

## **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

**Letter of Intent Between the City of Edmonton and EPCOR  
CR\_4436 Attachment 1**

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.