DRAINAGE SERVICES FRANCHISE AGREEMENT

BETWEEN:

THE CITY OF EDMONTON

- and -

EPCOR WATER SERVICES INC.

EFFECTIVE SEPTEMBER 1, 2017

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DRAINAGE SERVICES FRANCHISE AGREEMENT

THIS DRAINAGE SERVICES FRANCHISE AGREEMENT EFFECTIVE THE 1st DAY OF SEPTEMBER, 2017.

BETWEEN:

THE CITY OF EDMONTON,
a municipal corporation under the laws
of the Province of Alberta
(the "City")

AND

EPCOR WATER SERVICES INC.,
a corporation under the laws
of the Province of Alberta
("**EPCOR**")

WHEREAS, concurrently with entering into this Agreement, the City and EPCOR are entering into the Asset and Liability Transfer Agreement providing for the transfer and on-going operation of the Equipment from the City to EPCOR (the "Transfer");

AND WHEREAS, upon completion of the Transfer, EPCOR will operate a public utility as defined in the *Municipal Government Act*, for the purpose of, inter alia, supplying Drainage Services within the Municipality;

AND WHEREAS pursuant to section 45 of the *Municipal Government Act* the City has the right to enter into an agreement to grant an exclusive right to a person to provide a utility service in all or part of the Municipality;

AND WHEREAS EPCOR is a subsidiary of the City so this Agreement is not required to be advertised or approved by the Alberta Utilities Commission pursuant to section 45 of the *Municipal Government Act;*

AND WHEREAS pursuant to section 47.1 of the *Municipal Government Act*, Part 2 of the *Public Utilities Act* does not apply to a public utility operated by EPCOR within the boundaries of the City of Edmonton;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the mutual covenants and agreements herein, and subject to the terms and conditions in this Agreement, the Parties agree as follows:

ARTICLE 1 - DEFINITIONS

1.1 For the purposes of construing this Agreement, the recitals hereto, the schedules annexed hereto, and any other documents or undertakings delivered in accordance with or in furtherance of the purposes and intents of this Agreement, unless there is something in the

subject matter or context inconsistent therewith, the following expressions shall have the meanings ascribed in this ARTICLE 1.

(a) "**Agreement**" and the words "herein", "hereto", "hereunder" and similar expressions mean or refer to this Agreement and every schedule, addendum and all amendments hereto;

(b) **"Alignment"** means the area or all those portions of the City Lands for which the City has approved and issued to EPCOR a ULA Permit to install Equipment (aerial, surface or underground) as evidenced by the drawings required by Clause 7.4 of this Agreement;

(c) "**Applicable Law**" means the law applicable in Alberta, Canada, including any federal, provincial or local statute, ordinance, law, regulation, policy, bylaw, notification, directive, order, customs regulations, instruction, rule, code, intergovernmental agreement (including the Agreement on Internal Trade), license, consent, permit, authorization or other approval, including any conditions attached thereto, having the force of law and with which the City or EPCOR is legally obligated to comply, including the common law, the law of equity and Environmental Laws;

(d) "**Asset and Liability Transfer Agreement**" means the agreement dated September 1, 2017 between the Parties under which the City transferred to EPCOR the Drainage Assets;

(e) "**Attach**" or "**Attaches**" or "**Attachment**" means the physical accessing and use of, or attachment to, EPCOR's Equipment by a Third Party pursuant to Article 4 of this Agreement;

(f) "**City Lands**" means the "City Roads" and "City Non-Roads."

(g) **"City Non-Roads"** means public utility lots, walkways, parklands and public space within the Municipality, owned by or under the direction, control and management of the City, for which a certificate of title is issued in the name of the City, but does not include any buildings constructed thereon;

(h) **"City Roads"** means highways, roads, road allowances, streets, lanes, alleys, and bridges within the Municipality and owned by or under the direction, control and management of the City;

(i) "**City Manager**" means the chief administrative officer of the City or his or her designate;

(j) "**Customer(s)**" means any person, individual, body corporate, firm or other entity that uses Drainage Services within the Municipality;

(k) "**EPCOR Drainage Bylaw**" means Bylaw 18100, the EPCOR Drainage Services

Bylaw, duly enacted by the City relating to Drainage Services provided by EPCOR.

(l) "**Drainage Services**" means the collection, storage, pumping and monitoring of sanitary, storm and combined wastewater streams by any means and the right to charge and recover a fee for such services;

(m) "**Effective Date**" means September 1, 2017;

(n) **"Emergency"** means an unforeseen situation where immediate action must be taken to preserve the environment, public health, safety or an essential service of either of the City and/or EPCOR;

(o) "**Equipment**" means pipes, manholes, catch-basins, lift stations, equipment located within stormwater management facilities, and other accessories, structures and equipment related to the collection systems owned by or under the direction, control or management of EPCOR, including attachments that become property of EPCOR;

(p) "**Franchise Fee**" means the fee payable to the City pursuant to Clause 4.1 herein;

(q) "**Franchise Revenue**" means revenue derived by EPCOR for the provision of the sanitary Drainage Services (including that portion relating to the combined wastewater stream) within the Municipality;

(r) **"Interim Regulatory Framework Agreement"** means agreement dated September 1, 2017 between the Parties under which EPCOR agrees to operate the Drainage Utility in accordance with the City's Drainage Bylaw 16200 until such time as the EPCOR Drainage Bylaw is enacted;

(s) "**Municipality**" means the geographical area within the boundaries of the City;

(t) "**Municipal Government Act**" means the Municipal Government Act, S.A. 2015, c. 8;

(u) **"OSCAM Permit"** means On Street Construction and Maintenance Permit issued by the City to allow construction or maintenance on City Roads;

(v) "**Parties**" means the City and EPCOR and their successors and permitted assigns, and "**Party**" means any one of them;

(w) "**Reasonable Efforts**" means, in relation to the performance of an obligation under this Agreement, efforts that are sensible and practical in a commercial context, and involve the exercise of reasoned and sound judgment, having regard to all of the relevant circumstances;

(x) "**School Boards**" means the Board of Trustees of the Edmonton Catholic Separate School District No.7, the Board of Trustees of the Edmonton School District No. 7, and the Board of Trustees of the Regional Authority of the Greater North Central

Francophone Education Regional No. 2.

(y) "**Third Party**" means any person, individual, body corporate, firm or other entity that Attaches, or owns, controls, places or uses an Attachment pursuant to an arrangement with EPCOR;

(z) "**ULA Permit**" means a Utility Line Assignment permit issued by the City for an approved Alignment on City Lands; and

(aa) "**Work**" means any work related to the construction, installation, maintenance, operation, repair, replacement, removal, making safe or extension of the Equipment or any Attachment on City Lands by EPCOR or a Third Party.

ARTICLE 2 - GRANT OF EXCLUSIVE RIGHT TO PROVIDE DRAINAGE SERVICES

2.1 Subject to Applicable Laws and the terms and conditions of this Agreement, the City hereby grants to EPCOR:

(a) the exclusive right and licence to use the City Lands to construct, install, maintain, operate, repair, replace, extend and remove the Equipment for the purpose of providing Drainage Services within the Municipality; and

(b) the exclusive right to provide Drainage Services within the Municipality.

2.2 The City will not be liable to EPCOR for any infringement of any of the exclusive rights granted to EPCOR pursuant to Clause 2.1 hereof where the City has not granted such right to the infringing party. Subject to Applicable Laws, the City and EPCOR will cooperatively use their Reasonable Efforts to protect EPCOR's rights granted pursuant to Clause 2.1 herein.

2.3 Subject to Applicable Laws and the exclusive rights granted pursuant to Clause 2.1 herein, the grant of rights to EPCOR pursuant to this Agreement shall not restrict the City's rights to use, or allow any person not a party to this Agreement to use, the City Lands for any purpose, provided that

(a) such use will not materially hinder or interfere with EPCOR's use in accordance with Clause 2.1(a) and the terms and conditions of this Agreement; and

(b) if such use of City Lands is to provide Drainage Services, then EPCOR's consent is obtained in advance.

2.4 Any consents provided by EPCOR to the City pursuant to clause 2.3 (b) will be provided in as timely a manner as possible considering all of the circumstances, including but not limited to the nature of the consent required.

2.5 Subject to Clause 25.4 herein and any other agreement between the Parties, no use or occupation of City Lands pursuant to this Agreement shall create or vest in EPCOR any

ownership or other property rights in the City Lands or any portion thereof and EPCOR shall not register its interest under this Agreement as such. EPCOR shall be and remain a mere licensee of the City Lands.

2.6 Subject to Clause 25.4 herein, nothing in this Agreement gives to EPCOR and its contractors the right to permit any person to use the City Lands for any purpose.

2.7 The grant of consent to EPCOR pursuant to this Agreement shall not in any way restrict:

(a) with respect to City Roads, the City's right to cross the Equipment with its equipment or otherwise use the City Roads for any purpose, at no cost to the City, or to allow any person not a party to this Agreement to cross the Equipment with its equipment, on reasonable terms, or use the City Roads for any purpose.

(b) with respect to City Non-Roads:

(i) subject to Applicable Law and the City entering into an agreement in a form acceptable to the Parties, the City's right to cross EPCOR's Equipment with City equipment. The consideration payable by the City to EPCOR for all such crossing rights shall be one ($1.00) dollar; and

(ii) subject to Applicable Law and EPCOR entering into an agreement in a form acceptable to the Parties, EPCOR's right to cross City equipment with EPCOR's Equipment. The consideration payable by EPCOR to the City for all such crossing rights shall be one ($1.00) dollar.

2.8 Nothing in this Agreement shall be deemed to prevent any person, individual, body corporate, firm or other entity from collecting, storing, pumping and monitoring sanitary and storm wastewater on property of which that person is the owner or tenant, for use solely by that person and solely on that property.

ARTICLE 3 - DRAINAGE COVENANTS

3.1 Subject to Applicable Laws, the terms of this Agreement and EPCOR's Terms and Conditions of Service under the EPCOR Drainage Bylaw as may be amended from time to time, and the Interim Regulatory Framework Agreement until such time as the EPCOR Drainage Bylaw is enacted, EPCOR shall provide all Drainage Services required within the Municipality.

3.2 EPCOR will comply with all requirements of the EPCOR Drainage Bylaw and all other City bylaws applicable to EPCOR and the Drainage Services. This will include requirements within such bylaws that EPCOR provide any reports or information requested by the City Manager or City Council with respect to the Drainage Services provided by EPCOR.

ARTICLE 4– THIRD PARTY ATTACHMENTS

4.1 Subject to applicable law, to the extent that EPCOR is reasonably able to allow any

person to access or use its Equipment, EPCOR shall have the right to allow a Third Party to Attach to its Equipment and to charge and recover a fee from that person for that right provided that no portion of that fee will be a charge for the use and occupation of the City Lands.

4.2 EPCOR shall be responsible to ensure that all Attachments and all activities and operations of Third Parties on City Lands are in compliance with the terms and conditions of this Agreement. EPCOR agrees that a breach of any of the terms of this Agreement by a Third Party shall be a breach of this Agreement by EPCOR.

4.3 EPCOR shall promptly provide to the City:

(a) the names and addresses of all Third Parties who Attach to the Equipment, and

(b) all information requested by the City, acting reasonably, with respect to those Attachment rights.

ARTICLE 5 - PAYMENT

5.1 In consideration of the rights granted to EPCOR by the City pursuant to this Agreement, EPCOR agrees to pay to the City during the term of this Agreement, the amounts calculated pursuant to Schedule "A" attached hereto and forming part of this Agreement (such amounts being referred to herein as the "Franchise Fee").

5.2 EPCOR shall collect the Franchise Fee from Customers on the basis established by the City as described in Schedule "A" to this Agreement.

5.3 EPCOR shall pay the Franchise Fee to the City by monthly instalments, payments to be made on the last day of each month commencing September 30, 2017, without any deductions whatsoever.

5.4 The Franchise Fee is a charge for the City's costs and EPCOR's exclusivity hereunder and is not in lieu of taxes or local improvement charges payable to the City, and, subject to Schedule "A" and to any other agreement between the City and EPCOR, EPCOR shall pay to the City all taxes properly assessable under the taxing authority of the City.

5.5 The Franchise Fee to be paid by EPCOR to the City is based on the assumption that the rights granted to EPCOR will accrue on a per diem basis throughout a full calendar year, and whenever any of those rights commence on any day other than January 1 in any year or are terminated, cease or expire before December 31 in any year, the amount to be paid by EPCOR to the City therefor, shall be adjusted on a per diem basis.

5.6 To verify the amount of the Franchise Fee, EPCOR, on the request of the City, shall provide to the City on or before April 30 in each year, or such other time as agreed upon by the Parties, a financial statement stating the amount of the Franchise Revenue which is subject to the Franchise Fee as outlined in Schedule "A". If a financial statement reveals that the amount of the Franchise Fee paid by EPCOR to the City was more or less than

the amount due and payable, the difference shall be immediately due and payable by the City to EPCOR or by EPCOR to the City, as the case may be.

ARTICLE 6 - TERM

6.1 The term of this Agreement shall commence upon the Effective Date and shall continue thereafter until terminated in accordance with the provisions of ARTICLE 15.

ARTICLE 7 - WORK ON CITY LANDS

7.1 All costs and expenses associated with construction, installation, maintenance, operation, repair, replacement, extension, making safe or removal of Equipment or any other activity by EPCOR in the exercise of its rights pursuant to this Agreement on the City Lands shall be borne by EPCOR.

7.2 The Equipment will only be installed at such locations on those portions of the City Lands as are approved by the City Manager acting reasonably.

7.3 The City hereby acknowledges that all work on City Lands by the City and its contractors shall be in accordance with the most current version of the City Design and Construction Standards.

7.4 Prior to the commencement of any Work in, on, under, over, along or across City Lands pursuant to this Agreement and subject to ARTICLE 11 hereof, at any time during the term of this Agreement, EPCOR shall:

(a) for Work on City Roads, obtain a ULA Permit, and an OSCAM Permit from the City prior to commencement of the Work,

(b) for Work on City Non-Roads, obtain applicable permits from the City to undertake the Work; and

(c) where warranted by the scope of Work, submit detailed engineering drawings with respect to the Work,

except as exempted by the City Manager in writing from time to time. It is acknowledged by the City and EPCOR that it is the intention of the Parties under this Clause 7.4 to mutually agree on exemptions for routine Work including, but not limited to, service laterals and catch-basin repair on an existing Alignment, and emergency work carried out by EPCOR on City Lands.

7.5 Subject to Applicable Law, EPCOR agrees that all Work carried out by EPCOR and its contractors on City Lands pursuant to this Agreement shall:

(a) be conducted and completed to the City Design and Construction Standards prescribed by the City Manager;

(b) be carried out in a good, workmanlike and timely manner;

(c) comply with all applicable construction and safety codes, City of Edmonton Design and Construction Standards, City service standards and City Bylaws, and City policies and procedures, as amended from time to time; and

(d) not damage the property of the City or any existing right of way user, including but not limited to, poles, wires, cables, ducts, conduits, manholes, pipelines, pipes and other accessories, structures and equipment.

EPCOR acknowledges that the codes prescribed by the City Manager, City Design and Construction Standards, City service standards, City Bylaws and City policies and procedures in effect as of September 1, 2017 are reasonable and valid. All such construction and safety standards, construction and safety codes, City Design and Construction Standards, City service standards, City Bylaws and City policies and procedures established or amended by the City after September 1, 2017 in respect of the rights of EPCOR in this Agreement shall not be unreasonably applied to EPCOR. If EPCOR believes that any procedure or practice established or amended by the City after September 1, 2017 with respect to the rights of EPCOR in this Agreement is being unreasonably applied to EPCOR, then EPCOR may request that the obligation of EPCOR to abide by that procedure or practice be resolved pursuant to ARTICLE 18. Without limiting the generality of the foregoing, the City covenants that any applicable standard, code, policy or procedure that materially affects EPCOR will not be established or amended after September 1, 2017 without prior consultation with EPCOR. EPCOR covenants that any applicable standard, code, policy or procedure relating to the Equipment or Drainage Services that materially affects the City will not be established or amended after September 1, 2017 without prior consultation with the City.

7.6 Subject to Clause 7.5, upon completion of any Work pursuant to this Agreement EPCOR shall within a reasonable period of time restore and repair any damage to the City Lands and other City property to the condition in which they existed prior to the Work, and to the satisfaction of the City Manager acting reasonably. If EPCOR fails to restore and repair in accordance with this Clause 7.6 within twenty (20) days of receipt of written notification from the City, the City may complete the restoration and repair and charge all reasonable costs to EPCOR.

7.7 Where weather limitations or other external conditions beyond the control of EPCOR prevent EPCOR from completing a final repair to the City Lands at the completion of the Work, EPCOR may complete a temporary repair to the City Lands provided that, subject to Clause 7.10, EPCOR replaces the temporary repair with a final repair within the period of time agreed to by the Parties, acting reasonably. All repairs to City Lands by EPCOR shall be performed to the satisfaction of the City, acting reasonably. If a temporary repair gives rise to an unsafe condition, then such will be deemed to constitute an Emergency and the provisions of ARTICLE 11 shall apply.

7.8 Subject to material availability, or suitable alternatives as may be agreed to by the Parties,

both acting reasonably, EPCOR shall be responsible to restore any area that has been improved beyond the City of Edmonton Design and Construction Standards to the conditions that existed at the time the Work commenced. This includes areas that have been the subject of a Business Improvement Area streetscaping and/or beautification project, or an area Local Improvement levy that has resulted in construction to a higher standard.

7.9 At its sole cost and expense EPCOR will dispose of all earth, stone, asphalt, concrete and other materials removed from the City Lands during any Work or as otherwise directed by the City Manager. The City reserves its rights to salvage all or a portion of such materials upon notice to EPCOR and EPCOR will comply with such direction of the City Manager.

7.10 EPCOR agrees, at its sole cost and expense and subject to any other agreements between the Parties:

(a) to be a full participant with the City in the GeoEdmonton Utility Right of Way Alliance, and to provide information subject to and in accordance with the GeoEdmonton Utility Right of Way Alliance Agreement; or

(b) to provide all information required by the City to enable the City to enter, update and maintain facility mapping information of EPCOR in the GeoEdmonton Utility Right of Way Alliance system at the sole cost and expense of EPCOR

7.11 EPCOR shall use its best efforts to provide "as built" drawings to the City within two (2) months of completing the installation of any Equipment. The City acknowledges that for certain projects "as built" drawings may take considerably longer than two (2) months to complete after installation. Any dispute between the Parties as to delivery of "as built" drawings shall be resolved pursuant to ARTICLE 18 herein.

7.12 At any time within three (3) business days of receipt of written notification from the City, EPCOR will, at no cost to the City, provide to the City plans of the location of any Equipment or Attachment not within the GeoEdmonton Utility Right of Way Alliance system.

7.13 Each party shall, at its own cost and at the request of the other party (or its contractors or authorized agents), physically locate its respective facilities by marking the City Land using paint, staking or other suitable identification method ("Locates"), in the event of an Emergency, within two (2) hours, or as soon as practically possible, of receiving the request or as soon as practicably possible, following which the requesting party will ensure that it has a representative on site (or alternatively, provide a contact number for its representative) to ensure that the area for the Locates is properly identified.

7.14 Any approvals or consents provided by the City to EPCOR pursuant to this Agreement will be provided in as timely a manner as possible considering all of the circumstances, including but not limited to City circulation procedures.

7.15 Notwithstanding any other provision in this Agreement, the City reserves the right to set, adjust or change the approved schedule of Work by EPCOR within the City Lands at its sole discretion, acting reasonably, for the purpose of coordinating or managing any major events or activities, including the restriction of any Work on certain City Lands during certain time periods. The City shall use its best efforts to provide EPCOR with five (5) days advance notice of any change to the approved schedule of Work.

7.16 In addition to the requirements outlined in this Agreement with respect to the Work, EPCOR acknowledges that the City has entered into agreements with School Boards relating to the operation of certain Equipment, namely dry ponds, on City Non-Roads that are also utilized by the School Boards. EPCOR agrees to comply with the "Drainage Operations Procedure OP-20 - Dry Pond General Maintenance and Use" as may be amended during the Term. EPCOR shall assume the responsibility of the City pursuant to all indemnity agreements in effect with respect to dry ponds on City Non-Roads that are also utilized by the School Boards.

ARTICLE 8 - MAINTENANCE AND REPAIR

8.1 EPCOR agrees, at its sole cost and expense, to maintain the Equipment in a safe, clean and sanitary condition and in good and substantial repair. EPCOR agrees, at its sole cost and expense, to ensure that the Attachments are in a safe, clean and sanitary condition and comply with all safety requirements.

ARTICLE 9 – RELOCATION

9.1 Upon receipt of thirty (30) days written notice from the City, EPCOR shall, at its sole cost and expense, arrange to relocate or cause to be relocated any Equipment operated on the City Lands, or perform any other work in connection with any Equipment and Attachments as may be required by the City to comply with safety standards or accommodate any relocation, installation, modification, repair, construction, upgrading or removal of City facilities.

9.2 Where relocation involves Attachments and other facilities of Third Parties, EPCOR shall advise the City of any arrangements that may be required to address the interests of those affected Third Parties

9.3 Detailed design plans will be submitted to EPCOR by the City within a reasonable period of time prior to commencement of City work which will require relocation of Equipment and Attachments by EPCOR.

9.4 The City hereby agrees to provide EPCOR with four-year capital plans and amendments as approved by City Council on a yearly basis and detailed relocation plans within a reasonable period of time after these plans become available.

9.5 Notwithstanding the foregoing, EPCOR shall not be required to move any part of the Equipment after receipt of notice from the City in accordance with this ARTICLE 9

where:

(a) EPCOR has illustrated to the satisfaction of the City, acting reasonably, that an appropriate alternative course of action is available;

(b) the City has provided EPCOR with its written approval of the alternative course of action (which approval may not be unreasonably withheld by the City); and

(c) EPCOR has provided its written undertaking to carry out the alternative course of action promptly and within a sufficiently short period of time so as to ensure that the City will be left with sufficient time to complete the affected planned municipal construction within the intended time frame (taking into account any delays which the City may encounter as a result of EPCOR utilizing the alternative course of action).

9.6 Notwithstanding Clause 9.1, EPCOR shall not be responsible for costs related to the relocation of its Equipment as a result of the following:

(a) catch-basins to accommodate road alignment changes;

(b) relocations required due to private development by developers or by the City acting as a developer;

(c) temporary connections;

(d) beautification projects, provided that neighbourhood renewal projects are not considered beautification projects;

(e) projects initiated to provide concessions to third parties; or

(f) projects related to development on lands other than City Lands.

ARTICLE 10– EQUIPMENT

10.1 Where EPCOR advises the City that it no longer requires the use of any Equipment, EPCOR shall, at the City's request and within a reasonable period of time as agreed to by the parties, and at EPCOR's sole cost and expense makes safe such Equipment that is no longer to be used.

ARTICLE 11 – EMERGENCY

11.1 In an Emergency involving any Equipment or Attachment, or the activities of EPCOR or a Third Party on City Lands, which constitutes a danger or potential danger of bodily injury or substantial damage to property, EPCOR shall use its best efforts to provide telephone notice to the City prior to commencing any emergency repair. The Parties agree to provide to each other the names of the respective personnel and telephone

numbers in respect of emergency situations in accordance with ARTICLE 22 herein. If advance notice cannot be provided by EPCOR, EPCOR shall provide notice to the City as soon as reasonably possible thereafter. EPCOR will forthwith take steps or cause steps to be taken to handle the emergency in as timely a manner as possible and shall restrict the use of the City Lands to the minimum possible in the circumstances.

11.2 Notwithstanding the provisions of Clause 9.1 herein, in the event of an Emergency, the City may take any measures deemed necessary to alleviate the Emergency as it relates to the City's assets, and EPCOR shall reimburse the City for all expenses thereby incurred as a result of any act or omission of EPCOR in respect of the Equipment or the failure of EPCOR to comply with Clause 9.1 hereof.

ARTICLE 12 - HAZARDOUS SUBSTANCES

12.1 The City has made no representations or warranties as to the quality, condition or sufficiency of the City Lands for any purpose, or as to the presence or absence of hazardous substances on or under the City Lands and the City Lands are used by EPCOR at its own risk with all faults and imperfections whatsoever and on a strictly "as is, where is" basis.

12.2 EPCOR agrees to assume any and all environmental liabilities relating to the use of the City Lands by EPCOR or a Third Party, including but not limited to any liability for clean-up of any hazardous substance on or under the City Lands which result from the operations of EPCOR or a Third Party on the City Lands or which result from any products or goods brought upon the City Lands by EPCOR or a Third Party or by any person with the consent, express or implied of EPCOR or a Third Party.

ARTICLE 13 - INDEMNIFICATION

13.1 EPCOR:

(a) shall be liable to the City for, and

(b) shall indemnify and hold harmless the City, its councillors and employees from and against

(c) any and all losses, liabilities, claims, suits, actions, costs, damages and expenses (and without limiting the generality of the foregoing, including costs as between a solicitor and his own client) which may be brought or made against the City or which the City may pay or incur as a result of or in connection with:

(i) any of the rights, licences or privileges granted to EPCOR for the use or occupation of the City's Lands by EPCOR or a Third Party pursuant to this Agreement;

(ii) EPCOR's activities relating to the City's co-ordination of the

construction, installation and acceptance of Equipment and the private installations referred to in ARTICLE 26;

(iii) any breach, violation or non-performance of any covenant, condition or agreement in this Agreement to be fulfilled, kept, observed or performed by EPCOR;

(iv) any damage to property or injury to a person or persons, including death resulting at any time therefrom, occasioned by the use, occupation, activities or operations of EPCOR or a Third Party in, on or about the City Lands;

(v) any damage to any property or injury to a person or persons, including death resulting at any time therefrom, arising from the escape, discharge or release of any hazardous substance (including but not limited to, petroleum products and by-products, industrial wastes, contaminants, pollutants, dangerous substances and toxic substances, as defined in or pursuant to any law, ordinance, rule, regulation, bylaw or code, whether federal, provincial or municipal) occasioned by the use, occupation, activities or operations of EPCOR or a Third Party in, on or about the City Lands.

This Clause 13.1 shall survive the termination of this Agreement.

13.2 The City:

(a) shall be liable to EPCOR for, and

(b) shall indemnify and hold harmless EPCOR, its servants, agents and employees from and against;

(c) any and all losses, liabilities, claims, suits, actions, costs, damages and expenses (and without limiting the generality of the foregoing, including costs as between a solicitor and his own client) which may be brought or made against EPCOR or which EPCOR may pay or incur as a result of or in connection with:

(i) any breach, violation or non-performance of any covenant, condition or agreement in this Agreement to be fulfilled, kept, observed or performed by the City;

(ii) any damage to EPCOR's or Third Party property or injury to a person or persons, including death resulting at any time therefrom, occasioned by the use and occupation, activities or operations of the City, in, on or about the City Lands; or

(iii) any damage to any property or injury to a person or persons, including death resulting at any time therefrom, arising from the escape, discharge

or release of any hazardous substance (including but not limited to, petroleum products and by-products, industrial wastes, contaminants, pollutants, dangerous substances and toxic substances, as defined in or pursuant to any law, ordinance, rule, regulation, bylaw or code, whether federal, provincial or municipal) occasioned by the use, occupation, activities or operations of the City, in, on or about the City Lands.

This Clause 13.2 shall survive the termination of this Agreement.

13.3 Notwithstanding any approvals, consents, advice or direction given by the City with respect to any matter referred to in this Agreement, EPCOR shall be and remain liable and will indemnify the City in accordance with Clause 13.1 hereof.

ARTICLE 14 - INSURANCE

14.1 Throughout the term of this Agreement, EPCOR shall maintain in full force and effect General Liability Insurance in a form and with limits adequate to meet its obligations hereunder.

14.2 The aforementioned insurance coverage policies shall be endorsed to provide the City with thirty (30) days prior written notice of cancellation or material change, and shall be in a form acceptable to the City's Director, Risk Management or this person's designate. Evidence of such policies shall be submitted to the City on the Certificate of Insurance and endorsement forms provided to EPCOR by the City which will be duly completed by EPCOR's broker and/or insurer. EPCOR's broker shall promptly supply a certified copy of the policies if requested by the City's Director, Risk Management or this person's designate.

14.3 As an alternative to submitting the Certificate of Insurance form, EPCOR or EPCOR's broker may provide a certified copy of the aforementioned policies. Such policies shall be properly endorsed and in a form acceptable to the City's Director, Risk Management or this person's designate. Evidence of renewal of coverage shall be provided to the City prior to expiry in a form acceptable to the City's Director, Risk Management or this person's designate.

14.4 Upon 30 days' notice by the City, EPCOR shall provide additional insurance if this is deemed necessary by the City's Director, Risk Management or this person's designate, acting reasonably and if such insurance is available on reasonable commercial terms. If requested, a written explanation will be provided to EPCOR for the additional insurance requirement

14.5 It is further understood and agreed that any policy limits under EPCOR's coverage do not define or limit EPCOR's liability to indemnify the City, nor does the City make any representations as to the adequacy of said limits or scope of coverage in the event of a claim.

ARTICLE 15 - TERMINATION

15.1 The City may terminate this Agreement on the occurrence of any of the following events:

(a) if EPCOR defaults in the observance or performance of any obligation on its part under this Agreement and does not correct that default within thirty (30) days of receiving written notice thereof from the City (time shall not be computed during any period of time where in good faith, EPCOR disputes the allegation of default and pursues the resolution of that dispute in the manner contemplated in ARTICLE 18 herein, or EPCOR diligently proceeds to remedy the default);

(b) if an order is made or an effective resolution is passed for the winding up, dissolution or liquidation of EPCOR;

(c) if EPCOR ceases to carry on its business, becomes insolvent or bankrupt, commits any act of bankruptcy, goes into liquidation either voluntarily or under an order of a Court of competent jurisdiction, makes a general assignment for the benefit of its creditors, files a proposal or a voluntary assignment under the Bankruptcy and Insolvency Act (Canada), admits its inability to pay its debts generally as they become due or otherwise acknowledges its insolvency, or if a petition is filed against EPCOR under the Bankruptcy and Insolvency Act (Canada);

(d) upon the mutual agreement of the Parties;

(e) subject to ARTICLE 16 herein, on March 31, 2029; or

(f) if the City or EPCOR terminates this Agreement pursuant to Clause 25.1.

15.2 In the event of termination of this Agreement, at the option of the City in its sole discretion, the Equipment shall either remain upon and be surrendered to the City by EPCOR and become the absolute property of the City, or all or part of the Equipment shall be removed from the City Lands by EPCOR, at the sole cost and expense of EPCOR.

15.3 Notwithstanding the expiry or earlier termination of this Agreement EPCOR shall continue to be liable to the City for all payments due and obligations incurred thereunder prior to the date of such termination.

ARTICLE 16 - FIVE YEAR REVIEW

16.1 Upon the expiry of five (5) years from the Effective Date, and, upon the expiry of every five (5) year period thereafter during the term of this Agreement, the City shall have the right to review and set a new Franchise Fee, in consultation with EPCOR, payable by EPCOR pursuant to Clause 4.1 hereof, in accordance with the provisions of this ARTICLE 16.

16.2 The City will give written notice to EPCOR that it intends to review and set a new Franchise Fee payable by EPCOR in accordance with Clause 16.1 hereof, any time before or within sixty (60) days after, the expiry of five (5) years from the Effective Date and the expiry of every five (5) year period thereafter during the term of this Agreement.

16.3 In the event that the City gives notice to EPCOR of its intention to review and set a new Franchise Fee pursuant to Clause 16.1 herein, the City or EPCOR shall have the right to include in the review the terms of ARTICLE 9 herein.

16.4 In the event that the City and EPCOR through consultation do not agree on the amount of the new Franchise Fee payable by EPCOR, and the amendment of ARTICLE 9 herein where included in the review, or either of them; the City may unilaterally establish, the new Franchise Fee and the terms of ARTICLE 9, or either of them, by providing written notice to EPCOR within ninety (90) days after receipt of the notice by EPCOR pursuant to Clause 16.2 herein.

16.5 In the event that, in accordance with Clause 16.4 herein, the City gives written notice to EPCOR of an increase in the Franchise Fee or non-acceptance of EPCOR's proposed amendments to ARTICLE 9 herein, or either of them, EPCOR shall have the right to terminate this Agreement within ten (10) days of receipt of such notice, by providing written notice to the City.

16.6 If EPCOR fails to terminate this Agreement in accordance with Clause 16.5 herein, this Agreement shall be amended in accordance with the terms in the notice provided to EPCOR by the City pursuant to Clause 16.4 herein.

16.7 A decision of the City pursuant to Clause 16.4 herein is final and is not subject to the arbitration provisions in ARTICLE 18 of this Agreement.

ARTICLE 17 - RENEWAL

17.1 Twelve months prior to the expiry of the term of this Agreement, each party shall notify the other of its intention regarding the renewal of this Agreement for a subsequent term. If the intention disclosed by both Parties is to renew this Agreement, then each party shall provide the other with confirmation in writing to that effect and thereafter take such actions as may be necessary for approval of the said renewal pursuant to all applicable law. In the event that the intention disclosed by either party is to the effect that this Agreement may not be renewed on the same terms as contained herein, then each party covenants to promptly meet and discuss with the other the terms and conditions on which a renewal of this Agreement might be possible.

17.2 Upon expiry of the term and during the negotiation of a renewal of this Agreement, this Agreement shall continue on a year to year basis provided that either party may terminate this Agreement upon twelve (12) months' notice to the other party.

ARTICLE 18 - ARBITRATION

18.1 If a dispute arises that cannot be settled through direct discussions, the Parties shall submit the dispute to binding arbitration before a sole arbitrator conducted pursuant to the *Arbitration Act*, R.S.A. 2000, c. A-43. The Parties will appoint the arbitrator by agreement within twenty (20) days after the giving of notice of commencement of arbitration in accordance with Clause 18.4 herein. If agreement cannot be reached on naming the arbitrator, either party may request the Alberta Court of Queen's Bench to name an arbitrator.

18.2 This ARTICLE 18 applies to any dispute that arises between the Parties under this Agreement or any legal relationship associated with or contemplated by this Agreement, whether in contract, tort or otherwise, including but not limited to a dispute as to or arising out of the existence, terms, validity or termination of this Agreement.

18.3 Except as may be modified by this Agreement, the provisions of the *Arbitration Act*, R.S.A. 2000, c. A-43 apply to an arbitration under this Agreement.

18.4 An arbitration may be commenced by either party giving notice to the other party to participate in the appointment of an arbitrator. The notice shall contain a statement of the issue or issues in dispute.

ARTICLE 19 -TAXES

19.1 EPCOR agrees that no taxes, rates, assessments, charges, levies or impositions of any kind or nature of any governmental authority shall be payable by or placed upon the City in relation to any use or occupation of the City Lands by EPCOR or a Third Party pursuant to this Agreement, and if any such taxes, rates, assessments, charges, levies or impositions are levied, imposed, or placed, EPCOR shall make payment thereof.

19.2 All taxes or assessments in the nature of sales taxes, goods and services taxes or value added taxes which may be charged, levied or assessed as a result of this Agreement, whether or not such taxes are charged, levied or assessed as against the City, shall be the responsibility of EPCOR, and EPCOR shall on written demand by the City, pay to the City any and all such taxes. EPCOR shall not be obligated to pay such taxes to the City as contemplated in this Clause 19.2 if EPCOR shall have delivered to the City Manager a statutory declaration evidencing that EPCOR is a registrant pursuant to any such tax legislation and as such, the City is not liable to remit any such sales taxes to any taxing authority. In the event that EPCOR is a registrant as hereinbefore stated, and pursuant to this Clause 19.2 has the obligation to remit such taxes directly to the relevant taxing authority, then in such case, EPCOR agrees to indemnify and save harmless the City as against any and all actions, causes of action, claims, demands, costs or damages, which the City may incur or sustain in regard to the payment, or failure to pay, by EPCOR of any such taxes.

ARTICLE 20 - FAILURE TO PERFORM

20.1 Without restricting the City's rights pursuant to Clause 15.1 herein, in the event that EPCOR at any time fails after having received thirty (30) days prior written notice and an opportunity to cure the same within such thirty (30) day period to perform its obligations pursuant to this Agreement, the City may, at its option, perform such obligations upon written notice to EPCOR in that regard. Within sixty (60) days of receipt by EPCOR from the City of an invoice setting forth the costs incurred by the City in performing such obligations or any other costs payable by EPCOR to the City hereunder, EPCOR shall pay such costs to the City.

20.2 If EPCOR or the City is delayed in the performance of or is unable to perform any part of their respective obligations hereunder due to labour disputes, strikes, walkouts, fire, unusual delay by common carriers, unavoidable catastrophes, explosion, flood, act of God or public enemy, war, government regulation, any law, act or order of any court, government body or regulator or circumstances of any kind beyond the control of EPCOR or the City, then EPCOR or the City, as the case may be, shall be excused from the performance of those obligations to the extent that the performance is prevented, hindered or delayed by those causes and EPCOR or the City, as the case may be, shall not be liable hereunder during the period and to the extent of the inability to perform. Upon the occurrence of any of the events referred to above, the party unable to perform shall immediately notify the other party of the inability and the extent of any delay or inability to perform its obligations and shall use its reasonable efforts to remedy the delay or failure to perform as soon as reasonably possible.

20.3 When any amount payable hereunder by EPCOR to the City shall be in arrears, such amount shall bear interest at the rate per annum equal to two (2) percent plus the variable reference interest rate per year declared by The Toronto Dominion Bank from time to time to be its prime rate for Canadian dollar loans made by The Toronto Dominion Bank in Canada, until paid but this stipulation for interest shall not prejudice or affect any other remedies available to the City by law or by the terms of this Agreement.

ARTICLE 21 - COMPLIANCE

21.1 EPCOR shall procure and maintain, at its sole cost and expense, such licences, permits or approvals, from federal, provincial, municipal or other government authorities as may be necessary to enable EPCOR to conduct its business or exercise the rights granted to it pursuant to this Agreement on the City Lands.

21.2 EPCOR shall operate its business and shall carry on and conduct all activities on the City Lands in compliance with all federal, provincial and municipal statutes, orders, regulations and bylaws as amended.

21.3 EPCOR shall be subject to and shall comply with the procedures, practices and policies governing all City departments from time to time in respect of the use of the City Lands pursuant to this Agreement, and for greater certainty but, without restricting the generality

of the foregoing, EPCOR shall obtain all approvals ordinarily required from the City Manager and shall be subject to all City servicing standards, all construction standards, all OSCAM Permit requirements, all requirements under the Parkland Policy and North Saskatchewan River Valley Area Redevelopment Plan Bylaw, the Parkland and North Saskatchewan River Valley Utility Installation Policy and all other circulation procedures of general application as amended. EPCOR acknowledges that the procedures, practices, policies and standards in effect as of September 1, 2017 are reasonable and valid. All such procedures, practices, policies and standards established or amended by the City after September 1, 2017 in respect of the rights of EPCOR in this Agreement shall not be unreasonably applied to EPCOR. If EPCOR believes that any procedure, practice, policy or standard established or amended by the City after September 1, 2017 with respect to the rights of EPCOR in this Agreement is being unreasonably applied to EPCOR, then EPCOR may request that the obligation of EPCOR to abide by that procedure, practice, policy or standard be resolved pursuant to ARTICLE 18 herein. Without limiting the generality of the foregoing, the City covenants that any applicable procedure, practice, policy or standard that materially affects EPCOR will not be established or amended after September 1, 2017 without prior consultation with EPCOR.

ARTICLE 22 - NOTICE

22.1 Any notice required or permitted to be given hereunder may be sufficiently given if personally delivered, sent by prepaid registered mail or sent by facsimile, addressed as follows:

(a) to the City at:

Financial Strategies & Budget.
5th Floor, Chancery Hall
3 Sir Winston Churchill Square
Edmonton, Alberta T5J 2C3
Fax: (780) 420 4884
Attention: Barry McNabb, Branch Manager

and to:

Parks and Road
16th Floor Edmonton Tower,
10114-104 Ave
Edmonton AB T5J 0J4
Fax: (780) 496 1757
Attention: Gord Cebryk, Branch Manager

with a copy to:

City of Edmonton - Law Branch
9th Floor, Chancery Hall
3 Sir Winston Churchill Square
Edmonton, Alberta T5J 2C3
Fax: (780) 496 7267
Attention: Claudia Pooli, Barrister & Solicitor

(b) to EPCOR at:

EPCOR Water Services Inc.
2000 – 10423 101 Street NW
Edmonton, Alberta
Fax: (780) 441-7118
T5H 0E8
Attention: Director, Drainage Operations

with a copy to:

EPCOR Water Services Inc.
2000 – 10423 101 Street NW
Edmonton, Alberta
T5H 0E8
Fax: (780) 441-7118
Attention: Associate General Counsel

or to any other address as may be designated in writing by the Parties. Notice given shall be deemed conclusively to have been given and received when personally delivered or sent by facsimile or on the fifth (5^{th}) business day following the sending of the notice by prepaid registered mail. In the event of a postal strike, notice may only be given by personal delivery.

ARTICLE 23 - ASSIGNMENT

23.1 EPCOR covenants not to assign this Agreement or any part thereof without the written consent of the City which consent may be arbitrarily withheld.

23.2 Notwithstanding the provisions of Clause 23.1 herein, EPCOR may assign this Agreement to a wholly owned subsidiary (the "Subsidiary") of EPCOR or EPCOR Utilities Inc. provided that EPCOR or EPCOR Utilities Inc., as the case may be, will cause the Subsidiary to execute and deliver to the City the written undertaking of such Subsidiary, to observe, perform and comply with all of the provisions of this Agreement, the responsibility and liability of which are EPCOR's. No assignment shall affect the obligation of EPCOR to perform and observe all of its obligations pursuant to this Agreement.

ARTICLE 24 – AUDIT

24.1 The City may audit, using an independent auditor, EPCOR's financial records and accounts related to this Agreement.

24.2 EPCOR shall at all times keep and maintain the financial records pertaining to Drainage Services for a period that is the later of seven (7) years from the creation of such records or the period specified in its records retention practices for financial records. All such records shall be maintained in accordance with generally accepted accounting principles. EPCOR shall make records available for inspection and audit (including copies and extracts of records as required) by the City at all reasonable times with prior notice.

24.3 Costs of any audits conducted under this authority of this ARTICLE 24 shall be borne by the City unless the audit identifies significant findings that would financially benefit the City (i.e. a variation of at least 15% in comparison with items initially reported). EPCOR shall reimburse the City for the total costs of an audit that identifies significant findings that would financially benefit the City.

24.4 This ARTICLE 24 shall not be construed to limit, revoke or abridge any other rights, powers or obligations relating to audit rights that the City may have pursuant to Applicable Law, whether those rights, powers or obligations are express or implied.

ARTICLE 25 – GENERAL

25.1 In the event that any change in legislation and/or any other regulatory authority, acting within its jurisdiction, directs or mandates that any material term of this Agreement be amended or deleted then, either party, at its option may notify the other party that it wishes to re-negotiate the terms and conditions of this Agreement. In the event that the Parties are unable to resolve their differences caused by any change in legislation and/or any directive or mandate of a regulatory authority acting within its mandate, then either party may terminate this Agreement upon twelve (12) months' notice.

25.2 The City agrees to use reasonable efforts to take all necessary steps and to cooperate in all regulatory hearings such that the rights granted herein will extend to any area annexed by the City or included in the Municipality pursuant to any other means.

25.3 EPCOR shall not suffer or permit any builder's lien or other construction liens to be filed or registered against the City Lands resulting from the operations or activities of EPCOR or a Third Party. Any lien so filed shall be removed from title to the City Lands by EPCOR within twenty (20) days following notice from the City to EPCOR of the existence of a lien.

25.4 The City acknowledges and agrees that this Agreement does not impair, hinder, charge or restrict in any manner the right of EPCOR to use EPCOR's real and personal property. In particular, the City acknowledges and agrees that EPCOR has the right to use and occupy certain easements and utility rights of way pursuant to agreements between the City,

EPCOR Utilities Inc. and EPCOR and the City agrees that EPCOR shall have the use and occupation of any such rights in accordance with the terms of such easements and utility rights of way between the City and a third party, provided that the City will not be liable to EPCOR in the event that any such rights cannot be lawfully used by EPCOR.

25.5 EPCOR agrees that it shall, at its sole cost and expense, procure and carry, or cause to be procured, carried and paid for, full Workers' Compensation Board coverage for itself and all workers, employees, servants and others engaged in or upon any Work.

25.6 The insertion of headings is for convenience of reference only and shall not be construed so as to affect the interpretation or construction of this Agreement.

25.7 Use of the word "will" or "shall" in this Agreement creates a mandatory obligation.

25.8 This Agreement shall be construed and governed by the laws of the Province of Alberta.

25.9 This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective heirs, executors, administrators, successors, including successors in title, and permitted assigns.

25.10 All contracts, whether of employment or otherwise, entered into by EPCOR with respect to this Agreement, including without limiting the generality of the foregoing, all agreements with a Third Party shall be made by EPCOR as principal and not as agent of the City and the City shall have no liability thereon.

25.11 This Agreement is the entire agreement between the Parties with regard to the matters dealt with in it, and there are no understandings or agreements, representations, warranties, conditions or collateral terms, verbal or otherwise, existing between the Parties except as expressly set out in this Agreement. The consideration stated herein is the sole consideration and inducement for the execution of this Agreement.

25.12 The reference to any legislation in this Agreement shall be deemed to include all amendments thereto and all regulations thereunder and all statutes, including all amendments thereto and regulations thereunder, that may be substituted for that legislation.

25.13 The waiver by the City or EPCOR of the strict performance of any condition, covenant or agreement herein contained shall not constitute a waiver of or abrogate such or any other condition, covenant or agreement nor shall it be deemed a waiver of any subsequent breach of the same or of any other condition, covenant or agreement.

25.14 Nothing herein shall be construed as in any way constituting this a partnership among or a joint venture by the Parties hereto, or be construed to evidence the intention of the Parties to constitute such a relationship. Neither party shall hold itself out contrary to the terms of this Clause 25.14 by advertising otherwise, nor become liable or bound by any representation, act or omission whatsoever of the other party contrary to the provisions of

this Clause 25.14.

25.15 Should any provision of this Agreement be void, voidable or unenforceable for any reason whatsoever, it shall be considered separate and severable from the remaining provisions of this Agreement, which shall remain in force and be binding as though the said provision had not been included.

25.16 This Agreement shall not be modified, varied or amended except by an instrument in writing signed by the Parties hereto.

25.17 This Agreement may be executed in any number of counterparts transmitted by telecopier transmission, each of which when so executed shall be deemed to be original and all of which taken together shall be deemed to constitute one and the same instrument.

23.18 The Parties acknowledge that all records under the custody or control of either Party relating to the Agreement are subject to the protection of privacy and disclosure provisions of the *Freedom of Information and Protection of Privacy Act* (Alberta).

ARTICLE 26 – PRIVATE INSTALLATION OF UTILITY INFRASTRUCTURE

26.1 The City and EPCOR acknowledge that certain design and construction of drainage infrastructure and equipment will occur by third parties, either developers or contractors pursuant to servicing agreements, or the City pursuant to funded capital projects, with the understanding that ownership will transfer to EPCOR upon completion and successful commissioning. It is intended that this drainage infrastructure and equipment is to be used to provide Drainage Services . In these instances, the infrastructure and equipment will be installed in accordance with City Design and Construction Standards at the cost of the developer, contractor or City and ownership and title of such infrastructure and equipment will be transferred to the City after issuance of a final acceptance certificate in accordance with the City's development agreements, servicing agreements, or construction agreements as amended and adopted from time to time.

26.2 Subject to any other agreement between the Parties, upon transfer of ownership of the infrastructure and equipment to be used to provide Drainage Services to the City by the developer or contractor, as the case may be, the City agrees to transfer ownership of all such infrastructure and equipment to EPCOR, and once transferred to EPCOR, will be treated as Equipment pursuant to this Agreement.

26.3 In consideration of the transfer of ownership of the infrastructure and equipment pursuant to Clause 26.2 above, EPCOR covenants to operate the infrastructure and equipment as Equipment in accordance with the terms and conditions of this Agreement.

[Signatures to follow on next page]

IN WITNESS WHEREOF the Parties have executed this Agreement on the date first mentioned above.

Approval for the City of Edmonton:

Legally Reviewed and approved as to form:

Law Branch CPoli

As to content:

Manager, Financial Strategies & Budget

Manager Parks and Roads Services

CITY OF EDMONTON

Per:

As represented by Linda Cochrane, City Manager

EPCOR WATER SERVICES INC.

Per:

Stuart A. Lee
President and Chief Executive Officer

Per:

Guy Bridgeman
Senior Vice President and Chief Financial Officer

SCHEDULE "A"

FRANCHISE FEE CALCULATION

For 2017 and Subsequent Years

Franchise Fee payable for each calendar year will be based on the following formula:

Franchise Revenue ($)
Multiply by: Franchise Fee Rate (%)
Subtotal ($)

Less: Municipal Tax [excluding school portion] ($)
Less: Business Tax ($)

Franchise Fee Payable ($)

The Franchise Fee Rate is established at 8%

6.5 EPCOR Proposal for Drainage Transfer - Letter of Intent

L. Cochrane, City Manager, made a presentation and answered Council's questions.
S. Lee, EPCOR; T. Burge, Chief Financial Officer and Deputy City Manager, Financial and Corporate Services; and L. Sahli, City Clerk, answered Council's questions.

Moved D. Loken - M. Nickel:

That the April 11, 2017, Financial and Corporate Services report CR_4436, be referred back to Administration to work with EPCOR and stakeholders to conduct further public consultation and return to late Fourth Quarter 2017.

In Favour: **Lost**

M. Banga, T. Caterina, B. Esslinger, B. Henderson, D. Loken, M. Nickel

Opposed:

D. Iveson, B. Anderson, E. Gibbons, A. Knack, S. McKeen, M. Oshry, M. Walters

S. Lee, G. Bridgeman and S. Stanley, EPCOR; T. Burge, Chief Financial Officer and Deputy City Manager, Financial and Corporate Services; C. Pooli, Financial and Corporate Services (Law); C. Ward, City Operations; L. Sahli, City Clerk; P. Ohm, Sustainable Development; and L. Cochrane, City Manager, answered Council's questions.

Moved A. Knack - E. Gibbons:

1. That the transfer of the Drainage Utility assets and liabilities to EPCOR in accordance with Attachment 1 - EPCOR Proposal - Letter of Intent to Financial and Corporate Services report CR_4436, be approved with the following additions:

    - Include a requirement that EPCOR provides updates to every Utility Committee meeting in 2017 and 2018 with respect to the Drainage Utility.

- The Asset and Liability Transfer Agreement include a requirement for City Council approval through a public hearing of any proposed sale of all or substantially all of the City of Edmonton Drainage Utility assets.
- That the City and EPCOR submit a joint request to the Privacy Commissioner requesting clarity on the jurisdiction of the *Freedom of Information and Protection of Privacy Act* and appeals jurisdiction, and if it is determined that the *Freedom of Information and Protection of Privacy Act* does not apply, EPCOR and the City will ensure there is a requirement in the appropriate legal instrument for an appeals body that is mutually agreeable to the parties.
- That the transfer agreement and the Rates and Procedures Bylaw direct regular reporting regarding performance, provision of service, changing context and ability for Council to make inquiries of EPCOR.

2. That the City Manager be authorized to negotiate and settle the terms of, and execute and deliver on behalf of the City of Edmonton, all agreements, documents and instruments required to give effect to the transfer of the Drainage Utility assets and liabilities to EPCOR in accordance with Attachment 1 - EPCOR Proposal - Letter of Intent to Financial and Corporate Services report CR_4436 (and including the additions in Part 1), as the City Manager determines to be necessary or desirable and in the best interests of Edmontonians generally.

3. That the City Manager prepare recommendations for revisions to all applicable bylaws to effect the transfer, including Bylaw 16200 - Drainage Bylaw and the proposed EPCOR Drainage Bylaw and return to Utility Committee on June 9, 2017.

4. That the City Manager prepare recommendations for revisions to Bylaw 12294 - EPCOR Rates Procedures Bylaw to provide Council or Utility Committee with authority to require EPCOR to

provide:

a. Periodic reports relating to the utilities regulated by Council,

b. Reports relating to information requested by Utility Committee,

c. Audit Reports.

C. Pooli, Financial and Corporate Services (Law); T. Burge, Chief Financial and Officer and Deputy City Manager, Financial and Corporate Services, answered Council's questions.

Amendment moved T. Caterina - M. Nickel:

That the following amendments be approved:

- in Part 1, delete "approved" and replace with "bring back draft documents on all agreements, documents and instruments required to give effect to the transfer of the Drainage Utility asset",
- delete all of Part 2,
- in Parts 3 and 4, add "draft" before "revisions", with the intention that draft documents come back to Council for approval before proceeding.

For the Amendment: **Lost**

T. Caterina, B. Henderson, M. Nickel

Opposed:

D. Iveson, B. Anderson, M. Banga, B. Esslinger, E. Gibbons, A. Knack, D. Loken, S. McKeen, M. Oshry,
M. Walters

Motion, put:

1. That the transfer of the Drainage Utility assets and liabilities to EPCOR in accordance with Attachment 1 - EPCOR Proposal - Letter of Intent to Financial and Corporate Services report	Financial and Corporate Svcs. Office of the City

CR_4436, be approved with the following additions: • Include a requirement that EPCOR provides updates to every Utility Committee meeting in 2017 and 2018 with respect to the Drainage Utility. • The Asset and Liability Transfer Agreement include a requirement for City Council approval through a public hearing of any proposed sale of all or substantially all of the City of Edmonton Drainage Utility assets. • That the City and EPCOR submit a joint request to the Privacy Commissioner requesting clarity on the jurisdiction of the *Freedom of Information and Protection of Privacy Act* and appeals jurisdiction, and if it is determined that the *Freedom of Information and Protection of Privacy Act*does not apply, EPCOR and the City will ensure there is a requirement in the appropriate legal instrument for an appeals body that is mutually agreeable to the parties. • That the transfer	Manager

agreement and the Rates and Procedures Bylaw direct regular reporting regarding performance, provision of service, changing context and ability for Council to make inquiries of EPCOR.	**Due Date:** Jun. 9, 2017 Utility Committee
2. That the City Manager be authorized to negotiate and settle the terms of, and execute and deliver on behalf of the City of Edmonton, all agreements, documents and instruments required to give effect to the transfer of the Drainage Utility assets and liabilities to EPCOR in accordance with Attachment 1 - EPCOR Proposal - Letter of Intent to Financial and Corporate Services report CR_4436 (and including the additions in Part 1), as the City Manager determines to be necessary or desirable and in the best interests of Edmontonians generally.	**Due Date:** Jun. 9, 2017 Utility Committee
Recommendations for Revisions to All Applicable Bylaws to Effect the Drainage Transfer, including Bylaw 16200 – Drainage Bylaw	
3. That the City Manager prepare recommendations for revisions to all applicable bylaws to effect the transfer, including Bylaw 16200 - Drainage Bylaw and the proposed EPCOR Drainage Bylaw and return to Utility	

Committee on June 9, 2017. **Bylaw – Amendments to Bylaw 12294 – EPCOR Rates Procedures Bylaw** 4. That the City Manager prepare recommendations for revisions to Bylaw 12294 - EPCOR Rates Procedures Bylaw to provide Council or Utility Committee with authority to require EPCOR to provide: a. Periodic reports relating to the utilities regulated by Council, b. Reports relating to information requested by Utility Committee, c. Audit Reports.	

In Favour: **Carried**

D. Iveson, B. Anderson, E. Gibbons, A. Knack, S. McKeen, M. Oshry, M. Walters

Opposed:

M. Banga, T. Caterina, B. Esslinger, B. Henderson, D. Loken, M. Nickel

Moved M. Walters - S. McKeen:

Performance Based Rate Application – Increasing Public Awareness That Administration work with Epcor to report back to Utility Committee on increasing awareness of, and engagement in, the Performance Based Rate Application when the Rates and Procedures Bylaw returns to Utility Committee on June 9, 2017.	Financial and Corporate Svcs. **Due Date:** Jun. 9, 2017 Utility Committee

In Favour: **Carried**

D. Iveson, B. Anderson, M. Banga, T. Caterina, B. Esslinger, E. Gibbons, B. Henderson, A. Knack, D. Loken, S. McKeen, M. Nickel, M. Oshry, M. Walters

CITY COUNCIL

MINUTES

April 11/12, 2017

EPCOR Proposal for Drainage Transfer - Letter of Intent

Recommendation:

That the April 11, 2017, Financial and Corporate Services report CR_4436, be received for information.

Report Summary

This report provides an overview of the Letter of Intent that Administration and EPCOR Utilities Inc. developed for further consideration of Council regarding the transfer of the Drainage Utility assets and liabilities from the City to EPCOR.

Previous Council/Committee Action

At the January 24, 2017, City Council meeting, the following motion was passed:

> That the City Manager work with EPCOR Utilities Inc. to develop a Letter of Intent with EPCOR for further consideration of Council regarding the transfer of the Drainage Utility assets and liabilities from the City to EPCOR as outlined in the EPCOR Proposal with due consideration of the following principles:
>
> 1. The public's interests must be a top priority.
> 2. There must be value for the taxpayers and ratepayers.
> 3. Provide a net advantage to the City and maintain or enhance the City's long-term financial sustainability.
> 4. EPCOR's existing electricity, water and other business operations will be maintained.
> 5. City Council will remain as regulator of drainage rates through a Performance Based Regulation, similar to water.
> 6. Utility customers must not be negatively impacted: EPCOR to maintain no more than the rate increases required to support the service and quality metrics in the current Drainage Services Utility plan.
> 7. Ensure ongoing effective asset management practices and continued commitment to current Council priorities for flood mitigation.
> 8. All staff impacted by the proposal will be treated respectfully and their employment statuses will be maintained.
> 9. Mechanisms to address and include:
>   - transparency of operations
>   - equivalent public involvement to current environment situation,

- public access to information
- City's right to audit (or audit by City Auditor)
- future divestment of assets requiring public hearing
- an inquiry process to ensure the regulator and public can stay involved outside the Performance Based Rates process

Report

Context

The Letter of Intent, included as Attachment 1, sets out the fundamental terms of the proposed transfer of the City's Drainage Utility assets and liabilities to EPCOR. It outlines the key steps and actions necessary to effect the orderly transfer of the City's Drainage Utility, if the transfer is approved. It also formalizes EPCOR's commitments to satisfy the principles referred to in the January 24, 2017, City Council motion.

Transfer Principles

The balance of this report explains how each of the transfer principles identified by Council is addressed. This is done through a combination of the terms incorporated into the Letter of Intent developed by Administration and EPCOR and through the findings and conclusions of the independent Grant Thornton Report (presented to City Council on November 8, 2016, as Attachment 1 of CR_3800 EPCOR Proposal - Results of the Independent Assessment).

1. *The public's interests must be a top priority.*
   - City Council will continue to ensure the public interest remains a top priority following a transfer of the Drainage Utility through (1) Council's ongoing role as regulator of the Drainage Utility, (2) Council's ongoing role as the shareholder of the company that owns and operates the Drainage Utility and (3) the City's contractual rights concerning the provision of the Drainage Utility services under the franchise and other transfer agreements. Attachment 2 provides a matrix outlining the various roles of City Council.
2. *There must be value for the taxpayers and ratepayers.*
   - Grant Thornton's independent analysis confirmed that "EPCOR's proposal to transfer Drainage has potential to yield net benefits to the City, taxpayers, and ratepayers."
     - The City and taxpayers will benefit from the increase in the EPCOR Dividend by at least $20 million in the first full year following a transfer (prorated over the balance of 2017).
     - EPCOR has committed to hold the 3% annual Drainage Utility rate increase through to March 31, 2022, followed by a Performance Based Regulation application for new rates. This is below the rate increase for Drainage Utility currently projected by the City and is accomplished through operating and capital management efficiencies

that were independently reviewed and assessed as reasonable by Grant Thornton.

- The Letter of Intent provides for the orderly transfer of the Drainage Utility assets, liabilities and operations from the City to EPCOR without negative impacts on utility ratepayers or taxpayers.
- EPCOR will pay the City $75 million of Transition Cost Compensation over a period of time, to be determined by the City, to ensure that the City and taxpayers are fully compensated for any costs incurred by the City as a result of the transfer.

3. *Provide a net advantage to the City and maintain or enhance the City's long-term financial sustainability.*
   - As noted above, the independent Grant Thornton analysis concluded that EPCOR's proposal to transfer the Drainage Utility has potential to yield net benefits to the City, taxpayers, and utility ratepayers. The net benefits were summarized by Grant Thornton starting on page 103 of Attachment 1 of CR_3800 and are quoted below:
     - **Capital Savings**: Drainage is forecast to have large $1.9 billion capital program over the next 10 years (which can potentially increase further with additional flood mitigation investment). EPCOR's 10% capital efficiency appears to be reasonable, and can result in $193 million in savings over the 10 year forecast period. This is a significant factor, and one which would also benefit ratepayers since EPCOR would have a lower rate base on which it would be able to generate a regulated Return on Equity (ROE) compared to other ownership alternatives.
     - **Operational Savings:** EPCOR meets the mandatory criteria of not proposing any Drainage staff layoffs. Rather it poses a number of incremental cost savings opportunities which appear reasonable. It was agreed that EPCOR would be able to introduce cost saving measures, while minimizing the impact of lost synergies, where possible.
     - **Organizational Focus:** EPCOR has matured as an organization, and has fully transitioned from the sale of its power generation business in 2009. It has shifted much of its focus on water utilities since that time. This is a fundamental change since its last Proposal to transfer Drainage in 2005.
     - **Incremental Dividend:** EPCOR proposes to use the health of its strong balance sheet to provide the City with at least a $20 million additional dividend the first year following the transfer. We find this to be advantageous to the City and taxpayers since Drainage currently does not pay a dividend to the City, and the future state of the Drainage Utility appears to require a significant amount of investment.

- **Commitment to Hold Rate Increase:** Our quantitative analysis revealed that any owner (i.e. City, EPCOR, notional third-party) of Drainage Utility will need to increase utility rates to fund the forecast capital program. The Utility does not appear to be financially self-sufficient over the long-term with a 3% annual increase of monthly Drainage rates. However, EPCOR has committed to hold these rate increases in spite of earning a low Return on Equity (ROE) between forecast years 2017 to 2021. In addition, it is forecast to have the lowest total rate revenue increase of the scenarios analyzed when a 10.5% ROE on the equity component of the rate base is introduced in 2022.
- **Proven Regulatory Regime:** EPCOR proposes to use a Performance Based Regulation for Drainage as it does for EPCOR Water and Wastewater. Given that both EPCOR and the City (in its capacity as regulator) are familiar with this regime for Water, it is reasonable to assume that similar regulatory regime can be adopted for Drainage.
- **Transfer of Liability:** A transfer of the Drainage Utility would result in a transfer of associated environmental and property damage liabilities. EPCOR would be eligible for municipal protection offered by the Municipal Government Act through a bylaw in the same manner as those protections have been extended to EPCOR's Water Services and Wastewater Treatment businesses.
- **Control over Municipal Development**: The proposed division of Drainage Planning responsibilities means that the two areas responsible for area and detailed engineering drawing review would remain with the City. This ensures the City would have direct control over the direction of municipal development.
- **Expansion of EPCOR's Business:** In-house expertise in the full water-wastewater cycle could be leveraged by EPCOR to qualify for new full-cycle or drainage related business development opportunities. This could have a direct financial benefit for the City through further increases in EPCOR's dividend.
- **Retained Control:** The City would retain control over the Drainage Utility assets, operations, and planning through its roles as regulator and shareholder, and through Council's position as elected officials representing citizens.

4. *EPCOR's existing electricity, water and other business operations will be maintained.*
   - The transfer of the Drainage Utility to EPCOR is not expected to negatively affect EPCOR's existing business operations.
   - As part of the 2017-2021 Water and Wastewater Performance Based Regulation approval, EPCOR has committed to reflect economies of scale

savings in shared service costs in water and wastewater rates.

5. *City Council will remain as regulator of drainage rates through a Performance Based Regulation, similar to water.*
   - Utility Committee (and Council) will continue to regulate the same key aspects of the Drainage Utility as they currently do today with rates, terms and conditions of service and major capital initiatives such as the development and implementation of a Stormwater Integrated Resource Plan.
   - EPCOR will operate in accordance with the existing Drainage Bylaw until such time as a new EPCOR Drainage Bylaw is approved. This will include a mechanism whereby rates, fees and charges will be adjusted on January 1 of each year in accordance with EPCOR's commitment to limit annual rate increases to 3% (blended between the Sanitary and Stormwater Utilities) through to the end of March 2022. (Further details of the model for the proposed EPCOR Drainage Bylaw are included in Schedule B of the Letter of Intent (Attachment 1).
6. *Utility customers must not be negatively impacted: EPCOR to maintain no more than the rate increases required to support the service and quality metrics in the current Drainage Services Utility plan.*
   - EPCOR has committed to hold the 3% annual rate increase (blended between the Sanitary and Stormwater Utilities) through to March 31, 2022.
   - The new EPCOR Drainage Bylaw will include service quality metrics currently approved by Council for the Drainage Utility.
7. *Ensure ongoing effective asset management practices and continued commitment to current Council priorities for flood mitigation.*
   - As regulator, Utility Committee and Council will be able to continue to monitor the effectiveness of the asset management practices.
     - EPCOR has committed to provide Utility Committee with annual and periodic performance reporting including progress on capital programs and audit reports as may be requested by the Committee.
   - EPCOR has committed to the development of a Stormwater Integrated Resource Plan, a long-term road map that sets stormwater capital investment strategies and priorities. Development of the Stormwater Integrated Resource Plan would be overseen by Utility Committee and would be reviewed annually and updated periodically. EPCOR has agreed to be adaptable to meet the City's needs should Council or Utility Committee desire to have a different type or level of reporting with respect to the Stormwater Integrated Resource Plan and its implementation.

8. *All staff impacted by the proposal will be treated respectfully and their employment statuses will be maintained.*

   The Letter of Intent reflects EPCOR's commitments to City employees concerning their transfer to EPCOR. These include EPCOR's commitment to no layoffs and honouring all existing collective agreements until such time as new agreements are negotiated.

9. *Mechanisms to address and include:*

   - *Transparency of operations,*

     - EPCOR's regulated utility operations are operated in a highly transparent environment.
     - The rate renewal process includes extensive information provision concerning rate applications, expert reports and information request responses. It is expected that the Utility Committee will receive the same or more information concerning the Drainage Utility than it currently does.
     - EPCOR will provide an annual performance report, periodic reports and audit reports as determined in consultation with Utility Committee. If Utility Committee desires to receive more information, Utility Committee can direct EPCOR to provide the required information.

   - *Equivalent public involvement to current environment situation,*

     - The public has the right to attend Utility Committee and Council meetings and participate in public hearings for certain bylaw amendments concerning EPCOR utility matters including rate setting. This is the same right that the public currently has as it relates to Drainage matters including rate setting.
     - For significant initiatives such as the development of a Stormwater Integrated Resource Plan, EPCOR will conduct extensive community consultation and will adopt consultation and engagement principles and guidelines established through the "Council Initiative on Public Engagement" initiative. The initiative will be developed under the direction of Utility Committee with regular reporting on progress. The public will have the same right to participate in the community consultation process and any subsequent bylaw approval process that they have currently.

   - *Public access to information,*

     - EPCOR will participate in the City's Open Data initiative for Drainage as it currently does for Water and Wastewater.
     - To preserve the public's access to Drainage information, specific information access protocols will be included in the EPCOR Drainage Bylaw that are consistent with the requirements of the *Freedom of*

Information and Protection of Privacy Act— as outlined in Schedule C of the Letter of Intent.

- In this way, the public has similar rights to access such information under EPCOR operation of the Drainage Utility as they do currently under City operation.

- *City's right to audit (or audit by City Auditor),*

- As part of the Franchise Agreement for Drainage, the City will have the right to audit the records and accounts of EPCOR relating to the Drainage Franchise Agreement.
- The proposed EPCOR Drainage Bylaw will require an annual filing that includes an auditor's report concerning the accuracy of rate calculations.
- The City's right to request an audit of Utility matters will be included for Council consideration in proposed amendments to Bylaw 12294 - EPCOR Rates Procedures Bylaw.

- *Future divestment of assets requiring public hearing,*

- The Asset and Liability Transfer Agreement will require City Council approval of any proposal to sell all or substantially all of the Drainage Utility assets. Council meetings must be in public unless justification exists for the meeting to be held in private pursuant to the *Freedom of Information and Protection of Privacy Act*.
- It is in the discretion of Council to determine whether to provide for a public hearing at the time that any divestment is proposed in order to make its decision with respect to divestment. Council will also need to consider any confidentiality requirements of any proposed divestment as part of this determination.
- In addition, the Unanimous Shareholder Agreement requires Shareholder (represented by City Council) approval of any sale or disposition of the property of EPCOR where any such sale or disposition represents a material amount of the assets or equity base of EPCOR. The Drainage assets would constitute a material amount of EPCOR and could not be sold without Shareholder approval.

- *An inquiry process to ensure the regulator and public can stay involved outside the Performance Based Regulation process.*

- EPCOR has an established process for responding to inquiries from members of Council. The dedicated single point of contact for City Council responds to inquiries within 24 hours and works with the executive assistants to provide updates to more complex inquiries. Drainage will be incorporated into this process following a transfer of

Drainage to EPCOR.

- EPCOR will agree to attend Utility Committee meetings with regular reporting on operational matters and progress on capital plans.
- Provisions granting Utility Committee and Council explicit authority to direct the provision of utility information by EPCOR, including audit reports will be included for Council consideration in proposed amendments to Bylaw 12294 - EPCOR Rates Procedures Bylaw.
- The public will have the same access to monitor and participate in Utility Committee meetings as it does currently.

Next Steps

Council will need to decide if it will authorize the transfer of the assets and liabilities of the Drainage Utility to EPCOR and provide the City Manager with delegated authority to execute all the required agreements to effect the Transfer.

If Council's decision is to transfer, then the following actions should be taken:

- Administration will work with EPCOR to complete the transaction and execute all required agreements as outlined in the Letter of Intent.
- Administration will report back to Council once the transaction has been completed.
- Administration will make recommendations to Council for revisions to Bylaw 16200 - Drainage Bylaw in conjunction with EPCOR proposing an EPCOR Drainage Bylaw.
- Administration will make recommendations to Council for revisions to EPCOR Bylaw 12294 – EPCOR Rates Procedure Bylaw.
- In order to effect a seamless transition, EPCOR and the City will begin collaboration immediately on significant operational matters such as flood mitigation and will report to Utility Committee, as required.
- EPCOR will commence reporting to Utility Committee after the Transfer with respect to the Drainage Utility.

If Council's decision is not to transfer, then the City will continue operating the Drainage Utility.

Corporate Outcomes

The City of Edmonton has a resilient financial position.

Legal Implications

As owner and operator of the Drainage Utility, the City may transfer the assets and liabilities of the Drainage Utility to EPCOR as contemplated in the Letter of Intent.

Pursuant to the *Municipal Government Act,* City Council would remain as regulator of the Drainage Utility as outlined in the Letter of Intent.

Revision or replacement of Bylaw 16200 - Drainage Bylaw is recommended to provide for terms of service and rates for the Drainage Utility in a manner more consistent with how the water services and wastewater treatment services are regulated by City Council through Bylaw 17698 - EPCOR Water Services and Wastewater Treatment Bylaw.

Although EPCOR has agreed to provide additional reporting and respond to inquiries with respect to the Drainage Utility, in order to implement this reporting, it is recommended that City Council consider revisions to Bylaw 12294 - EPCOR Rates Procedures Bylaw.

In terms of public access to drainage information, EPCOR has exemptions within the *Freedom of Information and Protection of Privacy Act* for the parent company and subsidiaries that operate under the *Gas Utilities Act* and the *Electric Utilities Act*. It does not appear that these exemptions would apply to the Drainage Utility.

If the Office of the Information and Privacy Commissioner were to ever determine that the *Freedom of Information and Protection of Privacy Act* would not apply to the Drainage Utility, the transfer agreements will include a contractual commitment from EPCOR that it will implement and operate an access to information program that is identical to the processes prescribed in the *Freedom of Information and Protection of Privacy Act*, as generally described in Schedule C of the Letter of Intent. Using this approach, EPCOR would agree to provide access to information and apply only the exceptions to disclosure permitted by the *Freedom of Information and Protection of Privacy Act*, however applicants would not have a right of appeal to the Office of the Information and Privacy Commissioner or other independent reviewer. The Office of the Information and Privacy Commissioner can only review access to information requests for public bodies that are subject to the *Freedom of Information and Protection of Privacy Act*.

Metrics, Targets and Outcomes

Drainage Utility's 2017-18 business plan measures - which are aligned to the 2015-24 Aspirational Drainage Master Plan - are included in Attachment 3.

Attachments

1. Letter of Intent Between the City of Edmonton and EPCOR
2. Council's Role as Shareholder, Regulator and Contracting Party
3. Drainage Utility Performance Measures from the 2017 Utility Rate Filing – Operational Performance

Others Reviewing this Report

- R. G. Klassen, Deputy City Manager, Sustainable Development
- A. Laughlin, Deputy City Manager, Integrated Infrastructure Services
- C. Campbell, Deputy City Manager, Communications and Engagement
- D. Jones, Deputy City Manager, City Operations

Letter of Intent Between the City of Edmonton and EPCOR
CR_4436 Attachment 1

1. OVERVIEW

The purpose of this Letter of Intent is to provide further details regarding the EPCOR Utilities Inc. ("EPCOR") proposal concerning the transfer of the Drainage Utility from the City of Edmonton (the "City").

The transfer of the Drainage Utility assets and liabilities to EPCOR will be based on the following principles:

1) The public's interests must be a top priority.
2) There must be value for the taxpayers and ratepayers.
3) Provide a net advantage to the City and maintain or enhance the City's long-term financial sustainability.
4) EPCOR's existing electricity, water and other business operations will be maintained.
5) City Council will remain as regulator of drainage rates through a Performance Based Regulation, similar to water.
6) Utility customers must not be negatively impacted: EPCOR to maintain no more than the rate increases required to support the service and quality metrics in the current Drainage Services Utility plan.
7) Ensure ongoing effective asset management practices and continued commitment to current Council priorities for flood mitigation.
8) All staff impacted by the proposal will be treated respectfully and their employment statuses will be maintained.
9) Mechanisms to address and include:
   - transparency of operations,
   - equivalent public involvement to current environment situation,
   - public access to information,
   - City's right to audit (or audit by City Auditor),
   - future divestment of assets requiring public hearing,
   - an inquiry process to ensure the regulator and public can stay involved outside the Performance Based Rates process.

The transfer of the Drainage Utility to EPCOR will be structured as a transfer of assets and liabilities between related parties (the City and its wholly owned subsidiary EPCOR). The transfer will be executed in a similar manner to the transfer of the City's wastewater treatment utility (Gold Bar) to EPCOR in 2009.

A number of agreements between the City and EPCOR will be required to effect the transfer. Bylaw changes will also be required to adapt the regulatory framework for the Drainage Utility including changes to address certain of the transfer principles outlined above.

2. DRAINAGE UTILITY TRANSFER

2.1 Drainage Utility Transfer Agreements

All of the necessary agreements and proposed bylaw amendments required in order to effect the transfer will be listed in a Drainage Utility Transfer Master Agreement, which provides the overall plan for carrying out the transfer. Once the transfer has been completed and all of the conditions and obligations have been met, the Drainage Utility Transfer Master Agreement itself will expire and the agreements, bylaw amendments and other necessary arrangements entered into will govern the ongoing relationship between EPCOR and the City with respect to the Drainage Utility.

It may not be possible to transfer all assets and liabilities or obligations to EPCOR by the Transfer Date. In such cases, the City may continue to hold the asset or liability and transfer beneficial title of the asset and responsibility for the obligation to EPCOR until such time as legal title can be transferred. EPCOR would assume responsibility for such assets and obligations on the Transfer Date.

2.2 Scope and Timing of Transfer

The assets, liabilities, rights and obligations to be transferred are those of the Drainage Utility which is currently owned and operated by the City, including the Sanitary Utility, the Stormwater Utility and the Design and Construction functions that support these utilities. Certain assets, liabilities and functions related to the Drainage Utility that will not transfer to EPCOR are set out in Schedule A – City-Retained Assets and Functions.

The assets, liabilities, rights and obligations of the Drainage Utility will be transferred to EPCOR on September 1, 2017 (the "Transfer Date") or other such date as may be agreed between the parties.

2.3 Drainage Utility Assets to be Transferred

The Drainage Utility assets that will transfer to EPCOR are generally as follows. To the extent practical, the specific assets will be listed in a schedule to an Asset and Liability Transfer Agreement.

a) All pipe and all pumping and flow control infrastructure for the Sanitary, and Stormwater Utility including lift stations.
b) Those stormwater management facilities (dry ponds, wet ponds, etc.) that the parties identify as having a primary purpose of management (quality and quantity) and conveyance of stormwater.
c) All buildings and associated land interests including warehouses and yards, office furniture, office equipment and fixtures including computer equipment and licences currently utilized by Drainage Utility will be transferred.
d) The Clover Bar Lagoons (including accumulated bio-solids).
e) All books, records and historical information related to the Drainage Utility shall transfer with the assets to the extent practical.

The Asset and Liability Transfer Agreement will include a provision which requires City Council approval of any proposed sale of all or substantially all of the Drainage Utility assets.

2.4 Land Transfers

Any land interests related to the Drainage Utility transferring to EPCOR will be transferred in accordance with the following principles:

a) Where a parcel of land is utilized exclusively by the Drainage Utility, the parcel will be transferred to EPCOR.
b) Where a portion of a parcel of land is used exclusively by the Drainage Utility and the remainder of the parcel is utilized for other City purposes, EPCOR will be transferred an interest in the land that is required for the Drainage Utility either through subdivision and transfer of a parcel, commercial lease of a portion of the parcel or grant of a utility right of way.
c) Where the Drainage Utility is utilizing space leased to the City, the City will either assign or sublet its interests in the lease to EPCOR subject to any necessary landlord consents or approvals.
d) In transferring land interests for office and yard space, due consideration will be given to:
    i. Ability of EPCOR to accommodate staff within its current facilities
    ii. Ability of the City to utilize land interests for other purposes
e) Easements and utility rights of way registered for the purpose of the Drainage Utility will be transferred to EPCOR.
f) Unregistered easements and utility rights of ways for Drainage Utility infrastructure on City land will be transferred by way of (1) registration of easement or utility right of way or (2) general grant of rights to EPCOR.
g) Land transfer fees and disbursements shall be at the expense of EPCOR.
h) Any compensation for the transfer of land interests (e.g. rental, lease payments, utility rights of way) shall be consistent with the rates currently being charged to the Drainage Utility for such interests.

2.5 Assignment of Material Contracts, Licences and Approvals to Operate

The City will take all reasonable steps to assign or seek consent to assign or transfer all material contracts, licences of occupations and approvals to operate to EPCOR to ensure continued operation of the Drainage Utility by EPCOR.

In the event that the City is unable to have all material contracts, licences, or approvals to operate transferred or assigned to EPCOR by the Transfer Date and EPCOR is not able to enter into new replacement arrangements, the City shall maintain the contract, licence of occupation and approval to operate, as the case may be, until such time as the contract, licence of occupation, or approval to operate is transferred, assigned or expires. In the interim, the City and EPCOR will enter into an agreement under which the City transfers to EPCOR beneficial title to the rights and will assume responsibility for associated obligations.

2.6 Retained Earnings

a) Under the Utility Fiscal Policy a portion of the unappropriated retained earnings is maintained for the purpose of the Pay As You Go funding of the Capital Plan. The Drainage Utility utilizes the Return on Equity ("ROE") component of the utility revenue requirement, collected from drainage customers through rates, to build up the equity component of the capital program in the Capital Plan. Revenue raised from rates for the benefit of the ratepayers is reflected in the unappropriated retained earnings.

b) Accumulated Surplus of the Drainage Utility is comprised of accumulated operating surplus (unappropriated retained earnings), restricted surplus (appropriated retained earnings), Advances for Construction/Capital to be Financed, and Equity in Tangible Capital Assets.

c) To preserve the principle that utility customers must not be negatively impacted by the transfer, any funds collected by the City from Drainage Utility ratepayers and earmarked to fund Drainage Utility-related projects or services the accumulated operating surplus excluding restricted surplus (unappropriated retained earnings) will transfer to EPCOR to be used for Drainage Utility purposes only. Restricted surplus (appropriated retained earnings) which is comprised of Sanitary Servicing Strategy Fund ("SSSF") and developer contributions (including Permanent Area Contributions) and the equivalent cash balance shall remain with the City.

2.7 Assumed and Retained Liabilities

a) EPCOR will assume and be responsible for the following liabilities:
   i. Claims relating to the Drainage Utility arising on and after the Transfer Date.
   ii. Claims for environmental liabilities associated with the transferred assets that would normally be an expense recoverable through utility rate, arising prior to the Transfer Date.
   iii. Financial responsibility for Drainage Utility-related debt issued prior to the Transfer Date. This will be accomplished through a Back-to-Back Debt Agreement that will be patterned on Back-to-Back Debt Agreements entered into when the City completed similar transfers to EPCOR. Existing long-term debt is assumed to be in the range of $600 - $650 M.
   iv. Financial responsibility for the Drainage Utility business after the Transfer Date, which will include new debt issuance by EPCOR in support of the Drainage Utility and any such debt will be without recourse or credit support from the City.
   v. Any accrued vacation and employee benefits for Drainage Utility employees transferring to EPCOR as at Transfer Date.

b) The City will remain responsible for any claims, including environmental liabilities, related to the Drainage Utility arising prior to the Transfer Date except for claims for environmental liabilities that would normally be an expense recoverable through utility rates.

c) Although it is anticipated that the Transition Cost Compensation will compensate the City for liabilities that it is retaining with respect to the Drainage Utility, if unanticipated costs arise with respect to retained liabilities that are in excess of the Transition Cost Compensation, then the City may request payment from EPCOR with respect to those costs on the basis that they are liabilities of the Drainage Utility and ought to be paid through utility rates. EPCOR will pay for these costs if EPCOR is able to recover the costs through a non-routine adjustment mechanism approved by Council with respect to drainage utility rates. If EPCOR is unable to recover these costs through a non-routine adjustment, then the City will be responsible for such costs.

2.8 Financial Cut Off at Transfer Date

The City will deliver a closing balance sheet at the Transfer Date. EPCOR will collect all revenues after the Transfer Date and pay all invoices after the Transfer Date including for services provided before the Transfer Date.

2.9 EPCOR Commitments for Employment

EPCOR makes the following commitments to employees who will be transferring to EPCOR:

a) All Drainage Utility and identified Shared Services employees will have job security. There will be no layoffs. Temporary employees will have the same job security rights as they do today as set out in the collective agreements.
b) All Drainage Utility and identified Shared Services employees will have the opportunity to transfer to EPCOR with comparable salary, benefits and seniority.
c) Existing collective agreements with the City will be honoured.
d) EPCOR will negotiate new collective agreements following expiry of existing agreements. These negotiations will harmonize terms and conditions between the City and EPCOR collective agreements.
e) In the meantime, there will likely be a need for a Transition Agreement between EPCOR and the unions to address any practical transition issues that arise.
f) No assumptions will be made without two-way dialogue between EPCOR and the unions.

2.10 Employee Transfer Arrangements

a) The following process will apply to all Drainage Utility and identified Shared Services employees as of the Transfer Date:
   i. For unionized employees all terms and conditions of employment set out in the existing collective agreements with the City will continue to apply.
   ii. For non-unionized employees terms and conditions will be based on City salaries and EPCOR benefit programs.
b) If transition agreements between EPCOR and each of the unions cannot be entered into by the Transfer Date, then EPCOR may require payroll and benefit services from the City until such time as transition agreements are in place or new collective agreements are entered into with EPCOR and each of the unions.

c) All employees will continue to be enrolled in LAPP.

d) City employees transferring to EPCOR who are on a leave of absence (sick, short-term disability, long-term disability or other) at the Transfer Date will remain City employees until they return from their leave of absence and will become employed by EPCOR at that time.

e) EPCOR will assume conduct of all active grievances for City employees that transfer to EPCOR on the date they transfer. Any claims arising from such grievances will be dealt with as set out in Section 2.7(b) of this Letter of Intent.

3. DRAINAGE TRANSFER TRANSITION

3.1 Transition Services

Any services that the City will provide to EPCOR on a temporary basis while the Drainage Utility is being integrated within EPCOR will be set out in a Transition Services Agreement with the City. These services will be provided on a cost recovery basis consistent with the costs currently payable or incurred by the Drainage Utility. Currently identified services may include:

i. Maintenance of certain IT software licences, support for related IT software (e.g. Work Management, Geographical Information System (GIS), Public One Stop Service Application (POSSE)) until these systems and work processes can be incorporated into the EPCOR tools.
ii. Provision of IT hardware related services.
iii. Payroll, if required.
iv. Benefits, if required.
v. Office space sub-lease, if required.

3.2 Transition Cost Compensation

While EPCOR will assume direct responsibility for most Drainage Utility-related costs, certain costs will remain with the City and no longer be recovered through Drainage Utility rates. EPCOR will compensate the City for these stranded costs with Transition Cost Compensation payments over time totaling $75 million. The City will also use these payments to cover retained liabilities, particularly environmental liabilities and remediation costs related to retired Drainage Utility facilities (e.g. Bremner Lagoons and the Queen Elizabeth Wastewater Treatment Plant). The schedule for these payments will be set out in the Asset and Liability Transfer Agreement.

4. ONGOING AGREEMENTS WITH THE CITY

4.1 Ongoing Services Agreements

There are certain services that EPCOR will obtain from the City on an ongoing basis to support the Drainage Utility. Such services will be provided by the City to EPCOR on the same cost basis as they are being provided to the Drainage Utility today. Currently identified services requiring an ongoing service agreement may include:

i. Vehicle and Mobile Equipment services provided by Fleet Services.
ii. Integrated Counter services for Water and Drainage servicing.
iii. Bio-solids handling services provided by Waste Management.
iv. City Planning Services (land development planning, engineering, cost assessment and infill support).
v. Lot Grading inspection and approval support.
vi. Maintenance of certain stormwater management facilities.

4.2 Jointly Managed Initiatives

The City and EPCOR will work jointly on initiatives involving both City and Drainage Utility matters, and will create various agreements related to the ongoing management of such initiatives where required. Currently identified joint initiatives are:

i. Capital funding programs, including:
   - Grant funding pursuits and compliance with grant terms
   - Sanitary Servicing Strategy Fund
   - Permanent Area Contributions
   - Local improvements.

ii. Coordination efforts regarding planning and development.

5. REGULATORY FRAMEWORK FOR DRAINAGE

5.1 Drainage Utility Regulation

a) Customer rates and charges and the terms and conditions of services for the Drainage Utility are currently outlined in City Bylaw 16200, Drainage Bylaw. EPCOR will operate the Drainage Utility in accordance with this Bylaw under an interim agreement (the "Interim Regulatory Framework Agreement") until such time as a new EPCOR Drainage Bylaw is approved.

b) As new Drainage Utility rates have historically come into effect on January 1 of each year, the target date for the new EPCOR Drainage Bylaw to come into effect will be January 1, 2018. In the event that the EPCOR Drainage Bylaw does not come into effect by January 1, 2018:
   i. EPCOR will recommend revised rates for Bylaw 16200, Drainage Bylaw consistent with the proposed annual rate adjustment of 3%.
   ii. For any items normally covered by non-routine adjustments, EPCOR may apply for a rate adjustment for such costs in accordance with the process currently used by the Drainage Utility.

c) In addition to the requirements outlined in Bylaw 16200, the Interim Regulatory Framework Agreement will also:
   i. require that EPCOR provide the Utility Committee with periodic reports related to the operation and performance of the Drainage Utility, including audit reports, as may be requested by the Utility Committee;
   ii. include EPCOR's public access to Drainage Utility information procedure, as set

out in Schedule C - Public Access to Drainage Utility Information. This procedure preserves the public's access to information concerning the Drainage Utility and will be in accordance with the *Freedom of Information and Protection of Privacy Act* ("FOIP");

c) The new EPCOR Drainage Bylaw will be patterned after Bylaw 17698 EPCOR Water Services and Wastewater Treatment Bylaw. Key elements of a new EPCOR Drainage Bylaw are further outlined in Schedule B – Proposed Model for EPCOR Drainage Utility Bylaw.

d) The Terms and Conditions of Service included in the new EPCOR Drainage Bylaw will set out EPCOR's public access to Drainage Utility information procedure, as set out in Schedule C – Public Access to Drainage Utility Information.

5.2 Bylaw 12294 EPCOR Rates and Procedures Bylaw

a) This existing bylaw sets out procedures for Council to approve rates applicable to any utility service provided by EPCOR within Edmonton where the City has regulatory jurisdiction. Once the Drainage Utility is transferred to EPCOR, the regulation of rates associated with the Drainage Utility will be subject to this bylaw.

b) In addition to the requirements outlined in this bylaw, with respect to the Drainage Utility, EPCOR will provide:
   i. Quarterly reports to the Utility Committee.
   ii. Further reports as requested by Council or Utility Committee.
   iii. Audit reports as requested by Council or Utility Committee.

c) An amendment to this bylaw may be desirable to explicitly authorize the Utility Committee or Council to direct EPCOR to provide information in relation to matters falling within the utilities that it regulates that are outside of the rate setting process.

5.3 Franchise Agreement for Drainage

a) The Drainage Services Franchise Agreement will be patterned after the EPCOR Water and EPCOR Wastewater Treatment Franchise Agreements. Key elements include:
   i. ***Service:*** EPCOR will be granted the right and agree to be obligated to provide the drainage utility services within Edmonton in accordance with the terms and conditions established by Council through Bylaw.
   ii. ***Term and Termination:*** The Term of the Drainage Services Franchise Agreement will begin on the Transfer Date and have a 20 year term, which is the maximum allowed under the Municipal Government Act.
   iii. ***Franchise Fee:*** The City currently collects a local access fee of 8% on the Sanitary Utility revenues. The Drainage Services Franchise Agreement will give EPCOR the right to collect this same fee, as a Franchise Fee, from Drainage Utility customers through Sanitary Utility rates and the obligation to remit the revenues collected to the City.
   iv. ***Relocation:*** The Drainage Services Franchise Agreement will require EPCOR to pay for the cost of relocating Drainage Utility infrastructure at the request of the

City. This will be patterned after the relocation provision in the Water Franchise Agreement. However, costs related to the relocation of catch-basins, which are currently paid for by the City, will be excluded.

v. ***Right to Audit:*** City will have the right to audit the records and accounts of EPCOR relating to the franchise agreement.

6. OTHER MATTERS

6.1 EPCOR Dividend

The annual dividend paid by EPCOR to the City is determined in accordance with the EPCOR Dividend Policy. The EPCOR Dividend Policy is established by EPCOR's Shareholder (represented by City Council) in accordance with the Unanimous Shareholder Agreement. EPCOR has committed to increasing the EPCOR Dividend by $20 M in the first full year following a transfer of the Drainage Utility to EPCOR and a proportionate amount for any partial year. The increase in the EPCOR Dividend will be presented to the EPCOR Board and the Shareholder for approval in accordance with the EPCOR Dividend Policy.

6.2 Future Divestment of Drainage Utility

The Asset and Liability Transfer Agreement will require City Council approval of any proposal to sell all or substantially all of the Drainage Utility assets. Council meetings must be in public unless justification exists for the meeting to be held in private pursuant to the *Freedom of Information and Protection of Privacy Act*.

In addition, the Unanimous Shareholder Agreement requires Shareholder (represented by City Council) approval of any sale or disposition of the property of EPCOR where any such sale or disposition represents a material amount of the assets or equity base of EPCOR. The Drainage assets would constitute a material amount of EPCOR and could not be sold without Shareholder approval.

6.3 Drainage Utility Regulator Costs

EPCOR will pay for direct costs incurred by the City in supporting City Council's regulator function (e.g. Utility Advisor and consultant costs), as it currently does for the Water and Wastewater Treatment Utilities.

Schedule A – City-Retained Assets and Functions

The following will remain with the City:

1) Planning support for private development servicing:
   a) development of Area Structure Plan, Neighbourhood Structure Plan, Neighbourhood Design Report, subdivision plans and development permits;
   b) review and acceptance of servicing agreements, drawings, environmental screening reports, municipal improvement agreements, redlines;
   c) review and acceptance of asset cost forms;
   d) review and acceptance of utility rights of way, restrictive covenants, discharge of easements and crossing agreements;
   e) infill coordination and facilitation; and
   f) local improvements.

2) Development cost assessment including:
   a) fee assessment and calculation for development permits and servicing agreements;
   b) cost analysis and Permanent Area Contribution ("PAC") basin definition; and
   c) local improvements.

3) Lot Grading Inspection and Approvals.

4) Management of the Sanitary Servicing Strategy Fund.

5) Counter Services component of the Water and Sewer Servicing.

6) The Bremner Lagoon site located directly adjacent to the Alberta Capital Region Wastewater Commission wastewater treatment plant was abandoned in-situ in the mid 1980's and will remain an asset and liability of the City. The continued management and remediation will be at the discretion and expense of the City. It is anticipated that the City will utilize a portion of the Transition Cost Compensation payments to fund the ongoing management and remediation of the site.

7) Queen Elizabeth Park includes a wastewater treatment plant that was decommissioned in 1981 but the building remains. The City will retain ownership of this site and the building on it. The continued management and remediation will be at the discretion and expense of the City. It is anticipated that the City will utilize a portion of the Transition Cost Compensation payments to fund the ongoing management and remediation of the site.

8) Stormwater management facilities which are primarily utilized as parkland.

9) The outgoing pipes from the Clover Bar Lagoons to the Waste Management Centre will continue to be owned by the City.

10) The liabilities outlined in Section 2.7(b), and any liabilities associated with the assets and operations listed above.

Schedule B – Proposed Model for EPCOR Drainage Bylaw

The purpose of the bylaw will be to approve the rates, fees and charges and the terms and conditions of service for Drainage Utility Services provided by EPCOR to customers in Edmonton. The new bylaw will contain the following:

a) A mechanism whereby rates, fees and charges will be adjusted on an annual basis, for the period of January 1, 2018 to March 31, 2022, and reflecting EPCOR's commitment to hold the average annual rate increase over this period to 3% (on blended basis between the Sanitary and Stormwater utilities).
b) A mechanism for non-routine rate adjustments, examples of which are costs related to accelerated flood mitigation capital spend and other emergent City directed needs. Such non-routine adjustments will be similar to the one in Bylaw 17698 EPCOR Water and Wastewater Treatment Bylaw.
c) The Terms and Conditions of Service for the Drainage Utility will establish Drainage Utility Services Guidelines that will, among other things, set out EPCOR's public access to Drainage Utility information procedure, which is further detailed in Schedule C – Public Access to Drainage Utility Information.
d) Service quality metrics patterned after current Drainage Utility service quality metrics, with appropriate targets detailed in a manner similar to Schedule 3 of Bylaw 17698 EPCOR Water and Wastewater Treatment Bylaw.

The new EPCOR Drainage Bylaw will require EPCOR to file on or before December 1 of the year following the reporting year, an Annual Drainage Utility Rate Filing that contains the following parts:

a) An audit report verifying the accuracy of rate calculations;
b) The Drainage Utility rate forecast for each customer class of service for the period following the reporting period; and
c) Drainage Utility Service Quality Results - The results of each of the components of the Drainage Utility service quality indices.

EPCOR will submit an Annual Progress Report patterned after the Annual Water and Wastewater Progress report as outlined above. In addition, if requested by the Utility Committee, EPCOR will provide the Utility Committee with periodic reports including audit reports as desired and directed by the Committee.

Under the new EPCOR Drainage Bylaw, Utility Committee (and Council) will continue to direct the development of significant initiatives, in which it will require EPCOR's involvement and regular reporting to the Utility Committee on progress. For example, for the development of a Stormwater Integrated Resource Plan, EPCOR will conduct extensive community consultation and will adopt consultation and engagement principles and guidelines established through the "Council Initiative on Public

Engagement."

Schedule C – Public Access to Drainage Utility Information

Drainage Utility Services Guidelines will be developed as part of the Drainage Utility Terms and Conditions of Service that will include a requirement that EPCOR comply with FOIP as it relates to the Drainage Utility. The following principles outline how some of these requirements will be included in the Drainage Utility Services Guidelines:

a) A considerable amount of information requested by the public about utility services is in the public domain, either on EPCOR's website or on the City's website as part of a Drainage Utility rate application. Every effort will be made to direct members of the public to that information.
b) EPCOR will participate in the City's Open Data initiative for Drainage Utility-related data.
c) In the event that the requested Drainage Utility-related information is not readily available, EPCOR will advise members of the public (Applicants) to submit their request for information in writing to EPCOR. EPCOR will log the Applicant's request, when it was submitted and the Applicant's contact information. EPCOR will endeavour to provide a written response to the Applicant within 30 days. In some cases it may take longer and EPCOR will communicate this. In some instances a written response may not be practical and the Applicant may be invited to EPCOR's offices to review the information.
d) EPCOR will comply with the requirements of Parts 1 and 2 of FOIP as to the decision making process on whether or not the information can be released, or whether a fee is charged.

Council's Role as Shareholder, Regulator and Contracting Party

The following matrix provides high level descriptions of the role of Council with respect to EPCOR as shareholder, regulator and as a contracting party.

	Council as Representative of the Shareholder	**Council as Utility Regulator**	**City as Contracting Party**
EPCOR Entities	EPCOR Utilities Inc. and all subsidiaries	EPCOR Water Services Inc.	EPCOR Utilities Inc. and all subsidiaries
Primary Role	1) Appoint and remove directors of EPCOR 2) Amend corporate documents 3) Appoint EPCOR's auditor 4) Approve disposition of substantial assets owned by EPCOR 5) Review and amend Dividend Policy	1) Establish rates and terms and conditions of service and for utility services provided within Edmonton 2) Monitor Utility performance 3) Establish consultation and approval framework for the development of the SIRP 4) Monitor implementation of the SIRP 5) Pass Bylaws dealing with utility services and how Council regulates them	• Authorize the City Manager to negotiate and execute agreements consistent with Letter of Intent to facilitate the transfer of the Drainage Utility
Public Participation	• EPCOR Annual meeting is open to public • Shareholder meetings are private.	• Utility Committee and Council reports and meetings are public unless private meeting is justified pursuant to the *Freedom of Information and Protection of Privacy Act*	• Agreements are generally disclosable to the public with redactions to address privacy and proprietary concerns
Primary Governing Rules	EPCOR Corporate documents: 1) Unanimous Shareholder Agreement 2) Corporate Bylaws 3) Articles of Incorporation 4) Agreement Relating to Subsidiary Corporations	• City Bylaw 12300 - Procedures and Committees Bylaw • City Bylaw 12294 - EPCOR Rates Procedures Bylaw • City Bylaw 16200 - Drainage Bylaw	• City Bylaw 12300 - Procedures and Committees Bylaw • City Bylaw 16620 - City Administration Bylaw
Most Relevant Laws	1) *Business Corporations Act* (Alberta) 2) *Municipal Government Act and*	*Municipal Government Act*	*Municipal Government Act*

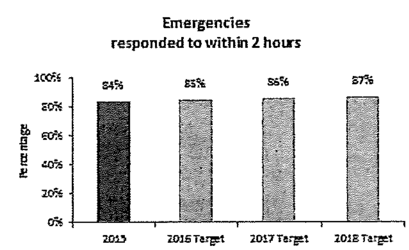
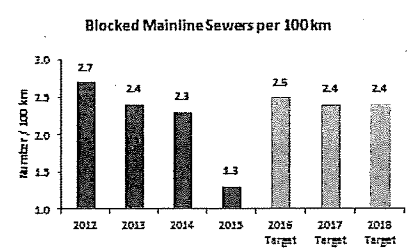
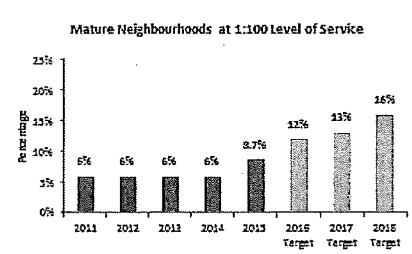
	Control of Corporations Regulations		
Consider-ations of Council	Best interests of the City	Just and reasonable rates and terms of service	Best interests of the City
Audit Rights	• Appoint external auditor • Authorize Investigation into the business and affairs of the Corporation	• Regulator may request utility audits	• Audit rights included in agreements as appropriate

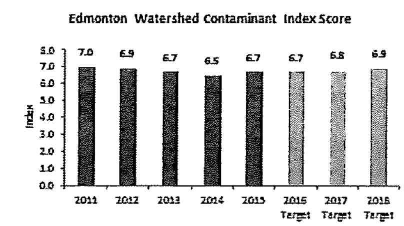
Drainage Utility Performance Measures from the 2017 Utility Rate Filing

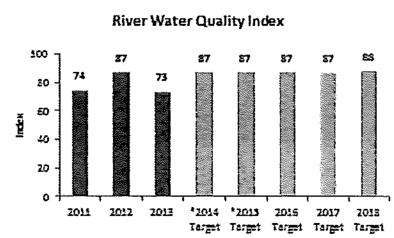
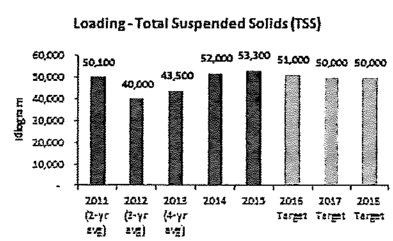
Operational Performance

The 5 performance goals below align with the Revised 2016-2018 Utility Services Business Plan. For the purposes of this report, the headings "Metrics, Targets, Outcomes" are equivalent to the following columns:

Metrics: Branch Performance Measures and Results
Targets: Targets
Outcomes: Branch Strategic Direction

Corporate Goals	Branch Performance Measures	Results & Targets	Branch Strategic Direction
Goal: A Healthy Community Well Served			
	Percentage of emergencies responded to within 2 hours		Utility Services responds to Council's vision and our community's changing needs through active engagement and collaboration. We provide a high level of customer satisfaction by delivering timely, seamless and uninterrupted service.
	Number of Blocked Mainline Sewers per 100 KM		
	Percentage of mature neighbourhoods at 1:100 level of service		

<table>
<tr><th>Corporate Goals</th><th>Branch Performance Measures</th><th>Results & Targets</th><th>Branch Strategic Direction</th></tr>
<tr><td colspan="4">Goal: Environmental Stewardship</td></tr>
<tr><td rowspan="3"></td><td>Edmonton Watershed Contaminant Reduction Index Score (five-year rolling average)</td><td>
</td><td rowspan="3">Utility Services is committed to preserving and protecting our environment and biodiversity through continuous improvement, regulatory compliance, and pollution prevention.</td></tr>
<tr><td>River Water Quality Index

*2014-2015 Index available from AEP at a later time</td><td>
</td></tr>
<tr><td>Kg of Total Loading – TSS (five-year rolling average)</td><td>
</td></tr>
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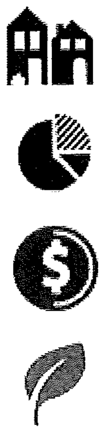
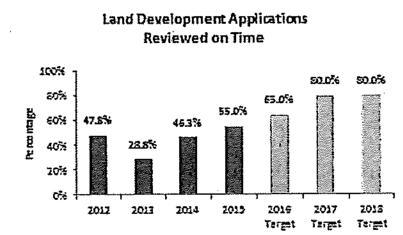
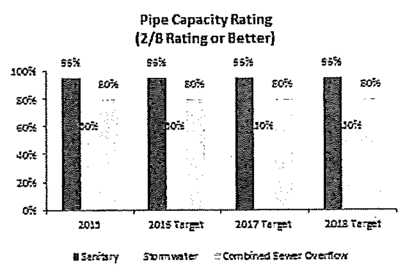
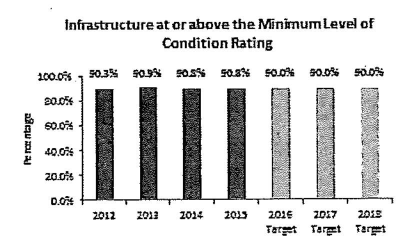
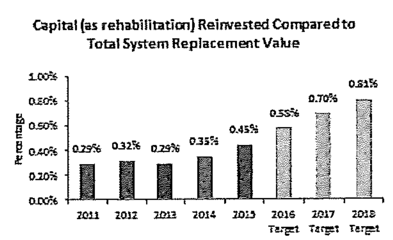
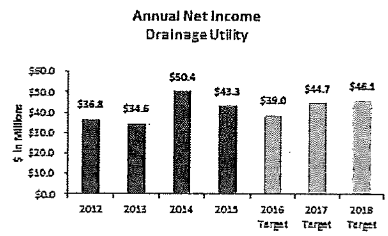
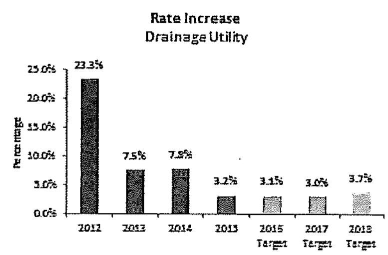
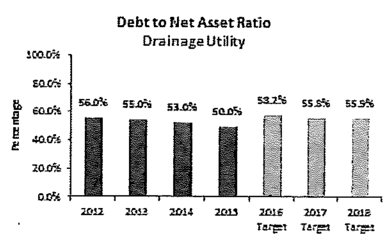
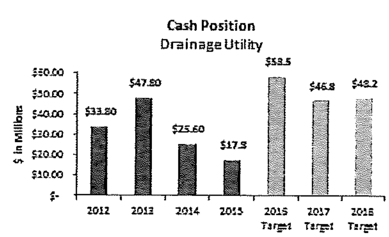
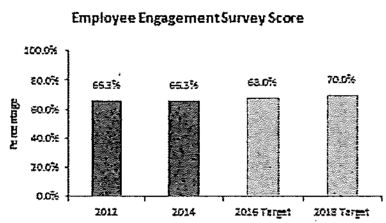
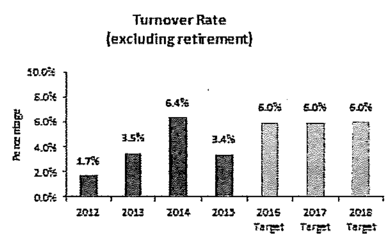
Goals	Measures		
Goal: Sustainable Infrastructure			
	Percent of Land Development Applications reviewed on time		Utility Services is committed to optimized and integrated asset management through effective planning and sustainable funding.
	Pipe Capacity Rating **A Measure of the overall pipe system to handle flow without service disruption, i.e., flooding or backup.*		
	Percentage of infrastructure at or above the minimum level of condition rating		
	Percentage capital (as rehabilitation) re-invested compared to total system replacement value		

Corporate Goals	Branch Performance Measures	Results & Targets	Branch Strategic Direction
Goal: Fiscal Sustainability			
	Annual Net Income		Utility Services strives for rates that are fair, equitable and provide value.
	Percentage Rate Increase		
	Debt to Net Asset Ratio		
	Cash Position		

Corporate Goals	Branch Performance Measures	Results & Targets	Branch Strategic Direction
Goal: Organizational Effectiveness			
	Employee Engagement Survey Score		Utility Services fosters a culture of innovation and a strong sense of purpose, through a commitment to people, and optimizing systems and resources.
	Percentage turnover (excluding retirement)		

Preserve and sustain Edmonton's environment	**Improve Edmonton's livability**	**Ensure Edmonton's financial sustainability**
Transform Edmonton's urban form	**Diversify Edmonton's economy**	**Shift Edmonton's transportation mode**

Law Branch
Financial and Corporate Services

City of Edmonton
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Edmonton

Memorandum

September 7, 2017

To: Barb Craig
Inform Services Coordinator
3rd Floor, Office of the City Clerk
Elections and Census

From: Claudia Pooli
Barrister & Solicitor
9th Floor, Chancery Hall
Law Branch

Subject: **Transfer of Drainage Services from the City of Edmonton (the "City") to EPCOR Utilities Inc. ("EPCOR")**

Attached is one fully executed copy of the following:

1. Asset and Liability Transfer Agreement Drainage Utility (includes Schedules in two binders);
2. Interim Regulatory Framework Agreement;
3. Drainage Services Franchise Agreement;
4. Non-Negotiable Unsecured Term Promissory Note; and
5. Employee Transfer Agreement.

The Agreements are being sent to you for your records and there is no need for sealing. Thank you.

For: J. Saporto

CP/jrs
Attachments