

**THE CITY OF EDMONTON**

**BYLAW 13655**

**EPCOR DISTRIBUTION INC. FRANCHISE AGREEMENT BYLAW**

Whereas, pursuant to section 4 of the Water, Gas and Electric Companies Act RSA 2000, c. W-4, Council is required to consent to a company providing power services within a municipality by passing a bylaw granting that consent:

Edmonton City Council enacts:

**PART I - PURPOSE, DEFINITIONS AND INTERPRETATION**

**PURPOSE**

- 1) The purpose of this bylaw is to consent to an agreement permitting EPCOR Distribution Inc. to distribute electric power within Edmonton.

**APPROVAL OF  
FRANCHISE  
AGREEMENT**

- 2) The Franchise Agreement between the City of Edmonton and EPCOR Distribution Inc. attached as Schedule "A" is hereby approved.

**PART II - GENERAL**

**EFFECTIVE DATE**      3)      This Bylaw takes effect on the date that it is passed.

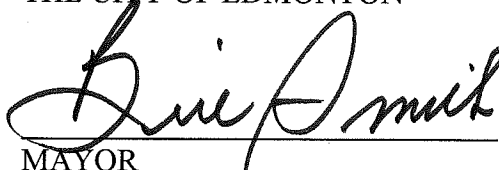
READ a first time this      24<sup>th</sup>      day of    February      2004;

READ a second time this      24<sup>th</sup>      day of    February      2004;

READ a third time this      24<sup>th</sup>      day of    February      2004;

SIGNED and PASSED this      24<sup>th</sup>      day of    February      2004.

THE CITY OF EDMONTON

  
MAYOR

  
CITY CLERK

## SCHEDULE "A"

THIS FRANCHISE AGREEMENT EFFECTIVE THE 1<sup>st</sup> DAY OF JANUARY, 2004.

BETWEEN:

**THE CITY OF EDMONTON,**  
a municipal corporation under the laws of the Province of Alberta  
(hereinafter referred to as the "City")

OF THE FIRST PART

- and -

**EPCOR DISTRIBUTION INC.,**  
a corporation under the laws of the Province of Alberta  
(hereinafter referred to as "EDI")

OF THE SECOND PART

WHEREAS EDI operates a public utility as defined in the *Municipal Government Act*, for the purpose of, *inter alia*, distributing electric power within the Municipality;

AND WHEREAS pursuant to sections 45 and 61 of the *Municipal Government Act* the City has the right to charge a fee for the use and occupation of City Lands and to grant an exclusive right to use City Lands for public utility purposes;

AND WHEREAS EDI wishes to maintain and install poles, wires, cables, fibre optic cables, ducts, conduits, manholes and other accessories, structures and equipment in, under, above, on, through or across highways, roads, streets, lanes, public space or public water within the Municipality and owned by or under the direction, control and management of the City;

AND WHEREAS the City wishes to grant exclusive rights to EDI to use City Lands and to provide electric power distribution services within the Municipality;

AND WHEREAS the parties desire to document their respective rights and obligations hereunder with respect to the use by EDI of the City Lands;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the sum of ten (\$10) dollars paid by each party to the other, receipt of which is hereby acknowledged, and of the mutual covenants and agreements herein, and subject to the terms and conditions in this Agreement, the parties agree as follows:

### 1. DEFINITIONS

1.1 For the purposes of construing this Agreement, the recitals hereto, the schedules annexed hereto, and any other documents or undertaking 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) **“Attachment”** or **“Attach”** means the use of, or attachment to, the Equipment of EDI by a Third Party pursuant to Article 4 of this Agreement;
- (c) **“City Manager”** means the chief administrative officer for the City or his or her designate;
- (d) **“City Land(s)”** means the highways, roads, road allowances, streets, lanes, bridges, public utility lots, public space or public water within the Municipality and owned by or under the direction, control and management of the City, excluding land (except walkways and public utility lots) for which a certificate of title is registered in the name of the City in the Land Titles Office;
- (e) **“Customer(s)”** means any person, individual, body corporate, firm or other entity that consumes electric power within the Municipality;
- (f) **“EDI Terms and Conditions”** means EDI’s Terms and Conditions for Distribution Access Service and EDI’s Terms and Conditions for Distribution Connection Services;
- (g) **“Effective Date”** means January 1, 2004;
- (h) **“Electric Distribution System”** means EDI’s system of works, including the plant, equipment, systems and services necessary to distribute electric power, but does not include a generating unit or transmission facility;
- (i) **“Equipment”** means poles, wires, cables, fibre optic cables, ducts, conduits, manholes and other accessories, structures and equipment related to the Electric Distribution System owned by or under the direction, control or management of EDI, including Attachments that become the property of EDI but, excluding City owned equipment that EDI manages for the City;
- (j) **“Fee”** means the fee payable to the City pursuant to Section 5.1 herein;
- (k) **“Line Assignment Permit”** means a permit issued by the City for an approved alignment on City Lands;
- (l) **“Municipality”** means the geographical area within the boundaries of the City;
- (m) **“Municipal Government Act”** means Chapter M-26, R.S.A. 2000, and its successors, equivalents or replacements thereto;

- (n) **“OSCAM Permit”** means a permit issued by the City to allow construction on City Lands;
- (o) **“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 or agreement with EDI; and
- (p) **“Work”** means any work related to the construction, installation, maintenance, operation, repair, replacement, removal or extension of the Equipment or any Attachment on City Lands by EDI or a Third Party.

## 2. GRANT OF ACCESS

2.1 Subject to applicable law and the terms and conditions of this Agreement, the City hereby grants to EDI:

- (a) the exclusive right and license to use the City Lands to construct, install, maintain, operate, repair, replace, extend and remove the Equipment for the purpose of constructing, operating and extending the Electric Distribution System within the Municipality; and
- (b) the exclusive right to distribute electric power within the Municipality.

2.2 The City will not be liable to EDI for any infringement of any of the exclusive rights granted to EDI pursuant to Section 2.1 hereof where the City has not granted such right to the infringing party. Subject to applicable law, the City and EDI will cooperatively use their best reasonable efforts to protect EDI's rights granted pursuant to Section 2.1 herein.

2.3 Subject to applicable law and the exclusive rights granted pursuant to Section 2.1 herein, the grant of rights to EDI 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 such use will not materially hinder or interfere with EDI's use in accordance with Section 2.1(a) herein and further provided that EDI's use is in accordance with the terms and conditions of this Agreement.

2.4 Subject to Section 23.3 herein, no use of City Lands pursuant to this Agreement shall create or vest in EDI any ownership or property rights in the City Lands or any portion thereof, and EDI shall be and remain a mere licensee of the City Lands.

2.5 Subject to Article 4 and Section 23.3 herein, nothing in this Agreement gives to EDI the right to permit any person to use the City Lands for any purpose.

2.6 Subject to applicable law, the grant of rights to EDI pursuant to this Agreement shall not restrict the City's right to cross EDI's Equipment with its equipment. EDI shall not charge a fee to the City to cross EDI's Equipment pursuant to this Section 2.6. The City is however responsible for all of its costs in effecting the crossing of its equipment with EDI's Equipment.

2.7 Nothing in this Agreement shall be deemed to prevent any person from distributing electric power on property of which that person is the owner or tenant for use solely by that owner or tenant.

2.8 Subject to EDI's servicing standards, the City may, for any reasonable municipal purpose, make use of the Equipment or may share in the use of trenches excavated by EDI provided that such use complies with all applicable law and does not materially interfere with the use by EDI or any Third Party. The labour and material cost of any additional equipment required by reason of the use of the facilities by the City shall be paid for by the City.

### **3. ELECTRIC POWER DISTRIBUTION COVENANTS**

3.1 Subject to applicable law, EDI shall distribute all electric power within the Municipality as directed by the City during the term of this Agreement.

3.2 EDI may interrupt or reduce the distribution of electric power for any reason or circumstance as provided for in the EDI Terms and Conditions.

### **4. THIRD PARTY ATTACHMENTS**

4.1 Subject to applicable law, to the extent that EDI is reasonably able to allow any person to access or use its Equipment, EDI 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 of the City Lands.

4.2 EDI 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. EDI agrees that a breach of any of the terms and conditions of this Agreement by a Third Party shall be a breach of this Agreement by EDI.

4.3 EDI shall promptly provide to the City, upon request:

- (a) the names and addresses of all Third Parties who Attach to the Equipment; and
- (b) all other information requested by the City, acting reasonably, with respect to those Attachment rights.

### **5. PAYMENT**

5.1 Subject to Section 5.3 herein, in consideration of the rights granted to EDI by the City pursuant to this Agreement, EDI 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. The amounts payable by EDI to the City pursuant to this Section 5.1 shall be referred to in this Agreement as the "Fee".

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

5.3 EDI shall pay the Fee to the City by monthly installments, payments to be made on the last day of each month commencing January 31, 2004, without any deductions whatsoever, but subject to any adjustments contemplated in Schedule "A" to this Agreement.

5.4 The Fee is a charge for the use of the City Lands and is not in lieu of taxes (including, without limiting the generality of the foregoing, business, property and linear property taxes) or local improvement charges payable to the City, and, subject to any other agreement between the City and EDI, EDI shall pay to the City all taxes properly assessable under the taxing authority of the City.

5.5 The Fee to be paid by EDI to the City is based on the assumption that the rights granted to EDI 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 EDI to the City therefore shall be adjusted on a per diem basis.

5.6 EDI, on the written request of the City, shall provide to the City on or before April 30 in each year, or such other time agreed upon by the parties, a report by the auditor of EDI for the previous calendar year setting forth the amounts collected by EDI from Customers and comparing the amounts so collected with the amounts paid to the City hereunder.

## **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 14 hereof.

## **7. WORK ON CITY LANDS**

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

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 EDI will provide to the City a copy of its Construction Standards within seven (7) days of receiving a written request from the City. EDI's Construction Standards must meet or exceed the requirements of the City's Design and Construction Standards, City policies or City practices. It is EDI's sole responsibility to determine if its Construction Standards meet the City's requirements. If the City's standards do not cover all articles dealt with in EDI's Construction Standards the City then reserves the right to review and approve those articles of EDI's 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 10 hereof, at any time during the term of this Agreement, EDI shall:

- (a) subject to any provisions of any City line assignment policy, obtain a Line Assignment Permit and OSCAM Permit from the City; and
- (b) submit detailed engineering plans 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 EDI that it is the intention of the parties under this Section 7.4 to mutually agree on exemptions for routine Work carried out by EDI on City Lands.

7.5 Subject to applicable law, EDI agrees that all Work carried out by EDI on City Lands pursuant to this Agreement shall:

- (a) be conducted and completed to the construction and safety 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 construction standards, City service standards and City policies and procedures, as amended from time to time;
- (d) be in accordance with the EDI Construction Standards Manual; and
- (e) not damage the property of the City or any existing right of way user, including but not limited to, poles, wires, cables, fibre optic cables, ducts, conduits, manholes and other accessories, structures and equipment.

EDI acknowledges that the construction and safety standards and codes prescribed by the City Manager, City construction standards, City service standards and City policies and procedures in effect as of January 1, 2004 are reasonable and valid. All such construction and safety standards, construction and safety codes, City construction standards, City service standards and City policies and procedures established or amended by the City after January 1, 2004 in respect of the rights of EDI in this Agreement shall not be unreasonably applied to EDI. If EDI believes that any procedure or practice established or amended by the City after January 1, 2004 with respect to the rights of EDI in this Agreement is being unreasonably applied to EDI, then EDI may request that the obligation of EDI to abide by that procedure or practice be resolved pursuant to Article 17. Without limiting the generality of the foregoing, the City covenants that any applicable standard, code, policy or procedure that materially affects EDI will not be established or amended after January 1, 2004 without prior consultation with EDI.

7.6 Upon completion of any Work pursuant to this Agreement EDI shall immediately restore and repair any damage to the City Lands or 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 EDI fails to restore and repair in accordance with this Section 7.6 within twenty (20) days of



receipt of notification from the City, the City may complete the restoration and repair and charge all reasonable costs to EDI.

7.7 At its sole cost and expense EDI 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 right to salvage all or a portion of such materials upon notice to EDI and EDI will comply with such direction of the City Manager acting reasonably.

7.8 Where a crossing outside of the approved alignment for the Equipment is required by EDI or a Third Party to distribute electric power, EDI will obtain or cause the Third Party to obtain, as the case may be, a Line Assignment Permit from the City.

7.9 EDI 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 large or complex 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 17 herein. The parties agree that "as built" drawings may be provided to the City by EDI pursuant to the GeoEdmonton Utility Right of Way Alliance.

7.10 At any time, within seventy two (72) hours of receipt of notification from the City, EDI 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.

7.11 EDI agrees, at its sole cost and expense and subject to any other agreements between the parties, to be a full participant in the GeoEdmonton Utility Right of Way Alliance and to update, maintain and make available in a timely manner the facility mapping information of EDI as required by the City.

7.12 Any approvals or consents provided by the City to EDI 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.

## **8. MAINTENANCE AND REPAIR**

8.1 EDI agrees, at its sole cost and expense, to maintain the Equipment in a safe, clean and sanitary condition and in good and substantial repair, to the satisfaction of the City Manager, acting reasonably. EDI 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, to the satisfaction of the City Manager, acting reasonably.

8.2 At any reasonable time, and upon prior notice, EDI will permit the City's duly qualified or certified personnel or agents to inspect the Equipment and Attachments for the purpose of ascertaining the condition or state of repair thereof or of verifying that no default has occurred under this Agreement.

8.3 Where an inspection pursuant to Section 8.2 hereof reveals that repair or maintenance of a material nature is necessary, the City may give EDI notice of the need for such repair or maintenance and EDI hereby agrees to promptly and in accordance with such notice, commence or cause the same to be commenced within the time limited in such notice and to diligently proceed to complete the same in a good and workmanlike manner. In default of EDI carrying out such repair or maintenance, the City, acting reasonably, may carry it out for the account and at the sole cost and expense of EDI.

## **9. RELOCATION**

9.1 Upon reasonable notice from the City, EDI, at its sole cost and expense, shall commence the work to relocate any Equipment and Attachments, within 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 Notwithstanding the foregoing, EDI shall not be required to move any part of the Equipment after receipt of notice from the City in accordance with this Article where:

- (a) EDI has illustrated to the satisfaction of the City, acting reasonably, that an appropriate alternative course of action is available;
- (b) the City has provided EDI with its written approval of the alternative course of action (which approval may not be unreasonably withheld by the City); and
- (c) EDI 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 timeframe (taking into account any delays which the City may encounter as a result of EDI utilizing the alternative course of action).

## **10. EMERGENCY**

10.1 In an emergency or situation of necessity, involving any Equipment or Attachment, or the activities of EDI or a Third Party on City Lands, which constitutes a danger or potential danger of bodily injury or substantial damage to property, EDI 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 Section 21.2 herein. If advance notice cannot be provided by EDI, EDI shall provide notice to the City as soon as reasonably possible thereafter. EDI 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 as minimally as possible in the circumstances.

10.2 Notwithstanding the provisions of Section 10.1 herein in the event of an emergency situation, the City may take any measures deemed necessary to alleviate the emergency as the City shall determine, and EDI shall reimburse the City for all expenses thereby incurred as a result of any act or omission of EDI in respect of the Equipment or Attachment or the failure of EDI to comply with Section 10.1 hereof.

10.3 Notwithstanding the terms and conditions of this Agreement, the City acknowledges that in certain circumstances and upon the request of a Customer, it will be in the interest of EDI and the City to allow EDI to perform Work for Customers in situations where timely provision of goods and services is required. The City acknowledges and agrees that in such circumstances EDI will not be in default of this Agreement by failure to provide prior notice or obtain prior approval from the City in accordance with the terms of this Agreement, provided that EDI acts reasonably in determining that timely performance is required and that the notice and approval provisions in this Agreement cannot reasonably be applied. In the event that EDI relies on the provisions of this Section it will provide notice and obtain approval from the City as required pursuant to this Agreement as soon as reasonably possible in the circumstances.

## **11. HAZARDOUS SUBSTANCES**

11.1 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 EDI at its own risk with all faults and imperfections whatsoever and on a strictly "as is, where is" basis.

11.2 EDI agrees to assume any and all environmental liabilities relating to the use of the City Lands by EDI 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 EDI or a Third Party on the City Lands or which result from any products or goods brought upon the City Lands by EDI or a Third Party or by any person with the consent, express or implied of EDI or a Third Party.

## **12. INDEMNIFICATION**

12.1 EDI:

- (a) shall be liable to the City for;
- (b) shall indemnify and hold harmless the City, its servants, agents, and employees from and against;

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, licenses or privileges granted to EDI or the use of the City Lands by EDI or a Third Party pursuant to this Agreement;
- (ii) any breach, violation or non-performance of any covenant, condition or agreement in this Agreement to be fulfilled, kept, observed or performed by EDI;
- (iii) any damage to property or injury to a person or persons, including death resulting at any time therefrom, occasioned by the use, activities or operations of EDI or a Third Party, in, on or about the City Lands; or
- (iv) 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 byproducts, 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, activities or operations of EDI or a Third Party, in, on or about the City Lands.

This clause shall survive the termination of this Agreement.

12.2 The City:

- (a) shall be liable to EDI for;
- (b) shall indemnify and hold harmless EDI, its servants, agents, and employees from and against;

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 EDI or which EDI 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 property or injury to a person or persons, including death resulting at any time therefrom, occasioned by the use, 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 substances (including, but not limited to, petroleum products and byproducts, 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, activities or operations of the City, in, on or about the City Lands.

This clause shall survive the termination of this Agreement.

12.3 Notwithstanding any approvals, consents, advice or direction given by the City with respect to any matter referred to in this Agreement, EDI shall be and remain liable and will indemnify the City in accordance with Section 12.1 hereof.

### **13. INSURANCE**

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

13.2 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 EDI by the City which will be duly completed by EDI's broker and/or insurer. EDI'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.

13.3 As an alternative to submitting the Certificate of Insurance form, EDI or EDI'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.

13.4 Upon request by the City, EDI 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 EDI for the additional insurance requirement.

13.5 It is further understood and agreed that any policy limits under EDI's coverage do not define or limit EDI'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.

### **14. TERMINATION**

14.1 This Agreement shall terminate on the occurrence of any of the following events:

- (a) if EDI 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, EDI disputes the allegation of default and pursues the resolution of that dispute in the manner contemplated in Article 17 herein, or EDI 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 EDI;
- (c) if EDI 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 EDI under the *Bankruptcy and Insolvency Act* (Canada);
- (d) upon the mutual agreement of the parties; or
- (e) subject to Article 15 herein, upon the expiration of twenty (20) years from the Effective Date.

14.2 In the event of termination of this Agreement and subject to applicable law, at the option of the City in its sole discretion, the Equipment shall either remain upon and be surrendered to the City by EDI and become the absolute property of the City, or all or part of the Equipment shall be removed from the City Lands by EDI, at the sole cost and expense of EDI. If the City requires the removal of all or part of the Equipment from the City Lands, the Equipment shall be removed within a reasonable period of time and EDI shall forthwith repair any damage resulting from the removal and restore the City Lands to the condition in which they existed prior to the removal. If EDI fails to remove its Equipment and restore the City Lands, the City may complete the removal and restoration and charge all costs to EDI. EDI agrees that the insurance referred to in Article 13 hereof shall remain in full force and effect until all EDI's Equipment is removed and the City Lands are restored in accordance with this Section.

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

## **15. FIVE YEAR REVIEW**

15.1 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 set a new Fee payable by EDI pursuant to Section 5.1 hereof, in accordance with the provisions of this Article 15.

15.2 The City will give written notice to EDI that it intends to review and set a new Fee payable by EDI in accordance with Section 15.1 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.

15.3 In the event that the City gives notice to EDI of its intention to review and set a new Fee pursuant to Section 15.1 herein, the City or EDI shall have the right to include in the review the terms of Article 9 herein.

**16. RENEWAL**

16.1 Twelve (12) 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.

16.2 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.

**17. ARBITRATION**

17.1 Except as otherwise within the constitutional jurisdiction of any regulatory authority at law, or herein, any dispute (a "Dispute") between the parties arising out of or as a consequence of this Agreement, including without limiting the generality of the foregoing any dispute as to the interpretation, application or operation of this Agreement or of any of the provisions hereof, shall be determined as follows:

17.2 The party desiring to refer the Dispute for arbitration (the "Notifying Party") shall notify the other party (the "Notified Party") in writing (the "Notice") of the nature of and the matters alleged by the Notifying Party to be in dispute.

17.3 Within fourteen (14) days of the receipt of the Notice, the Notified Party, by written notice (the "Notice Back"), may notify the Notifying Party of all matters in the Notice which are in dispute.

17.4 If the Notified Party does not send a Notice Back to the Notifying Party as contemplated in Section 17.3 herein the Notified Party shall be deemed to have admitted or accepted responsibility or liability for all matters alleged by the Notifying Party to be in dispute in the Notice.

17.5 The Notified Party shall be deemed to have admitted or accepted responsibility or liability for all matters alleged by the Notifying Party to be in dispute and which the Notified Party has not disputed in the Notice Back.

17.6 The terms of reference for arbitration shall be only those matters in the Notice which remain in dispute and are described, as such, in the Notice Back.

17.7 Within seven (7) days of the establishment of the terms of reference pursuant to Section 17.6 herein the parties shall appoint a single arbitrator to decide the Dispute, failing which, within a further five (5) days, they shall each appoint an arbitrator, and within seven (7)

days of the date the last of them appointed an arbitrator, the two (2) arbitrators shall appoint a third arbitrator and the three (3) arbitrators shall comprise the arbitration committee (the "Committee").

17.8 The arbitrator appointed by the two (2) arbitrators shall be the "chair" of the Committee, provided further, that if the two (2) arbitrators fail to appoint a third arbitrator, then both parties or either of them may apply to a Justice of the Court of Queen's Bench of Alberta to have the third arbitrator appointed.

17.9 If either party fails to appoint an arbitrator within the five (5) day period described in Section 17.7 hereof the arbitrator appointed by the other party shall be deemed to be the Committee and the decisions of that arbitrator on the Dispute shall be binding upon the parties.

17.10 Within thirty (30) days of the establishment of the Committee, or such further period as may be agreed upon by the parties, the Committee shall hear and endeavour to resolve the Dispute in accordance with the terms of reference.

17.11 The decision of the majority of the Committee shall be the decision of the Committee provided that if no majority decision is reached, the decision of the chair shall be deemed to be the decision of the majority of the Committee.

17.12 The decision of the Committee on the Dispute will be final and binding upon the parties.

17.13 The cost of arbitration shall be borne by any party or apportioned between the parties in any manner as the Committee finds to be equitable in the circumstances.

17.14 If, within thirty (30) days of the date:

- (a) by which the Notified Party is deemed to have admitted or accepted responsibility or liability for any matters alleged by the Notifying Party to be in dispute; or
- (b) of a decision of the Committee;

the Notified Party or the party against whom a decision of the Committee is awarded, (the "Defaulting Party") fails to remedy the matter or comply with the terms of the decision of the Committee, or, in the case of a matter which cannot be remedied within thirty (30) days, fails to initiate and diligently pursue the remedy thereof within those thirty (30) days, the Notifying Party or the party in whose favour a decision of the Committee is awarded, may apply ex parte, to a Justice of the Court of Queen's Bench of Alberta for a judgment against the Defaulting Party.

17.15 Except as herein modified, the provisions of the *Arbitration Act* (Alberta), as amended, shall apply to any arbitration procedure involved pursuant to this Agreement.



**18. TAXES**

18.1 EDI 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 of the City Lands by EDI or a Third Party pursuant to this Agreement, and if any such taxes, rates, assessments, charges, levies or impositions are levied, imposed, or placed, EDI shall make payment thereof.

18.2 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 EDI, and EDI shall on written demand by the City, pay to the City any and all such taxes. EDI shall not be obligated to pay such taxes to the City as contemplated in this Section if EDI shall have delivered to the City Treasurer a statutory declaration evidencing that EDI 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 EDI is a registrant as hereinbefore stated, and pursuant to this Section has the obligation to remit such taxes directly to the relevant taxing authority, then in such case, EDI 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 EDI of any such taxes.

**19. FAILURE TO PERFORM**

19.1 Without restricting the City's rights pursuant to Section 14.1 herein, in the event that EDI at any time fails to perform its obligations pursuant to this Agreement, the City may, at its option, perform such obligations upon written notice to EDI in that regard. Within sixty (60) days of receipt by EDI from the City of an invoice setting forth the costs incurred by the City in performing such obligations or any other costs payable by EDI to the City hereunder, EDI shall pay such costs to the City.

19.2 If EDI 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, acts of terrorism, severe weather, 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 EDI or the City, then EDI 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 EDI 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.

19.3 When any amount payable pursuant to this Agreement by EDI 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.

## **20. COMPLIANCE**

20.1 EDI 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 EDI to conduct its business or exercise the rights granted to it pursuant to this Agreement on the City Lands.

20.2 EDI 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.

20.3 EDI 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, EDI shall obtain all approvals ordinarily required from the City Manager and shall be subject to all City servicing standards, all construction standards, all OSCAM 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. EDI acknowledges that the procedures, practices, policies and standards in effect as of January 1, 2004 are reasonable and valid. All such procedures, practices, policies and standards established or amended by the City after January 1, 2004 in respect of the rights of EDI in this Agreement shall not be unreasonably applied to EDI. If EDI believes that any procedure, practice, policy or standard established or amended by the City after January 1, 2004 with respect to the rights of EDI in this Agreement is being unreasonably applied to EDI, then EDI may request that the obligation of EDI to abide by that procedure, practice, policy or standard be resolved pursuant to Article 17 herein. Without limiting the generality of the foregoing, the City covenants that any applicable procedure, practice, policy or standard that materially affects EDI will not be established or amended after January 1, 2004 without prior consultation with EDI.

## **21. NOTICE**

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

- (a) to the City at:

The City of Edmonton  
Transportation and Streets Department  
15<sup>th</sup> Floor, Century Place  
9803 - 102A Avenue  
Edmonton, Alberta T5J 3A3  
Attention: General Manager

With a copy to:

The City of Edmonton  
Law Branch  
9<sup>th</sup> Floor, Chancery Hall  
3 Sir Winston Churchill Square  
Edmonton, Alberta T5J 2C3  
Attention: City Solicitor

- (b) to EDI at:

Epcor Distribution Inc.  
17<sup>th</sup> Floor, Epcor Centre  
10065 Jasper Avenue  
Edmonton, Alberta T5J 3B1  
Attention: President

with a copy to:

Epcor Distribution Inc.  
20<sup>th</sup> Floor, Epcor Centre  
10065 Jasper Avenue  
Edmonton, Alberta T5J 3B1  
Attention: Associate General Counsel

or to any other address as may be designated in writing by the parties. Notice given by registered mail, if posted in Alberta, shall conclusively be deemed to have been received on the fifth business day following the date on which such notice is mailed. In the event of a postal strike, notice may only be given by personal delivery.

21.2 EDI shall provide to the City a list of twenty four (24) hour emergency contact personnel for EDI and shall ensure that the list is always current.

## **22. ASSIGNMENT**

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

22.2 Notwithstanding the provisions of Section 22.1 herein, EDI may assign this Agreement to a wholly owned subsidiary (the "Subsidiary") of EPCOR UTILITIES INC. provided that EDI 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 EDI's. No assignment shall affect the obligation of EDI to perform and observe all of its obligations pursuant to this Agreement.

## **23. GENERAL**

23.1 Notwithstanding any other provision of this Agreement, the obligations, excepting those under Sections 4.3 and 7.10 herein, of EDI to the City pursuant to this Agreement do not apply to any Attachment of Telus Communications Inc. pursuant to rights granted to Telus Communications Inc. or its predecessors or its successors and assigns (collectively "Telus") pursuant to any written agreements with the City. For certainty, the City and EDI acknowledge and agree that Telus has contractual obligations directly with the City that may be inconsistent with the obligations of EDI to the City pursuant to this Agreement. EDI is therefore not required to ensure that Telus deals with Attachments in accordance with this Agreement. The City and EDI will cooperate with each other as circumstances dictate to control and manage all issues relating to Attachments involving Telus.

23.2 EDI 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 EDI or a Third Party. Any lien so filed shall be removed from title to the City Lands by EDI within twenty (20) days following notice from the City to EDI of the existence of a lien.

23.3 The City acknowledges and agrees that this Agreement is applicable only to EDI's Equipment located on City Lands. This Agreement does not impair, hinder, charge or restrict in any manner the right of EDI to use EDI's Equipment on land owned by EDI or any other person.

23.4 Subject to Section 23.3 herein and any other agreement between the parties, no rights granted hereunder shall create an interest in land, and EDI shall not register its interest under this Agreement as such.

23.5 EDI 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.

23.6 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.

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

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

23.9 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.

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

23.11 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.

23.12 The waiver by the City or EDI 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.

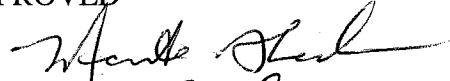
23.13 Nothing herein shall be construed as in any way constituting this a partnership among or a joint venture by the parties hereto, or be construed to evidence the intention of the parties to constitute such a relationship. Neither party shall hold itself out contrary to the terms of this Section by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

23.14 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.


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

IN WITNESS WHEREOF the parties hereto have affixed their respective corporate seals by the hands of their proper officers this 25<sup>th</sup> day of February, 2004.

APPROVED



As to Form



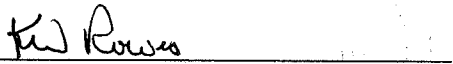
As to Content

THE CITY OF EDMONTON

Per: 

Per: \_\_\_\_\_

EPCOR DISTRIBUTION INC.

Per: 

Per: \_\_\_\_\_

**SCHEDULE "A"**

The Fee for 2004 shall be \$26,658,000.00 or such other amount as may be determined by the City and notified in writing to EDI.

Pursuant to written requests of the City from time to time, the City shall advise EDI of the manner in which the City requires EDI to collect from Customers sufficient amounts to satisfy the Fee. EDI shall pay a monthly amount to the City, as collected from Customers, calculated on the basis of a fractional dollar amount per kWh of electric power distributed to Customers and recorded on meters each month, hereinafter referred to as "Rate", such fractional dollar amount to be communicated in writing by the City to EDI from time to time. Such payment, until further written notice from the City, shall be made on the last day of each and every month commencing January 31, 2004. The parties confirm that this is a method of calculation only and is not in any way to be construed or deemed as a fee or charge for electric power consumption.

Unless otherwise determined by the City, for the calendar year 2005 and all subsequent years, the amount payable by EDI to the City shall be the Fee for 2004 plus a percentage increase being a combination of, the rate of inflation (as defined by the year over year change in the August Statistics Canada Consumer Price Inflation Index for Edmonton for the relevant years) plus 1.5%. If Statistics Canada does not publish information relating to its Consumer Price Inflation Index for Edmonton for August of any relevant year, then the City, in its absolute discretion, shall determine an alternate inflation calculation.

Notwithstanding the foregoing, the City, in its total discretion, may set a different Fee or Rate for any given calendar year. In all events, on or before October 1 of each year, the City shall advise EDI in writing of the anticipated Fee and Rate for the next ensuing year.