

**TWO-WAY CONFIDENTIALITY AGREEMENT**  
**(this "Agreement")**

**MEMORANDUM OF AGREEMENT** dated for reference the 15<sup>th</sup> day of October, 2013.

**BETWEEN:**

**EPCOR WHITE ROCK WATER INC.**

a British Columbia corporation (No. BC0756389), having its registered and records  
address at 1200 Waterfront Centre, 200 Burrard Street, P.O. Box 48600, Vancouver,  
B.C. V7X 1T2

**("EPCOR")**

**-AND-**

**THE CORPORATION OF CITY OF WHITE ROCK**

a British Columbia local government having its City Hall at 15322 Buena Vista Avenue,  
**WHITE ROCK, B.C. V4B 1Y6**

**(the "City")**

**WHEREAS** the parties have engaged in and propose to continue to engage in exchanges of confidential information and discussions regarding the potential acquisition by the City of EPCOR's White Rock water utility (the "**Utility**"), which potential acquisition is defined as the "**Potential Transaction**";

**WHEREAS** each party may disclose certain information to the other party on the terms and conditions as set forth below in order to enable the parties to evaluate and, if applicable, negotiate and complete, the Potential Transaction, which process of disclosure and evaluation and, if applicable, negotiation and completion are defined as the "**Process**";

**AND WHEREAS** in the course of such disclosure, whether such disclosure be written, observed or oral, certain confidential, proprietary and commercially sensitive information of one party may come into the possession of the other party;

**AND WHEREAS** each party requires the other party to not, except as provided herein, use or disclose any confidential proprietary or commercially sensitive information of one party that may come into the possession of the other party, or publicize the Potential Transaction;

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby covenant and agree as follows:

Acknowledgement Information Supplied in Confidence

1. Each party, as a receiving party, hereby acknowledges that all information, contract terms, proposals, valuations, assumptions, customer lists, price lists, trade secrets, data formulae, statistics, plans, specifications, flow charts, drawings, designs, methods, procedures, prototypes, know-how and any and all other material or information of any kind, including without limitation, of a financial nature or containing personal information about an identifiable person, that is furnished to it regarding the Utility, the Proposed Transaction, the Process and/or any ancillary or incidentally disclosed matters by the other party or with the concurrence of the other party, by its subsidiaries, affiliates, representatives and/or agents, as a disclosing party, (hereinafter called the "**Confidential Information**") will be furnished to a receiving party or to its directors, officers, employees, agents or advisors in strictest confidence.

City Elected Officials

2. In this Agreement, references to "directors" of the City refer to its elected Council members.

Obligation to Keep Information Confidential

3. Each party, as a receiving party, hereby covenants with the other party, as a disclosing party, that it will keep the Confidential Information in strictest confidence and will not disclose or reveal the same to any other person, entity, enterprise, government, agent of government or regulatory authority other than in accordance with and except to the extent permitted by the provisions of this Agreement.

Copies of Information

4. Each party, as a receiving party, hereby covenants with the other party, as a disclosing party, that it will not, without the prior written consent of the disclosing party, make any copies, duplicates, recordings or other reproductions of the Confidential Information unless they are reasonably required by a receiving party in relation to the Proposed Transaction or the Process, and any such copies, duplicates, recordings or reproductions will be subject to the terms and conditions of this Agreement, and all such copies, duplicates, recordings or other reproductions will contain the same proprietary and confidential notices and legends, if any, which appear on the original Confidential Information.

### Use of Information

5. Each party, as a receiving party, hereby covenants with the other party, as a disclosing party, that it will not at any time use the Confidential Information for any purpose not directly related to the Proposed Transaction or the Process.

### This Agreement

6. For the purposes of this Agreement, Confidential Information will also be deemed to include the contents of this Agreement, but not the fact that this Agreement has been entered into.

### Publicity

7. Neither party will issue or make nor permit any of its affiliates or their respective directors, officers, employees, agents, or representatives to issue or make any press release, public announcement or other public statement, including without limitation through social media, relating to the Potential Transaction, the Process or other subject matter of this Agreement without the prior written approval of the other party, EXCEPT that the City and any of its directors, officers, employees, agents, or representatives, for the purposes of public transparency, may disseminate information to the public, or groups of the public, about the timing and holding of meetings with EPCOR, and other general information about the progress or status of the Process.

### Distribution of Information

8. A receiving party agrees that the Confidential Information provided by a disclosing party pursuant to this Agreement will be made available only to those of its directors, officers, employees, agents and advisors and the directors, officers, employees, agents and advisors of its affiliates who are involved in the Proposed Transaction and/or the Process or who need access to the Confidential Information in performing their responsibilities in respect of the Proposed Transaction and/or the Process, and a receiving party will release the Confidential Information to such directors, officers, employees, agents and advisors on the basis that they must observe the confidentiality obligations of a receiving party as set forth in this Agreement. Without derogation to the foregoing, a receiving party remains liable to the disclosing party for the breach of any of the terms of this Agreement by its directors, officers, employees, agents, affiliates and advisors.

### Advisors

9. Without limiting section 8,
  - (a) EPCOR acknowledges that the City will be distributing Confidential Information to KPMG LLP, Young Anderson, and other firms and persons who will assist the City with negotiations, legal representation, financial

evaluations and other aspects of the Potential Transaction and the Process; and

- (b) the City acknowledges that EPCOR will be distributing Confidential Information to Ernst and Young Canada LLP and other firms and persons who will assist EPCOR with negotiations, legal representation, financial evaluations and other aspects of the Potential Transaction and the Process.

#### Protection of Information

- 10. A receiving party agrees that it will use not less than the same degree of care as it uses for its own confidential information but no less than a reasonable degree of care to protect and prevent the disclosure of a disclosing party's Confidential Information to any unauthorized person, entity, enterprise, government, agent of government or regulatory authority by it, its directors, officers, employees, agents or advisors or the directors, officers, employees, agents or advisors of its affiliates. The receiving party will be fully responsible for any breach of this Agreement by such persons.

#### Return / Destruction of Information

- 11. If the City should give a notice to EPCOR that the City is ceasing negotiations about the Proposed Transaction or if EPCOR should give a notice to the City that EPCOR is ceasing negotiations about the Proposed Transaction, then each receiving party will cease using and will, upon the request of a disclosing party, return to a disclosing party all Confidential Information provided to it by a disclosing party and any and all copies thereof and will destroy all extracts, reports, recordings, reproductions and notes thereof, and upon request of the disclosing party certify in writing that it has complied with the obligations set forth in this paragraph, provided that the receiving party will not be required to return or destroy any Confidential Information:
  - (a) that is contained or embodied in any evaluations, models or analysis prepared for internal proprietary management evaluation purposes, or
  - (b) which may be subject to privileged legal communications, or
  - (c) if such return or destruction would violate any of its formal documentation retention policies,
  - (d) if such return or destruction would violate any document retention requirement imposed by applicable law; or
  - (e) that is on backed-up computer records; or
  - (f) if the receiving party would be entitled to receive such information through other legal process, including in relation to the 1922 Agreement (as

defined below), in which the disclosing party is bound to participate, related to the potential transfer of the Utility,

provided that all such retained Confidential Information will continue to be held by the receiving party subject to this Agreement.

#### Termination of Negotiations

12. The provisions of this Agreement will continue to apply following the termination of any discussions between the parties hereto with respect to the Proposed Transaction and/or Process.

#### Subsequent Agreements

13. This Agreement will survive any subsequent agreement entered into by the parties, unless and only to the extent such subsequent agreement expressly supersedes the covenants and agreements contained in this Agreement.

#### No Obligation to Negotiate or Further Agree

14. This Agreement is not intended to, and does not obligate either party to negotiate with the other regarding the Proposed Transaction, or enter into any further agreements or to proceed with any transaction, including the Potential Transaction.
15. Each party agrees that nothing in this Agreement imposes any obligation on the other (whether or not any Confidential Information is supplied) to enter into or continue any discussions and/or negotiations with the other party in respect of the Proposed Transaction and/or the Process, and each party is free at any time to terminate for any reason all discussions and/or negotiations with the other relating to the Process.
16. Any further obligations of any party to the other will require a separate agreement. Further, nothing herein will be construed as obligating or be deemed to obligate the parties to enter into any future agreement with respect to the Utility.
17. Nothing in this Agreement will waive or modify any rights or obligations that either party may have with respect to acquisition of the Utility pursuant to a purported September 29, 1922 agreement between The Corporation of the District of Surrey and White Rock Water Works Company Limited (the "1922 Agreement"), about which the parties currently disagree regarding its applicability and enforceability.

#### Ownership of Information

18. All right, title and interest in and to the Confidential Information will remain the exclusive property of a disclosing party and no license for or other rights of any

kind whatsoever in or to the Confidential Information or any trade secret, patent, patent application, industrial design, trademark, copyright or other type or form of intellectual or industrial property derived therefrom is granted or can be implied to have been granted at any time by the disclosure of the Confidential Information by a disclosing party to a receiving party.

#### Limitation on Confidential Information

19. "Confidential Information" will, for the purposes of this Agreement, not include:
- (a) Prior Information - any information which was rightfully in the possession of a receiving party prior to the date of disclosure of such information to a receiving party by a disclosing party;
  - (b) Already in Public Domain - any information which was in the public domain prior to the date of disclosure of such information to a receiving party by a disclosing party;
  - (c) Becomes Public Domain - any information which becomes part of the public domain by publication or otherwise except through an unauthorized act or omission on the part of a receiving party or its directors, officers, employees, agents or advisors;
  - (d) Received from Third Parties - any information which is supplied to a receiving party by a third party who is under no obligation to a disclosing party to maintain such information in confidence pursuant to a confidentiality agreement or other contractual, legal or fiduciary obligation of confidentiality or secrecy; and
  - (e) Developed Independently - any information which is developed by a receiving party independently of the disclosures made by a disclosing party under this Agreement.

#### Supply of Information

20. It is EPCOR's intent to, during discussions and negotiations with the City regarding the Proposed Transaction and the Process, provide as complete and accurate information as is reasonably possible regarding the Utility and the Proposed Transaction. For greater certainty, however, the foregoing sentence is a statement of general intent and does not constitute a binding obligation of the EPCOR and, except as may be set forth in a legally binding definitive agreement between the parties regarding a Potential Transaction, each party acknowledges and agrees that a disclosing party provides all Confidential Information "AS-IS" and that the disclosing party does not make or provide any warranties or guarantees, either expressed or implied, to the receiving party with respect to the suitability of the Confidential Information and the receiving party further acknowledges that neither the disclosing party, its directors, officers, employees, agents nor its advisors make(s) any representation or warranty as to the

accuracy or completeness of the Confidential Information. Each receiving party assumes all risks in its use of or reliance upon the Confidential Information and the disclosing party will have no liability to the receiving party or any of its affiliates, directors, officers, employees, agents or advisors arising out of the use of or reliance upon the Confidential Information by such persons.

#### Permitted Disclosure of Information – Court Order

21. In the event that a receiving party or any of its affiliates, directors, officers, employees, agents or advisors are required by a court or other regulatory or government or tribunal, agency or body having jurisdiction to disclose any of the Confidential Information of a disclosing party, a receiving party will, to the extent permitted by law, provide a disclosing party with prompt written notice of such requirement so that a disclosing party may seek a protective order or other appropriate remedy. In the absence of a protective order or other appropriate remedy being sought or obtained by a disclosing party, a receiving party may disclose the Confidential Information, but only that portion of the Confidential Information which the receiving party's legal counsel advises it, in writing, that it is legally required to disclose.

#### Permitted Disclosure of Information – Freedom of Information

22. EPCOR acknowledges and agrees that the City is subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia) and Regulation (the "FOIP Act"), and that this Agreement and any Confidential Information of EPCOR may be subject to disclosure thereunder.
23. The City agrees and acknowledges that the contents of this Agreement and EPCOR's Confidential Information has been and will be explicitly supplied by EPCOR in confidence.
24. The City acknowledges that it is EPCOR's position that EPCOR's Confidential Information constitutes or includes commercial, financial and labour relations information regarding EPCOR, and it is EPCOR's position that the disclosure of this would significantly harm the competitive position and interfere with the negotiating position of EPCOR or result in undue financial loss to EPCOR or both. EPCOR acknowledges that execution of this Agreement by the City does not constitute agreement by the City on this point.
25. The City agrees that if it receives a request for disclosure of the contents of this Agreement or Confidential Information supplied by EPCOR pursuant to this Agreement, the City will give EPCOR written notice under section 23 of the FOIP Act.

#### Permitted Disclosure of Information – Community Charter

26. EPCOR acknowledges that, in order to complete the Proposed Transaction, the City, as a local government, will be required to comply with the Community

Charter and other legislation, which legislation requires City Council approval, open Council meetings, distribution of minutes of Council meetings (including Council reports), distribution of financial plans, audits and other financial reports, and other information dissemination that may include Confidential Information of EPCOR; and the City may need to borrow funds, which would require the approval of the electors and the approval of the Inspector of Municipalities, which may in turn require the disclosure of Confidential Information of EPCOR to the electors and/or the Inspector.

In connection with the foregoing, the parties agree that:

- (a) unless and until a form of definitive agreement regarding the Proposed Transaction is agreed to in principle by the parties, but which remains subject to Council approval, in connection with Council meetings and related matters, the City may only disclose Confidential Information of EPCOR with EPCOR's written approval, acting reasonably; and
  - (b) if a form of definitive agreement regarding the Proposed Transaction is agreed to in principle by the parties, but which remains subject to Council approval, then afterwards in seeking such approval from Council and in taking the other steps referenced in this section 26, the City may disclose, without EPCOR's consent, the purchase price, the conditions to closing and list of assets under such proposed definitive agreement, but may not disclose any other EPCOR Confidential Information without EPCOR's written approval, acting reasonably.
27. Without derogation to section 26, EPCOR and the City agree and acknowledge that the *Community Charter* authorizes City Council to exclude the public from portions of Council meetings and not receive minutes of those portions of those meetings where the subject matter of the meeting relates to:
- (a) the acquisition, disposition or expropriation of land or improvements, if the Council considers that disclosure could reasonably be expected to harm the interests of the municipality; or
  - (b) information that is prohibited, or information if it were presented in a document would be prohibited, from disclosure under section 21 of the FOIP Act.

#### Permitted Use and Disclosure – Regulatory Process

28. EPCOR agrees that the City may use and disclose Confidential Information of EPCOR that is received by the City in its capacity as an intervenor or interested party as part of the current regulatory process before the Comptroller of Water Rights regarding EPCOR's Total Quality Water Management Project, or any other regulatory process before the Comptroller, PROVIDED that any restrictions or limitations applicable to the City pursuant to such process remain in effect and are unaffected by this Agreement.

### Application of Sections 21 to 28

29. EPCOR agrees that sections 21 to 28 apply notwithstanding anything else in this Agreement to the contrary.

### Remedies

30.

- (a) Each party acknowledges that the provisions contained herein are reasonable in the circumstances and necessary for the adequate economic protection of the other party. Each party further acknowledges that the breach by it of any of the provisions herein contained would cause irreparable harm to the other party which would not be adequately compensated for by damages and, accordingly, in the event of such breach, each party acknowledges and agrees that the other party will be entitled in its discretion to commence proceedings for injunctive relief.
- (b) The provisions of this paragraph will not be construed so as to derogate from any other remedy which a disclosing party may have in the event of such breach whether at law, equity or pursuant to the terms of this Agreement.

### Entire Agreement

31. This Agreement constitutes the entire agreement between the parties hereto as to the subject matter hereof and merges all prior discussions between the parties hereto, and neither of the parties hereto will be bound by any terms, conditions, representations or undertakings other than as expressly set forth herein.

### Enurement / Assignment

32. This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns, provided however that neither party will be entitled to assign this Agreement or any of its obligations hereunder to any other person(s) without the prior written consent of the other party, such consent not to be unreasonably withheld.

### Amendment

33. This Agreement will not be varied, altered or amended except by a document in writing signed by all the parties hereto.

### Governing Law

34. This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia, and the federal laws of Canada applicable therein (excluding any conflict of law rule or principle of such laws that might refer

such interpretation or enforcement to laws of another jurisdiction). Each party irrevocably submits to the non-exclusive jurisdiction of the courts of British Columbia with respect to any matter arising hereunder or relating hereto.

### Severability

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

### Notices

36. Notices to be sent pursuant to this Agreement will be sent by hand delivery or by facsimile to the locations noted below and will be deemed to have been received, if by hand delivery, on the date of delivery, and if by facsimile, then on the next business day after confirmed sending of the facsimile.

#### **EPCOR WHITE ROCK WATER INC.**

#203 - 15261 Russell Avenue  
White Rock, BC V4B 2P7  
Facsimile: (604) 536-3412  
Attention: Betty Icharia, Manager

With a copy to: EPCOR Utilities Inc.  
2000 – 10423 101 Street NW  
Edmonton, AB T5H 0E8  
Facsimile: (780) 441-7118  
Attention: Associate General Counsel

#### **THE CORPORATION OF THE CITY OF WHITE ROCK**

15322 Buena Vista Avenue  
White Rock, B.C. V4B 1Y6  
Facsimile: (604) 541-9348  
Attention: Tracey Arthur, Corporate Officer

### Counterparts

37. This Agreement may be executed in any number of counterparts, and may be delivered originally, by facsimile, or by Portable Document Format ("PDF") and each such original, facsimile copy, or PDF copy, when so executed and delivered will be deemed to be an original and all of which taken together will constitute one and the same instrument.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement as of the day and year written below.

DATED the 7<sup>th</sup> day of November, 2013

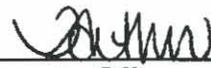
**EPCOR WHITE ROCK WATER INC.**

Per: 

DATED the 14<sup>th</sup> day of November, 2013

**THE CORPORATION OF THE CITY OF WHITE ROCK**

Per:   
Mayor

Per:   
Corporate Officer