has been met.
- (f) Notwithstanding anything in this Section, Fort Hills may at any time within the calendar year following a Production Year provide to the Province additional documentation and evidence pertinent to compliance with the Upgrading Commitment for that Production Year, and the Province shall on receipt of such documentation and evidence within such calendar year give due consideration to it.

### **3.08 Reporting**

In addition to the written statement required by Section 3.07(a), Fort Hills shall by September 15 of each Production Year provide to the Province a report, including reasonable background information, on the expectation of Fort Hills as to the respective amounts of Applicable Volume, Incremental Upgrading Capacity and Intra-Alberta Upgrading for that Production Year. If in any Production Year Fort Hills remains in default of its obligation to provide any report required under this Section notwithstanding receiving specific notice from the Province of such default, then unless and until such default is fully rectified, Fort Hills shall be deemed not to have met the Upgrading Commitment with respect to any Applicable Volume for that Production Year.

### **3.09 Records**

Fort Hills shall, from First Bitumen until the end of the second calendar year following the last Production Year, maintain within Alberta reasonable and appropriate records pertinent to its compliance with the Upgrading Commitment, which records shall be made available (on a confidential basis), at all reasonable times and upon reasonable notice, for inspection by the Province or its designated representatives (which may include representatives of the Auditor General of Alberta). Fort Hills shall provide any cooperation and assistance reasonably required to facilitate such inspection. Apart from this right of inspection and any audit contemplated by Section 3.10, the records of Fort Hills shall be in the exclusive custody and control of Fort Hills, and the Province shall have no general right under this Agreement to obtain copies of such records.

### **3.10 Audit**

The cost of any special third-party audit, examination or report arising from an inspection under Section 3.09 shall be borne by the Province, unless the audit, examination or report reveals that Fort Hills has materially misrepresented the extent to which it has complied with the Upgrading Commitment, in which case Fort Hills shall upon demand reimburse the Province for the out-of-pocket cost of such audit, examination or report.

#### **4. LIQUIDATED DAMAGES**

##### **4.01 Sole Remedy**

The Parties intend and agree that in the event of non-compliance with the Upgrader Commitment, the sole remedy of the Province in respect of that non-compliance shall be the obligation of Fort Hills to pay a genuine pre-estimate of the damages (the “**Liquidated Damages**”) thereby sustained by the Province, which obligation is supported by the right of the Province under Section 4.05 to terminate the New Oil Sands Leases in the event of non-payment of the Liquidated Damages. The Province hereby waives any other remedies, at law or in equity, that would otherwise have been available to it in respect of such non-compliance. The Parties acknowledge and agree that the measure of damages is difficult to ascertain or calculate in advance, and confirm that the measure of Liquidated Damages provided for in Section 4.03 is their mutual best estimate of the harm or loss likely to be suffered by the Province in the event of a failure by Fort Hills to comply with the Upgrading Commitment.

##### **4.02 Maximum Aggregate Liquidated Damages**

The maximum aggregate liquidated damages payable under this Agreement shall be limited to the following amount:

- (a) \$500 million, less
- (b) one-half of actual out-of-pocket engineering, procurement, site preparation and construction expenditures (as established to the satisfaction of the Province, acting reasonably) on the Fort Hills Sturgeon Upgrader during the calendar years 2009 through the calendar year in which First Bitumen occurs, to a maximum of \$100 million

##### **4.03 Payment of Liquidated Damages**

The Liquidated Damages for any Production Year shall be payable by Fort Hills to the Province on or before May 31 of the calendar year following that Production Year. Liquidated Damages not paid when due shall bear interest thereafter until paid at a rate that is 1% greater than the rate of interest from time to time established by Alberta Treasury Branches at its main branch at Calgary, Alberta as its prime lending rate on loans payable in Canadian dollars, with interest to be compounded annually.

##### **4.05 Failure to Pay Liquidated Damages**

Subject to Section 4.06, the Parties intend, and the New Oil Sands Leases provide, that in the event that any Liquidated Damages remain unpaid ten months after the Province has provided to Fort Hills a notice that Liquidated Damages under this Agreement have not been paid when due, the Province will be entitled at any time thereafter while any portion of such Liquidated Damages remains unpaid to cancel the New Oil Sands Leases or either of them.

#### **4.06 Payment in the Event of Dispute**

In the event that Fort Hills disputes in good faith and with reasonable argument the amount of Liquidated Damages that the Province asserts is payable, and if Fort Hills is proceeding in good faith to have the dispute resolved pursuant to Section 6.01 or determined by a Court, then:

- (a) Fort Hills must pay the amount of Liquidated Damages, if any, that is not in dispute, and
- (b) provided Fort Hills has:
  - (i) paid the amount required by clause (a) of this Section, and
  - (ii) deposited in trust (for the benefit of Fort Hills and the Province pending and in accordance with such resolution or determination of the dispute) an amount equal to the amount of Liquidated Damages in dispute, in an interest bearing account with Alberta Treasury Branches or another financial institution agreed upon by the Parties,

then the Province shall not be entitled to terminate either of the New Oil Sands Leases unless and until Fort Hills fails to pay in full any final judgment after all rights of appeal have expired or been exhausted, within 90 days of the date of that judgment.

### **5. COMMUNICATIONS**

#### **5.01 Public Announcements**

Except as otherwise required by applicable laws or by any regulatory authority, including any securities commission or other securities regulatory authority or any stock exchange, the Parties shall not make any news release or public announcement regarding the making of this Agreement without first consulting with each other regarding the content of the news release or public announcement.

#### **5.02 Confidentiality**

Except as required by the *Freedom of Information and Protection of Privacy Act* (Alberta) or any other applicable law, the Province shall maintain confidentiality in relation to all business, financial or technical information supplied to it by Fort Hills under this Agreement, and shall share such information internally or with its consultants only on as needed basis for the purpose of duly administering this Agreement and monitoring performance of the Upgrader Commitment.

#### **5.03 Notices**

Any notice, statement, report, consent, approval or other communication under any provision of this Agreement must be in writing to be effective, and is effective when delivered by any means, including fax transmission or e-mail to the following respective addresses:

- (a) if to the Province:

Department of Energy  
10<sup>th</sup> Flr, Petroleum Plaza North Tower  
9945 - 108 Street  
Edmonton, AB, T5K 2G6  
Attention: Deputy Minister of Energy  
Fax: 780-644-3103  
E-mail: [peter.watson@gov.ab.ca](mailto:peter.watson@gov.ab.ca)

(b) if to Fort Hills:

Fort Hills Energy Corporation  
P.O. Box 2844  
150 - 6<sup>th</sup> Avenue SW  
Calgary, AB T2P 3E3  
Attention: President  
Fax: 403-296-5374  
E-mail: [ncamarta@petro-canada.ca](mailto:ncamarta@petro-canada.ca)

Either Party may change its address information by giving notice to the other in the above manner.

#### **5.04 Authority to Give Notices**

The Parties designate for the time being the following individuals as having authority to communicate to the other any notice, statement, report, approval, consent, waiver or other communication under this Agreement (other than a purported amendment of this Agreement):

(a) in the case of the Province:

Anne Denman  
Executive Director, Oil Sands Operations

(b) in the case of Fort Hills:

Colin Cook  
Vice-President

In the absence of any further designation or limitation communicated with reference to this Section 5.04, each Party may assume that any notice, statement, response, approval, consent, waiver or other communication under this Agreement given to it by the above designated individual has been duly authorized and is binding upon the other Party.

## **6 DISPUTE RESOLUTION**

### **6.01 Negotiation and Mediation**

In the event of any dispute or disagreement regarding the interpretation or application of any provision of this Agreement (including any matter arising under Section 3.07), the Parties

agree to refer the matter for joint discussion by their respective senior officials and, if that fails to produce a resolution within 30 days of such referral, will discuss the suitability of jointly referring the matter to consensual mediation. If the Parties agree to refer the matter to an agreed-upon mediator, then mediation will proceed on the following basis:

- (a) the Parties will share the cost of the mediator equally and bear their own costs incurred in relation to the mediation; and
- (b) no evidence of anything said or of any admission or communication made in the course of the mediation shall be admissible in any legal proceeding (including any arbitration) except with the consent of both Parties.

## **7 GENERAL PROVISIONS**

### **7.01 Assignment**

Neither Party may assign any right or obligation under this Agreement except with the prior consent of the other Party; provided that this prohibition against assignment shall have no application to assignment of the New Oil Sands Leases.

### **7.02 Governing Law and Jurisdiction**

This Agreement shall be governed by the laws in force in Alberta, including the federal laws of Canada applicable therein. Alberta Courts shall have exclusive jurisdiction over all matters arising in relation to this Agreement, and each Party accepts the jurisdiction of the Alberta Courts.

### **7.03 Further Assurances**

The Parties each agree to from time to time do all such acts and provide such further assurances and instruments as may reasonably be required in order to carry out the provisions of this Agreement according to their spirit and intent; but this Section 7.03 shall not in any event be construed as obligating the Province to amend or enact any statute or regulation or to exercise in a particular manner any discretion under any statute or regulation.

### **7.04 Amendment, Waiver and Estoppel**

No amendment of this Agreement is effective unless made in writing and signed by a duly authorized representative of each of the Parties. No waiver of any provision of this Agreement is effective unless made in writing, and any such waiver has effect only in respect of the particular provision or circumstance stated in the waiver. No representation by either of the Parties with respect to the performance of any obligation under this Agreement is capable of giving rise to an estoppel unless the representation is made in writing.

### **7.05 Counterparts**

This Agreement may be executed in counterparts, in which case (i) the counterparts together shall constitute one agreement, and (ii) communication of execution by fax transmission shall constitute good delivery.

The Parties have therefore signed this Agreement, by their respective duly authorized officers, on the respective dates shown below.

Date: March \_\_\_\_, 2009

**HER MAJESTY THE QUEEN IN RIGHT  
OF ALBERTA**, as represented by the  
Minister of Energy

Per: \_\_\_\_\_  
Minister of Energy

Date: March \_\_\_\_, 2009

**FORT HILLS ENERGY  
CORPORATION.**

Per: \_\_\_\_\_  
Neil Camarta, President