



THE CITY OF EDMONTON

BYLAW 15372

ATCO GAS AND PIPELINES LTD. 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 natural gas services within a municipality by passing a bylaw granting that consent;

Whereas, pursuant to section 45 of the Municipal Government Act RSA 2000, c.M-26, Council may grant a right, exclusive or otherwise, for the provision of a utility service in the municipality:

Edmonton City Council enacts:

PART I - PURPOSE, DEFINITIONS AND INTERPRETATION

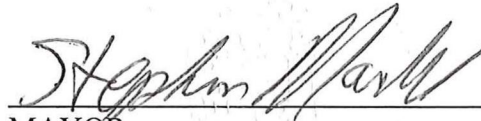
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| PURPOSE | 1 | The purpose of this bylaw is to consent to an agreement permitting ATCO Gas and Pipelines Ltd. to distribute natural gas within Edmonton. |
| APPROVAL OF FRANCHISE AGREEMENT | 2 | The Franchise Agreement between the City of Edmonton and ATCO Gas and Pipelines Ltd. attached as Schedule "A" is hereby approved. |

PART II - GENERAL

EFFECTIVE DATE 3 This Bylaw takes effect on the day on which it is passed.

READ a first time this	20 th	day of	January,	A. D. 2010;
READ a second time this	21 st	day of	July,	A. D. 2010;
READ a third time this	21 st	day of	July,	A. D. 2010;
SIGNED and PASSED this	21 st	day of	July,	A. D. 2010.

THE CITY OF EDMONTON


MAYOR


CITY CLERK

Schedule "A" to Bylaw 15372 as amended

EXECUTION COPY

NATURAL GAS DISTRIBUTION SYSTEM FRANCHISE AGREEMENT

THE CITY OF EDMONTON

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NATURAL GAS DISTRIBUTION SYSTEM FRANCHISE AGREEMENT

THIS AGREEMENT made the _____ day of _____, 20____.

BETWEEN:

THE CITY OF EDMONTON, a Municipal Corporation in the Province of Alberta
(the "Municipality")

OF THE FIRST PART

- and -

ATCO GAS AND PIPELINES LTD., a corporation having its head office at the City of
Edmonton, in the Province of Alberta (the "Company")

OF THE SECOND PART

WHEREAS:

- a. The Municipality granted to Northern Alberta Natural Gas Development Company, Limited, its successors and assigns, the right to use municipal lands for the sale of natural gas within the Municipality for a period of twenty (20) years from the 16th day of November, 1915, on the terms and conditions contained in a written agreement dated November 16, 1915 printed as Chapter 29 of the Statutes of Alberta, 1916 (hereinafter called the "Edmonton Franchise");
- b. In the year 1923 the Northern Alberta Natural Gas Development Company Limited assigned all of its interest in the Edmonton Franchise to Northwestern Utilities Limited;
- c. By Section 14 of Chapter 88 of the Statutes of Alberta, 1935, the term of the Edmonton Franchise was extended for a further period of ten (10) years from the 16th day of November, 1935;
- d. By Section 18 of Chapter 73 of the Statutes of Alberta, 1944, the term of the Edmonton Franchise was extended for a further period of ten (10) years from the 16th day of November, 1945;
- e. By Chapter 47 of the Statutes of Alberta, 1955, the term of the Edmonton Franchise was extended for a further period of ten (10) years from the 16th day of November, 1955;
- f. By Chapter 115 of the Statutes of Alberta, 1966, the term of the Edmonton Franchise was extended for a further period of ten (10) years from the 16th day of November, 1965;
- g. By Chapter 90 of the Statutes of Alberta, 1976, the term of the Edmonton Franchise was extended for a further period of ten (10) years from the 16th day of November, 1975;

- h. By Chapter 39 of the Statutes of Alberta, 1986, the term of the Edmonton Franchise was extended for a further period of ten (10) years from the 16th day of November, 1985;
- i. The Edmonton Franchise was further amended by agreement in writing dated February 3, 1993;
- j. The Edmonton Franchise was further amended by agreement in writing October 17, 1995, and the term of the Edmonton Franchise was extended for a further period of ten (10) years from the date of November 16, 1995;
- k. By letter dated December 10, 1999, the Municipality consented to the assignment of the Edmonton Franchise Agreement by Northwestern Utilities Limited to ATCO Gas and Pipelines Ltd.
- l. The term of the Edmonton Franchise was extended for a further period of ten (10) years from the date of November 16, 2005;

WHEREAS the Municipality desires to grant and the Company desires to obtain an exclusive franchise to provide gas distribution services within the Municipal Area on the terms and conditions herein contained;

NOW THEREFORE in consideration of the mutual covenants and promises herein contained, the parties hereby agree as follows:

1) **DEFINITIONS**

Unless otherwise expressly provided in this Agreement, the words, phrases and expressions in this Agreement shall have the meanings attributed to them as follows:

- (a) "Act" means the *Gas Utilities Act* (Alberta) as amended;
- (b) "City Lands" means the highways, roads, road allowances, streets, lands, alleys, bridges, public utility lots, parklands, public space or public water within the Municipality and owned by or under the direction, control and management of the Municipality, excluding land (except walkways and public utility lots) for which a certificate of title is registered in the name of the Municipality in the Land Titles Office;
- (c) "Commission" means the Alberta Utilities Commission as established under the *Alberta Utilities Commission Act* (Alberta), as amended;
- (d) "Company" means the party of the second part to this Agreement and includes its successors and permitted assigns;
- (e) "Construct" means and includes establish, construct, reconstruct, upgrade or extend any part of the existing Gas Distribution System or proposed Gas Distribution System;

- (f) **"Consumer"** means any individual, group of individuals, firm or body corporate, including the Municipality, with premises or facilities within the Municipal Area that is provided with Gas Distribution Service by the Company;
- (g) **"Core Services"** means all those services set forth in Schedule "A" and any other core services required by legislation or the AEUB from time to time;
- (h) **"Council"** means the municipal council of the City of Edmonton;
- (i) **"Delivery Tariff"** means the tariff prepared by the Company as revised or amended from time to time and approved by the Commission on an interim or final basis, as the case may be, approving and authorizing the Company to provide the service of the delivery of natural gas to the Consumer;
- (j) **"Edmonton Franchise 2005 Agreement"** means the Edmonton Franchise Agreement dated December 20, 2004;
- (k) **"Effective Date"** means the earliest date after both of the following events have occurred:
 - (i) Council has passed third reading of the adopting bylaw in connection with the approval of this Agreement; and
 - (ii) the Commission has approved this Agreement;
- (l) **"Extra Services"** means those services set forth in Schedule "B" that are requested by the Municipality on behalf of its citizens and provided by the Company in accordance with Article 6;
- (m) **"Franchise Fee"** means the amount of money exclusive of taxes as set out in Article 4 that the Company agrees to pay to the Municipality on account of:
 - (i) the use and occupation of City Lands for the Company's Gas Distribution System;
 - (ii) the cost to the Municipality associated with restrictions upon the Municipality's efficient development and planning due to the presence and operation of the Company's Gas Distribution System on City Lands;
 - (iii) the cost to the Municipality resulting from the inherent risks of operating a Gas Distribution System within the Municipal Area; and
 - (iv) the exclusive privileges granted under this Agreement to the Company;
- (n) **"Gas Distribution Service"** means the delivery of natural gas in accordance with the Company's Delivery Tariff;
- (o) **"Gas Distribution System"** means any facilities owned by the Company to provide Gas Distribution Service within the Municipal Area, and without limiting the generality of the foregoing, shall include all mains, pipes, conduits,

valves and all other installations used and required for the purpose of delivering natural gas to the Consumer within the Municipal Area and includes any natural gas transmission lines owned by the Company within the Municipal Area;

- (p) **"Maintain"** means to maintain, keep in good repair or overhaul any part of the Gas Distribution System;
- (q) **"Municipality"** means the party of the first part to this Agreement;
- (r) **"Municipal Area"** means the area within the municipal boundaries of the Municipality, as at the date of this Agreement, and as it may be otherwise increased herein;
- (s) **"Operate"** means to operate, interrupt or restore any part of the Gas Distribution System in a safe and reliable manner;
- (t) **"Oscam Permit"** means On Street Construction and Maintenance Permit issued by the Municipality to allow construction or construction and maintenance on City Lands;
- (u) **"Service Line"** means the pipe constructed to bring Gas Distribution Service from the Gas Distribution System to a Consumer on a single lot by the most direct route that is also practical and cost effective;
- (v) **"Term"** means the term of this Agreement set out in Article 2;
- (w) **"Terms and Conditions"** means the terms and conditions contained within the Delivery Tariff;
- (x) **"Utility Line Assignment Permit"** means the utility line assignment issued by the Municipality authorizing the use of a utility alignment on City Lands;
- (y) **"Work"** means any work to Construct or Maintain the Gas Distribution System.

2) **TERM**

- (a) This Agreement shall be for a term of 20 years, commencing on the Effective Date.

- (b) Unless otherwise agreed in writing between the parties, following the expiration of the Term, all the rights and obligations of the parties under this Agreement shall continue to be in effect until the parties negotiate a new franchise agreement or until the Municipality exercises its rights under the *Municipal Government Act* (Alberta) to purchase the Gas Distribution System.
- (c) Except as otherwise provided in this Agreement, at any time following the expiration of the Term, if the Municipality has not provided notice to the Company to exercise its rights to purchase the Gas Distribution System, either party may submit any items in dispute pertaining to a new franchise agreement to binding arbitration under Article 22 of this Agreement.
- (d) This Agreement shall supercede and replace any other agreement entered into between the parties in respect of the subject matter herein and in particular, shall supercede and replace the Edmonton Franchise 2005 Agreement which is hereby terminated.

3) **GRANT OF FRANCHISE**

- (a) Subject to the terms and conditions hereof, the Municipality hereby grants to the Company the exclusive right within the Municipal Area to Construct, Operate, and Maintain the Gas Distribution System together with the exclusive right to use and occupy portions of City Lands which have been designated by the Municipality for such use and which are necessary to Construct, Operate and Maintain the Gas Distribution System.

Subject to the terms hereof, the Municipality agrees that it will not, during the Term, grant to any other person, firm or corporation, the right to Construct, Operate and Maintain any gas distribution system nor the exclusive right to use and occupy the portions of the roads, rights-of-way and other lands owned, controlled or managed by the Municipality which have been designated by the Municipality for such use and which are necessary to Construct, Operate and Maintain a gas distribution system, for the purpose of delivering natural gas in the Municipal Area for Consumers, so long as the Company delivers to the Municipality and the Consumers their requirements of natural gas. Where any person, firm or corporation is using and occupying City Lands without authority, the Municipality agrees to use its best efforts to secure the removal of that person, firm or corporation from City Lands. The Municipality will not be liable to the Company whatsoever where any person, corporation or entity infringes upon any of the exclusive rights granted to the Company where the Municipality has not granted a right to, or consented to the use and occupation of City Lands for transporting natural gas by such person, corporation or entity.

Nothing in this Agreement shall be construed so as to alter or modify in any way the rights and obligations of the parties as found in paragraph 1 of the agreement dated the 21st day of June, 1976 among the Municipality, the Northwestern Utilities Ltd., Edmonton Liquid Gas Limited, Canadian Utilities Limited, and Dome Petroleum Limited that is attached hereto as Schedule "C".

Provided further that the exclusive right granted to the Company shall not be exclusive as against the Municipality itself, or any corporation all of the issued shares of which are owned by the Municipality, for any of the Municipality's own uses or purposes as long as the Municipality's activities are not so substantial as to adversely affect the Company's exclusive rights under this Agreement. For greater clarity the phrase "own uses or purposes" shall not include provision of gas distribution service to any other Consumer, except the Municipality and its wholly owned subsidiary corporations.

- (b) The Company agrees to:
- (i) bear the full responsibility of an owner of a natural gas distribution system and to ensure all services provided pursuant to this Agreement are in accordance with the Delivery Tariff, insofar as applicable;
 - (ii) Construct, Operate and Maintain the Gas Distribution System;
 - (iii) use and occupy designated portions of City Lands necessary to Construct, Operate and Maintain the Gas Distribution System, including the necessary removal, trimming of trees, shrubs or bushes or any parts thereof; and
 - (iv) use and occupy the City Lands granted hereunder solely for the purpose of providing Gas Distribution Service and any other service contemplated or specified in this Agreement.

4) **FRANCHISE FEE**

(a) **Calculation of Franchise Fee**

In consideration of the exclusive grant of franchise, the ability to use Municipal rights-of-way, and the mutual covenants herein, the Company agrees to pay to the Municipality a franchise fee. The parties agree that s. 360(4) of the *Municipal Government Act*, R.S.A. 2000, c. M-26 (the "MGA"), as amended does not apply to the calculation of the franchise fee in this Agreement. For each calendar year the franchise fee will be calculated as a percentage of the Company's actual total revenue derived from the Delivery Tariff, including without limitation the fixed charge, base energy charge, demand charge but excluding the cost of gas (being the calculated revenues from the gas cost recovery rate rider or the deemed cost of gas and revenues from gas related riders, for clarity Method A in the Company's Rate Rider A as approved by the Commission from time to time) in that year for Gas Distribution Service within the Municipal Area. For the first calendar year or

portion thereof of the Term of this Agreement, the franchise fee percentage shall be 28.5 percent.

By no later than September 1 of each year, the Company shall: (i) advise the Municipality in writing of the total revenues that were derived from the Delivery Tariff within the Municipal Area for the prior calendar year; and (ii) with the Municipality's assistance, provide in writing an estimate of total revenues to be derived from the Delivery Tariff within the Municipal Area for the next calendar year.

By no later than November 15 of each year, the Municipality shall advise the Company in writing of the franchise fee percentage to be charged for the following year. Failing which notification, the franchise fee percentage shall remain unchanged.

In addition to the Municipality's right to amend the franchise fee percentage, the Municipality may amend the method of franchise fee calculation provided that it provides adequate written notice to the Company to enable the Company to incorporate such amendment into the Company's billing and accounting systems and provided that any such amendment is approved by the Commission where such approval is required.

b) Franchise Fee Cap

The franchise fee percentage shall not at any time exceed thirty five (35%) percent, unless there has been prior Commission approval.

c) Notice to Change Franchise Fee

Prior to implementing any change to the franchise fee, the Municipality shall notify its intent to change the franchise fee and the resulting effect that such change will have on an average residential customer's annual gas bill through publication of a notice once in the newspaper that has the widest circulation in the Municipal Area at least 45 days prior to implementing the revised franchise fee. A copy of the notice shall be filed with the Commission.

(d) Payment of Franchise Fee

Immediately upon the Municipality passing third reading of the applicable by-law approving this Agreement, the Company shall pay the franchise amount, billed to each Consumer, to the Municipality on a monthly basis with forty-five (45) days after billing for each Consumer.

(e) Compliance Report

The Company shall provide to the Municipality on March 31 of each year of the Term for the previous calendar year a statement certified by the Company's external auditors showing the calculation of amount of Franchise Fee collected and remitted in compliance with the terms and conditions of this Agreement.

5) **CORE SERVICES**

The Company agrees to provide those Core Services to the Municipality as set forth in Schedule "A" and further agrees to the process contained in Schedule "A".

6) **PROVISION OF EXTRA SERVICES**

Subject to an agreement being reached, the Company agrees to provide to the Municipality those Extra Services, if any, as set forth in Schedule "B", as requested by the Municipality from time to time. The Company is entitled to receive from the Municipality a reasonable amount for full compensation for the provision of those Extra Services in accordance with Schedule "B".

Any breach by the Company for failing to provide any Extra Services contained in this Agreement shall not constitute a breach of a material provision of this Agreement for the purposes of Article 8.

7) **TAXES**

Amounts payable to the Municipality pursuant to the terms and conditions hereof shall be (without duplication) in addition to the Company's requirement to pay the municipal taxes, business taxes and other levies or charges made by the Municipality against the Company, its land and buildings, linear property, machinery and equipment, including school taxes and all other taxes that the Municipality is authorized to charge or collect.

All taxes or assessments in the nature of sales taxes, goods and services taxes (the "GST"), or value-added taxes which may be charged, levied, or assessed as a result of this Agreement shall be collected and paid by the Company. The obligation to pay these taxes to the Municipality will coincide with the timing of the payments as they become due.

8) **RIGHT TO TERMINATE ON DEFAULT**

In the event either party breaches any material provision of this Agreement, the other party may, at its option, provide written notice to the party in breach to remedy such breach. If the said breach is not remedied within two (2) weeks after receipt of the written notice or such further time as may be reasonably required by the party in breach using best efforts on a commercially reasonable basis to remedy the breach, the party not in breach may give six (6) months notice in writing of the termination of this Agreement to the other party, and unless such breach is remedied to the satisfaction of the party not in breach acting reasonably this Agreement shall terminate subject to prior Commission approval.

9) **SALE OF GAS DISTRIBUTION SYSTEM**

Upon the expiration of the Term of this Agreement, or the termination of this Agreement pursuant to the terms and conditions hereof or by operation of law or order of a governmental authority or court of law having jurisdiction, the Municipality may, subject to the approval of the Commission, (i) exercise its right to require the Company to sell to it the Gas Distribution System pursuant to the provisions of the *Municipal Government Act* (Alberta), as may be amended, where applicable or (ii) if such right to require the Company to sell the Gas Distribution System is either not applicable or has been repealed, require the Company to sell to it the Gas Distribution System. If, upon the expiration of this Agreement, the parties are unable to agree on the price or on any other terms and conditions of the purchase, the unresolved matters shall be referred to the Commission for determination.

10) **PROVISION OF DETAILED PLANS AND EQUIPMENT**

(a) **Detailed Plans**

The Company shall, at its own cost, participate in the Geo Edmonton Utility ROW Alliance, Alberta One Call, and other similar organizations that may exist from time to time and shall ensure that electronic facility plans are maintained at the Company's expense in the shared data base and are available to all partners in the Alliance and Alberta One Call.

The Company agrees to provide on request to the Municipality the most current set of detailed plan sheets including facility drawings and specifications showing the locations (excluding depth) and alignments of the Gas Distribution System, excepting Service Lines and installations on private property. The parties acknowledge that the Company continues to own all intellectual property rights in such detailed plan sheets, drawings and specifications.

The Municipality shall upon reasonable request, provide to the Company any subdivision development plans of the Municipality in hard copy and in the Municipality's electronic form where available. The subdivision development plans are provided to the Company for the sole purpose of assisting the Company in delivering natural gas to the Consumer.

(b) **Provision of Equipment**

The Company agrees to provide the Municipality's fire department with the equipment necessary for the operation of curb boxes and service valves so that in case of fire, the service valves may be turned off by the fire department if they reach a fire before the Company's representative. The Municipality will notify one of the Company's representatives of fires which may affect the Gas Distribution System and /or the operations as quickly as reasonably possible, or, in the event that they cannot reach a Company representative, the Municipality will advise the Company's standby personnel of such fires. The Company shall ensure that its representatives reasonably cooperate with the Municipality in

preventing, controlling and investigating fires involving or affecting the Gas Distribution System.

11) **RIGHT OF FIRST REFUSAL TO PURCHASE**

- (a) If during the Term of this Agreement, the Company receives a bona fide offer to operate, take control of the entire Gas Distribution System or purchase the Gas Distribution System within the Municipal Area, which the Company is willing to accept, then the Company shall promptly give written notice to the Municipality of the terms and conditions of such offer and the Municipality shall during the next one hundred and twenty (120) days, have the right of first refusal to operate, take control of or purchase that part of the Gas Distribution System, as the case may be, for the same price and upon the terms and conditions contained in the said offer. Notwithstanding the foregoing, in the event that the Municipality fails or refuses to exercise its right of first refusal, the Municipality shall retain the right to withhold its consent to an assignment of this Agreement in accordance with paragraph 19 below. For the purposes of this paragraph 11, "operate, take control" shall not be construed as including the subcontracting by the Company of only some portions of its operations where the Company continues to be responsible for the performance of this entire Agreement.
- (b) If the Municipality does not exercise its right of first refusal and the said bona fide offer that the Company is willing to accept does not proceed to closure, the Municipality retains its right of first refusal on any other offer.
- (c) This right of first refusal only applies where the offer pertains to the entire Gas Distribution System and the right of first refusal does not apply to offers that include any other distribution systems or distribution facilities of the Company located outside of the Municipal Area. If such offer includes other distribution systems of the Company, the aforesaid right of first refusal shall be of no force and effect and shall not apply.
- (d) Where the Municipality exercises its rights to purchase the Gas Distribution System from the Company and thereby acquires the Gas Distribution System, the Municipality agrees that should it no longer wish to own the Gas Distribution System within five (5) years after it acquires the said system and the Municipality receives any *bona fide* offer from a third party (including any entity which the Municipality controls) to purchase the Gas Distribution System, which it is willing to accept, then it shall promptly give notice to the Company of the terms and conditions of such offer. The Company shall during the next one hundred and twenty (120) days have the first right of refusal to purchase the Gas Distribution System for the same price and upon the same terms and conditions as contained in the said offer, providing the offer is equal to or greater than the terms of the original purchase by the Municipality from the Company (taking into account the depreciation of the Gas Distribution System at the time of the offer).
- (e) The Municipality's right of first refusal shall not apply where the Company has agreed to transfer the entire Gas Distribution System to a third party utility

company in exchange for certain other assets provided all of the following conditions are met:

- (i) the third party utility can demonstrate to the reasonable satisfaction of the Municipality that it meets the necessary technical and financial requirements to own and operate the Gas Distribution System;
- (ii) the only consideration that shall be exchanged between the Company and the third party utility company is the transfer and exchange of assets, or the transfer and exchange of assets and monetary consideration (where such monetary consideration does not exceed 49% of the net book value of the Gas Distribution System);
- (iii) there is no material adverse impact to the Municipality resulting from the transfer and exchange above referenced as determined by the Commission;
- (iv) the Company and the third party utility company obtain all the requisite regulatory requirements prior to completing the exchange; and
- (v) full compensation is paid to the Municipality for all costs including administrative and legal costs incurred by the Municipality in ensuring all of the conditions (i) through (iv) above are satisfied.

12) **CONSTRUCTION/MAINTENANCE OF GAS DISTRIBUTION SYSTEM**

(a) **Municipal Approval**

Before undertaking any Work on the Company's existing Gas Distribution System or for new Work in existing roads that are being operated by the Municipality and for which a construction compliance certificate has been issued, or in any case in which the Municipality specifically requests the same, the Company will submit to and obtain the approval from the Municipality, or its authorized officers; of the plans, and the specifications when available for the proposed Work and its location. Approval by the Municipality granted in accordance with this paragraph shall be limited to an approval of the location and alignment of the Work only, and shall not signify approval of the structural design or the ability of the Work to perform the function for which it was intended.

Before undertaking any Work in new subdivisions or areas in which a third party is constructing a roadway which has not yet received a construction completion certificate from the Municipality, the Company shall obtain the necessary third party approval for alignment and location of the Work in accordance with the City of Edmonton Design and Construction Standards.

Prior to commencing any Work on City Lands, the Company shall obtain such utility line assignment permits, OSCAM permits and other applicable permits as are required by the Municipality.

The Company shall obtain prior written approval from the Municipality of any traffic lane or sidewalk closures required to be made at least forty-eight (48) hours prior to the commencement of the proposed Work except in situations described in Clause 12(c) of this Agreement.

All costs and expenses associated with construction, installation, maintenance, operation, repair, replacement, or removal of equipment, or any other activity by the Company in the exercise of its rights pursuant to this Agreement on, over, under, along or across the City Lands, shall be borne by the Company.

The Company shall ensure that all Work is performed in accordance with the requirements of all applicable legislation, rules and regulations. In particular, the Company agrees that all Work carried out by the Company on, over, under, along or across City Lands pursuant to this Agreement shall:

- (i) be carried out in good, workmanlike and timely manner;
- (ii) comply with all applicable civil construction and safety codes, City of Edmonton Design and Construction Standards, Municipal service standards and Municipal policies and procedures, as amended from time to time;
- (iii) be in accordance with the Company's servicing standards; and
- (iv) be made to the permanent installation standard no later than nine months after installation or within such reasonable time period as approved by the Municipality, where the Work has been done as an emergency or temporary repair.

(b) Restoration of City Lands

The Company shall forthwith restore the City Lands to the same state and condition, as nearly as reasonably practicable, in which it existed prior to the commencement of any Work, subject to reasonable wear and tear, to meet or exceed the Municipality's Design and Construction Standards in place from time to time.

The Company shall, where reasonably practicable, install its pipelines and related equipment in accordance with the Municipality's Design and Construction Standards which include alignments by roadway type.

The Company further covenants that it will not unduly interfere with the works of others or the works of the Municipality. Where reasonable and in the best interests of both the Municipality and the Consumer, the Company will cooperate with the Municipality and coordinate the installation of the Gas Distribution System along the designated rights-of-way pursuant to the direction of the Municipality. During the performance of the Work, the Company shall use commercially reasonable efforts to not interfere with existing City Lands and to cause as little damage as possible to the property of others (including the City Lands). If the Company causes damage to any existing City Lands during the performance of any Work, it shall cause such damage to be repaired at its own cost.

Upon default by the Company or its agent to repair damage caused to City Lands, the Municipality may provide written notice to the Company to remedy the default. If the default is not remedied within two (2) weeks after receipt of the written notice or such further time as may be reasonably required and requested by the Company using the best efforts on a commercially reasonable basis to remedy the default, the Municipality may undertake such repair work and the Company shall be liable for the reasonable costs thereof.

(c) Urgent Repairs and Notification to Municipality

If any repairs or maintenance required to be made to the Gas Distribution System are of an urgent nature where the operation or reliability of the Gas Distribution System is materially compromised or potentially materially compromised, the Company shall be entitled to conduct such repairs or maintenance as are commercially reasonable without prior notice to the Municipality, on the understanding and agreement that the Company will provide written or verbal notice to the Municipality as soon as practicable and in any event no later than 72 hours after the repairs are commenced.

(d) Company to Obtain Approvals from Other Utilities

The Company shall be solely responsible for locating, or causing to be located, including through services of Alberta One Call, all existing utilities or utility mains, pipes, valves and related facilities in, on or adjacent to the Work site. The Company shall notify all other utility operators and ensure that utilities and utility mains, pipes, valves and related facilities are staked prior to commencement of construction. Unless the Municipality has staked the location for the utility property, staking shall not be deemed to be a representation or warranty by the Municipality that the utility or utility property are located as staked. The Municipality shall not be responsible for any damage caused by the Company to any utility or any third party as a result of the Company's Work, unless the Municipality has improperly staked the utility property. Approval must be obtained by the Company from the owner of any third party utility prior to relocation of any facility owned by such third party utility.

(e) **Approvals**

Where any approvals are required to be obtained from either party under this Article, such approvals shall not be unreasonably withheld.

The Company shall immediately notify the Municipality of any lien, claim of lien or other action of which it has or reasonably should have knowledge, and shall cause the same to be removed within 30 days (or such additional time as the Municipality may allow in writing), failing which the Municipality may take such action as it reasonably deems necessary to remove the same and the entire cost thereof shall be immediately due and payable by the Company to the Municipality.

(f) **Salvaging**

The Municipality reserves its rights to salvage all or a portion of materials such as earth, stone, asphalt, concrete and other materials removed from City Lands during any Work, as directed by the City Manager.

(g) **Alignment Standards**

The Municipality shall consider and incorporate as reasonably appropriate the Company's input when revising and updating the City of Edmonton Design and Construction Standards.

13) **RESPONSIBILITIES FOR COST OF RELOCATION**

Upon receipt of one hundred twenty (120) days notice from the Municipality, the Company shall, at its own expense, relocate to City Lands such parts of the Gas Distribution System that are located on City Lands as may be reasonably required by the Municipality due to planned Municipal construction. In order to encourage the orderly development of Municipal facilities and the Gas Distribution System, the Municipality and the Company agree that they will meet regularly to: a) review the long-term facility plans of the Municipality and the Company; and b) determine the time requirements and costs for final design specifications for each relocation. Providing the Municipality is not the developer requesting the relocation for commercial or residential resale to third parties, the Company shall bear the expenses of the required relocation.

Notwithstanding the foregoing, the Company shall not be required to move any part of the Gas Distribution System after receipt of notice from the Municipality in accordance with this Article where:

- (a) the Company has illustrated to the satisfaction of the Municipality, acting reasonably, that an appropriate Alternative Course of Action is available;
- (b) the Municipality has provided the Company with its written approval of the Alternative Course of Action (which approval may not be unreasonably withheld by the Municipality); and

- (c) the Company 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 Municipality will be left with sufficient time to complete the said planned Municipal construction within the Intended Time Frame (taking into account any delays which the Municipality may encounter as a result of the Company utilizing the Alternative Course of Action).

For the purposes of this Article 13, the term "Alternative Course of Action" shall mean any course of action that will enable the Municipality to complete the said Municipal construction and will result in a net cost savings to the Company (taking into account all additional costs incurred by the Company in carrying out the Alternative Course of Action and any additional costs which the Municipality may incur and which the Company will be required to pay in accordance with this Article 13) and "Intended Time Frame" shall mean the period of time within which the Municipality would have reasonably been able to complete the said Municipal construction if the Company would have relocated the Gas Distribution System in accordance with this Article 13.

If the Municipality agrees to permit the Company to utilize an Alternative Course of Action, the Company shall pay any and all costs incurred in carrying out the Alternative Course of Action and shall pay on demand to the Municipality (on a full indemnity basis) any and all costs incurred by the Municipality, which costs may include, but not be limited to the costs incurred:

- (i) in conducting a review of the Alternative Course of Action to determine whether the Alternative Course of Action is acceptable to the Municipality;
- (ii) in modifying any plans the Municipality may have prepared in respect of the said Municipal construction (which are referred to herein as "Modified Plans") or in preparing or developing plans and procedures (which are referred to herein as "Work Around Procedures") to work around the Gas Distribution System or any improvement, thing, or component utilized by the Company in effecting the Alternative Course of Action; and
- (iii) in the course of conducting the said planned Municipal construction where such costs would not have been incurred by the Municipality if the Company had relocated the Gas Distribution System in accordance with this Article 13 (including any additional cost the Municipality may incur in completing the said Municipal Construction in accordance with the Modified Plans or in effecting any Work Around Procedures).

The following example illustrates the intended application of the foregoing provisions:

Where : (A) The Municipality requires the Company to move a gas line so that the Municipality can replace its own sewer lines. The cost of moving the gas line is \$10,000. The cost of carrying out the replacement of the sewer line after moving the gas line is \$40,000;

(B) The Company proposes to simply brace the gas line (at a cost of \$2,000) and the Municipality, acting reasonably, approves of this as an Alternative Course of Action;

(C) As a result of having to prepare Modified Plans and to prepare and implement Work Around Procedures to work around the braces, the actual cost incurred by the Municipality in replacing the sewer line is \$45,000 (being a net increase in cost of \$5,000);

the Company is required to pay the \$2,000 cost of the bracing together and the additional cost of \$5,000 incurred by the Municipality (resulting in a net savings of \$3,000 to the Company).

In cases of emergency, the Company shall take all measures that are commercially reasonable and necessary to ensure public safety with respect to relocating any part of the Gas Distribution System that may be required in the circumstances.

If the Company fails to complete the relocation of the Gas Distribution System or fails to repair or do anything else required by the Company pursuant to this clause without valid justification and in a timely and expeditious manner to the satisfaction of the Municipality's representative, acting reasonably, the Municipality may, but is not obligated to, complete such relocation or repair and the Company shall pay the reasonable costs of such relocation or repair forthwith to the Municipality. If the Municipality chooses to complete such relocation or repair the Municipality will ensure that such work is completed using the Company's design specifications and standards, as provided by the Company, including the use of good and safe operating practices.

The Municipality is not responsible, either directly or indirectly, for any damage to the equipment which forms part of the Gas Distribution System which may occur during its installation, maintenance or removal by the Company, nor is the Municipality liable to the Company for any losses, claims, charges, damages and expenses whatsoever suffered by the Company including claims for loss of revenue or loss of profits, on account of the actions of the Municipality, its agents or employees, working in, under, over, along, upon and across its highways and rights-of-ways or other City Lands other than direct loss or damage to the Company caused by the negligence or willful misconduct of the Municipality, its agents or employees.

In the event the relocation or any part thereof requires the approval of a third party, the Municipality will use reasonable efforts to assist the Company in any negotiation with such third party to obtain the necessary approval(s).

In the event the relocation results from the demand or order of an authority having jurisdiction, other than the Municipality, the Municipality shall not be responsible for any of the costs of such relocation.

14) **GAS DISTRIBUTION SYSTEM EXPANSION**

Subject to the Terms and Conditions, and at no cost to the Municipality unless otherwise provided for under the Terms and Conditions, the Company shall, on a timely basis use its best efforts on a commercially reasonable basis to meet the Gas Distribution System expansion requests of the Municipality or a Consumer, and provide the requisite facilities for connections for new Consumers to the Gas Distribution System.

15) **INCREASE IN MUNICIPAL BOUNDARIES**

Where there are increases to the Municipal Area through annexation or amalgamation as understood under the *Municipal Government Act* (Alberta), the rights and obligations contained in this Agreement will apply in respect of the whole Municipal Area, including the increased area, provided that the Municipality shall have the right to reopen negotiations on the Franchise Fee whenever there is an annexation or amalgamation.

16) **JOINT USE OF GAS DISTRIBUTION SYSTEM**

(a) **Municipal Use**

The Municipality shall upon notice to the Company have, for any reasonable municipal purpose, the right to make use of the Gas Distribution System (excluding the transportation of gas) and any rights-of-way granted to the Company, provided such use complies with good and safe natural gas operating practices, as determined by the Company acting reasonably, applicable legislation, and does not unreasonably interfere with the Company's use thereof, at no charge to the Municipality. The Municipality is responsible for its own costs and any necessary and reasonable costs incurred by the Company including the costs of any alterations that may be required in using the Gas Distribution System.

(b) **Third Party Use and Notice**

The Company agrees that should any third party including other utilities desire to jointly use the Gas Distribution System or trenches or any parts of the Gas Distribution System, the Company shall not grant the third party joint use except in accordance with this Article, unless otherwise directed by any governmental authority or court of law having jurisdiction.

The Company agrees that the following procedure shall be used in granting permission to third parties desiring joint use of the Gas Distribution System:

- (i) first, the third party shall, if it contacts either party hereto, be directed by the relevant party to approach the Company to initially request conditional approval from the Company to use that part of the Gas Distribution System it seeks to use;
- (ii) second, upon receiving written conditional approval from the Company, the third party shall be directed to approach the Municipality to obtain its written approval to jointly use that part of the Gas Distribution System on

any City Lands or right-of-way. As a condition of granting its consent, the Municipality may require that such third party enter into an agreement with the Municipality, and such agreement may require that such third party pay compensation to the Municipality;

- (iii) third, upon receiving written conditional approval from the Municipality, the third party shall be directed to obtain final written approval from the Company to jointly use that part of the Gas Distribution System. Once a joint use agreement has been entered into between the Company and the third party, it shall not be subsequently amended without the consent of the Municipality (which consent will not be unreasonably withheld).

(c) **Cooperation**

The Company and Municipality agree they will use reasonable efforts to cooperate with each other in encouraging activities that will improve the provision of Gas Distribution Service to Consumers, including the use of joint trenching and in any negotiations with third parties desiring joint use of any part of the Gas Distribution System located on City Lands.

(d) **Payment**

The compensation paid or to be paid by such third party to the Municipality for the use of the City Lands, shall be determined between the Municipality and the third party.

The compensation paid or to be paid by such third party to the Company for the joint use any portion of the Gas Distribution System shall be determined between the Company and the third party, subject to the jurisdiction of any governmental authority over the matter and the Municipality's right to intervene in any related regulatory proceeding.

(e) **Provision of Agreements**

The Company shall provide to the Municipality within 6 months of executing this Agreement a copy of all agreements between the Company and any third parties involved in the joint use of any part of the Gas Distribution System.

Upon reasonable request by the Municipality, copies of these agreements shall be updated by the Company and provided to the Municipality at no cost to the Municipality.

17) **INDEMNIFICATION, LIABILITY AND INSURANCE**

- (a) The Company shall indemnify and save the Municipality, its servants, agents, employees, licensees, contractors and invitees, harmless from and against any and all liability, actions, demands, claims, damages, losses and expenses (including all legal costs and disbursements), including indemnity from and against any claim, loss, cost, demand and legal or other expense, whether in respect of any lien, encumbrance or otherwise, arising out of any Work

performed by or for the Company, which may be brought against or suffered, sustained, paid or incurred by the Municipality, its servants, agents, employees, contractors, licensees and invitees, arising from, or otherwise caused by:

- (i) any breach by the Company of any of the provisions of this Agreement; or
 - (ii) the negligence or willful misconduct of the Company, or any of its servants, agents, employees, licensees, contractors or invitees in carrying on its business within the Municipal Area.
- (b) The Municipality shall indemnify and save the Company, its servants, agents, employees, licensees, contractors and invitees, harmless from and against any and all liability, actions, demands, claims, damages, losses and expenses (including all legal costs and disbursements) which may be brought against or suffered, sustained, paid or incurred by the Company, its servants, agents, employees, licenses, contractors and invitees, arising from, or otherwise caused by:
- (i) any breach by the Municipality of any of the provisions of this Agreement; or
 - (ii) the negligence or willful misconduct of the Municipality, or any of its servants, agents, employees, licensees, contractors or invitees, in carrying on the business of the Municipality.
- (c) Notwithstanding anything to the contrary herein contained, in no event shall the Municipality or the Company be liable under this Agreement, in any way, for any reason, for any indirect, special or consequential damages (including damages for pure economic loss, loss of profits, loss of earnings or loss of contract), howsoever caused or contributed to.

- (d) Throughout the term of this Agreement, the Company shall maintain in full force and effect the following:

General Liability insurance in an amount not less than Ten Million Dollars (\$10,000,000.00) per occurrence for personal injury and/or property damage. Such policy shall be endorsed to include the following:

- (v) Contractual Liability (including this Agreement);
- (vi) Non-Owned Automobiles;
- (vii) Independent Contractors (as applicable);
- (viii) Products & Completed Operations (as applicable);
- (ix) Excavation, collapse, shoring and pile driving (as applicable);
- (x) Broad form Property Damage;
- (xi) Employees as Additional Insureds;
- (xii) Cross Liability.

Standard Owned Automobile Liability coverage in an amount not less than Two Million Dollars (\$2,000,000.00) per accident for bodily injury and/or property damage.

The insurance coverage policies shall be endorsed to provide the Municipality with thirty (30) days prior written notice of cancellation or material change to coverage levels below those stated above, and shall be in a form acceptable to the Municipality's Director, Risk Management or his/her designate. Evidence of such policies shall be submitted to the Municipality on the Certificate of Insurance and endorsement forms provided to the Company by the Municipality which will be duly completed by the Company's broker and/or insurer.

Evidence of renewal of coverage shall be provided to the Municipality prior to expiry in a form acceptable to the Municipality's Director, Risk Management or his/her designate.

Upon request by the Municipality, the Company shall provide additional insurance if this is deemed necessary by the Municipality's Director, Risk Management or his/her designate. If requested, a written explanation will be provided to the Company for the additional insurance requirement and any such request shall be reasonable and required by the circumstances.

It is further understood and agreed that the policy limits shown herein do not define or limit the Company's liability to indemnify the Municipality, nor does the Municipality make any representation as to the adequacy of said limits or scope of coverage in the event of a claim.

18) **HAZARDOUS SUBSTANCES**

- (a) The Municipality 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, over, under, along or across the City Lands and the City Lands are used and occupied by the Company at its own risk with all faults and imperfections whatsoever and on a strictly "as is, where is" basis. Notwithstanding the above in no circumstance shall the Company be liable for the remediation or clean up of any hazardous substances existing on, over, under, along or across the City Lands prior to the execution of this Agreement, save and except for any remediation or clean up required as a result of the Company's use, activities or operations on, over, under, along or across the City Lands prior to execution of this Agreement.
- (b) In the event the City Lands become contaminated due to any hazardous substances on, over, under, along or across the City Lands which result from the use, activities or operations of the Company in, on, over, under, along or across the City Lands or which result from any products or goods brought upon the City Lands by the Company, or by any person for whom it is responsible in law, the Company agrees to be responsible for any clean up of the City Lands to the extent the Company is mandatorily required to do so under applicable law.
- (c) Notwithstanding the foregoing, the Municipality shall notify the Company of any escape, discharge or release of any hazardous substance on City Lands, where the Company has been given consent to Construct its Gas Distribution System, of which the Municipality has actual knowledge prior to the Company carrying out its Work.

19) **ASSIGNMENT**

In the event that the Company agrees to sell the Gas Distribution System to a third party purchaser, the Company shall comply with Article 11 above. In addition, the Company will request that the third party purchaser confirm in writing that it will agree to all the terms and conditions of this Agreement between the Company and the Municipality. The Company agrees that it will provide to the Municipality a copy of the third party purchaser's confirmation letter.

The Company agrees to provide the Municipality with reasonable prior written notice of a sale of the Gas Distribution System to a third party purchaser. The parties shall thereafter meet to discuss the technical and financial capabilities of the third party purchaser to perform and satisfy all terms and conditions of the Agreement, and the compensation payable to the Municipality for all costs including administrative and legal costs relating to providing its consent to the Assignment. ("Municipal Compensation")

The Municipality has thirty (30) days from the meeting date with the Company to provide written notice to the Company of its intention to consent or withhold its consent to the assignment of the Agreement to the third party purchaser. The Company agrees that the Municipality may provide notice of its intention to withhold its consent to the assignment of this

Agreement to the third party purchaser if the Municipal Compensation is inadequate or if the third party purchaser fails to covenant, in favour of the Municipality, to perform and observe all of the covenants and obligations of the Company to be performed and observed under this Agreement and otherwise solely on the basis of reasonable and material concerns regarding the technical capability or financial wherewithal of the third party purchaser to perform and satisfy all terms and conditions of the Agreement. In this case, such notice to the Company must specify in detail the Municipality's concern. Should the Municipality not reply within the thirty (30) days, it is agreed that the Municipality will be deemed to have consented to the assignment. The Company further agrees that, when it applies to the Commission for approval of the sale, it will include in the application any notice received from the Municipality, including the reasons given by the Municipality for withholding its consent. The Municipality shall have the right to make its own submissions to the Commission.

Subject to the Company having fulfilled the obligations outlined in the preceding three paragraphs, the Company shall be entitled to assign this Agreement to an arm's length third party purchaser of the Gas Distribution System without the consent of the Municipality, subject to paying the Municipal Compensation for the assignment, and having obtained the Commission's approval for the sale of the Gas Distribution System and, the third party purchaser's confirmation in writing that it agrees to all the terms and conditions of this Agreement.

Subject to applicable law (including environmental legislation), where the Commission approves such sale of the Gas Distribution System to a third party and the third party provides written confirmation to assume all liabilities and obligations of the Company under this Agreement, then upon the assignment of this Agreement and the payment of the Municipal Compensation for its consent to the Assignment subject to Commission approval, the Company shall be released from all its liabilities and obligations thereunder.

The Company shall be entitled to assign this Agreement to a subsidiary or affiliate of the Company without the Municipality's consent. Where the Company assigns this Agreement to a subsidiary or affiliate, the Company will remain jointly and severally liable.

Further, it is a condition of any assignment that the subsidiary, affiliate or third party purchaser, as the case may be, shall provide written notice to the Municipality indicating that it will assume all liabilities and obligations of the Company under this Agreement.

Any disputes arising under the operation of this Article shall be submitted to the Commission for determination.

20) **NOTICES**

All notices, demands, requests, consents, or approvals required or permitted to be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been properly given if personally served or sent by registered mail or sent by fax to the Municipality or to the Company as the case may be, at the addresses set forth below:

- (i) ATCO Gas and Pipelines Ltd.
Attention: Vice-President Edmonton Operations
10035 - 105 Street
Edmonton, Alberta T5J 2V6

Phone (780) 420-7223 Fax (780) 420-7966

- (ii) The City of Edmonton
Attention: City Manager
3rd Floor, City Hall
1 Sir Winston Churchill Square
Edmonton, Alberta T5J 2R7
Phone (780) 496-8222 Fax (780) 496-8220

The City of Edmonton
Attention: General Manager, Transportation Department
15th Floor, Century Place
9803 - 102A Avenue
Edmonton, Alberta T5J 3A3
Phone (780) 496-2808 Fax (780) 496-2803

The City of Edmonton
Attention: City Solicitor
9th Floor, Chancery Hall
3 Sir Winston Churchill Square
Edmonton, Alberta T5J 2C3
Phone (780) 496-7203 Fax (780) 496-7267

The date of receipt of any such notice as given above, shall be deemed to be as follows:

- (i) In the case of personal service, the date of service;
- (ii) In the case of registered mail, the seventh (7th) business day following the date of delivery to the Post Office, provided, however, that in the event of an interruption of normal mail service, receipt shall be deemed to be the seventh (7th) day following the date on which normal service is restored;
- (iii) In the case of a fax, the date the fax was actually received by the recipient.

21) **INTERRUPTIONS OR DISCONTINUANCE OF DELIVERY SERVICE**

Subject to its Delivery Tariff, the Company shall use its best efforts on a commercially reasonable basis to avoid and minimize any interruption, reduction or discontinuance of Gas Distribution Service to any Consumer. However, the Company reserves the right to do so for any one of the following reasons:

- (i) Where the Company is required to effect necessary repairs or changes to the Gas Distribution System;
- (ii) On account of or to prevent fraud or abuse of the Gas Distribution System;
- (iii) On account of defective aspects of the Gas Distribution Systems which in the opinion of the Company, acting reasonably, may become dangerous to life or property;
- (iv) Where required, under the Terms and Conditions, due to a Consumer's non-payment of gas bills.

To the extent the Company has any planned major interruptions, reductions or discontinuances in Gas Distribution Service, it shall notify the Municipality in writing as soon as practicable in the circumstances. For any other major interruption, reductions or discontinuances in Gas Distribution Service, the Company shall provide verbal notice to the Municipality as soon as is practicable in the circumstances.

22) **DISPUTE SETTLEMENT**

To the extent permitted by law and except as otherwise provided in this Agreement, the Company and Municipality agree that unresolved disputes pertaining to this Agreement, other than any matter that is within the exclusive jurisdiction of a governmental authority having jurisdiction, shall be submitted to arbitration for determination and may be commenced by either party providing written notice to the other party stating the dispute to be submitted to arbitration. The parties shall attempt to appoint a mutually satisfactory arbitrator within 10 business days of the said notice. In the event the parties cannot agree on a single arbitrator within the 10 business days, each party shall appoint an arbitrator within the 10 business days thereafter by written notice, and the two arbitrators shall together appoint a third arbitrator within 25 business days of written notice for arbitration. If either party fails to appoint an arbitrator within the time set forth above, the arbitrator appointed by the other party shall proceed with the arbitration and the award of such arbitrator shall be final and binding. If the two arbitrators appointed by the parties hereto fail to agree upon a third arbitrator within the 25 business day period from the date of delivery of the written notice for arbitration, either party may apply, on ten (10) days written notice to the other, to a Judge of the Court of Queen's Bench of Alberta for the appointment of the third arbitrator. The dispute shall be heard by the arbitrator(s) within 45 business days of the written notice for arbitration unless extended by mutual agreement between the parties. The arbitrator(s) shall render a decision within 20 business days of the last day of the arbitration hearing. Save as otherwise expressly provided in this Agreement, the provisions of the *Arbitration Act* (Alberta) (as amended from time to time) shall apply to any arbitration undertaken under this Agreement subject always to the Commission's jurisdiction over any matter submitted to arbitration. Pending resolution of any dispute, the Municipality and the Company shall continue to perform their

respective obligations hereunder. The decision of the majority of the arbitrators shall be final and binding.

The Company shall advise the Commission of any dispute submitted to arbitration within ten (10) business days of it being submitted and shall advise the Commission of the results of arbitration within ten (10) business days following receipt of the decision of the arbitrator(s).

23) **APPLICATION OF WATER, GAS AND ELECTRIC COMPANIES ACT**

This Agreement shall be deemed to operate as consent by the Municipality to the exercise by the Company of those powers which may be exercised by the Company with the consent of the Municipality under and pursuant to the provisions of the *Water, Gas and Electric Companies Act* (Alberta), as amended.

24) **FORCE MAJEURE**

If either party shall fail to meet its obligations hereunder within the time prescribed, and such failure shall be caused or materially contributed by an event of "force majeure", such failure shall be deemed not to be a breach of the obligations of such party hereunder, but such party shall use its best efforts to put itself in a position to carry out its obligations hereunder. The term "force majeure" shall mean any acts of God, strikes, lock-outs, or other industrial disturbances, acts of the Queen's enemies, sabotage, war, blockades, insurrections, riots, epidemics, lightning, earthquakes, storms, fires, wash-outs, nuclear and radiation activity or fall-out, restraints of rulers and people, orders of governmental authorities or courts of law having jurisdiction, the inability to obtain any necessary approval from a governmental authority having jurisdiction (excluding municipal governments), civil disturbances, explosions, mechanical failure, and any other causes similar in nature not specifically enumerated or otherwise specified herein that are not within the control of such party, and all of which by the exercise of due diligence of such party could not have been prevented. Lack of finances shall be deemed not to be an event of "force majeure".

25) **TERMS AND CONDITIONS**

The Terms and Conditions that apply to the Company and are approved by the Commission, as revised or amended from time to time by the Commission, shall apply to the provisions of this Agreement and to its performance as the context requires.

26) **NOT EXCLUSIVE AGAINST HER MAJESTY**

Notwithstanding anything to the contrary herein contained, it is mutually understood and agreed that the rights, powers and privileges conferred and granted by this Agreement shall not be deemed to be exclusive against Her Majesty in the right of the Province of Alberta.

27) **SEVERABILITY**

To the extent permitted by law, any provision of this Agreement which is prohibited or unenforceable, shall be ineffective to the extent of such prohibition or unenforceability, without invalidating the remaining portions hereof.

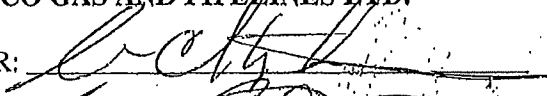
IN WITNESS WHEREOF the parties hereto have executed these presents as of the Effective Date.

THE CITY OF EDMONTON

PER: _____

PER: _____

ATCO GAS AND PIPELINES LTD.

PER:  _____

PER:  _____

SCHEDULE "A"

Core Services

The Company shall provide to the Municipality the following basic services as Core Services:

- 1) The Company shall deliver natural gas to the Consumers within the Municipal Area in accordance with the Company's Terms and Conditions, the Company's Distribution Tariff, the Act, any regulations thereto, and any Commission Orders.
- 2) The Company shall install all natural gas facilities required to provide service to the Consumers within the Municipal Area and in accordance with the Terms and Conditions of Service.
- 3) As required by legislation, the Company shall provide and install all necessary regulators and meters necessary for measuring the natural gas supplied to each Consumer. The point of delivery shall be upon the Consumer's premise, currently at the outlet side of the meter.
- 4) The Company agrees to collaborate with the Municipality in an effort to mutually develop emergency response procedures, assist with emergency response planning, participate in emergency training and take an active role in the Municipality's Emergency Operations Centre when activated due to natural gas emergencies.
- 5) The Company shall do all things to Operate and Maintain the Gas Distribution System, including in accordance with all applicable regulations, codes, applicable standards and common industry practices.
- 6) The Company shall provide twenty-four hour a day "Trouble Service" to investigate any natural gas odor and make safe any suspected gas leak inside or outside the Consumer's premise.
- 7) The Company will utilize the services of professional engineers who are responsible for designing all natural gas facilities to satisfy all applicable regulatory codes and standards; preparing of necessary work order plans and monitoring the distribution network pressures to ensure that the Company's facilities will satisfy the Consumer's current and future natural gas delivery requirements.
- 8) The Company shall provide to the Municipality, on request, copies of any and all Gas Distribution Service related written information or reports required to be filed with the Commission, with the exception of responses to questions from interveners or the Commission related to rate hearings.
- 9) The Company shall provide to the Municipality, upon request, an annual report on the following standards specific to the Municipality:
 - i) **System Reliability** - that will be measured by:

- The number of major interruptions to Gas Distribution Service resulting in a loss of service to Consumers;
 - The number of Consumers affected by each outage; and
 - The average duration of each outage.
- ii) Customer Satisfaction with local Gas Distribution Service - that will be measured by the number and nature of unresolved local non-rates related customer complaints received by the Company.
- including the Company-wide Call Centre targets and statistics (wait times, abandoned calls, call volumes, etc); and any
 - customer complaints received by the Commission.
- iii) **Public Safety:** that will be measured by:
- the number of customer injuries and/or damages due to Gas Distribution System failure;
 - the number of line hits per total locates completed;
 - the number of line hits as a result of inaccurate locates;
 - the percentage of the area of the Municipality surveyed for leaks and yearly cathodic protection measures;
 - the number and nature of calls received from the Municipality and any of its Municipal agencies (including fire department, police department etc.) regarding the Gas Distribution System.
- 10) The Company shall meet at least annually with the Municipality ensuring that through a mutual exchange of information the Municipality is kept apprised of the Company's construction and upgrading programs planned for the Municipality. The Municipality will advise the Company of any issues relating to the Gas Distribution System that have been addressed by Municipal council.

SCHEDULE "B"

Extra Services

- 1) After the Municipality requests Extra Services, the Company will provide its applicable operations and maintenance standards for Gas Distribution System field services.
- 2) If the Company and the Municipality agree that the Company will provide Extra Services requested by the Municipality, the parties shall complete the information required in subparagraph 3), and subparagraph 4) shall apply in respect of such Extra Services.
- 3) Extra Services shall mean:

[To be negotiated by Municipality.]
- 4) In consideration for the provision of the Extra Services, the Municipality shall pay to the Company the sum of _____ Dollars (\$_____) which if forming part of this Agreement shall be collected as part of the Franchise Fee.
- 5) Within sixty (60) days of the end of each calendar year, the Company shall provide a written report to the Municipality, outlining the actual performance of the Extra Services provided and the related costs for each service for the Municipality to assess if the performance standards for the Extra Services have been met.
- 6) In the event the Company breaches any material provision of the Extra Services contract, the Municipality may, at its option, provide written notice to the Company to remedy such breach. If the said breach is not remedied within two (2) weeks after receipt of the written notice or such further time as may be reasonably required by the Company using its best efforts on a commercially reasonable basis to remedy the breach, the Municipality may give six (6) months notice in writing of the termination of the Extra Services contract to the Company, and unless such breach is remedied to the satisfaction of the Municipality acting reasonably, the Extra Services contract shall terminate.

Schedule "A" to Bylaw 15372 as amended

SCHEDULE "C"

Dome Petroleum Agreement

Schedule "A" to Bylaw 15372 as amended

PUBLIC UTILITIES BOARD
FOR THE PROVINCE OF ALBERTA

ORDER NO.: E77048

FILE NO.: E6.7.4

THURSDAY, THE THIRD DAY OF MARCH, A.D. 1977

IN THE MATTER OF "The Municipal Government Act", being Chapter 246 of the Revised Statutes of Alberta, 1970, as amended;

AND IN THE MATTER OF "The Municipal Taxation Act", being Chapter 251 of the Revised Statutes of Alberta, 1970, as amended;

AND IN THE MATTER OF "The Public Utilities Board Act", being Chapter 302 of the Revised Statutes of Alberta, 1970, as amended;

AND IN THE MATTER OF an application by Northwestern Utilities Limited to the Public Utilities Board for approval to enter into a certain agreement dated June 21, 1976.

BEFORE:

THE PUBLIC UTILITIES BOARD FOR THE PROVINCE OF ALBERTA

- 2 -

Public Utilities Board, Alberta

ORDER NO.: E77048

O R D E R

The Board in this Order adopts the report of D. J. Sheridan, the Member authorized, pursuant to section 17 of the Public Utilities Board Act, to hear and report on the matter.

WHEREAS the Board did, by Order No. E75066 dated July 9, 1975, approve the City of Edmonton (the City) entering into a renewal franchise agreement with Northwestern Utilities Limited (NUL);

AND WHEREAS the Board did, by Order No. E75067 dated July 9, 1975, approve the City entering into an agreement with NUL pursuant to section 17(7) of the Municipal Taxation Act;

AND WHEREAS the parties to the agreement dated June 21, 1976, which is attached as Schedule "A" hereto, were desirous of clarifying that the revenue franchise tax was intended to apply only to gas "consumed" by the customers of NUL residing within the corporate boundary of the City;

AND WHEREAS the City by By-law No. 4954, attached hereto as Schedule "B", did authorize the City entering into the agreement;

Public Utilities Board, Alberta

ORDER NO.: E77048

ORDER (Continued)

AND WHEREAS NUL applied on behalf of the parties on March 1, 1977, for an Order approving the parties entering into the agreement dated June 21, 1976;

AND UPON READING the Application and all other material in support of the Application;

AND UPON HEARING Counsel;

AND IT APPEARING that nothing contained therein adversely affects the public interest;

IT IS ORDERED that approval of the Public Utilities Board be and the same is hereby given to the parties entering into the Agreement dated June 21, 1976 and attached as Schedule "A" hereto;

AND IT IS HEREBY DECLARED that nothing in this Order contained shall bind, affect or prejudice the Board in its consideration of any other matter or question relating to the parties to the agreement.

CERTIFIED A TRUE COPY

Mavis Beesley
A/ SECRETARY

PUBLIC UTILITIES BOARD

(SIGNED) D. J. SHERIDAN

MEMBER

Schedule "A" to Bylaw 15372 as amended

Public Utilities Board, Alberta

ORDER NO.: E77048

SCHEDULE "A"

THE ATTACHED SCHEDULE "A" WHICH,
CONSISTS OF SIX PAGES,
EACH MARKED SCHEDULE "A", WITH THE
APPROPRIATE PAGE MARKED ON EACH,
FORMS PART OF AND IS REFERRED TO IN:

PUBLIC UTILITIES BOARD

ORDER NO.: E77048

DATED THE THIRD DAY OF MARCH, 1977.

PUBLIC UTILITIES BOARD

(SIGNED) D. J. SHERIDAN

MEMBER

Page 1 of 6
March 3, 1977

THIS AGREEMENT made this ^{JUNE} 21 day of ~~May~~, A.D.

1976.

BETWEEN:

THE CITY OF EDMONTON, a Municipal Corporation in the Province of Alberta,
(hereinafter called "the City")

OF THE FIRST PART

- and -

NORTHWESTERN UTILITIES LIMITED,
a body corporate with office at the City of Edmonton, in the Province of Alberta,
(hereinafter called "NUL")

OF THE SECOND PART

- and -

EDMONTON LIQUID GAS LIMITED, a body corporate with office at the City of Edmonton, in the Province of Alberta,
(hereinafter called "ELG")

OF THE THIRD PART

- and -

CANADIAN UTILITIES LIMITED, a body corporate with office at the City of Edmonton, in the Province of Alberta,
(hereinafter called "CUL")

OF THE FOURTH PART

- and -

DOMB PETROLEUM LIMITED, a body corporate with office at the City of Calgary, in the Province of Alberta,
(hereinafter called "Dome")

OF THE FIFTH PART

(ELG, CUL and Dome being sometimes hereinafter collectively called,

WITNESSETH:

WHEREAS BLG owns and operates an extraction plant for the recovery of hydrocarbon components at a plant site located in the Southwest quarter of Section 4, Township 52, Range 25, W4M in the City of Edmonton; and

WHEREAS CUL or a subsidiary of CUL and Dome plan to expend large sums of money to expand the said extraction plant to recover further hydrocarbon components from gas moving in pipelines owned by Northwestern Utilities Limited (hereinafter called "NUL") through the said plant site, and

WHEREAS pursuant to agreement dated the 14th day of May, 1975 (hereinafter called the "franchise agreement"), the City and NUL agreed that the exclusive period of the franchise to NUL for the sale of natural gas within the City of Edmonton be extended for a further period of ten (10) years from the 16th day of November, 1975; and

WHEREAS the franchise agreement provides for the payment to the City by NUL for a period from the 16th day of November, 1975 to the 16th day of November, 1985 of a franchise tax with respect to certain gas sold by NUL to domestic, commercial and industrial consumers within the limits of the City of Edmonton as the limits exist from time to time.

NOW THEREFORE in consideration of the premises and of the mutual covenants of the parties hereto herein contained, IT IS AGREED AS follows:

1. Where extraction operations for the removal of hydrocarbon components are being conducted at any time at the plant site referred to in the first preamble of this agreement no franchise tax under the franchise agreement or any renewal or replacement thereof, or otherwise, shall be imposed or levied on the Companies, on NUL or on any other person by the City of Edmonton or any authority acting under the control of the City of Edmonton on or with respect to said hydrocarbon components so removed or on or with respect to proceeds of or compensation for said hydrocarbon components nor shall NUL be required to pay to the City any franchise tax on or with respect to the said hydrocarbon components or the proceeds or compensation received in respect thereof. Nothing herein shall affect or restrict the right of the City of Edmonton to levy or impose such franchise tax on or with respect to gas used as fuel or lost in the operation of extraction plants as set forth in paragraph 1 of the franchise agreement or in any similar paragraph in any future franchise agreement.
2. This agreement shall in no way commit the City to issue a Development Permit for the development of the said extraction plant.
3. Notwithstanding the provision of paragraph 2, the Council of the City of Edmonton having had regard to the proposed development hereby requires that as a condition

of this agreement, that in the event of the construction of the ethane extraction facility as proposed and presented, that the following conditions shall become effective between the parties and in full force and effect, namely:

- (a) That the entire 77 acres be examined by the Planning Department so as to determine the highest and best industrial zoning use and thereafter that the owner pay annual property taxes based on the determined deemed highest and best industrial land use;
- (b) No future expansion or change to the 77 acres (after this contemplated change) be allowed without prior consent of Council of the City of Edmonton. It being understood that the Council of the City of Edmonton is desirous to control all future plant expansions, but does not intend to freeze other forms of development on the said lands. It being further understood that Council will approve any development on the said land that is within the zoning in existence and in force for the said lands at the time the application for such development is made with the further condition that the development will be compatible with the development that has taken place or is permissible on lands in the surrounding area owned by other parties. It is further understood that the normal planning procedure for development application will be complied with.
- (c) That any monies paid under and by virtue of the

- franchise tax agreement will not be refunded;
- (d) The Companies agree that they will comply with the standards of the Province of Alberta with respect to odour and air quality. In the event of any complaint arising as to odour by virtue of the operations of the plant, the matter may be referred to the City Council of Edmonton.

As to the adjudication of the non-compliance the City Council in adjudicating shall be bound to follow scientific and technical evidence in determining as to whether there has been non-compliance with the Province of Alberta Standards as to odour and air quality. In the event the City Council in properly adjudicating finds non-compliance they shall have the right to order appropriate measures to be taken by the Companies to remedy the problem of the odour and air quality and further in the event of failure of the Companies to remedy the problem within a reasonable amount of time, the City shall have the right to order the closure of the operations of the plant and the Companies shall comply until such time as the problem has been rectified;

4. This agreement is subject to the approval of the Public Utilities Board.

5. The City agrees to pass a by-law authorizing the execution of this agreement.

6. This agreement shall enure to the benefit of and be binding upon the successors and assigns of the parties hereto.

IN WITNESS WHEREOF the parties hereto have executed these presents as of the day and year first above written.

THE CITY OF EDMONTON

[Signature]
Mayor

[Signature]
City Clerk

CANADIAN UTILITIES LIMITED

[Signature]
VICE-PRESIDENT
[Signature]
SECRETARY

NORTHWESTERN UTILITIES LIMITED

[Signature]
VICE-PRESIDENT
[Signature]

DOME PETROLEUM LIMITED

[Signature]
[Signature]
Secretary

EDMONTON LIQUID GAS LIMITED

[Signature]
[Signature]

APPROVED
Dir.
Inv.
Acct.
Ins.
Law
Admin.

APPROVED

As to Form *[Signature]*
As to Content *[Signature]*
As to Principle *[Signature]*
City Secretary
City Clerk
City Commissioner

Schedule "A" to Bylaw 15372 as amended

Public Utilities Board, Alberta

ORDER NO. : E77048

SCHEDULE "B"

THE ATTACHED SCHEDULE "B" WHICH
CONSISTS OF TWO PAGES,
EACH MARKED SCHEDULE "B", WITH THE
APPROPRIATE PAGE MARKED ON EACH,
FORMS PART OF AND IS REFERRED TO IN:

PUBLIC UTILITIES BOARD

ORDER NO. : E77048

DATED THE THIRD DAY OF MARCH, 1977.

PUBLIC UTILITIES BOARD

(SIGNED) D. J. SHERIDAN

MEMBER

BYLAW NO. 4954

A Bylaw respecting the operations of an Extraction Plant for the recovery of hydro-carbon components at a plant site located in the S.W. 1/4 of Section 4, Township 52, Range 25, W. 4th M. in the City of Edmonton.

APPROVED

As to Form: *[Signature]* City Solicitor
As to Content: *[Signature]* Mayor
As to Financial: *[Signature]* Chief Commissioner
As to Technical: *[Signature]* Chief Commissioner

WHEREAS the Municipal Council of the City of Edmonton on the 16th day of November, 1915 passed Bylaw No. 662 authorizing the Mayor and City Clerk of the City of Edmonton to execute a Franchise agreement between the City of Edmonton and Northern Alberta Natural Gas Development Company Limited; and

WHEREAS the said agreement was later assigned to Northwestern Utilities Limited and has remained in force by mutual consent and a series of private Acts of the Legislature of Alberta have extended the initial 20 year period from time to time for further periods of 10 years; and

WHEREAS the Municipal Council for the City of Edmonton at its adjourned meeting of May 14th, 1975 approved an agreement between the City and Northwestern Utilities Limited extending the Edmonton Franchise Agreement dated November 16th, 1915 as amended for a further period of 10 years from the 16th day of November, 1975; and

WHEREAS Edmonton Liquid Gas owns and operates an Extraction Plant for the recovery of hydro-carbon components at a plant site located in the S.W. 1/4 of Section 4, Township 52, Range 25, W. 4th M., in the City of Edmonton; and

WHEREAS Canadian Utilities Limited or a subsidiary of Canadian Utilities Limited and Dome Petroleum Limited are expending large sums of money to expand the said Extraction Plant to recover further hydro-carbon components

from gas moving in pipe lines owned by Northwestern Utilities Limited through the said plant site; and

WHEREAS the Municipal Council for the City of Edmonton at its meeting of April 27th, 1976, approved an agreement between the City of Edmonton, Northwestern Utilities Limited, Edmonton Liquid Gas Limited, Canadian Utilities Limited, and Dome Petroleum Limited, which agreement has been executed by all said parties, is dated June 21, 1976 and by which the City agreed to pass a bylaw authorizing the execution of the said agreement;

NOW THEREFORE the Municipal Council of the City of Edmonton duly assembled enacts as follows:

That the Mayor and City Clerk for the City of Edmonton are hereby authorized and empowered for and on behalf of the City of Edmonton to execute and seal that agreement dated the 21st day of June, A.D. 1976, between the City of Edmonton, Northwestern Utilities Limited, Edmonton Liquid Gas Limited, Canadian Utilities Limited and Dome Petroleum Limited, a copy of which is attached and incorporated as Appendix "A" to this bylaw.

READ A first time this 12th day of January A.D. 1977;

READ a second time this 12th day of January A.D. 1977;

READ a third time and duly passed this 12th day of January A.D. 1977.

THE CITY OF EDMONTON

"T. J. Caranagh"
MAYOR

"B. J. McLaughlin"
CITY CLERK

Schedule "A" to Bylaw 15372 as amended