

## Attachment 1

### Memorandum of Understanding ("MOU")

This MOU is made effective this 10th day of July, 2020 ("**Effective Date**") to record the understanding, intentions and agreements reached among:

- **EPCOR Utilities Inc.** or a subsidiary thereof, a corporation registered pursuant to the laws of the Province of Alberta ("**EPCOR**"); and
- **City of Edmonton**, a municipal corporation pursuant to the *Municipal Government Act* (Alberta) ("**City**")

Individually, each of EPCOR and the City is a "**Party**" and collectively they are the "**Parties**".

#### RECITALS

- A. The Parties have agreed to undertake certain initial work to establish the viability of alternative technologies supporting a District Energy System in Downtown Edmonton (the "**Project**") including working with system designers and constructors to develop a business case, and evaluation of system ownership and regulatory framework;
- B. The Parties have agreed to certain guiding principles that will govern development of the Project. These guiding principles are included as Schedule "A"; and
- C. Once each Party receives authorizations based on the business model and proposed structure mutually developed in accordance with this MOU, the Parties will commence drafting and negotiating the Definitive Agreements (as defined below in Section 3.1) based on the principles set out in this MOU and those as otherwise agreed to by the Parties.

NOW THEREFORE the Parties state their mutual understanding as follows:

#### BACKGROUND

The Parties have been working together to identify opportunities to develop the Project, a District Energy Sharing System in Downtown Edmonton. The City has engaged FVB Energy to design a high temperature District Energy System that would provide heat, electricity, and domestic hot water to three buildings (the "**Customers**"): Chancery Hall, Century Place, and the Winspear Centre. This system would include an Energy Centre located at the Winspear consisting of boilers and a Combined Heat and Power ("**CHP**") system.

The Parties have further identified an opportunity to develop an ambient temperature District Energy System that would also serve the cooling needs of the three buildings and could potentially result in additional greenhouse gas emission reductions beyond the high temperature system base case. EPCOR

has engaged AECON Water Infrastructure and Cascara Energy to provide a preliminary design and cost estimate for this system. EPCOR will then develop a rate model for the ambient temperature system that will be shared with the City.

The Parties current understanding of the key business parameters of two scenarios are provided in Schedule "B". The Parties acknowledge that items 2 through 9 in Schedule "B" represent the Parties' current intention with respect to the business arrangements associated with the different technology options. The Parties may consider and evaluate additional alternative business arrangements with respect to items 2 through 9 in Schedule "B" but agree that the technologies to be considered will be limited to those identified in item 1 of Schedule "B".

The Parties have discussed and are interested in building on the principles as detailed in Schedule "A" by which EPCOR and the City will explore, develop and prioritize a number of options for an enhanced strategic partnership, including the potential for EPCOR to finance, own and/or operate the District Energy System. The intent of the proposed partnership would be to combine the City's experience with developing the District Energy System to date with EPCOR's significant utility experience to the design, construction, operation and governance of the Project and future expansions thereof.

The Parties wish to work together in good faith to develop a comprehensive business case ("**Business Case**") that will consider the impacts of various technical, ownership and schedule options to the Project and its Customers. This would include a detailed accounting of impacts to Customer rates and the benefits to the City, both financial and environmental, of developing the proposed Project.

The Business Case will consider, but is not limited to, the following elements:

- i. Triple-bottom line evaluation of the two scenarios in Schedule "B", and any alternative business arrangements proposed with respect to items 2 through 9 in Schedule "B"
- ii. Expected capital and operating costs of the Project
- iii. Expected Greenhouse Gas reductions associated with the Project
- iv. Expected Customer rates associated with development of the Project
- v. Ownership structure and regulatory framework for the Project
- vi. Roles, responsibilities, and risk allocation amongst the Parties
- vii. Funding and financing strategies for the Project
- viii. Proposed governance models for the Project including future expansions

## **NON-BINDING**

### **1. PHASE ONE – Development of the Business Case**

- 1.1. Triple-bottom line Evaluation:** The parties will work together to fully understand, analyze, and evaluate the two scenarios outlined in Schedule "B", and any alternative business arrangements proposed with respect to items 2 through 9 in Schedule "B".

**1.2. Financial Model:** The Parties will prepare a financial model with respect to the Project (“Model”). The Model will outline the expected capital, operating and financing costs of the District Energy System under each scenario described in Schedule “B”, including any alternative business arrangements with respect to items 2 through 9 in Schedule “B” as agreed upon by the Parties, as well as the expected rate structure associated with each option. Based on the Model, the guiding principles described in Schedule “A”, the Structure considerations for each scenario described in Schedule “B” and any other factors considered relevant by the Parties, the Parties will, acting reasonably, select the preferred option between the high temperature District Energy System and the ambient temperature District Energy System. The Structure, defined in Section 1.3 below, and all further phases contemplated by this MOU will specifically address the preferred option selected by the Parties.

**1.3. Legal Structure:** The Parties will work together to determine (i) the optimal ownership structure of the Project and (ii) the regulatory framework under which the Project will operate (collectively, “Structure”). The Parties agree that they will negotiate in good faith to agree upon a Structure that is consistent with the objectives as described in Schedule “A”, and in addition, ensures that the Parties respective accounting, tax, legal, environmental and regulatory positions are optimized and is designed in a manner such that it does not lead to materially adverse accounting, tax, legal and regulatory consequences to either of the Parties. Upon preliminary determination of the Structure, each of the Parties will engage their own external advisors if necessary, including but not limited to external legal counsel, to review and comment on the Structure.

**1.4. Interim Approvals:** Upon completion of the Model and the development of the Structure, the Parties will seek the necessary interim approvals required for the Parties to proceed with Phase Two of the Project.

**1.5. Phase One Timeline:** The Parties agree that Phase One, which includes the tasks set out in this Article 1, must be completed on or before July 31, 2020. If either Party fails to satisfy its obligations under this Article 1 or an agreement cannot be reached by the Parties with respect to the matters in this Article 1 on or before July 31, 2020, unless otherwise agreed to in writing by the Parties, this MOU will automatically terminate on July 31, 2020 without any penalty, damages, fee, or costs and any obligations owed by a Party will cease.

## **2. PHASE TWO – Development of Project Term Sheet**

**2.1. Development of a Term Sheet:** Once the Parties have agreed on the Structure, the Parties will negotiate, finalize and execute a non-binding term sheet (“Term Sheet”) with respect to the Project. The Term Sheet will clearly outline the key obligations and the expectations the Parties have for each other in respect of the Project. The Term Sheet will include, but will not be limited to, the following:

- A description of the Definitive Agreements and/or Bylaws required in connection with the Project;
- The Definitive Agreements and/or Bylaws will set out the rights and obligations of the City and EPCOR in connection with the operation and management of the Project and the Term Sheet will include a description of the key terms including, but not limited to, the following:
  - The governance model of the Project, including expectations regarding the ongoing design, construction, financing, operation, environmental performance and reporting;
  - Decision-making authority of the City and EPCOR;
  - The decision-making process including the thresholds required for various decisions;
  - Necessary land and or lease agreements for access to Project infrastructure;
  - The regulation of the Project, including the process by which future rates will be set. Process for setting rates will be based on appropriate rate-setting framework for comparable utilities;
  - Exit, default and termination provisions; and
  - A framework for the City and EPCOR to manage future expansion of the Project.

**2.2. *Interim Approvals:*** In advance of the Parties executing the Term Sheet, internal approvals will be required. These approvals include City Council and EPCOR's senior management. The final Term Sheet will form the basis upon which the parties will proceed to negotiate and draft the Definitive Agreements and/or Bylaws. The Parties acknowledge that further internal approvals will be required prior to the execution of the binding Definitive Agreements and/or passing of Bylaws.

**2.3. *Ongoing Development:*** During this Second Phase, the Parties will continue development of the Project. This will include refinement of the Project's design, costing and operational parameters. The Parties will also further refine the proposed Customer rates structure for the Project.

**2.4. *Second Phase Deadline:*** The Parties agree that the "Second Phase", which includes all of the tasks set out in this Article 2, must be completed on or before October 31, 2020. If either Party fails to satisfy its obligations under this Article 2 or an agreement cannot be reached by the Parties with respect to the matters in this Article 2 on or before October 31, 2020, unless otherwise agreed to in writing by the Parties, this MOU will automatically terminate on October 31, 2020 without any penalty, damages, fee, or costs and any obligations owed by a party will cease.

### 3. PHASE THREE – Development of Definitive Agreements and/or Bylaws

**3.1. Definitive Agreements.** Upon execution of the Term Sheet, and in good faith, the Parties will immediately begin to negotiate the various legally binding agreements required to complete the Project approved by the Parties in addition to any Bylaws that may be required (“**Definitive Agreements**”). The Definitive Agreements will include customary closing requirements including but not limited to:

- an agreement with respect to duties and powers of the Parties in relation to the management and operations of the Project; and
- obtaining any other consents or approvals from governmental or other authorities, lenders and other third parties, required to complete the Project.

**3.2. Final Approvals:** Prior to executing the Definitive Agreements, the City will seek the final approval of City Council. Prior to executing the Definitive Agreements, EPCOR will seek the approval of its senior management.

**3.3. Ongoing Development:** During this Third Phase the Parties will continue development of the Project. This ongoing development may include finalization of the Project’s design, costing, schedule, operational parameters, and rate structure.

**3.4. Third Phase Deadline.** The Parties agree that the “Third Phase”, which includes all of the tasks set out in this Article 3, must be completed on or before February 28, 2021. If either Party fails to satisfy its obligations under this Article 3, or an agreement cannot be reached by the Parties with respect to the matters in this Article on or before February 28, 2021, unless otherwise agreed to in writing by the Parties, this MOU will automatically terminate on February 28, 2021 without any penalty, damages, fee, or costs and any obligations owed by a Party will cease.

## **BINDING**

### 4. BINDING PROVISIONS

The purpose of the following provisions (“**Binding Provisions**”) is to set forth certain binding agreements between the Parties with respect to this MOU and the Project.

**4.1 Exclusivity:** From the Effective Date until the termination of this MOU (“**Exclusivity Period**”) neither Party, nor its affiliates, or employees will directly or indirectly, discuss, solicit, initiate or entertain offers from, negotiate with, provide any assistance or information to or in any manner consider any proposal of any other person relating to, in connection with or similar to the Project. If either Party receives any unsolicited offer or proposal related to, in connection with or similar to the Project, it will immediately advise the other Party of same. In addition, upon execution of this MOU, the Parties will immediately cease and cause to be terminated any

existing activities, including discussion or negotiations with any parties conducted heretofore with respect to any proposal relating to, in connection with or similar to the Project, provided that EPCOR may continue working with AECON Water Infrastructure and Cascara Energy and the City may continue working with FVB Energy and the Winspear in connection with the Project.

**4.2. Responsibility for Costs:** Any costs incurred in connection with the Project will be the responsibility of the Party incurring the cost unless the Parties otherwise mutually agree.

**4.3. Termination.** This MOU will terminate upon the earlier of: (a) mutual consent of the Parties; (b) in accordance with Sections 1.5, 2.4 and 3.4; (c) written notice by either Party to the other Party if the other Party has breached any of the Binding Provisions; or (d) upon execution of the Definitive Agreements.

**4.4. Indemnification.** Each Party (each an “Indemnifying Party”) will indemnify and hold harmless the other Party and its directors, elected officials, officers, employees, agents and affiliates (collectively, “Indemnified Parties”), from and against all losses, claims, demands, expenses, costs, damages or liabilities to which the Indemnified Parties may be subject to or which the Indemnified Parties may suffer or incur and which are caused by or arise directly or indirectly by reason of the breach of, default under or non-compliance with any of the Binding Provisions, by the Indemnifying Party.

**4.5. Confidentiality.** The Parties agree that the terms of this Agreement and all information exchanged in connection herewith will be considered Confidential Information for purposes of the Mutual Non-Disclosure Agreement between the Parties dated February 21, 2020 (the “Mutual Non-Disclosure Agreement”) and the terms of the Mutual Non-Disclosure Agreement will apply as if same were incorporated herein.

**4.6. Intellectual Property.** If one Party is responsible for the creation of any intellectual property that is used in connection with the Project, such creating Party will retain ownership of the intellectual property and will grant an irrevocable, royalty free license to the other Party to use such intellectual property in connection with the Project. If the Parties jointly create any intellectual property, such intellectual property will be jointly owned by the Parties and each Party shall have an irrevocable, royalty free license to use such intellectual property in connection with the Project following termination of this MOU. For greater certainty, all created intellectual property will be considered Confidential Information, pursuant to the terms of the Mutual Non-Disclosure Agreement, of the Party who created such property.

**4.7. General.**

4.7.1. Notwithstanding any other provision of this MOU, the non-binding provisions set out above in Articles 1, 2 and 3 of this MOU (“Non-Binding Provisions”) do not create or constitute

any legally binding or enforceable obligation between the Parties, and neither the City, nor EPCOR will have any liability to the other Party with respect to the Non-Binding Provisions until the Definitive Agreements, if successfully negotiated, are executed and delivered by the Parties and then only to the extent and subject to the terms and conditions set forth therein. If the Definitive Agreements are not executed and delivered for any reason, the Parties will not have any liability to each other based upon, arising from or relating to the Non-Binding Provisions.

4.7.2. Notices to be sent pursuant to this MOU will be sent by personal delivery or transmitted by email to the locations noted below:

To EPCOR:

EPCOR Utilities Inc.

Suite 2000, 10423 – 101 Street NW

Edmonton, Alberta T5H 0E8

Attention: Geoff Wagner, Senior Manager, Project Development

Email: [gwagner@epcor.com](mailto:gwagner@epcor.com)

To City:

City of Edmonton

13<sup>th</sup> Floor, 10111 – 104 Avenue NW

Edmonton, Alberta T5J 0J4

Attention: Christian Felske, Director, Renewable Energy Systems

Email: [christian.felske@edmonton.ca](mailto:christian.felske@edmonton.ca)

Any notice or other communication will be in writing and will be given by e-mail (with receipt confirmed) and will be deemed to be given at the time sent by e-mail or delivered, if sent by e-mail or delivered to the recipient on a business day and before 5:00 p.m. (local time) on such business day, and otherwise will be deemed to be given at 9:00 a.m. (local time) on the next following business day. A Party may change its address for notice by notice to the other Party given in the manner herein provided.

4.7.3. The Parties will negotiate in good faith with the goal to arrive at mutually acceptable Definitive Agreements, provided however, that (a) nothing herein will obligate the Parties to conclude Definitive Agreements ; and (b) in the event any Party has breached the foregoing obligation to negotiate in good faith, unless otherwise specifically provided herein, the other Party's sole remedy will be to terminate this MOU in accordance with Section 4.3, prior to execution of the Definitive Agreements, and, unless otherwise specifically provided herein, the breaching Party will not otherwise have any liability for such breach.

4.7.4. In the event the Parties agree to terminate this MOU in accordance with Section 4.3, Sections 4.2, 4.4, 4.5, 4.6 and 4.7.1 will survive termination of this MOU and the Parties will remain responsible for their obligations thereunder until such obligations are satisfied in full.

4.7.5. Time is of the essence with respect to this MOU, the Project, and the finalization of the Term Sheet and the Definitive Agreements.

4.7.6. If any of the Binding Provisions for any reason will be held to be illegal, invalid or unenforceable, such illegality will not affect any other of the Binding Provisions and this MOU will be construed as if such illegal, invalid or unenforceable provision never had been included herein.

4.7.7. Except for the Mutual Non-Disclosure Agreement, which remains in effect in accordance with its terms, this MOU constitutes the entire understanding of the Parties relating to the subject matter hereof and supersedes all prior letter agreements, documents, contracts and other understandings, if any, among the Parties. This MOU will enure to the benefit of and be binding upon the successors and assigns of both of the Parties. It is expressly understood by the Parties that a Party may not assign any of its rights and obligations hereunder without the prior written consent of the other Party hereto, which consent may not be unreasonably withheld, provided that EPCOR may assign its rights and obligations hereunder to a wholly-owned subsidiary without the consent of the other Party. This MOU and the subject matter herein, including the Binding Provisions, will be governed by and construed in accordance with the laws of the Province of Alberta.

4.7.8. The Parties have participated jointly in the negotiation and drafting of this MOU. If an ambiguity or question of intent or interpretation arises, this MOU will be construed as if drafted jointly by the Parties and no presumption or burden of proof will arise favouring or disfavouring either Party by virtue of authorship of any provisions of this MOU.

4.7.9. Each Party hereto is independent from the other Party, and has entered into this MOU solely for the purpose set forth herein. Nothing in this MOU will be deemed to constitute, create, give effect to or otherwise recognize a joint venture, partnership or formal business entity of any kind between the Parties hereto, and the rights and obligations of the Parties will be limited to those expressly set forth in this MOU. Nothing herein will be construed as providing for the sharing of profits or losses arising out of the efforts of the Parties, except as may be provided for in the Term Sheet or any subsequent contract entered into by the Parties (including the Definitive Agreements). The Parties are independent contractors whose employees or agents will not be deemed to be employees or agents of the other Party for any purpose. No Party will have the right to act on behalf of, bind or otherwise obligate the other Party hereto.



4.7.10. This MOU may be amended, superseded, cancelled, renewed or extended only by written agreement by the Parties. The Binding Provisions may only be waived in writing signed by the Party waiving compliance. No delay on the part of any Party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any waiver on the part of any Party of any such right, power or privilege, nor any single or partial exercise of such right, power or privilege preclude any further exercise thereof or the exercise of any other such right, power or privilege.

4.7.11. Upon execution of this MOU by the Parties, the Binding Provisions will constitute the legally binding and enforceable agreements of the Parties. However, nothing in this MOU will be construed as an agreement by the Parties to create a binding business arrangement or to complete the Project. Such an agreement, if concluded, will result only from the execution and delivery of the Definitive Agreements (subject to the terms and conditions set forth therein).

4.7.12. This MOU may be executed in any number of counterparts and may be delivered originally, by facsimile, or by Portable Document Format ("PDF") and each such original, facsimile copy or PDF copy, when so executed and delivered will be deemed to be an original and all of which taken together will constitute one and the same instrument.

IN WITNESS WHEREOF the Parties have executed this MOU as of the Effective Date.

**CITY OF EDMONTON**

Per:



Name: Christian Felske

July 22 - 2020

Title: Director, Renewable Energy Systems

**EPCOR UTILITIES INC.**

Per:



Name: Geoff Wagner

Title: Senior Manager, Project  
Development

## **Schedule “A” – Guiding Principles**

The further development of the Project between the Parties will be based on the following guiding principles:

1. The Project must provide value to the public as well as to Customers of the system.
2. The Project will be guided and informed by the Community Energy Transition Strategy goals and objectives, including any future updates to that Strategy.
3. The Parties will approach the Project as a long term opportunity with an objective to grow the Project’s customer base and to enhance performance of the system by integrating appropriate new technologies.
4. The Parties acknowledge EPCOR’s opportunity to diversify its business portfolio and recognize that EPCOR is targeting to earn a regulated rate of return commensurate with the risks of the business.
5. In accordance with Section 4.1 of this MOU, the Parties agree to work exclusively with each other on development of the Project in a collaborative, fair and equitable manner.
6. Both Parties recognize the value of the Winspear Centre’s support of the initiative and the importance of the Winspear Centre’s requirements including project timing, compensation, and mitigation of any impacts the Project may have on the Winspear Centre.
7. Ownership, operational and regulatory considerations will inform decision making in order to support the best possible Project outcomes. The Project will be structured to provide optimal outcomes with responsibilities of each Party aligned with their respective strengths.
8. Funding strategies and opportunities for this Project will be jointly discussed and agreed upon. The Parties will work together to access grant funding and other financial support from various orders of government. This is an important factor in advancing the Project.
9. A number of agreements between the City, EPCOR, and Winspear will be required. Bylaws and Franchise Agreements may also be required to establish the regulatory framework.

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## Schedule "B" – Key Business Parameters for Project Scenarios

| Item | Parameter                                     | Scenario One   | Scenario Two   |
|------|---|--|--|
| 1    | System Type                                   | <ul style="list-style-type: none"> <li>Initial system to include boilers and CHP located at Winspear with high temperature distribution system providing heating and domestic hot water to 3 Customer buildings.</li> <li>Future expansion and modification to include ambient temperature distribution system, provision of cooling services, and integration of renewables.</li> </ul> | <ul style="list-style-type: none"> <li>Initial system to include boilers, chiller and CHP located at Winspear with near-ambient temperature distribution system providing heating, cooling and domestic hot water to 3 Customer buildings. Thermal storage may also be included in the original configuration.</li> <li>Future expansion and modification to include integration of renewables.</li> </ul> |
| 2    | System Financing and Ownership                | <ul style="list-style-type: none"> <li>City finances and owns initially.</li> <li>EPCOR may finance or purchase at a later stage subsequent to completion of construction and commissioning of system.</li> </ul>  | <ul style="list-style-type: none"> <li>EPCOR to finance.</li> <li>EPCOR or City to own based on optimal regulatory structure.</li> </ul>   |
| 3    | Capital Cost                                  | <ul style="list-style-type: none"> <li>Current estimate \$27.9 million</li> </ul>  | <ul style="list-style-type: none"> <li>Targeting similar cost. (To be confirmed by AECON/Cascara.)</li> </ul>  |
| 4    | Funding Sources                               | <ul style="list-style-type: none"> <li>2019-2022 City Capital Budget - \$7.1M</li> <li>2020 Spring Supplemental Capital Budget Adjustment - \$7.0M</li> <li>Self-liquidating debt - \$13.8M</li> <li>Possible additional funding from FCM, CIB, or stimulus grant to offset other sources.</li> </ul>  | <ul style="list-style-type: none"> <li>2019-2022 City Capital Budget - \$7.1M</li> <li>2020 Spring Supplemental Capital Budget Adjustment - \$7.0M</li> <li>EPCOR to finance balance</li> <li>Possible additional funding from FCM, CIB, or stimulus grant to reduce cost of capital.</li> </ul>   |
| 5    | System Design and Construction Responsibility | <ul style="list-style-type: none"> <li>City has primary responsibility for design and construction with support from EPCOR.</li> </ul>   | <ul style="list-style-type: none"> <li>EPCOR has primary responsibility for design and construction with support from City.</li> </ul>   |
| 6    | Regulatory Framework                          | <ul style="list-style-type: none"> <li>Regulation by City Council if Project is owned by City, including if Project is financed by EPCOR.</li> <li>CHP may require AUC approval.</li> </ul>  | <ul style="list-style-type: none"> <li>Regulation by City Council if Project is owned by City and financed by EPCOR.</li> <li>Regulation by AUC if Project is owned by EPCOR. May be possible to</li> </ul>  |

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|   |                                     |   |   |
|---|-------------------------------------|---|---|
|   |                                     | <ul style="list-style-type: none"> <li>• City leads initial regulatory applications with support from EPCOR.</li> </ul>   | <p>apply to AUC for regulation by City Council.</p> <ul style="list-style-type: none"> <li>• EPCOR leads regulatory applications with support from City.</li> <li>• CHP may require AUC approval.</li> </ul>                |
| 7 | Winspear Involvement                | <ul style="list-style-type: none"> <li>• City leads contract negotiation with Winspear with support from EPCOR.</li> </ul>  | <ul style="list-style-type: none"> <li>• EPCOR leads contract negotiation with Winspear with support from City.</li> <li>• City may lead initial funding agreement development with Winspear, with EPCOR support</li> </ul> |
| 8 | System Operations                   | <ul style="list-style-type: none"> <li>• City assumes operational responsibility and associated performance risk unless the Parties agree to transfer operational responsibility to EPCOR.</li> </ul>   | <ul style="list-style-type: none"> <li>• EPCOR assumes operational responsibility and associated performance risk.</li> </ul>   |
| 9 | Managing / Funding System Expansion | <ul style="list-style-type: none"> <li>• City manages and finances system expansion unless ownership and/or operations are transferred to EPCOR.</li> <li>• EPCOR manages and finances system expansion if City retains ownership and transfers operations to EPCOR.</li> </ul> | <ul style="list-style-type: none"> <li>• EPCOR manages and finances system expansion.</li> </ul>  |