

Non-Binding Term Sheet (“Term Sheet”)

Parties

- 1) **EPCOR Power Development Corporation** or an affiliate thereof, a corporation registered pursuant to the laws of the Province of Alberta (“**EPCOR**”); and
- 2) The **City of Edmonton**, (“**City**”)

1. Project Development

Oversight Framework: The Parties agree to develop an oversight framework and form a Committee, guiding the joint strategic planning, operation and growth of the district energy system in downtown Edmonton (the “Project”). The Parties agree that the Memorandum of Understanding between the Parties dated July 10, 2020 (the “MOU”), as amended, is not superseded or replaced in any way by this Term Sheet and confirm their intention that the MOU will continue to apply to the development of the Project in accordance with the terms contained therein.

2. Construction and Operation

a. Primary Relationship Agreement

- i. There will be a primary relationship agreement that will address the Parties’ responsibilities with respect to the Project (the “Primary Agreement”). The Primary Agreement will take a form that best represents the relationship - a design, build, finance, operate and maintain agreement, concession agreement or other similar form.
- ii. The City will own all infrastructure constructed pursuant to the Primary Agreement.
- iii. The Primary Agreement will provide for a 30-year operations and maintenance period, subject to change if required pursuant to applicable legislation, and such period will commence upon completion of construction.
- iv. Pursuant to the Primary Agreement and the customer agreements EPCOR will take primary responsibility for the design, construction, financing, operation and maintenance of the Project.

1. EPCOR will subcontract the design and construction work to a third party and may subcontract all or a portion of the operation and maintenance work to a third party, including an EPCOR affiliate.
2. EPCOR and the City will finance the design and construction costs for the Project. It is currently anticipated that the City will contribute approximately \$7,000,000 to the Project (in addition to the cost of the alterations required at the Winspear Centre) in the form of progress payments during construction. EPCOR will finance the remainder of the approximately \$14,000,000 in capital costs.
3. EPCOR will be compensated for the financing and operations and maintenance work required by the Primary Agreement and/or customer agreements through payment of a top up fee from the City, as owner, and recovery of electricity and thermal energy rates from customers of the Project, including the City as customer.
 - i. It is currently anticipated that EPCOR will require an annual fee of approximately \$2,400,000 in the first year of the operations period, which includes: 1) a fixed amount totalling approximately \$1,563,000 (subject to an adjustment mechanism as outlined below) for operations and maintenance and capital repayment, and 2) a variable amount, forecasted at \$837,000, that is to be treated as flow-through. The fees indicated above may be subject to adjustment and negotiation by the Parties, acting reasonably.
 - ii. EPCOR will be paid the annual fee through the monthly collection of electricity and thermal energy rates from customers pursuant to customer agreements and a top up payment from the City pursuant to the Primary Agreement.
 - iii. The operations and maintenance and capital repayment fees will be increased by 5% per year for the first 5 years of the operations period. After the first 5 years of the operations period, the operations and maintenance and capital repayment fees will be increased by application of a mutually agreed to index. The operation and maintenance and capital repayment fees will be subject to achievement of performance metrics with payment deductions applicable if performance metrics are not achieved.

- iv. The cost of commodities required for operation of the Project, including gas costs, electricity costs (net of sales of excess electricity from the CHP into the grid), delivery charges, carbon levy and any other charges associated with the commodities will be charged to the customers as a flow through in proportion to their relative usage.

b. Winspear Centre Lease

- i. EPCOR will enter into a Lease Agreement with the Francis Winspear Foundation for access to and use of the space at the Winspear Centre housing the CHP. The Lease Agreement will terminate, or be transferable, upon termination of the Primary Agreement.

c. Customers

- i. The initial buildings to be served by the system will be Century Place, Chancery Hall and the Winspear Centre. The City will be the customer for Century Place and Chancery Hall and the Francis Winspear Foundation will be the customer for the Winspear Centre.
- ii. EPCOR will be responsible for negotiating and entering into the customer agreements required for the provision of service to the above-noted buildings. Binding customer agreements, including the provision of any security that EPCOR determines is necessary, or binding construction commitment agreements with each customer must be in place prior to EPCOR commencing construction of the Project.
- iii. The Parties will determine the rate structure applicable to the customer agreements, provided that such rate structure will be consistent with the principles set out in this Term Sheet.

3. Expansion

- a. EPCOR will be provided a right of first refusal to design, build, finance, operate and maintain services required in connection with any expansion to the Project beyond the initial three buildings, provided that EPCOR will be entitled to earn a rate of return commensurate with the level of risk on such services.
- b. The Primary Agreement will contemplate a mechanism for potential adjustment of the annual operations and maintenance and capital repayment fee in the future

based on expansion and the fact that the City's investment has contributed to the cost of excess system capacity that can be used for future growth.

- c. The City may determine that certain expansions of the system would require further Council approval and regulation of rates through a utility bylaw and any such expansion will be subject to Council approval, provided that if such Council approval or regulation of rates represents a change to the commercial arrangements then EPCOR will have termination rights pursuant to the Primary Agreement, the customer agreements and any agreement in place with respect to the expansion.

4. Definitive Agreements and Conditions Precedent

- a. Below is a summary of the various legally binding agreements required to complete the Project (the "Definitive Agreements"):
 - i. Primary Agreement between the City and EPCOR;
 - ii. Agreements with respect to land rights required for the construction, operation and maintenance of the system, if any, which will be entered by the City.
 - iii. Lease Agreement between EPCOR and the Francis Winspear Foundation for access to and use of the space at the Winspear Centre housing the CHP;
 - iv. Customer Agreements between EPCOR and customers (including the City) for service to Century Place, Chancery Hall and the Winspear Centre;
 - v. Design-Build subcontract between EPCOR and a third party;
 - vi. Operations and Maintenance subcontract between EPCOR and a third party, if applicable; and
 - vii. Interface Agreement – EPCOR will determine if this is required.

- b. The parties acknowledge that the following are conditions precedent to the Definitive Agreements noted:
 - i. Customer agreements acceptable to EPCOR will be a condition precedent to the Primary Agreement;
 - ii. City borrowing bylaw regarding EPCOR financing is a condition precedent to the Primary Agreement;
 - iii. AUC Approval of the CHP system for the Primary Agreement and Design-Build subcontract between EPCOR and a third party; and
 - iv. Approval of the EDTI application for the electricity grid connection for the Primary Agreement and Design-Build subcontract between EPCOR and a third party.