

**ALBERTA GOVERNMENT SERVICES  
LAND TITLES OFFICE**

**IMAGE OF DOCUMENT REGISTERED AS:**

**142330848**

**ORDER NUMBER: 29099490**

**ADVISORY**

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Neighbourhood: Hollick Kenyon  
Stage: 10D

Water Distribution Lines

The Land Titles Act

Utility Right-of-Way  
("URW")

**THIS AGREEMENT MADE BETWEEN:**

**EPCOR Water Services Inc.**  
("EPCOR")

and

**The City of Edmonton**  
(the "Owner")

A. The Owner is the registered owner or is entitled to become the registered owner under an Agreement for Sale or unregistered Transfer or otherwise, of the land legally described as:

PLAN 1225114

BLOCK 32

LOT 57

EXCEPTING THEREOUT ALL MINES AND MINERALS

(the "Land").

B. The Owner has agreed to grant to EPCOR a URW across all or a portion of the Land in accordance with the terms and conditions contained in this Agreement.

**IN CONSIDERATION OF** the granting of the URW by the Owner to EPCOR and the payment of the Fee by EPCOR to the Owner, the Owner and EPCOR agree as follows:

**1. GRANT**

1.1 The Owner grants to EPCOR the right to use that portion of the Land being described as follows:

All that portion shown as Area "C" on Utility Right of Way Plan 122 5115

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last updated July, 2014

(the "Right-of-Way"); for the installation, construction, operation, inspection, maintenance, repair, removal and replacement of water transmission and distribution lines and any other utility lines and systems as may be required by EPCOR (the "Utilities").

1.2 The right to use the Right-of-Way in the manner stated in this Agreement shall be for as long a period as EPCOR may desire to exercise the right.

## **2. FEE**

2.1 Upon the execution of this Agreement by EPCOR and the Owner, EPCOR shall pay to the Owner the sum of One Dollar (\$1.00 exclusive of Goods and Services Tax) (the "Fee"), the receipt of which is acknowledged by the Owner. The payment of the Fee by EPCOR is the sole consideration and inducement for the execution of this Agreement by the Owner and is the total compensation payable by EPCOR to the Owner for the right to use the Right-of-Way as stated in this Agreement.

## **3. RIGHT OF ACCESS**

3.1 EPCOR shall have the right to do whatever may be required for the enjoyment of the rights granted under this Agreement, including the trimming and removal of all trees and shrubs.

3.2 Upon execution of this Agreement by EPCOR and the Owner, EPCOR may enter the Right-of-Way with its agents, employees, and contractors, and with or without vehicles, machinery or equipment, for the purpose of exercising the rights granted pursuant to this Agreement.

3.3 EPCOR shall have a right of access to the Right-of-Way for the purposes of exercising the rights granted under this Agreement, across the remainder of the Land. This right of access shall be used only in cases of necessity as determined by EPCOR. EPCOR shall pay reasonable compensation to the Owner of the Land for any damage caused by EPCOR, its agents, employees, and contractors in the exercise of the right of access as granted to EPCOR under this Clause 3.3.

## **4. UTILITIES**

4.1 Notwithstanding any rule of law to the contrary, the Utilities shall remain chattels and the property of EPCOR and shall not become part of the Land.

4.2 EPCOR shall install, construct, operate, and maintain the Utilities in a responsible manner so as to minimize damage to the Right-of-Way and shall, where practicable, after any such work restore the Right-of-Way to substantially its original level and condition. EPCOR shall not be responsible for any damages caused by subsidence after leveling is completed, provided the subsidence does not occur as a result of the negligence on the part of EPCOR. Notwithstanding the foregoing, or Clause 7.1, EPCOR shall only be obligated to compensate the

Owner for damage to buildings or improvements that may be placed within the Right-of-Way, and arising from the exercise by EPCOR of its rights under this Agreement, provided that EPCOR has given its written consent pursuant to Clause 5.1 to the placement of such buildings or improvements within the Right-of-Way.

4.3 Should EPCOR decide that it has no further need of the Right-of-Way, EPCOR may abandon the Utilities and as is reasonably possible, EPCOR shall remove all visible above ground parts of the Utilities and the ground surface area of the Right-of-Way shall be restored to the condition that existed prior to the abandonment. Upon abandonment, EPCOR shall have no further obligation or liability to the Owner pursuant to this Agreement.

## **5. OWNER'S USE OF RIGHT-OF-WAY**

5.1 The Owner shall not, without the prior written consent of EPCOR, stockpile, excavate, drill, install, erect, construct or place above, on or under the Right-of-Way, any pavement, building, fence, pit, sidewalk, or other structure or improvement. The Owner shall not permit any of these activities to occur by others.

5.2 The Owner shall not alter the surface grade level of the Right-of-Way in any manner which would affect the rights granted to EPCOR pursuant to this Agreement.

5.3 The Owner shall not plant any trees within the Right-of-Way.

5.4 The Owner shall not use the Right-of-Way in any manner which may conflict with the rights of EPCOR as granted to EPCOR pursuant to this Agreement.

5.5 The Owner shall not store or otherwise place toxic, flammable or potentially explosive substances within the Right-of-Way, nor shall the Owner permit the storage or placement by a third party of such substances within the Right-of-Way.

5.6 The Owner shall be responsible for the maintenance of the Right-of-Way, including but not limited to such items as grass cutting and clean-up, replacement and repair of the Right-of-Way in such a manner that it shall be suitable at all times for EPCOR's use as permitted by this Agreement. The Owner shall undertake any maintenance directed by EPCOR to maintain the said Right-of-Way within sixty (60) days of receiving written notification.

## **6. ENVIRONMENTAL OBLIGATIONS**

6.1 EPCOR and the Owner shall comply with all legislation dealing with environmental issues related to the Right-of-Way including, but not limited to, the Environmental Protection and Enhancement Act R.S.A. 2000 Ch. E-12 and its regulations or any successive legislation.

6.2 The responsibility of EPCOR and the Owner with respect to environmental obligations, as required by this Agreement, shall continue to be enforceable during and after the termination of this Agreement.

## **7. INDEMNITY AND COMPENSATION**

7.1 Except for the negligence of the Owner, its employees, agents, contractors and for those persons for whom the Owner is responsible in law, EPCOR shall:

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

any and all claims, suits, actions, demands, expenses, damages and costs which may be brought or made against the Owner or which the Owner may pay or incur by reason of any breach, violation or non-performance by EPCOR of any covenant, term or provision of this Agreement, or by reason of the negligence of EPCOR, its employees, agents, contractors and for those persons for whom EPCOR is responsible in law, in the exercise of the rights as granted to EPCOR under this Agreement.

## **8. QUIET ENJOYMENT**

8.1 EPCOR by performing and observing the terms and conditions of this Agreement shall peaceably hold and enjoy all the rights granted under this Agreement, without hindrance or interruption from the Owner or any person claiming through, under or from the Owner.

## **9. ADDRESS FOR CONSENT**

9.1 Any prior written consent required to be obtained from EPCOR pursuant to this Agreement shall be obtained by delivering the request to EPCOR by registered mail, postage prepaid, addressed as follows:

EPCOR WATER SERVICES INC.  
Land Administration  
Rossdale Watermark Building  
c/o 2000 – 10423, 101 Street N.W.  
Edmonton, Alberta T5H 0E8

## **10. DISPUTE RESOLUTION**

10.1 In the event of a determination by either party in regard to a matter in dispute between EPCOR and the Owner as to the interpretation or effect of any of the terms or conditions of this Agreement, the determination shall be conclusively deemed to have been accepted by the parties,

unless, within ten (10) days of the determination, a party shall give written notice to the other party (the "Arbitration Notice") of their desire to have the matter in dispute resolved by arbitration.

10.2 Within seven (7) days of receipt of the Arbitration Notice, the parties shall mutually appoint an arbitrator (the "Arbitrator"). In the event that the parties shall fail to agree on the appointment of the Arbitrator, then either party may, on written notice to the other, apply to the President of the Alberta Arbitration and Mediation Society to name the Arbitrator.

10.3 The decision of the Arbitrator is final and binding on the parties and there shall be no appeal of the decision to the courts.

10.4 Except as modified by this Agreement, the provisions of the Arbitration Act R.S.A. 2000 Ch. A-43, as amended, shall apply.

## 11. GENERAL

11.1 There are no conditions, either subsequent or precedent, except as stated in this Agreement. This Agreement is the entire agreement between EPCOR and the Owner and no representations or warranties have been made by EPCOR, except as stated in this Agreement.

11.2 EPCOR shall, without the consent of the Owner, have the right to assign to any person or corporation to whom a franchise is granted, or to any person, partnership, trust, government, agency or corporation, the right to use the Right-of-Way, in whole or in part, in accordance with the terms and conditions contained in this Agreement.

11.3 This Agreement is and shall be of the same force and effect to all intents and purposes as a covenant running with the Land.

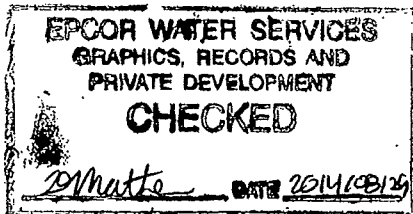
11.4 If any term or condition of this Agreement shall be invalid or unenforceable, the remainder of this Agreement shall not be affected and each remaining term and condition shall be valid and be enforced to the fullest extent permitted by law.

11.5 In this Agreement:

- (a) the word "shall" is to be read and interpreted as mandatory;
- (b) the word "may" is to be read and interpreted as permissive; and
- (c) the word "Owner" shall be read and interpreted as meaning an individual, a partnership, a corporation, a trust, an unincorporated organization, a government, or any department or agency thereof, and the heirs, executors, administrators or other legal representatives of any individual.

11.6 EPCOR 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 Owner in relation to any use of the Right-of-Way by EPCOR pursuant to this Agreement, and if any such taxes, rates, assessments, charges, levies or impositions shall be levied, imposed, or placed, EPCOR shall make payment thereof. 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 Owner, shall be the responsibility of EPCOR, and EPCOR shall on written demand by the Owner, pay to the Owner any and all such taxes.

EPCOR AND THE OWNER HAVE EXECUTED THIS AGREEMENT ON  
THE 11 DAY OF September 2014.



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EPCOR Water Services Inc.

Per:

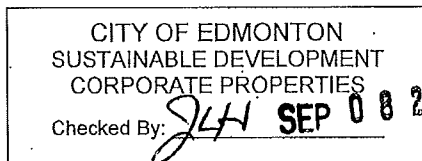
Senior Vice President

(Seal)

APPROVED:

AS TO CONTENT:

THE CITY OF EDMONTON, as  
Represented by the Director of Land Services  
Section, Corporate Properties,  
Sustainable Development



Per: (City Seal)

Per: (Seal) ✓

DATED this 11 day of Sept, 2014

The City of Edmonton

To

EPCOR Water Services Inc.

Water Distribution Lines

EPCOR WATER SERVICES INC.  
Land Administration  
Rossdale Watermark Building  
c/o 2000 - 10423, 101 Street N.W.  
Edmonton, Alberta T5H 0E8



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