

# Rossdale Land Transfer Agreement

## Recommendation

That Executive Committee recommend to City Council:

1. That the terms of a land transfer agreement between the City of Edmonton and EPCOR Power Development Corporation and EPCOR Utilities Inc., as outlined in Attachment 3 of the October 1, 2020, Urban Form and Corporate Strategic Development report CR\_6957, be approved, and that the land transfer agreement be in form and content acceptable to the City Manager.
2. That the terms of a maintenance agreement between the City of Edmonton and EPCOR Power Development Corporation, as outlined in Attachment 4 of the October 1, 2020, Urban Form and Corporate Strategic Development report CR\_6957, be approved, and that the maintenance agreement be in form and content acceptable to the City Manager.

## Executive Summary

This report recommends that a land transfer agreement between the City of Edmonton and EPCOR Power Development Corporation and EPCOR Utilities Inc. be approved. The City has been negotiating with EPCOR to transfer the Rossdale Power Plant since the plant was decommissioned in 2012. Administration completed due diligence to understand the environmental conditions of the site and is now ready to bring a transfer agreement forward for approval. The land transfer is also essential to Council's vision for the Rossdale area, outlined in the River Crossing Business Plan approved by Council on September 10, 2019.

## Report

In 1995, the City transferred the assets and obligations for power generation to Edmonton Power Corporation (subsequently renamed EPCOR Utilities, Inc.) pursuant to a master agreement dated September 27, 1995. Included in the transferred assets was the generating station known as the Rossdale Power Plant. The land on which the power plant is located also includes other improvements, specifically RE/MAX Field, the Rossdale Community League building, the Ross Flats apartment block, as well as numerous open space areas including the existing shared use path along the river's edge. The parties to the master agreement contemplated that this land would be subdivided at a future date. Following subdivision, public use areas would be retained by the City, and all other assets transferred to EPCOR. In the interim, the City would hold EPCOR's portions of the land as a trustee. EPCOR agreed to assume all the

liability and responsibility for its portions of the land after the closing date for the master agreement.

In 2010, EPCOR began working on a decommissioning project, and Administration initiated discussions with EPCOR so that additional portions of the EPCOR land could be returned to the City for public use, including the decommissioned Rossdale Power Plant (the “Returned Lands”). Through ongoing discussions with EPCOR, a proposed plan of subdivision was developed (Attachment 1). Areas identified as “City” in the plan of subdivision include both the land that was to be retained by the City per the 1995 master agreement, as well as the Returned Lands, which are the subject of the proposed transfer agreement. The Returned Lands include five buildings that will be transferred to the City: the Low Pressure Plant, Pumphouse #1, Pumphouse #2, Substation 060 adjacent to RE/MAX Field, and a small decommissioned ATCO Gas building. The Low Pressure Plant and Pumphouse #1 are Provincial Historic Resources. These structures and Pumphouse #2 are on the City’s Inventory of Historic Resources. Substation 060, which dates from the 1980s, was decommissioned with the termination of trolley bus service and is currently used by Edmonton Transit for storage.

Administration is prepared to move forward with the subdivision. While the subdivision of these lands was contemplated in the 1995 master agreement, the transfer of the Returned Lands with the Rossdale Power Plant was not. As the master agreement was approved by Council, the transfer of full ownership of the Returned Lands to the City by EPCOR requires Council’s approval.

### **Returned Lands Environmental Study**

As part of the subdivision process, Administration worked to ensure that the Returned Lands were fit for public use. Administration undertook a series of environmental studies, which identified numerous contaminants caused by decades of industrial use. The cost of full site remediation to address historic contamination is estimated to be in the tens of millions of dollars. This approach is cost prohibitive and is not considered viable given potential negative impacts to the river. The environmental studies therefore recommended a combined remediation and risk management approach.

A Risk Assessment and Preliminary Risk Management Plan were completed in 2018. These focused on the waterfront area that will be developed as part of the proposed Touch the Water Promenade. Contaminants will be left in place and will be managed as required to protect the public and the river. The contaminants do not pose a risk to the public or workers in their current undisturbed state. This approach is considered the most environmentally sound solution since it minimizes potential disturbance to surrounding areas, including the river. The Risk Management Plan also stipulates remediation of one contaminated area to be retained by EPCOR. Administration will continue working with EPCOR to address remediation of the area identified.

As required by the Environmental Protection and Enhancement Act, Administration submitted the Risk Assessment and Preliminary Risk Management Plan to the Government of Alberta. The Government of Alberta has completed their preliminary review and provided initial feedback. The City is working with EPCOR and the Government of Alberta to ensure that the proposed risk management measures satisfy all parties. Approval of the Risk Management Plan by Alberta Environment and Parks will not delay the land transfer or the proposed subdivision.

### **The Land Transfer Agreement**

Administration worked with EPCOR to delineate the terms and conditions for the land transfer agreement, which includes the following significant terms and conditions:

- The City will acquire the Returned Lands (including all buildings) for \$1.00 on a strictly “as is” basis.
- Responsibility for all taxes and ongoing costs associated with servicing (water, gas, fuel, electricity) will revert to the City.
- The City becomes responsible for all operations and maintenance costs associated with the Returned Lands.
- The City becomes responsible for all costs, including maintenance costs for the historical buildings including assuming the obligations associated with the historical designations implemented by the Province and the City.
- The City will be assuming all environmental obligations and liabilities for the Returned Lands, including indemnifying Epcor for all environmental liabilities for the Returned Lands, subject to the following:
  - Any work undertaken on the Returned Lands that requires remediation or removal of hazardous substances by order of a regulatory authority will be the responsibility of the party initiating the work.
  - If the City is the party initiating work on the Returned Lands and is therefore liable for remediation, it may still seek a contribution from EPCOR towards the cost of remediation.
  - The City will be able to request this contribution for a period of twenty years following the land transfer.
  - If the City and EPCOR cannot agree on the contribution, City Council becomes the ultimate arbiter on this matter.
  - The Alberta Environment and Parks Approval 1395-03-00 will be transferred to the City which details obligations related to the decommissioning and reclamation of the power plant site. The terms of the Approval will be amended once the land transfer takes place through discussion with AEP and EPCOR.

The land transfer agreement also sets out a series of easements that both the City and EPCOR will grant to each other, including a public access easement on the existing water reservoir that will remain under EPCOR ownership but will be available to the community (Attachment 2). This area is considered a significant component of the open space network for the River Crossing initiative.

### **Ongoing Projects**

The Returned Lands are essential for numerous City projects currently underway, including River Crossing. The River Crossing Business Plan includes recommendations for adaptive reuse of the Rosssdale Power Plant, which is identified as a signature element for the neighbourhood and a regionally significant activity node within the central river valley. Through the River Crossing capital profile (19-17-0601) approved as part of the 2019 - 2022 capital budget, a Rosssdale Power Plant Advanced Assessment and Priority Rehabilitation project is starting. This \$6.7 million project will prioritize and construct limited, strategic renovations necessary to conserve the heritage buildings and allow initial public uses to occur in the power plant. The City will operate the power plant in a limited fashion until the facility can be leased to another entity for long-term reuse.

Other portions of the land described in the subdivision plan include areas that will continue to be used for civic purposes, such as the waterfront currently used by the public as a shared use path. This area has been a recreational amenity for decades, is an essential component of the main river valley trail system, and is currently being reenvisioned as part of the Touch the Water Promenade. Work on the promenade was delayed while the City completed environmental assessments for the site. Concept planning for the promenade is underway.

The land transfer would also accommodate ongoing conversations regarding the proposed gondola project.

### **The Maintenance Agreement**

Administration will work with EPCOR to draft a maintenance services agreement through which EPCOR will continue to provide maintenance on the power plant as the City develops its own plans for interim operation and adaptive reuse of these structures. The agreement will include the following significant elements:

- The City will work with EPCOR to establish a set term for maintenance, not to exceed two years, which may be extended for one year terms, as required, while Administration undertakes additional studies and strategic renovations prior to assuming maintenance responsibilities.
- The agreement will set a maximum yearly value for services and payments not to exceed \$500,000.00 per year. The same maximum will also apply to any additional extensions which may be required.

- There will be a set limit of \$20,000.00 for any distinct service provided under the maintenance agreement. The City's written approval will be required to undertake any service which may exceed this limit.
- The agreement will include a provision for ongoing maintenance of the decorative lighting program.

The maintenance agreement will make no provision for significant repairs similar to those approved by City Council in 2013. If additional repairs are deemed essential during the term of this agreement, Administration will submit a capital budget request to Council.

### **Budget/Financial**

The land transfer will have incremental operating costs as outlined below. The full financial implications as the City continues to advance plans for River Crossing and the adaptive reuse of the buildings that will come into the City's inventory are unknown at this time. As cost estimates and site purposing work is further refined, there will be future capital and operating budget requests coming forward for consideration. Incremental expenditures and liabilities will be absorbed within the approved 2019-2022 operating and capital budget where feasible.

#### Capital Funding:

The funded River Crossing capital profile (19-17-0601) includes \$6.7 million for the Rossdale Power Plant. Of this, \$1.0 million is being used for roof repairs and \$5.7 million is going into the Rossdale Power Plant Advanced Assessment and Priority Rehabilitation. This project includes preparing a historic building record, updating previous building condition assessments, preparing a conservation plan, and identifying and constructing limited, strategic renovations needed to prepare the power plant for initial new uses in the complex. It will be the responsibility of a future operator of the power plant to secure funding for more substantial renovations.

#### Incremental Operating Costs:

The land transfer is expected to cost the City at least an extra \$300,000 annually in operating costs as detailed below.

The City already has a \$540,000 annual approved operating budget for the Rossdale Power Plant. Through this budget, the City has been reimbursing EPCOR for power plant operating costs (winter heating to prevent foundation cracking, vandalism repair, groundwater monitoring, etc.) for several years. These costs have ensured the basic level of protective maintenance expected of a designated heritage resource and fulfilled requirements of the site's Alberta Environment and Parks decommissioning

and reclamation approval. Assuming that the land transfer occurs early in 2021, Administration will spend the year determining what additional costs and tradeoffs are associated with the City's interim operation of the power plant and the transfer of other land.

While it is not possible to precisely determine the costs before the City has had experience operating the power plant, current estimates of incremental operating costs associated with the land transfer include:

- Additional facilities maintenance costs: \$160,000.
- A new FTE for a dedicated property manager: about \$100,000.
- Operating and maintaining additional open space and road infrastructure: approximately \$14,000 annually.
- Environmental monitoring and reporting as per the Risk Management Plan and as required under the provincial Approval 1395-03-00: approximately \$30,000.
- Insurance: approximately \$10,000 if the City insures the power plant similar to how EPCOR has been insuring it (this cost does not include any environmental pollution insurance coverage that the City may decide to obtain considering the current environmental liabilities associated with the land).
- Security: to be determined through discussions with EPCOR (costs would likely be less if the City can pay EPCOR to continue providing security rather than establishing its own security measures).

As plans evolve regarding River Crossing implementation and any necessary potential deferred or discovered maintenance is identified, future operating budget requests may come forward for Council consideration.

### Financial Risks:

The most notable financial risks are associated with site contamination and related to the Rosssdale Power Plant. The complete financial impacts of possible environmental liabilities are unknown at this time. Full remediation of contaminants has been estimated in the tens of millions of dollars, but the risk management approach recommended by the City's consultants and environmental scientists is to leave most of the contaminants in place and to manage them to protect the public and the river. Development of an updated risk management plan for the Touch the Water area and the development of new risk management plans for the remaining parcels being transferred to the City is roughly estimated at \$150,000. The estimate is uncertain due to ongoing discussion with Alberta Environment and Parks regarding the risk management requirements.

If a full renovation of the power plant were undertaken, the River Crossing Business plan estimated it would cost approximately \$100 million. As outlined in the River

Crossing Business Plan, reuse of historic industrial facilities is generally done incrementally. Administration's strategy is to do limited, strategic renovations that will allow initial public uses to occur in the power plant and pump houses as the City establishes a permanent operator for the buildings. Future capital investments would become the responsibility of the operator. Numerous precedent case studies suggest that a long term, viable business plan for buildings of this nature will require multi-party investment, and combined partner funding from Federal, Provincial, Municipal and private sources.

### Legal

#### Land Transfer Agreement

Under the 1995 master agreement, Edmonton Power Corporation agreed to assume the liability for the transferred assets, and any claims relating thereto, arising before and after the closing date, including a release of hazardous substances on the real property. Excluded from this assumption of liability were releases caused by a department other than Edmonton Power. Under the land transfer agreement, the City would assume all liability for the Returned Land, including for the period during which EPCOR had use and possession of the Returned Land.

#### Maintenance Agreement

As per the City Administration Bylaw 16620, agreements over \$500,000 that do not arise from a competitive procurement process must be approved by the appropriate Committee of Council.

The City is subject to trade agreements that require an open competitive process for procurements of this value, unless a trade agreement exemption applies. For this agreement with EPCOR, there is an exemption in each applicable trade agreement.

### Public Engagement

Public engagement was not undertaken in the development of the land transfer agreement. Administration undertook public engagement and consultation in support of the River Crossing Business Plan, which identified the EPCOR parcels earmarked for transfer to the City as crucial components of the open space network. All public involvement was conducted in accordance with City Policy C513.

### Corporate Outcomes and Performance Management

Corporate Outcome(s): Edmontonians are connected to the city in which they live, work and play			
Outcome(s)	Measure(s)	Result(s)	Target(s)



Edmontonians are connected to the city in which they live, work and play	Edmontonians' Assessment: Connected to Community	47% (2017)	No target is currently set for this measure
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## Risk Assessment

Risk Element	Risk Description	Likelihood	Impact	Risk Score (with current mitigations)	Current Mitigations	Potential Future Mitigations
Legal/Regulatory	New contamination or information is discovered related to contaminant risk, thereby increasing financial liability or requiring unexpected remedial measures.	3 - Possible	3 - Major	9 - Medium	City has worked with EPCOR to incorporate a protocol for addressing environmental liabilities into the land transfer agreement.	City will continue to work with EPCOR and Alberta Environment on any additional work required to meet environmental requirements.
Legal/Regulatory	Alberta Environment and Parks does not approve the Risk Management Plan or imposes other remedial measures not planned by the City.	2-Unlikely	3 - Major	6 - Low	The City has submitted a Risk Management Plan to Alberta Environment which has received initial review.	City will continue to work with Provincial regulators to address requests for additional information and finalize risk management requirements.
Legal/Regulatory	The City cannot or does not comply with the historical designation requirements.	2 -Unlikely	2 - Moderate	4 - Low	The City understands obligations under the Historical Resources Act and has previously worked closely with the Province when undertaking renovations.	Continued collaboration with the Province to ensure that any future work undertaken in the buildings aligns with all relevant heritage requirements.



Public Perception	City may be perceived as not following through with plans for River Crossing and Touch the Water Promenade.	2- Unlikely	3 - Major	6 -Low	City has been working closely with EPCOR to address all outstanding issues and advance subdivision.	Continued work on all pending administrative and technical components of the subdivision in order to ensure that development plans for the area can be advanced.
Financial	Full costs associated with the City taking on ownership of buildings are unknown.	4 - Likely	3 - Major	12 - Medium	The City ensured that previous engineering estimates for building renovations were included in the River Crossing Business Plan to account for inflation.	City is in the process of hiring building engineering consultants to do a full, updated condition assessment of the buildings.
Financial	An energy audit will no longer be required as the building has been granted an exception to Policy C532. Cost of retrofitting the building to meet energy efficiency and GHG reduction targets of the City or of other potential partners is unknown.	5 - Almost Certain	2 - Moderate	10 - Medium	The City has identified the need to study energy efficiency options in heritage buildings.	City will work with any future partners to understand the cost and GHG implications of retrofitting and running these facilities.
Property Damage	Failure to adequately maintain Power Plant may result in significant damage to foundations.	3 - Possible	4 - Severe	12 - Medium	City has been contributing to maintenance and heating of Power Plant	Formal agreement for ongoing maintenance of Power Plant to ensure structural integrity.

## Attachments

1. Proposed Subdivision Boundaries
2. Proposed Public Access Easement
3. Terms for the Land Transfer Agreement between the City and EPCOR

### 4. Terms for the Maintenance Agreement between the City and EPCOR

#### **Others Reviewing this Report**

- M. Persson, Chief Financial Officer and Deputy City Manager, Financial and Corporate Services
- C. Owen, Deputy City Manager, Communications and Engagement
- G. Cebryk, Deputy City Manager, City Operations
- J. Meliefste, Acting Deputy City Manager, Integrated Infrastructure Services
- R. Smyth, Deputy City Manager, Citizen Services
- B. Andriachuk, City Solicitor