

AMENDING AGREEMENT
TO
FRANCHISE FEE AGREEMENT: ELECTRICTY

THIS AGREEMENT is made as of the [•] day of September, 2024

BETWEEN:

ENMAX POWER CORPORATION,
a corporation incorporated under the *Business Corporations Act*
(Alberta)
(hereinafter referred to as "ENMAX")

and

THE CITY OF CALGARY,
a corporation under and by virtue of Section 4 of the *Municipal*
Government Act (Alberta)
(hereinafter referred to as "**the City**")

WHEREAS the City and ENMAX are parties to a Franchise Fee Agreement dated May 4, 2017 (described below as the “**Original Agreement**”), pursuant to which ENMAX was granted the exclusive right to distribute Electricity within the Municipality;

AND WHEREAS the City and ENMAX both wish to amend such Original Agreement in order to comply with the *Utilities Affordability Statutes Amendment Act, 2024*;

NOW THEREFORE in consideration of the premises, covenants and agreements herein contained, the City and ENMAX agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Amending Agreement, capitalized terms used herein, including in the recitals hereof, and defined in the Original Agreement will have the meanings given to them in the Original Agreement, and the following words and expressions shall have the following meanings:

“**Original Agreement**” means the Franchise fee Agreement: Electricity between the City and ENMAX dated May 4, 2017, including the appendix thereto, and all prior instruments supplementing, amending or confirming such agreement.

“**Amending Agreement**” means this Amending Agreement to the Original Agreement.

“**Amended Agreement**” means the Original Agreement, as amended pursuant to the terms and conditions of this Amending Agreement, including the appendix thereto, and all instruments supplementing, amending or confirming such agreement.

1.2 General Interpretation

All principles and rules of interpretation set out in Section 22 of the Original Agreement will apply to this Amending Agreement, *mutatis mutandis*.

1.3 Applicable Law

This Amending Agreement will be construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein and will be treated, in all respects, as an Alberta contract. No action at law or in equity will be commenced or continued on any matter arising out of or connected with this Agreement in any court other than a court of competent jurisdiction in the Province of Alberta or on appeal to the Supreme Court of Canada from the appropriate court of the Province of Alberta.

**ARTICLE 2
AMENDMENT**

2.1 Amendments

Effective January 1, 2025, the Original Agreement is hereby amended as follows:

- (a) Appendix No. 1 of the Original Agreement is hereby deleted in its entirety and replaced with the following:

APPENDIX NO. 1

ANNUAL FEE

1. ENMAX shall pay to the City an annual fee in consideration of the exclusive right granted by the City to ENMAX under this Agreement (the “**Annual Fee**”) as set out in this Appendix.
2. Commencing January 1, 2018 and continuing until December 31, 2024, ENMAX shall pay to the City, an Annual Fee in the amount of 11.11% of the annual Gross Revenue of ENMAX.
3. For the purposes of this Appendix, "Gross Revenue" shall mean revenue derived by ENMAX from the distribution, transmission, and sale of Electricity within the Municipality. Gross Revenue will be calculated as follows:
 - (a) $gr + (qu.ns \times vpu)$,
 - (b) where:
 - (c) "gr" is the gross revenue received by the public utility under its distribution tariff for the year;
 - (d) "qu.ns" is the quantity of Electricity in respect of which system access service, electric distribution service, or both, were provided during the year by means of the transmission system, the electric distribution system, or both, of the provider of the public utility;
 - (e) "vpu" is the deemed value per unit quantity of Electricity determined by the Alberta Utilities Commission (the “AUC”) for that month for the Electricity in respect of which system access service, electric distribution service, or both, were so provided.
4. To verify the amount of the Annual Fee payable under Section 2 above, ENMAX, on the written request of the City, shall provide to the City, at the expense of ENMAX, on or before April 30 in each year, or such other time agreed upon by the parties, an audited financial statement on all ENMAX Gross Revenue stating the amount of Gross Revenue which is subject to the Annual Fee. If an audited financial

statement reveals that the amount of the Annual Fee paid by ENMAX to the City was more or less than the amount due and payable, the difference shall be due and payable by the City to ENMAX or by ENMAX to the City, as the case may be, within thirty (30) days of receipt of the audited financial statement.

5. The Annual Fee for 2025 shall be \$143,500,000.00.
6. For the calendar year 2026 and all subsequent years, the Annual Fee payable by ENMAX to the City shall be determined as follows:
 - (a) The Annual Fee shall be set by council for the city of Calgary (“City Council”) following guidance from administration within the City and with reference to applicable legislation and regulations, including, without limitation, the AUC rules.
 - (b) Once approval for the amount of the Annual Fee is obtained from City Council, which shall occur no later than October 1st of each year, the City will consult with ENMAX on (i) the quantity of Electricity forecasted by ENMAX to be distributed to Customers for the upcoming year, and (ii) the fractional dollar amount(s) per kWh (the “Franchise Fee Rates”) required to collect the Annual Fee. The City acknowledges and accepts that there may be variances from the Annual Fee projected to be collected and the amount actually collected by ENMAX during the year due to volumetric variances between forecasted Electricity and Electricity actually distributed to Customers. Therefore, if required, as determined by the City, a rider will also be implemented to refund or collect any difference between the prior year’s Annual Fee and the actual amount collected by ENMAX for that year. For the purposes of this Appendix, the term “rider” shall mean a credit or charge included in Customer utility bills that is not part of the Franchise Fee Rates.
 - (c) ENMAX, in consultation with the City, will make an application to the AUC to approve the Franchise Fee Rates required to collect the Annual Fee determined in (b) above for the upcoming calendar year.
7. ENMAX shall pay monthly installments of the Annual Fee collected pursuant to the Franchise Fee Rates to the City in arrears throughout each year of the term of the Agreement.
8. ENMAX shall pay the monthly portion of the Annual Fee collected pursuant to the Franchise Fee Rates within fifteen (15) days after month end without penalty or interest and shall make payment at the address of the City shown in this Agreement or as otherwise directed by the City.
9. Should ENMAX fail to pay the City any part of the Annual Fee collected pursuant to the Franchise Fee Rates by the due date, ENMAX shall pay to the City, on demand, an interest charge of one and one-half percent (1½) per month upon such moneys due and unpaid until such payments are made.

10. All payments by ENMAX are exclusive of all applicable provincial and federal taxes or assessments and in the event provincial and federal taxes or assessments apply to any part of the Annual Fee the taxes shall be payable by ENMAX.
11. The Annual Fee is based on the assumption that the rights granted to ENMAX will accrue on a per diem basis throughout a full calendar year, and whenever any of those rights commence on any day other than January 1 in any year or are terminated, cease or expire before December 31 in any year, the amount to be paid by ENMAX to the City, shall be adjusted on a per diem basis.
12. ENMAX and the City acknowledge and agree that the Annual Fee is only applicable to amounts received by ENMAX for the supply of Electricity service within the Municipality and that any amount received by ENMAX for the supply of Electricity service outside of the Municipality or revenue earned for activities other than the supply of Electricity service shall not be subject to the Annual Fee.

ARTICLE 3 RATIFICATION

3.1 Ratification

Except as expressly amended in this Amending Agreement, the parties ratify and confirm the Original Agreement and each party acknowledges that the Original Agreement, as amended by this Amending Agreement, is in full force and effect as of the date hereof.

3.2 Supplemental

This Amending Agreement is supplemental to and amends the Original Agreement, and the Original Agreement shall henceforth be read in conjunction with, and as amended by, this Amending Agreement, and the Original Agreement and this Amending Agreement shall henceforth be read, interpreted, construed and have effect so far as it is practicable as if all the provisions of the Original Agreement and this Amending Agreement were contained in one instrument.

ARTICLE 4 GENERAL

4.1 Further Assurances

Each of the parties shall from time to time execute and deliver all further documents and instruments and do all things and acts as the other party may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Amending Agreement.

4.2 Counterparts

This Amending Agreement may be executed in counterparts and when so executed shall constitute one document, notwithstanding that the parties are not signatories to the same counterpart. Facsimile or electronic transmission of an executed signature page to this Amending Agreement

by a party will be effective as delivery of a manually executed copy of the Amending Agreement by such party.

4.3 Severability

If any provision of this Amending Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability will attach only to such provision or part of such provision and any remaining part of such provision and all other provisions of this Amending Agreement will continue in final force and effect.

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CONFIDENTIAL

IN WITNESS WHEREOF the parties have hereunto executed this Amending Agreement under their proper authorized signatories as of this [•] day of September, 2024.

THE CITY OF CALGARY

ENMAX POWER CORPORATION

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

CONFIDENTIAL

ENMAX Power Corporation	
CONTENT	
LEGAL FORM	

The City of Calgary	
CONTENT	
LEGAL FORM	