

**REGIONAL DISTRICT OF NANAIMO**

**AND**

**EPCOR WATER (WEST) INC.  
(Inc. No. A0049806)**

**FIRE PROTECTION SERVICES AGREEMENT**

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## SCHEDULES

Schedule "A" - Services

Schedule "B" - Fees and Terms of Payment

Schedule "C" - Contacts

Schedule "D" - Special Terms

THIS AGREEMENT (the “Agreement”) dated the \_\_\_ day of \_\_\_\_\_, 2018.

BETWEEN

REGIONAL DISTRICT OF NANAIMO,  
a Regional District incorporated under the laws of the Province of British Columbia  
(the “District”)

-and-

EPCOR WATER (WEST) INC.  
a corporation incorporated under the laws of the Province of British Columbia  
 (“EPCOR”)

WHEREAS:

- A. In February 2006, EPCOR assumed ownership of the public water utility from Breakwater Enterprises Ltd.;
- B. Since February 2006, in connection with its role as the operator of the public water utility, EPCOR has been providing to the District maintenance, repair and other services relating to the fire Hydrants that are a component of the public water utility;
- C. The Parties now wish to reduce to writing their agreement with respect to the provision by EPCOR of maintenance, repair and other services relating to the fire Hydrants and fire protection services that are a component of the public water utility;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and the covenants herein contained, EPCOR and the District covenant and agree each with the other as follows:

## 1.0 DEFINITIONS, INTERPRETATION AND SCHEDULES

### 1.1 Definitions

For the purposes of this Agreement, each of the following expressions has the meaning ascribed to it in this section 1.1. Any capitalized word or expression that is not defined in this Agreement has the ordinary meaning given to it.

- 1.1.1 “Additional Services” means those services to be provided and performed by EPCOR employees or subcontractors hereunder in addition to the Standard Services, as more particularly described in Schedule “A” hereto;
- 1.1.2 “Agreement”, “hereto”, “herein”, “hereby”, “hereunder”, “hereof” and similar expressions when used in this Agreement refer to the whole of this Agreement which includes the attached Schedules and not to any particular, article, part, section, Schedule or portion thereof;
- 1.1.3 “Confidential Information” means information considered proprietary by either Party and which is delivered or disclosed under or pursuant to this Agreement and identified as such, and includes all material, data and information (regardless of form and whether or not patentable or protectable by copyright) which is not available to the public. Notwithstanding the generality of the foregoing, the term “Confidential Information” shall not include any information that:
- (a) is now in or subsequently enters the public domain through means other than by the direct or indirect disclosure by either Party hereto in violation of the terms of this Agreement;
  - (b) is already in the possession of the Party receiving that information free of any obligation of confidence to the other Party;
  - (c) is lawfully communicated to the Party receiving the information by a Third Party, free of any confidential obligation, subsequent to the time of communication thereof by, through or on behalf of the other Party;

- (d) is developed independently by employees of the Party receiving that information not in contravention of this Agreement;
- (e) the Party disclosing that information has given its prior written approval to disclose; or
- (f) the District or EPCOR is required to disclose pursuant to an applicable statute, regulation or bylaw, or that either Party is required to disclose pursuant to any law or order of the Court.

1.1.4 “District Event of Default” means an event described in section 11.4;

1.1.5 “Effective Date” means January 1, 2018; **[Note to District: EPCOR intends for this Agreement to be effective starting next year to align with the new tariff and to be in place for the length of the new tariff.]**

1.1.6 “EPCOR Event of Default” means an event described in section 11.4;

1.1.7 “Fees” means those fees, reimbursements, charges and other amounts to be paid by the District to EPCOR as more particularly described in Schedule “B” hereto;

1.1.8 “Hydrant” means a Hydrant that is owned by EPCOR and connected to the public water utility in the District;

1.1.9 “Party” means either EPCOR or the District and “Parties” means both of them;

1.1.10 “Prime Rate” means the variable reference interest rate per month declared by the Royal Bank of Canada from time to time to be its prime rate for Canadian dollar loans made by the Royal Bank of Canada;

1.1.11 “Schedule” means a schedule attached to this Agreement and all amendments, supplements, replacements and additions thereto;

1.1.12 “Services” means the Standard Services and the Additional Services;

1.1.13 “Standard Services” means those services to be provided and performed by EPCOR employees or subcontractors hereunder, as more particularly described in Schedule “A” hereto;

1.1.14 “Term” means that period of time from the Effective Date to the date of termination of this Agreement as stated in Schedule “A” hereto; and

1.1.15 “Third Party” means any person or persons other than EPCOR and the District, and includes the federal, provincial and municipal governments and any department, agency, board or commission thereof and any firm or corporation.

## 1.2 Interpretation

1.2.1 Conflict with Schedules - Except as otherwise expressly provided for in the Schedules any conflict between the provisions in the body of this Agreement and the provisions in the Schedules shall be resolved in favour of the provisions in the Schedules.

1.2.2 Singular and Plural - Words importing the singular number include the plural and vice versa.

1.2.3 Gender - Words importing gender include the masculine, feminine and neuter genders.

1.2.4 Derivations - Where the context permits, derivations of terms defined herein shall have a meaning corresponding to the meaning of the defined term.

1.2.5 Person - The word “person” includes an individual, partnership, firm, body corporate or politic, government or department thereof.

1.2.6 Headings and Division - The division of this Agreement into parts and sections and the headings used herein are inserted for convenience of reference only and shall not define, enlarge or limit the terms nor affect the construction or interpretation of this Agreement.

1.2.7 Reference to Statutes, Regulations and Codes - Any reference to a statute, regulation, bylaw, ordinance, policy, procedure or code shall include and be deemed to be a reference to that statute, regulation, bylaw, ordinance, policy, procedure or code as amended and in force from time to time, and to any statute, regulation, bylaw, ordinance, policy, procedure or code that may be passed which has the effect of supplementing or superseding that statute, regulation, bylaw, ordinance, policy, procedure or code.



- 1.2.8 Continuous Effect - Except where specifically provided to the contrary herein, this Agreement shall be construed as always speaking and shall be interpreted and applied to circumstances as they arise.
- 1.2.9 Including - The words “include” and “including”, when following any general statement, term or matter, shall not be construed to limit that general statement, term or matter to the specific items or matters set forth immediately following those words or to similar items or matters following those words or to similar items or matters, whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto but shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of that general statement, term or matter.
- 1.2.10 Covenants Implied - All provisions of this Agreement requiring one Party or the other to do or to refrain from doing something shall be interpreted as the covenant of that Party with respect to that matter notwithstanding the absence of the words “covenants” or “agrees”.

### 1.3 Schedules

1.3.1 The following Schedules are attached hereto and form part of this Agreement:

- (a) Services
- (b) Fees and Terms of Payment
- (c) Contacts
- (d) Special Terms

## 2.0 GENERAL MATTERS

### 2.1 Effective Date

2.1.1 The provisions of this Agreement come into effect on the Effective Date and shall thereafter be binding upon the Parties until the termination of this Agreement pursuant to Article 11.

## 2.2 Services

2.2.1 EPCOR shall provide the Services in accordance with the terms and conditions contained herein.

## 2.3 Performance of Work

2.3.1 EPCOR shall diligently and punctually perform the Services in compliance with the terms of this Agreement. EPCOR shall perform the Services with the standard of professional skill, care, diligence and expertise customarily applied by qualified and experienced professionals performing similar services in the Province of British Columbia and adhere to all applicable professional standards and shall only use qualified personnel.

## 2.4 No Acquisition of Interests

2.4.1 Subject to any other Agreement between the Parties, notwithstanding the Fees paid by the District to EPCOR, the District shall not acquire any interest in the assets of EPCOR employed in the provision of the Services and, without restricting the generality of the foregoing, the District shall not, acquire any interest in any intellectual property owned or used by EPCOR in the provision of the Services, including any patents, copyrights, trademarks and industrial designs.

## 2.5 Changes in the Number of Hydrants

2.5.1 The Parties acknowledge that Hydrants may be added to EPCOR's inventory or sold by EPCOR over the Term and that the Fees payable by the District will be adjusted as set forth in Schedule "B" to reflect such changes in the inventory.

## 3.0 LEGISLATION AND REPORTING

### 3.1 Compliance with Legislation by EPCOR

3.1.1 In performing the Services (including any portion thereof performed by any subcontractors), EPCOR shall comply with the provisions and requirements of all laws, rules and regulations by lawful authority applicable including, without limitation, all relevant legislation, codes, bylaws, regulations and ordinances. Where there are two or more laws, codes, bylaws, ordinances or regulations applicable to the Services, the more restrictive shall apply. In particular, EPCOR

shall at all times observe and cause its personnel, agents and subcontractors to observe the provisions of all applicable environmental, health, safety and labour legislation. Evidence of compliance with any applicable legislation shall be furnished by EPCOR to the District at such times as the District may reasonably request. If EPCOR, its personnel, any agent or subcontractor or their respective personnel, fail to comply with any legislation or any regulations thereunder and the District is required to do anything or take any steps or pay any amounts to rectify that non-compliance, the provisions of section 5.3 shall apply.

### 3.2 Compliance with Legislation by the District

3.2.1 The District shall make its personnel and facilities suitable and available to enable EPCOR to efficiently provide the Services and the District shall comply with the provisions and requirements of all laws, rules and regulations by lawful authority applicable including, without limitation, all relevant legislation, codes, bylaws, regulations and ordinances. Where there are two or more laws, codes, bylaws, ordinances or regulations applicable to the District's obligations, the more restrictive shall apply. Evidence of compliance shall be furnished by the District to EPCOR at such times EPCOR may reasonably request. If the District, its personnel, any agent or subcontractor or their respective personnel, fail to comply and for the proper performance of the services EPCOR elects to do anything or take any steps or pay any amounts to rectify that non-compliance, the provisions of section 5.4 shall apply.

### 3.3 Permits and Licenses

3.3.1 EPCOR shall not be required to pay for any registrations, permits or licenses required by the District in connection with the fire Hydrants and fire protection services.

3.3.2 EPCOR shall be responsible for acquiring all registrations, permits and licenses required to operate and maintain the Hydrants. The costs associated with acquiring all required registrations, permits and licenses will be the responsibility of the District and will be included in the Additional Services Fee.

## 4.0 PERSONNEL AND SUBCONTRACTORS

### 4.1 Safety

4.1.1 While performing the Services, EPCOR shall be responsible for the safety of its personnel, agents and subcontractors, and for all property of EPCOR, its personnel, agents and subcontractors. The District shall be responsible for the safety of its personnel, agents and subcontractors, and all property of the District, its personnel agents and subcontractors.

#### 4.2 Subcontractors

4.2.1 EPCOR may arrange to have some or all of the Services performed or provided by subcontractors provided that those subcontractors have sufficient skills, expertise and resources to perform the Service and provided that EPCOR shall remain at all times responsible for the due performance of its obligations hereunder notwithstanding any such subcontracting of the Services.

### 5.0 PAYMENTS FOR SERVICES

#### 5.1 EPCOR Invoices

5.1.1 Upon the provision of the Services, the District shall pay Fees to EPCOR in accordance with the provisions of Schedule "B". On a monthly basis, EPCOR shall submit to the District an invoice for the Additional Services rendered to or prior to the date thereof. On a yearly basis, EPCOR shall submit to the District an invoice for the Standard Services rendered during the 365 day period immediately prior to the date of the invoice.

#### 5.2 No Payment for EPCOR Negligence

5.2.1 The District shall not be required to make any payment to EPCOR under this Agreement for any costs, expenses, losses or damages suffered or incurred by EPCOR to remedy errors or omissions resulting from the negligence of EPCOR in the provision of the Services.

### 5.3 Performance upon Default of EPCOR

5.3.1 Upon the failure of EPCOR to provide some or all of the Services, the District shall provide written notice to EPCOR setting out the nature of EPCOR's default. EPCOR shall have thirty (30) days to remedy such default to the satisfaction of the District, acting reasonably. If EPCOR fails to remedy the default, an EPCOR Event of Default will be deemed to have occurred and the District may terminate this Agreement in accordance with section 11.3.

### 5.4 Performance upon Default of the District

5.4.1 Upon the failure of the District to fulfill its obligations under this Agreement, EPCOR shall provide written notice to the District setting out the nature of the District's default. The District shall have thirty (30) days to remedy such default to the satisfaction of EPCOR, acting reasonably. If the District fails to remedy the default, a District Event of Default will be deemed to have occurred and EPCOR may terminate this Agreement in accordance with section 11.3.

### 5.5 Interest and Overdue Fees

5.5.1 Upon the failure of the District to pay any Fees within thirty (30) days of receipt of any invoice thereof, the District shall pay interest to EPCOR thereon at a rate per month equal to the Prime Rate plus two percent (2%).

### 5.6 Withholdings

5.6.1 Notwithstanding any other provision of this Agreement, the District shall be entitled to withhold and remit to the appropriate taxing authorities, or otherwise withhold, federal withholding taxes or any other amounts required by law to be withheld from payments made to EPCOR pursuant to this Agreement.

### 5.7 Deductions and Remittances

5.7.1 EPCOR is responsible for all deductions and remittances required by law in relation to its employees including those required for Canada Pension Plans, unemployment insurance, workers' compensation or income tax. The District shall have no liability or responsibility for the withholding, collection or payment of income taxes, unemployment insurance, statutory or other taxes or payments of any other nature on behalf of or in respect of or for the benefit of EPCOR or

any of its employees or any other person.

## 5.8 Taxes

5.8.1 In addition to the Fees, the District shall pay to EPCOR all taxes applicable to and payable for the Services or in respect to any other amount payable to EPCOR pursuant to this Agreement (including, but not limited to, GST and PST) and the District shall indemnify and hold EPCOR, its directors, officers, agents and employees harmless against any order, fine, penalty, interest or tax that may be assessed or levied against EPCOR or those persons as a result of the failure or delay of the District to make that payment or to file any return or information required by any law, ordinance, regulation or other lawful authority.

## 5.9 Release

5.9.1 EPCOR hereby releases and forever discharges the District and each of its elected officials, officers, directors, and agents, and its and their heirs, executors, administrators, personal representatives, successors and assigns from and against all claims, demands, damages, actions, or causes of action by reason of or arising out of or which would or could not occur but for the negligence of EPCOR or EPCOR's breach of this agreement, or the exercise by the District of any of its rights under this Agreement.

## 6.0 INFORMATION

### 6.1 No Obligation to Disclose

6.1.1 Except as contemplated herein or in any other agreement or arrangement between the District and EPCOR, neither Party shall have any obligation to disclose to the other any particular data, information or material which is considered by the former to be exempt or confidential. Subject to the foregoing, the District agrees to give to EPCOR all data, information and material necessary to enable EPCOR to provide the Services to the District pursuant to this Agreement.

### 6.2 Non-Disclosure

6.2.1 Each Party shall make all reasonable efforts to maintain in confidence the Confidential Information of the other. Without limiting the generality of the

foregoing each Party shall make all reasonable efforts to keep, file and store all Confidential Information, together with any notes or other material incorporating or relating to the Confidential Information, in a manner consistent with its confidential nature and to take all reasonable action, whether by instruction, agreement or otherwise, to ensure that its directors, officers, employees and sub-contractors do not disclose or use the Confidential Information of the other directly or indirectly, for any purpose other than the purposes of this Agreement.

### 6.3 Need to Know

6.3.1 Each of EPCOR and the District shall limit the provision of Confidential Information to those of its employees and sub-contractors in its business or organization, as applicable, who are required to have knowledge of the Confidential Information as a result of their participation in the provision or receipt of the Services. Each Party shall inform its employees and sub-contractors involved in the provision or receipt of the Services of the confidential nature of the information provided under this Agreement and shall require those employees and sub-contractors to comply with the terms herein to the same extent as a Party hereto.

### 6.4 No Rights

6.4.1 Nothing contained in this Agreement shall be construed as granting a right to a recipient, by license or otherwise, to disseminate any Confidential Information.

### 6.5 Term of Confidentiality Obligations

6.5.1 The obligations of confidentiality herein imposed upon a recipient of Confidential Information shall continue until the Party originally claiming the information to be confidential releases that claim by deed or action.

### 6.6 Injunctive Relief

6.6.1 The Parties acknowledge that improper disclosure or use of any Confidential Information may cause irreparable harm to EPCOR, or the District, as the case may be, which harm may not be adequately compensated by damages. As a result, in addition to all other remedies either Party may have and not in derogation thereof, either Party may seek and obtain from any court of competent jurisdiction injunctive relief in respect of any actual or threatened disclosure or use of any

Confidential Information contrary to the provisions of this Agreement.

## 6.7 Indemnity

6.7.1 Each of the Parties shall indemnify and save the other Party harmless from and against any and all liabilities, claims, suits or actions, losses, costs, damages and expenses which may be brought against or suffered by that other Party as a consequence of the unauthorized disclosure by the indemnifying Party of the Confidential Information of that other Party.

## 7.0 INDEMNITIES

### 7.1 Indemnity by EPCOR

7.1.1 Subject to sections 7.3 and 7.4, EPCOR shall be liable to the District, its elected and appointed officials, officers, agents and employees for and indemnify and hold harmless the District, its elected and appointed officials, officers, agents and employees from and against any and all liabilities, claims, suits or actions, losses, costs, damages and expenses (and without limiting the generality of the foregoing, any direct losses, costs, damages and expenses of the District or those persons, including costs as between a solicitor and his own client) which may be brought or made against the District or those persons, or which the District or those persons may pay, suffer or incur as a result of or in connection with:

- (a) any breach, violation or non-performance of any obligation on the part of the EPCOR herein; or
- (b) any damage to property (including loss of use thereof) or injury to any person or persons, including death resulting at any time therefrom, arising out of or in consequence of the negligent or willfully deficient provision of the Services;

except to the extent that such liabilities, claims, suits or actions, losses, costs, damages and expenses are caused by or arise out of actions of the District or councilors, officers, agents or employees of the District or Third Parties.

### 7.2 Indemnity by the District



7.2.1 Subject to section 7.4, the District shall, to the extent not covered by insurance, be liable to EPCOR, its directors, officers, agents and employees for and indemnify and hold harmless EPCOR, its directors, officers, agents and employees from and against any and all liabilities, claims, suits or actions, losses, costs, damages and expenses (and without limiting the generality of the foregoing, any direct losses, costs, damages and expenses of EPCOR or those persons, including costs as between a solicitor and his own client) which may be brought or made against EPCOR or those persons, or which EPCOR or those persons may pay, suffer or incur as a result of or in connection with:

- (a) any breach, violation or non-performance of any obligation on the part of the District herein; or
- (b) any damage to property (including loss of use thereof) or injury to any person or persons, including death resulting at any time therefrom, arising out of or in consequence of the negligent or deficient performance of the District's obligations under this Agreement or arising as a result of the actions of a Third Party;

except to the extent that such liabilities, claims, suits or actions, losses, costs, damages and expenses are caused by or arise out of actions of EPCOR or directors, officers, agents or employees of EPCOR.

### 7.3 Limitation of Liability

Notwithstanding any other provision of this Agreement, in no event, and under no circumstances shall the aggregate liability of EPCOR to the District or Third Parties in connection with this Agreement and the Services performed hereunder, exceed the Fees paid by the District to EPCOR for the performance of the Services.

### 7.4 Consequential Damages

Neither Party will be liable to the other for any damage, cost, expense, injury, loss or other liability of an indirect, special or consequential nature suffered by the other Party or claimed by any third party against the other Party, howsoever arising (including negligence). Without limiting the generality of the foregoing, damage, injury or loss of an indirect, special or consequential nature shall include loss of revenue, loss of profits, loss of production, loss of

earnings, loss of contract, cost of capital and loss of use of any facilities or property or any other similar damage or loss whatsoever.

## 8.0 INSURANCE BY EPCOR

### 8.1 Coverage Details

EPCOR shall maintain in full force and effect with insurers licensed in the Province of British Columbia, the following insurance:

8.1.1 comprehensive general liability insurance in respect of the operations of EPCOR for bodily injury and property damage with policy limits of not less than five million dollars (\$5,000,000.00) per occurrence; and

8.1.2 standard automobile insurance providing coverage of at least two million dollars (\$2,000,000.00) inclusive for bodily injury and property damage (if EPCOR is required to use a vehicle in the performance of the Services).

### 8.2 Placement of Insurance by EPCOR

8.2.1 EPCOR shall obtain and maintain the insurance coverage required by section 8.1.

### 8.3 Premiums and Deductibles

8.3.1 EPCOR shall be responsible for the payment of all premium and deductible amounts relating to any insurance policies obtained and maintained by EPCOR.

### 8.4 Additional Provisions

8.4.1 The policy of insurance required under section 8.1.1 shall contain the following:

- (a) a provision naming the District as an additional insured;
- (b) a provision requiring the Insurer not to cancel or materially change the policy without thirty (30) days prior written notice to the District; and
- (c) a provision stating that the policy is primary and not contributory.

## 9.0 AUDIT

### 9.1 Records and Access

9.1.1 Each of the Parties shall keep accurate and complete records of the Services provided and received and shall make those records available to the other Party during normal business hours upon five (5) working days' notice. Once in each calendar year and upon reasonable written notice, either Party may audit the records of the other Party with respect to the Services provided and received. If any audit or inspection of the records reveals that the amount of any Fees paid by the District to EPCOR was more or less than the amount then due and payable, the difference including applicable interest shall be immediately due and payable by EPCOR to the District or by the District to EPCOR as the case may be. The Parties shall retain all such records for a period of seven (7) years from the end of the Term.

### 9.2 Unpaid Amounts

All amounts due to a Party pursuant to section 9.1 which remain unpaid thirty (30) days after the date on which the payment or refund was required shall be considered overdue and the Party obligated to make that payment or refund shall also pay interest thereon at a rate per month equal to the Prime Rate plus two percent (2%).

### 9.3 Limitation of Claims

9.3.1. Neither Party may advance a new claim for a re-adjustment of Fees paid or payable for any calendar year after the 30th day of June in the following calendar year.

## 10.0 RESOLUTION OF DISPUTES

### 10.1 Negotiation

10.1.1 The Parties shall attempt to resolve by discussion and negotiation any dispute (a "Dispute") which may arise between them regarding any matters arising out of this Agreement, including any dispute as to the interpretation, application or operation of this Agreement or of any of the provisions hereof

## 10.2 Dispute Resolution

10.2.1 Except as otherwise specifically provided herein, every Dispute not resolved by discussion and negotiation shall be resolved by arbitration in accordance with the following provisions:

- (a) the Party desiring to refer the Dispute for arbitration (the “Notifying Party”) shall notify the other Party (the “Notified Party”) in writing (the “Notice”) of the nature of and the matters alleged by the Notifying Party to be in dispute;
- (b) within thirty (30) days of the receipt of the Notice, the Notified Party, by written notice (the “Notice Back”), may notify the Notifying Party of all matters in the Notice which are in dispute;
- (c) if the Notified Party does not send a Notice Back to the Notifying Party as contemplated in section 10.2.1(b), the Notified Party shall be deemed to have admitted or accepted responsibility or liability for all matters alleged by the Notifying Party to be in dispute in the Notice;
- (d) the Notified Party shall be deemed to have admitted or accepted responsibility or liability for all matters alleged by the Notifying Party to be in dispute and which the Notified Party has not disputed in the Notice Back;
- (e) the terms of reference for arbitration shall be only those matters in the Notice which remain in dispute and are described, as such, in the Notice Back;
- (f) within seven (7) days of the establishment of the terms of reference pursuant to section 10.2.1(e), the Parties shall appoint a single arbitrator to decide the Dispute, failing which, within a further five (5) days, they shall each appoint an arbitrator, and within seven (7) days from the date that the last of them appointed an arbitrator, the two (2) arbitrators shall appoint a third arbitrator and the three (3) arbitrators shall comprise the arbitration committee (the “Committee”);
- (g) the arbitrator appointed by the two (2) arbitrators shall be the “chair” of the Committee, provided further, that if the two (2) arbitrators fail to

appoint a third arbitrator, then both Parties or either of them may apply to a Justice of the Supreme Court of British Columbia to have the third arbitrator appointed;

- (h) if either Party fails to appoint an arbitrator within the five (5) day period described in section 10.2.1(F), the arbitrator appointed by the other Party shall be deemed to be the Committee and the decisions of that arbitrator on the Dispute shall be binding upon the Parties;
- (i) within thirty (30) days of the establishment of the Committee, or such further period as may be agreed upon by the Parties, the Committee shall hear and endeavour to resolve the Dispute in accordance with the terms of reference;
- (j) the decision of the majority of the Committee shall be the decision of the Committee provided that if no majority decision is reached, the decision of the chair shall be deemed to be the decision of the majority of the Committee;
- (k) the decision of the Committee on the Dispute will be final and binding upon the Parties;
- (l) the cost of the arbitration shall be borne by the Party against which the decision is made, provided however, that if neither Party is entirely successful in that decision, at the discretion of the Committee, the cost of the arbitration may be apportioned between the Parties in any manner the Committee finds equitable in the circumstances;
- (m) if within thirty (30) days of the date:
  - (i) on which the Notified Party is deemed to have admitted or accepted responsibility or liability for any matters alleged by the Notifying Party to be in dispute; or
  - (ii) of a decision of the Committee;

the Notified Party or the Party against whom a decision of the Committee is made, as the case may be, (the “Defaulting Party”) fails to remedy the matter or comply with the terms of the decision of the Committee, the

Notifying Party or the Party in whose favour a decision of the Committee is made, as the case may be, may apply ex parte, to a Justice of the Supreme Court of British Columbia for a judgment against the Defaulting Party; and

- (n) except as hereby modified, the provisions of the *Commercial Arbitration Act* (British Columbia), as amended, shall apply to the arbitration procedure.

## 11.0 TERMINATION AND EVENTS OF DEFAULT

### 11.1 Termination

11.1.1 This Agreement shall terminate:

- (a) upon the mutual agreement of the Parties; or
- (b) upon termination by a Party in accordance with this Article 11; or
- (c) on the expiration of the Term, which shall occur on December 31, 2020. **[Note to the District: EPCOR would like this Agreement to be in place for a 3 year term so that it's in place for the length of the next tariff. If this presents a problem for the District please let us know.]**

### 11.2 Termination by EPCOR on Sale of Public Water Utility Assets

11.2.1 In the event of the sale or disposition of all or substantially all of the public water utility assets by EPCOR, EPCOR may terminate this Agreement effective the date of such sale by providing the District with thirty (30) days prior written notice of the date of termination.

### 11.3 Termination for Default

11.3.1 Subject to the rights of EPCOR pursuant to section 11.5, the District may terminate this Agreement upon the occurrence of an EPCOR Event of Default.

11.3.2 Subject to the rights of the District pursuant to section 11.5, EPCOR may terminate this Agreement upon the occurrence of a District Event of Default.

## 11.4 Events of Default

11.4.1 The following events shall constitute an EPCOR Event of Default:

- (a) if EPCOR defaults in the observance or performance of any obligation on its part under this Agreement and does not correct that default within thirty (30) days of receiving written notice thereof from the District;
- (b) if an order is made or an effective resolution is passed for the winding up of EPCOR; or
- (c) if EPCOR ceases to carry on its business, becomes insolvent or bankrupt, commits any act of bankruptcy, goes into liquidation either voluntarily or under an order of a Court of competent jurisdiction, makes a general assignment for the benefit of its creditors, files a proposal or a voluntary assignment under the *Bankruptcy and Insolvency Act (Canada)*, admits its inability to pay its debts generally as they become due or otherwise acknowledges its insolvency, or if a petition is filed against EPCOR under the *Bankruptcy and Insolvency Act (Canada)*.

11.4.2 The following event shall constitute a District Event of Default:

- (a) if the District defaults in the observance or performance of any obligation on its part under this Agreement and does not correct that default within thirty (30) days of receiving written notice thereof from the EPCOR;
- (b) if an order is made or an effective resolution is passed for the winding-up of the District; or
- (c) if the District ceases to carry on its business, becomes insolvent or bankrupt, commits any act of bankruptcy, goes into liquidation either voluntarily or under an order of a Court of competent jurisdiction, makes a general assignment for the benefit of its creditors, files a proposal or a voluntary assignment under the *Bankruptcy and Insolvency Act (Canada)*, admits its inability to pay its debts generally as they become due or otherwise acknowledges its insolvency, or a petition is filed against the District under the *Bankruptcy and Insolvency Act (Canada)*.

## 11.5 Time to Remedy Defaults

11.5.1 For the purposes of section 11.4, time shall not be computed during any period of time where:

- (a) in good faith, the Party alleged to be in default disputes the allegation of default and pursues the resolution of that dispute in the manner contemplated in Article 10; or
- (b) the Party alleged to be in default diligently endeavours to remedy the default.

## 11.6 Payment upon Termination

11.6.1 Upon the termination of this Agreement, the District shall pay to EPCOR all Fees for completed Services. The District shall have no liability of any nature whatsoever to EPCOR for any losses or damages suffered or sustained, either directly or indirectly, by EPCOR including, without limitation, loss of profit, as a result of the termination of this Agreement. Upon termination of this Agreement, EPCOR shall have no liability of any nature whatsoever to the District for any losses or damage suffered or sustained, either directly or indirectly, by the District including, without limitation, loss of profit, as a result of the termination of this Agreement.



## 11.7 Effect of Termination

11.7.1 Upon termination or expiration of this Agreement, each of the Parties shall forthwith return to the other all Confidential Information in the form in which it was received, together with all copies thereof or, at the written direction of either Party, all Confidential Information in possession of the other shall be destroyed and the destroying Party shall provide the other with confirmation of that destruction. Notwithstanding the foregoing, a Party shall not be required to return or destroy any Confidential Information contained or embodied in any evaluations, models or analysis prepared for internal proprietary management evaluation purposes, or which may be subject to privileged legal communications, or if such destruction would violate any of such Party's formal documentation retention policies, or any Confidential Information which is on backed-up computer records, and provided that all such retained Confidential Information shall continue to be held by such Party subject to this Agreement.

## 11.8 Survival of Obligations

11.8.1 The provisions of this Agreement regarding outstanding payment obligations, indemnities, confidentiality obligations and proprietary rights shall survive any expiration or termination of this Agreement.

11.8.2 EPCOR hereby releases and forever discharges the District and each of its elected officials, officers, directors, and agents, and its and their heirs, executors, administrators, personal representatives, successors and assigns from and against all claims, demands, damages, actions, or causes of action by reason of or arising out of or which would or could not occur but for the negligence of EPCOR or EPCOR's breach of this agreement, or the exercise by the District of any of its rights under this Agreement.

## 12.0 GENERAL PROVISIONS

### 12.1 Force Majeure

12.1.1 If the District or EPCOR is delayed in the performance of or is unable to perform any part of their respective obligations hereunder due to labour disputes, strikes, walkouts, fire, unusual delay by common carriers, unavoidable catastrophes, explosion, flood, earthquake, tsunami, act of God or public enemy, war,

government regulation, any law, act or order of any court, government body or regulator or circumstances of any kind beyond the control of EPCOR or the District, then EPCOR or the District, as the case may be, shall be excused from the performance of those obligations to the extent that the performance is prevented, hindered or delayed by those causes and EPCOR or the District, as the case may be, shall not be liable hereunder during the period and to the extent of the inability to perform. Upon the occurrence of any of the events referred to above, the Party unable to perform shall immediately notify the other Party of the inability and the extent of any delay or inability to perform its obligations and shall use its reasonable efforts to remedy the delay or failure to perform as soon as reasonably possible.

## 12.2 Notices

12.2.1 A notice in writing or other correspondence required or permitted to be given to EPCOR pursuant to this Agreement shall be sufficiently given:

- (a) when transmitted by facsimile (addressed as if to be mailed in the manner hereafter provided) and transmitted to the facsimile number of EPCOR identified in Schedule “C”; or
- (b) when personally delivered or mailed by registered mail, postage prepaid, addressed to EPCOR to the address identified in Schedule “C”.

12.2.2 A notice in writing or other correspondence required or permitted to be given to the District pursuant to this Agreement shall be sufficiently given:

- (a) when transmitted by facsimile (addressed as if to be mailed in the manner hereafter provided) and transmitted to the facsimile number of the District identified in Schedule “C”, or 1-250-390-1542 .
- (b) when personally delivered or mailed by registered mail, postage prepaid, addressed to the District to the address identified in Schedule “C”.

12.2.3 Any notice transmitted by facsimile or delivered or mailed shall be deemed to have been received by the addressee on the day of actual facsimile transmission or delivery (if a business day) or the first business day after actual facsimile transmission or delivery (if facsimile transmission or delivery is not on a business day) and, when mailed, on the fifth (5th) business day following the date of

mailing except in the case of a postal strike or disruption of postal services in which case the deemed time of service shall be extended one (1) week past the resumption of normal postal services.

12.2.4 Any facsimile number or any address for giving notice to any Party may be changed from time to time by that Party by notice given as hereinbefore provided.

### 12.3 Waiver

12.3.1 The failure of a Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement or to exercise any option herein contained shall not be construed as a waiver or relinquishment for the future of that covenant or option and no waiver by EPCOR or the District of any provision of this Agreement shall be deemed to have been made unless expressed in writing and signed by EPCOR or the District, as the case may be.

### 12.4 No Agency

12.4.1 Nothing in this Agreement, nor in any acts of EPCOR or the District pursuant to this Agreement, shall be construed, implied or deemed to create an agency, partnership, joint venture or employer and employee relationship between EPCOR and the District, and neither Party has the authority to bind the other to any obligation of any kind.

### 12.5 Entire Agreement

12.5.1. This Agreement constitutes the entire agreement between the Parties with respect to the Services and supersedes all prior negotiations, representations or agreements concerning the Services whether written or oral.

### 12.6 Amendment

12.6.1. This Agreement shall not be altered or amended except by a document in writing signed by the Parties.

### 12.7 Partial Invalidity

12.7.1 If any term, condition or provision of this Agreement or the application thereof to

any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of that term, condition or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, condition or provision shall be separately valid and enforceable to the fullest extent permitted by law.

## 12.8 Time of Essence

12.8.1 Time shall be of the essence of this Agreement.

## 12.9 Expiration of Time

12.9.1 In any case where the time limited by this Agreement expires on a Saturday, Sunday or legal holiday (as defined in the *Interpretation Act* (British Columbia) in the Province of British Columbia, the time limited shall be extended to and shall include the next succeeding day which is not a Saturday, Sunday or legal holiday (as defined in the *Interpretation Act* (British Columbia) in the Province of British Columbia.

## 12.10 Further Assurances

12.10.1 Each of the Parties to this Agreement shall at the request of the other Party hereto, execute and deliver any further documents and do all acts and things as that Party may reasonably require to carry out the full intent and meaning of this Agreement.

## 12.11 Governing Law

12.11.1 This Agreement shall be governed by the laws in force in the Province of British Columbia and the courts of the Province of British Columbia shall have exclusive jurisdiction with respect to any question of law arising from this Agreement.

## 12.12 Limitation of Authority

12.12.1 Notwithstanding any other provision contained in this Agreement, any right, power or authority to be exercised by the District or any of its departments, authorities, boards or tribunals pursuant to this Agreement shall be exercised in

accordance with, and subject to, any applicable law including without limitation the *Community Charter* (British Columbia) and the *Local Government Act* (British Columbia) and the District shall only be bound to comply with and carry out the provisions contained herein insofar as it can legally do so and, accordingly, nothing herein contained shall operate as a waiver or abrogation by the District of its rights under any applicable law and for greater clarity, and without limiting the generality of the foregoing, nothing herein contained shall fetter the discretion of the District with respect to the rights and duties of the District pursuant to any applicable law,

### 12.13 Permitted Assignment

12.13.1 Neither Party may assign this Agreement without the prior written consent of the other, which consent cannot be unreasonably withheld, provided that either Party may assign this Agreement to an “affiliate”, as such term is defined in the *Business Corporations Act* (British Columbia) without the consent of the other Party and provided further that EPCOR may utilize subcontractors in accordance with section 4.2. In addition, EPCOR shall be permitted to assign this Agreement without the consent of the District in the event that EPCOR disposes of all or substantially all of its interests in the public water utility it is operating for the benefit of the District and its citizens.

12.13.2 A Party assigning all or any part of this Agreement pursuant to section 12.13.1 shall provide to the other Party:

- (a) a true copy of the assignment agreement or instrument; and
- (b) an agreement and undertaking from the assignee to be bound by the provisions of this Agreement and not to further assign its rights hereunder without complying with the provisions of this section.

12.13.3 A Party assigning all or any part of this Agreement shall remain responsible to the other Party for the covenants assigned unless the assignee has the financial and operational capacity to observe and perform the covenants assigned or the assigning Party indemnifies the other Party or guarantees to the other Party the observance and performance of the covenants assigned.

### 12.14 Special Terms

12.14.1 The special terms, if any, contained in Schedule “D” shall be binding on the Parties and any conflict between those special terms and any other provision in this Agreement, shall be resolved in favour of the special terms.

12.15 Enurement

12.15.1 This Agreement shall be binding upon and enure to the benefit of the District and EPCOR and, subject to section 12.13.3, upon their respective successors and assigns.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the day and year first above written.

**REGIONAL DISTRICT OF NANAIMO**

Per:

\_\_\_\_\_  
Name:  
Title:

**EPCOR WATER (WEST) INC.**

Per:

\_\_\_\_\_  
Name:  
Title:

**Schedule "A"****SERVICES**Services (1.1.8)*Standard Services*

EPCOR shall provide to the District the following Standard Services in accordance with the terms of this Agreement:

- i) At least one (1) time per year EPCOR will perform a general inspection on each Hydrant (the "Annual Inspection").
- ii) At least one (1) time every two years EPCOR will perform a maintenance inspection on each Hydrant (the "Biannual Maintenance Inspection").
- iii) Upon discovery, or notification by the District, EPCOR shall repair and/or replace leaking or inoperative Hydrants by dig-up if necessary as soon as possible after the discovery or notification of such defect. Immediately on identifying a defective Hydrant, EPCOR shall attach a disk or bag to the Hydrant signifying that it is out of service and notify the District and all potentially impacted District fire departments that such Hydrant is out of service. Further notice will be given to the District and all potentially impacted District fire departments if repair or replacement cannot be reasonably completed within a two (2) week timeframe.

For clarity, when undertaking the Annual Inspection, the following tasks will be performed:

- i) Check for any obstructions and brush out around each Hydrant within a one (1) metre radius if required. Those obstructions that are identified and cannot be removed will be reported to all potentially impacted District fire departments. Obstructions of the hose port will be checked for and removed, if possible.
- ii) Inspect the condition of the paint on each Hydrant, including the paint on the Hydrant body, caps, gaskets and nozzle threads. As required, EPCOR will power wash and re-paint the Hydrants. If re-painting the Hydrants, EPCOR will use only those colours approved by the District.
- iii) Check for ease of operation of each Hydrant. If it is determined that the Hydrant is difficult to operate, EPCOR will record this and report such difficulties to the District and all potentially impacted District fire departments.

- iv) Check for leaks at ground level of each Hydrant. In addition, EPCOR shall listen for internal leakage within each Hydrant.
- v) Flush or purge each Hydrant and branch line.
- vi) Conduct a water hydrostatic test on each Hydrant.
- vii) Check for drainage by suction at each hose port.
- viii) Check that all ports are accessible and that the streamer port is facing the possible access route.
- ix) Complete an inspection report.
- x) Check, record and report any external structural damage to the Hydrants to the District. In addition, any deficiencies that require further repair shall be immediately reported to all potentially impacted District fire departments.

For clarity, when undertaking the Biannual Maintenance Inspection, the following tasks will be performed:

- (i) Close of each Hydrant isolation valve in order to check the operation of the valve. Any repairs required shall be recorded and reported to the District. Upon completion of such test, the Hydrant isolation valve should be reopened.
- (ii) Disassembly of each Hydrant to remove serviceable parts and to check for worn or broken parts and to check for leaks in the assembly or their component parts. Parts that shall be checked shall include, but not be limited to: (a) head or “O” ring assembly; (b) drain valve assembly; (c) main gate or main valve assembly; and (d) hose nozzle assembly.
- (iii) All external and internal working parts of each Hydrant shall be lubricated. Lubrication of such parts shall occur during the reassembly of each Hydrant.
- (iv) Each Hydrant shall be operated from fully opened to fully closed with caps in place. The pressure and number of turns required to open the Hydrant shall be recorded.
- (v) Each Hydrant shall be flushed or purged.
- (vi) Complete an inspection report for each Hydrant, a summary of each such report which will then be provided to the District.

#### *Additional Services*

In addition to the Standard Services, during the Term, prior to the end of each calendar year the District and EPCOR shall, acting reasonably, agree upon a list of services to be performed by EPCOR during the upcoming calendar year outside the scope of the Standard Services and the fees to be paid by the District for the performance of such Additional Services. In the event that



the Parties cannot agree upon a list of Additional Services to be performed or the fees to be paid with respect to such Additional Services, EPCOR shall only perform those Additional Services that must be performed to ensure the continued operation of the Hydrants and the District agrees to pay EPCOR for the performance of such Additional Services.

These Additional Services may include, but shall not be limited to:

- (i) Services, repairs or upgrades identified by the District, EPCOR or Fire Department personnel and not included in the "Standard Services" section in "Appendix A". This includes but not limited to:
  - a. Hydrants off grade and need to be raised or lowered.
  - b. New hydrants to improve spacing.
  - c. Replace 5" port Hydrants with 4" port Hydrants.
  - d. Replace 2 port Hydrants with 3 port 4" Hydrants.
  - e. Install isolation valves (Seaward Way).
  - f. Replacement of out of date hydrants.
  - g. Color coding of hydrants.
- (ii) Upgrades due to changes in applicable regulations, codes, bylaws, statutes and ordinances, standards policies, procedures, etc.

Furthermore, as part of the Additional Services, EPCOR shall repair all Hydrants that are damaged by Third Parties. Such damage may include, but shall not be limited to, damage due to vandalism or damage due to a motor vehicle collision with the Hydrant.

Notwithstanding the fact that the Parties reached an agreement on the Additional Services to be provided during a calendar year, if the Parties agree, acting reasonably, that other services should take higher priority over the Additional Services, or in the event the cost of certain Standard Services exceed those budgeted due to factors outside the control of EPCOR, EPCOR will be permitted not to perform certain Additional Services which the Parties agreed should be performed and/or add to the list of Additional Services. In the event that a change is required, the Party seeking the change shall provide the other Party with notice of a change to be made in the Additional Services as soon as it is practicable to do so. As soon as practicable the Parties will discuss the change and, acting reasonably, determine if it can be implemented. In the event of a change to the Additional Services agreed to by the Parties, the budgeted fees for the Additional Services will not change and the District shall remain responsible for the entire budget amount initially agreed upon by the Parties.

Standards

Standards covered by this Agreement including its Schedules shall be the industry standards as defined by the American Water Works Association, and other standards mutually adopted by the Parties from time to time.

Term (11)

This Agreement will become effective on the Effective Date and subject only as hereafter provided and to Section 11, will terminate on December 31, 2020.

Notice Period for Termination (1)

This Agreement for Services as specified may be terminated upon six (6) months written notice, given by either Party, or upon mutual agreement of both Parties.

**Schedule "B"****FEES AND TERMS OF PAYMENT**1. Standard Services Fee

- i) In its regular rates filings with the Comptroller of Water Rights of British Columbia (the "Comptroller"), EPCOR sets out the costs that EPCOR intends to attribute to Standard Services over the course of the period for which approval of the Comptroller is being sought. Also included in these costs are costs to be paid by the District in connection with the provision of fire protection services infrastructure. Upon approval by the Comptroller, EPCOR will convert such costs into a per Hydrant amount (the "Individual Hydrant Fee"), which amount the District will be solely responsible for paying for the length of time for which the costs were approved by the Comptroller (and the aggregate of the Individual Hydrant Fee for each Hydrant is referred to herein as the "Standard Services Fee").
- ii) The Parties agree that the Standard Services Fee and the Individual Hydrant Fee will be reviewed by EPCOR and the District prior to EPCOR submitting a regular rate filing with the Comptroller. In addition, the Parties acknowledge that depending on the approval provided by the Comptroller, the Standard Services Fee and the Individual Hydrant Fee may change from year-to-year notwithstanding the fact the Comptroller has approved EPCOR's costs for a multi-year period.
- iii) The Standard Services Fee shall be paid annually by the District to EPCOR. Once annually EPCOR shall invoice the District for such Standard Services Fee and such invoice shall set out the number of Hydrants in EPCOR's inventory and the Standard Services Fee payable by the District for the 365 day period immediately prior to the date of the invoice.
- iv) In the event that Hydrants are added or removed from EPCOR's inventory during the year of a term, the Standard Services Fee will be pro rated on a per diem basis with respect to any added or removed Hydrant, such that the District shall only be required to pay the Standard Service Fee with respect to a Hydrant for the period of time in which the Hydrant formed part of EPCOR's inventory.
- v) If this Agreement commences or is terminated on other than the calendar year end, the Standard Services Fee shall be pro-rated as if earned on a per diem basis equally throughout that calendar year.

Additional Services Fees

- i) EPCOR shall invoice the District for any amounts owing with respect to the Additional Services (the “Additional Service Fees”). Each monthly invoice shall set out the Additional Services Fees for the invoiced month.
- ii) On or prior to the Effective Date, the District will establish a maintenance reserve fund (the “Maintenance Reserve Fund”) which Maintenance Reserve Fund will be the sole source for payment by the District of the Additional Services. The District will establish the Maintenance Reserve Fund by depositing or transferring into a bank account on or before the Effective Date, in trust for the satisfaction of the Additional Service Fee, \$20,000.00. After the first year of the Term, on January 1 of each year of the Term, the District will deposit into the Maintenance Reserve Fund that amount required to return the balance in the Maintenance Reserve Fund to \$20,000.00. For clarity, if the Maintenance Reserve Fund is exhausted in one calendar year, the District will not be responsible for payment of any Additional Service Fees for that calendar year unless the Parties agree in writing that such Additional Service Fees in excess of the funds in the Maintenance Reserve Fund shall be paid by the District.
- iii) The Parties agree that a minimum of one (1) time each calendar year, or at any time if a need to do so is identified by one of the Parties, they will discuss increasing the size of the Maintenance Reserve Fund. Throughout the Term, at any time the Parties shall, by written agreement, be permitted to increase the size of the Maintenance Reserve Fund. In the event that the Parties increase the size of the Maintenance Reserve Fund, the District shall deposit or transfer such additional amounts into the Maintenance Reserve Fund in accordance with (ii) immediately above, or such other time frame as agreed to by the Parties in writing.

**Schedule "C"****CONTACTS**For the Regional District of Nanaimo

Facsimile Number: 250-390-1542

Address:       The Regional District of Nanaimo  
                  6300 Hammond Bay Road  
                  Nanaimo, BC  
                  V9T 6N2

Attention:     Manager of Water Services

EPCOR Water (West) Inc.

Facsimile Number: (250) 954-0361

Address:       EPCOR Water (West) Inc.  
                  #10D – 1343 Alberni Hwy  
                  Parksville, British Columbia  
                  V9P 2B9

Attention:     Manager, Operations, French Creek

**Schedule "D"****SPECIAL TERMS**

1. During the Term of this Agreement both Parties agree to review, *inter alia*, service levels, operation and maintenance costs, the allocation of extra capacity costs to fire protection, and the allocation of capital costs associated with the over-sizing of the water system.
2. EPCOR and District agree to share information on the Hydrant infrastructure and the servicing of the Hydrants, as well as any other information pertinent to the operations of EPCOR and District.
3. Services outlined in Schedule "A" will be performed in accordance with EPCOR's documented procedures for each Service. EPCOR shall supply details on Services rendered at the request of the District.