

*An Act to confirm a  
Certain Bylaw of the  
City of Saskatoon  
regarding the Street  
Railway*

*being a Private Act*

Chapter 49 of the *Statutes of Saskatchewan, 1912*  
(effective March 15, 1912).

**NOTE:**

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

1912

CHAPTER 49

An Act to confirm a Certain Bylaw of the City of Saskatoon regarding  
the Street Railway

(Assented to March 15, 1912)

**Preamble**

WHEREAS a petition has been presented by the city of Saskatoon and by Harry Marshall Erskine Evans praying that a certain agreement made between them and dated the twenty-first day of July, 1911, and bylaw No. 385 of the said city of Saskatoon adopting the said agreement be validated and confirmed;

And whereas it is expedient to grant the prayer of the said petition:

Therefore His Majesty by and with the advice and consent of the Legislative Assembly of Saskatchewan enacts as follows:

**Bylaw confirmed**

1 Bylaw No. 385 of the city of Saskatoon and the agreement therein referred to made between the said city of Saskatoon and one Harry Marshall Erskine Evans therein described, which said bylaw and agreement are set out in the schedule hereto, are hereby validated and confirmed; and the said city of Saskatoon shall be deemed to have had power to enter into the said agreement notwithstanding anything in *The City Act*:

Provided that nothing herein contained shall deprive any person of any right or remedy which he possessed at the time of the passing of this Act except as between the parties to the said agreement in respect to matters arising out of the same.

1912, c.49, s.1.

SCHEDULE

BYLAW NO. 385 OF THE CITY OF SASKATOON

*A Bylaw of the City of Saskatoon to Grant a Street Railway and Power Franchise*

The council of the corporation of the city of Saskatoon enacts as follows:

1 The mayor and city clerk of the city of Saskatoon are hereby authorised to execute on behalf of the said city of Saskatoon an agreement with Harry Marshall Erskine Evans, of Edmonton, in the province of Alberta, in the terms of the agreement set out in the schedule of this bylaw, and to affix thereto the corporate seal of the said city of Saskatoon.

2 The votes of the burgesses for and against this bylaw shall be taken on the sixth day of July, A.D. 1911, between the hours of nine o'clock in the morning and five o'clock in the afternoon, at the following places, viz.:

Ward 1, at or near the Nutana Real Estate Office in Ward 1;

Ward 2, at or near the corner of Avenue A, in Ward 2;

Wards 3 and 4, at or near the City Offices on Third Avenue, in Ward 4;

Ward 5, at or near the corner of Avenue B and 23rd Street, in Ward 5.

3 Andrew Leslie is hereby appointed returning officer;

R. B. Irvine, deputy returning officer for Ward 1;

John Jackson, deputy returning officer for Ward 2;

R. J. Sparling, deputy returning officer for Wards 3 and 4;

Walter Crozier, deputy returning officer for Ward 5; to take the votes at the time and places aforesaid.

4 The mayor shall attend at his office in the city of Saskatoon on the fifth day of July at the hour of ten o'clock in the forenoon, for the purpose, if requested, of appointing by writing signed by him, two persons to attend at the final summing up of the votes, and one person to attend at each polling place on behalf of the persons interested in promoting the passing of this bylaw, and a like number on behalf of the persons interested in opposing the passing of this bylaw.

5 The returning officer shall sum up the number of votes for and against this bylaw at the hour of twelve o'clock noon on the seventh day of July, A.D. 1911, at the City Hall.

Introduced and read in council the first time this fifth day of June, 1911.

Read a second time this fifth day of June, 1911.

Read a third time and passed this tenth day of July, 1911.

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(Sgd.) Jas. Clinkskill, (L.S.) *Mayor*.

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(Sgd.) A. Leslie, *City Clerk*.

The following is the agreement referred to as a schedule to bylaw No. 385 of the city of Saskatoon, being a bylaw to grant a street railway and power franchise.

Memorandum of Agreement made this twenty-first day of July, 1911, between the municipality of the city of Saskatoon, hereinafter called "the Corporation" of the first part and Harry Marshall Erskine Evans, of the city of Edmonton, in the province of Alberta, company's manager, hereinafter called "the contractor," of the second part:

Whereas a proposal has been made by the contractor for the establishment of a hydro electric plant on the South Saskatchewan river, and a street railway in the city of Saskatoon, and for the sale to the corporation of so much of the electric power produced at such hydro electric plant as is not required for the street railway, and it is expedient to accept such proposal upon the terms hereinafter set out;

And whereas the contractor has made arrangements to acquire the rights, privileges and property of the Saskatchewan Power Company, a company incorporated by the Dominion of Canada by Statutes 7 and 8, Edward VII, c.154, and the proposals made by the contractor and this agreement are subject to its being ascertained that the said rights and privileges can be preserved;

And whereas in the year 1910 the corporation entered into an agreement with the said the Saskatchewan Power Company for the purchase of power as therein provided, and such agreement is to be cancelled and determined as a condition to the corporation entering into this agreement;

And whereas this agreement is further conditional upon the Legislature of the Province of Saskatchewan at its next session passing a special Act, or special Acts, incorporating a company for the purpose of exercising the powers and performing the duties given and assumed under this agreement, and also for the purpose of validating this agreement.

Now therefore it is mutually agreed by and between the parties hereto as follows:

#### VALIDITY OF SASKATCHEWAN POWER CHARTER

**1** The contractor agrees to ascertain with the utmost possible expedition whether the rights and privileges of the Saskatchewan Power Company can be preserved, and subject to such rights and privileges being preserved to apply at the next session of the Legislature of the province of Saskatchewan for an Act incorporating a Company to exercise the powers and perform the duties given to and assumed by the contractor under the provisions hereof, and the corporation agrees to apply to the said Legislature at such session for an Act validating this agreement, the expense of both of said special Acts to be borne by the contractor, and both parties hereto to co-operate in securing the passing of said Acts.

**2** The contractor shall within five days after the final execution of this agreement deposit with the city treasurer the sum of fifteen thousand dollars to be retained by the corporation as security for the fulfilment of the terms, conditions and provisions herein contained, relating to or in any way applicable to the construction of the work referred to, and as security while it shall be held by the corporation for the observance and fulfilment by the contractor of all other terms, covenants and stipulations herein contained, and if at any time the said sum shall be reduced by reason of any claims or damages due or adjudged to the corporation from the contractor, the latter shall restore to the said fund of fifteen thousand (\$15,000) dollars the sum or sums by which the same has been reduced, the corporation to allow five per cent. per annum interest on said money, calculated from date of deposit. In case the contractor makes default in building the works referred to, within the time hereby stated, or such further time as the contractor may hereunder be entitled to, the said sum shall be forfeited to the corporation.

Upon its being made to appear to the corporation council that the contractor has expended the sum of fifty thousand (\$50,000) dollars on his undertaking, the contractor may deliver to the corporation by way of security for the fulfilment of the terms, conditions, provisions and stipulations of this contract, a bond for twenty five thousand (\$25,000) dollars, with sureties, and in form to be approved of by the corporation council, and upon such bond being accepted by the corporation council there shall be refunded to the contractor the said deposit of fifteen thousand (\$15,000) dollars, or so much thereof as shall remain after any claims thereupon shall have been satisfied, and subject to any rights of the corporation thereupon that may have then arisen. If no cause of action shall have arisen on the bond within two years after it has been furnished, it shall be surrendered to the contractor.

#### CONDITIONS PRECEDENT

3 The reasonable and proper performance of the terms and conditions, stipulations and provisos contained in this agreement shall be a condition precedent to the continued exercise and enjoyment by the contractor of the rights and privileges hereby granted, but no *bona fide* difference of opinion between the corporation and the contractor shall create a forfeiture under this clause until after such difference has been submitted to arbitration as herein provided, and the contractor has, after the determination of the board of arbitration, failed to comply with the award within the time therein limited, if any, or if none for more than a reasonable time.

#### COMMENCEMENT OF STREET RAILWAY

4 The contractor will, within three months after the final execution of this agreement, proceed with the construction of the street railway as herein provided, and will carry on such construction with all diligence so that in the event of the above mentioned special Acts being obtained as aforesaid, the said street railway will be in operation within fifteen months after such final execution.

#### PROVISO AS TO TIME LIMIT

5 Provided that the time for the commencement of the operation of the street railway shall be extended until the expiry of the period hereby limited for the delivery of the power from the hydro electric plan of the contractor, unless upon the said railway being ready for operation the corporation can furnish to the contractor electrical power for the purpose on terms to be settled between the contractor and the corporation.

#### CONDITION AS TO SPECIAL ACTS

6 In the event of the said special Acts or either of them not being passed at the said session the corporation will assume from and pay to the contractor all expense and liability for salaries, labour, materials and otherwise in connection with the construction of the street railway. Any dispute as to the amount to be paid or assumed under the provisions of this clause shall be determined by arbitration as hereinafter provided.

### COMMENCEMENT OF HYDRO ELECTRIC PLANT

7 The contractor will, within one month after the approval by the Minister of Public Works of Canada under the provisions of the said Statute of 7 and 8, Edward VII, c.154, of the final plans of the hydro electric plant, proceed with the construction thereof and continue the same with all possible speed so that in the event of the special Acts as aforesaid being passed as aforesaid, power will be delivered under the provisions hereof within two years from the date of such approval.

### GRANT OF FRANCHISE

8 The corporation hereby grants to the contractor subject to all the terms of this agreement, the exclusive right and privilege for a period of twenty years from the final execution hereof, to lay out, construct, maintain and operate upon, over, along, and under the streets, highways, lanes and alleys within the present or future boundaries of the city of Saskatoon, and along and over all bridges as to which the corporation shall have power to grant such rights and which can be conveniently so used, a single or double track street railway with all necessary poles, wires, feeders, accessories, sidetracks, turnouts and switches, for the proper and convenient conveyance of passengers, freight, mail and express parcels. The obligations imposed by this agreement shall apply to all lines of the contractor within the present or future boundaries of the city of Saskatoon.

### CHARACTER OF CONSTRUCTION

9 The railway shall be substantially constructed according to the best modern practice, with a gauge of 4 feet 8½ inches of standard T rails weighing not less than 70 pounds to the yard, or such lighter rails as may be approved by the corporation, the rails to be so laid and maintained as to present the least possible obstruction to traffic. The rails shall be properly bonded for the return electric current.

### SUPERVISION

10 The right to construct the railway upon any street, highway, lane or alley, and the location of the rails and poles thereupon, shall be subject to the approval of the city engineer, who shall approve, reject, or suggest modifications of any tentative plans thereof within one month of the submission of such plans by the contractor, and shall determine the grade of such street or highway within one month after being requested by the contractor so to do. The construction shall at all times be under the supervision of the city engineer, who shall not unreasonably refuse his approval of any proposed construction or location.

### CHANGE OF GRADE

11 If the corporation at any time, having determined the grade or approved the location of rails and poles on any street or highway, should desire to change such grade or location, all expense involved in making any alterations to the railway made necessary by such change of grade or location shall be borne by the corporation, but may be paid by the contractor and shall be forthwith repaid to him by the corporation.

### MOTIVE POWER

12 The railway shall be operated by an electric overhead trolley carrying not more than 1,200 volts, or by such other motive power as may be agreed upon between the contractor and the council of the corporation.

### CARS

**13** The coaches and cars used upon the railway shall be of the most modern type and construction and suitable for the safety, convenience and comfort of the passengers, and when in operation shall always be sufficiently heated, ventilated and lighted. They will be equipped with modern fenders and brakes, and such equipment as will cause a minimum of noise.

### SERVICE

**14** Cars will be run at such intervals as may be required for the service, and at intervals of at most 15 minutes, unless otherwise agreed upon between the contractor and the council of the corporation. The service will begin at least as early as 6 a.m. in summer, and 6:30 a.m. in winter, and continue until at least 11:30 p.m., additional service being supplied when occasion requires. Any interruption of traffic shall be overcome as speedily as possible. The council of the corporation may make reasonable regulations respecting the hauling and shunting of freight cars and the time when such work may be performed.

### SUNDAY CARS

**15** The company will, when the council of the city so directs, operate its system on Sundays, in which case the times of running cars and the nature of the service to be rendered, shall be fixed by the council.

### RIGHT OF WAY

**16** The cars upon the railway shall be entitled to right of way over those portions of the streets and highways used by them, subject to any general regulations which may be made by the corporation from time to time governing traffic in case of fire. Subject to the right of way hereby granted, the right of the public to use the portions of the streets and highways occupied by the railway track shall remain unaffected.

### REMOVAL OF SNOW

**17** the contractor will remove from the street railway tracks any snow and dirt required to be removed to permit of the proper operation of the railway in such manner as not to unnecessarily obstruct the ordinary traffic and to afford a safe and unobstructed passageway for vehicles. In the event of the city engineer being of opinion that the contractor has not complied with this clause he may notify the contractor in writing, setting out what is required, and if the contractor fails to reasonably carry out such requisition within twenty-four hours, the engineer may cause the work to be done and charge the same to the contractor.

### MAINTENANCE

**18** The contractor shall maintain the ties, stringers and rails in a state of thorough repair and shall for that purpose remove, renew and replace the same as circumstances may require, and shall maintain and keep the roadbed between the two rails of each track and to a width of eight inches on the outside of the rails, in as good a state of repair as the remainder of the street may be. And in the event of the contractor making any repairs or alterations to the track, ties, stringers, or rails, the contractor shall replace the portion of the streets disturbed for the purpose of such repairs in as good order and condition as the rest of the street without unnecessary delay.

## INTERRUPTION OF SERVICE

**19** The contractor shall have no claim for damages by reason of the interruption of the service when the corporation requires to interfere with the railway track or wires, to alter grades, to open the streets, or otherwise deal with the same for any purpose, or to fight fire, but the corporation shall, as soon as may be after interruption, replace the property in the condition in which it formerly was, or the contractor may do so and charge the expense thereof to the corporation.

## FARES

**20** Single cash fares for adults shall not exceed five cents each, and for children under twelve years of age shall not exceed three cents each. The following classes of tickets shall be sold by the company:

- (a) Regular tickets at not more than 25 cents for six tickets;
- (b) Limited tickets, good only from 6 to 8 a.m. and from 5 to 6:30 p.m. at not more than 25 cents for eight tickets;
- (c) Children's tickets for children under twelve years of age at not more than 25 cents for ten tickets;
- (d) School tickets for children under 14 years of age attending school, good only between 8 and 9:30 a.m., 12 and 1:30 p.m., and 3 and 5 p.m., at not more than 25 cents for ten tickets;

Members of the city fire brigade and police force, and officials of the city health department, shall, when in uniform, be carried free. The usual transfer privileges shall be given for a continuous trip in one general direction from any one point to any other point within the limits of the municipality.

## REGULATIONS

**21** The contractor shall have the right to make and enforce reasonable regulations for the collection and payment of fares, and the conduct of passengers on the cars.

## EXTENSIONS

**22(a)** The corporation may at any time, and from time to time, require the contractor to construct and operate extensions of the service within the municipality when there is in any area not more than one-quarter of a mile in width an actual *bona fide* resident population of at least 400 persons of above five years of age for each half mile of the projected line, no person to be counted who lives within one-quarter mile of any line already in operation or under construction, and the proposed extension shall not be less than one mile in length, unless it be an extension from the end of an existing line. The contractor shall have such extension actually constructed and in operation within twelve months after being required to construct the same.

(b) If after the railway has been in operation for ten years the corporation desires to construct or have constructed a line of railway not coming within a district of the municipality such as is described in the last preceding paragraph and not served by the line of the contractor, the corporation may give to the contractor notice in writing to construct such line, and if the contractor fails to commence such construction within six months after such notice, or to proceed diligently with the same after such commencement, the corporation shall have the right to construct such line or grant the right to construct the same to any other person, firm or corporation.

### SHOPS

**23** Workshops, repair shops and other plant and buildings required for the maintenance of the service within the city, and all car barns required for the city service, shall be located within the limits of the municipality.

### WAITING ROOMS

**24** If the corporation grants permission to the contractor to occupy the streets for such purpose, the contractor may provide waiting rooms for the accommodation of passengers while waiting for cars.

### EXEMPTION FROM TAXATION

**25** The franchise, track, rolling stock, income, personal property and business of the contractor shall be exempt from taxation for all municipal purposes, and the contractor shall be liable to be assessed only in respect of any real estate held within the city.

### PAYMENTS TO THE CITY

**26** The contractor shall yearly, on or before the fifteenth day of January in each year after the railway has been in operation for three years, file with the treasurer of the corporation a duly verified statement of the gross earnings of the railway within the city, for the preceding calendar year or any part thereof in respect of which any percentage may be payable under this clause, and shall, on or before the first day of February in each year, pay to the corporation a sum equal to following percentages of gross earnings:

- (a) After the railway has been in operation for three years, and until it has been in operation for ten years, 3 per cent.;
- (b) After the railway has been in operation for ten years and until it has been in operation for twenty years, 4 per cent.;
- (c) After the railway has been in operation for twenty years, and until the option to purchase hereby given is exercised by the corporation, 5 per cent.;

The corporation shall have the right to appoint an accountant or auditor who shall be entitled at all reasonable times to examine the contractor's books and accounts as to such gross earnings.

### PURCHASE

**27** The corporation shall, at the expiration of the period of twenty years mentioned in clause 8 hereof, have the right upon twelve months' previous notice in writing, to purchase at replacement value, less depreciation, the tangible assets of the contractor used for the purpose of the street railway system, exclusively within the city. If the corporation does not exercise such right at the expiration of the said period of twenty years, it shall have the like right upon notice as aforesaid, at the end of each succeeding period of five years; and until such right is exercised the privileges granted to the contractor hereunder shall continue. In determining the price to be paid, no allowance shall be made to the contractor for the value of the franchise, rights or privileges or for any potential revenue, profits, dividends or other intangible assets.

#### PURCHASE OF RADIAL LINES

**28** The corporation, at the expiration of the period of twenty years from the final execution of this agreement, upon twelve months' previous notice in writing (provided the corporation has carried out, or is about to carry out, the purchase in the last preceding clause mentioned), shall have the right to buy that portion of the street railway system of the contractor not within the limits of the municipality (but not the hydro electric plant or high tension transmission lines) at replacement value, less depreciation, together with a proper allowance for the franchise rights and good will, and shall have the like right upon notice as aforesaid at the end of each succeeding period of five years. Until the right to purchase given by this clause is exercised, the contractor shall be entitled to running rights from the limits of the municipality through and across the same and over the lines within the city limits on such terms as to price of power, frequency and character of service, fares and other matters as may be agreed upon, or failing agreement, as may be settled by arbitration as hereinafter provided.

#### INDEMNITY

**29** The contractor shall indemnify and save harmless the corporation of and from all liability for damages, costs and charges of whatsoever nature arising out of the construction or operation of the railway, other than liability arising from or out of any act or default of the corporation.

#### DEFINITION

**30** In the following clauses of this agreement, primary power shall mean an amount equal to the maximum amount of power available at the lowest stage of water in the hydro electric plant, and secondary power shall mean the additional power available at other stages of water.

#### SALE OF POWER

**31** The contractor agrees to sell to the corporation and the corporation agrees to buy from the contractor for the twenty (20) years next following the execution of this agreement, all the primary power up to 3,200 h.p. produced by the contractor at the hydro electric power plant not required from time to time for the operation of that portion of the street railway system of the contractor lying within the limits of the municipality or within two miles thereof or such greater distance as may be agreed upon with the council of the corporation.

#### ADDITIONAL PRIMARY POWER

**32** If it appears that the hydro electric plant can produce more primary power than is required to operate the street railway as hereinbefore set out and to furnish the 3,200 h.p. referred to in the last preceding paragraph, the contractor shall notify the corporation in writing of the amount of such additional primary power, and the corporation shall have the right by notice in writing to the contractor within two months after the receipt of such notice from him, to purchase the additional power or any part thereof in units of 200 h.p. and any agreement so made shall extend for the remainder of the period of twenty years or until the contractor requires such additional power for the purpose of operating the street railway above mentioned, which ever is the earlier.

### SECONDARY POWER

**33** The contractor may, at any time, and shall, not later than eighteen months after the hydro electric plant has been in operation, notify the corporation in writing of the amount of secondary power which will be available in each month of the year, and the corporation may, by notice in writing to the contractor at any time within two months after such notice by the contractor, agree to purchase such secondary power or any part thereof in units of 200 h.p. and such agreement shall extend for the remainder of the period of twenty years, or until the contractor requires the power for the operation of the street railway as above mentioned, which ever is the earlier.

### DISPOSITION OF POWER ELSEWHERE

**34** In case the corporation does not purchase all the additional power in either of the last two preceding clauses mentioned, the contractor on being so notified or at the expiration of the said periods of two months, shall be at liberty to sell the remainder not so purchased by the corporation to any other consumers outside the then city limits, but the contractor agrees not to sell to any such consumers at any price less than five per cent advance above the price paid by the corporation.

### APPLICATION FOR ADDITIONAL POWER

**35** Should the corporation require additional primary or secondary power, it shall apply to the contractor and shall give the contractor at least six months' notice in writing of the date when delivery is desired to commence, and shall specify the amount required (in blocks of 200 h.p.). Within ten days after receipt of such application and notice, the contractor shall notify the corporation whether or not he can supply such additional power or any part thereof (in blocks of 200 h.p.) and the corporation shall be at liberty to obtain from any other person or company so much of such additional power for such times as the contractor may be unable to supply the same without further application to the contractor.

### REDUCTION OF POWER SOLD

**36** If or so soon as the corporation has agreed or given notice to purchase more power than the contractor has available in excess of what is required by him for street railway purposes as aforesaid, or if the requirements of the contractor for such purposes exceed the amount of the difference between the total amount available and the amount which the corporation has agreed or given notice to purchase, the contractor shall from time to time give notice to the corporation of the amount of primary and secondary power which will be available for the corporation from month to month, and such amount shall be deemed to be the amount contracted for by the corporation under the terms hereof.

### PAYMENT FOR POWER

**37** The corporation shall pay the contractor monthly on the fifteenth day of each month for the power contracted for under the provisions hereof (or if the contractor cannot deliver such amount of power, then for the amount of power delivered by him), at the rate of \$2.75 per horse power per month, measured on the high tension side of the Saskatoon end of the transmission line, without deduction for counterclaims which have neither been agreed to by the contractor nor settled by arbitration as herein provided.

### COUNTERCLAIMS

**38** All counterclaims which the corporation may have or claim to have against the contractor shall be notified in writing to the latter during the first fifteen days of each month for any claim having arisen during the preceding month. If the said claim should not be allowed by the contractor, the parties hereto agree to submit the same to arbitration, as hereinafter provided.

### DEFAULT

**39** If the corporation shall at any time make default in payment of any money payable under this agreement, and such default shall continue for a period of one month, the contractor may, in addition to all other remedies, and without notice, discontinue the delivery of such power to the corporation in default until said bill is paid. No such discontinuance shall relieve the corporation in default from the performance of the covenants, provisos and conditions herein contained. All payments in arrear shall bear interest at the legal rate.

### VOLTAGE

**40** The power to be delivered under this agreement shall be delivered by the contractor and received by the corporation within the receiving station of the corporation in the city of Saskatoon located as may be agreed upon between the parties, at the transmission voltage of approximately twenty-two thousand (22,000) volts or more, as may be agreed upon, and at a frequency of approximately sixty cycles per second. The maintenance by the contractor of approximately the agreed voltage at approximately the agreed frequency at the receiving station in the limits of the corporation shall constitute the supply of all power involved herein, and the fulfilment of all operating obligations hereunder; and when voltage and frequency are so maintained, the amount of power, its fluctuations, load factor, power factor, distribution as to phases, and all other electric characteristics and qualities are, except as herein provided, under the sole control of the corporation, their agents, customers, apparatus, appliances and circuits.

### PHASES

**41** The corporation shall so operate its plant and so control the use of the power delivered to it by the contractor that the amount of current flowing in any phase, as shown by an ammeter connected in such phase, shall not exceed by more than ten per cent. the amount of current as shown in any other phase at the same time.

### CURRENT

**42** The said power shall be three phase, alternating and commercially continuous during twenty-four hours, every day of the year, and shall be measured by curve drawing meters subject to test as to accuracy by either party hereto.

### APPARATUS

**43** The contractor shall provide, instal and maintain the measuring apparatus and a disconnecting switch at the place of delivery. The corporation shall provide and maintain a building at such location as may be agreed upon in which said measuring and disconnecting apparatus may be installed or shall provide space within its receiving station for the reception of the said apparatus. The corporation shall provide and maintain in its receiving station lightning protective apparatus of an effective type. The contractor shall construct and maintain a telephone line between the generating and receiving stations.

#### ACCESS TO MEASURING INSTRUMENTS

44 The representatives of the corporation and of the contractor shall have, at all times, the right of access to the measuring instruments and the records of the power measured.

#### EXCESS OF POWER

45 The contractor shall deliver the full amount of power called for under this contract, but the corporation has no right to use at any time more power than it may be entitled to use as herein set forth, and the contractor has the right to supply power through or controlled by an automatic switch or circuit breaker for cutting off the corporation's system from the line or lines used by the contractor to supply power to the corporation when the power taken by the corporation exceeds the amount ordered by the corporation to be supplied and held in reserve by the contractor by more than ten per cent., the excess of ten per cent. being allowed for permitting those instantaneous fluctuations of the corporation's system that may occur from momentary abnormal conditions, and which are not of so great magnitude as cannot be absorbed and sustained by the stored up energy of the revolving parts of the contractor's power equipment.

#### PROVISO

46 Provided that during the times when the aforesaid instantaneous fluctuations occur due to momentary abnormal conditions in the corporation's system, the contractor is not bound to strictly maintain the aforesaid voltage and frequency;

And provided further that the contractor is not bound under this paragraph to supply and hold in reserve for the corporation any additional reserve power or water to take care of the said fluctuations beyond the amount contracted for under the terms of this agreement.

#### PAYMENT FOR EXCESS

47 When the amount of power taken for any 20 consecutive minutes in any month shall exceed the amount contracted for, the corporation shall pay for the entire month at the rate of the amount taken during such 20 minutes. When the greatest amount of power taken for any 20 consecutive minutes in any month is being delivered at approximately normal voltage and frequency and its power factor falls below 90 per cent., then the corporation shall pay for said power divided by the power factor.

#### TRANSMISSION

48 The contractor shall supply all wires, poles, etc. forming a complete overhead transmission system for conveying electrical energy from the city limits to the receiving station of the corporation. The said receiving station shall be located at a point to be mutually decided upon between the two contracting parties and the contractor shall maintain at his own expense the said transmission line within the city limits. The corporation shall furnish to the contractor a free right of way for the said transmission line within the city limits, and any change in the said transmission system within the city limits required by the corporation will be carried out by the contractor at the expense of the corporation.

#### APPARATUS TO BE FIRST CLASS

**49** The contractor shall use first class, modern, standard, commercial apparatus and plant, and shall exercise all due skill and diligence so as to secure the most perfect operation of the plant and apparatus of the corporation. The corporation shall use and shall require its customers to use, first class, modern, standard, commercial apparatus and plant, and shall exercise all due skill and diligence so as to secure the most perfect operation of the plant and apparatus both of the company and the corporation.

#### RESALE OF POWER

**50** It is understood and agreed that the power sold under this contract may, save as hereinafter provided, be used by the corporation for any purpose whatever, but it shall not be resold to or used by any other company or person operating under a municipal franchise for the sale or distribution of electricity.

#### SHORTAGE OF POWER

**51** In case the contractor fails to supply power, the corporation shall be released *pro rata* according to the time of such failure from payment for power to the contractor; but the contractor shall be liable in damages only if the failure has been due to his deliberate act or default, and in that event the contractor shall pay to the corporation as liquidated damages a sum equal to three times the amount which would, if power had been supplied, have become payable by the corporation to the contractor.

#### RELEASE OF CORPORATION

**52** In case the corporation, after the exercise of all due diligence, shall be prevented from taking said power or any part thereof at the receiving station by reason of ice, abnormal sleet or windstorms, strike, lockout, riot, fire, invasion, explosion, act of God or of the King's enemies, or any other cause reasonably beyond its control, then the corporation shall not be bound to pay the price of said power during such time, but shall be prompt and diligent in removing and overcoming such cause or causes of interruption.

#### SHUTTING DOWN

**53** In order to secure the better efficiency of the whole system, the contractor may make such interruption in the supply of power as may be reasonable under the circumstances not exceeding two hours' duration in the forenoon of Sunday, and not more frequently than twice in any one month, in order to do any repair work or improvements necessary in any part of the contractor's plant.

#### DISPOSITION OF POWER IN LINES PURCHASED

**54** In the event of the corporation having renewed this agreement in respect of power, and having exercised one or both of the options given in paragraphs 27 and 28, the contractor shall forthwith upon the purchase being completed, notify the corporation of the amount of power (both primary and secondary) released by the exercise of such option or options, and the corporation may within ten days thereafter, by notice in writing to the contractor, agree to purchase such power or any part thereof, (in units of 200 h.p.). The amounts purchased shall be subject to all the terms of this agreement and shall be purchased by the corporation for the balance of the term fixed hereby.

#### AMENDMENTS

**55** It is recognised by both the parties hereto that the state of the art of production and transmission and application of electrical energy is subject to constant advance, and that it is impossible by contract to cover all requirements and conditions which time may develop, and the contractor and the corporation, while adhering to the provisions of this agreement, will at any time, upon the request of the other, take up and in good faith fairly consider, with the aid of their respective engineers, any features or changes of the system as a whole or the modifications of any of the provisions thereof, provided it shall appear to the party to whom such request is made that compliance therewith shall tend to make this agreement more effective, and to make the venture of each party more successful and certain; provided, however, that any such action, or the failure of either party to require of the other exact conformity to the provision hereof or any liberty of greater latitude beyond the provisions of this agreement permitted by either party to the other in the course of the co-operation implied by the spirit of this agreement, shall in no manner act as or constitute a precedent or amend or change the obligations of the parties hereto.

#### CANCELLATION

**56** Should the contractor fail to commence the works as herein provided or should he fail to complete the same within the times herein limited, then, in any such case, the council of the corporation may grant an extension of the time hereby limited or may by notice in writing cancel the agreement, and upon cancellation all liability of the corporation under the provisions herein contained shall cease, but such extension shall be granted if the delay is due to any of the matters which would release the corporation from liability to pay for power which the contractor was ready to deliver.

#### RENEWAL OF POWER AGREEMENT

**57** The corporation shall have the right to renew this contract in respect of power, for a further period of ten years after the expiry of the term of twenty years herein provided for, by giving notice in writing to the contractor not later than one year before the expiration of such twenty years period herein provided for; and all the terms of this agreement shall apply to the extended term as if this agreement had been made for a period of thirty years instead of for twenty.

**58** The corporation shall, at the expiration of the period of twenty years after the final execution of this agreement, and upon twelve months' previous notice in writing, provided the corporation has exercised or is about to exercise the options hereinbefore given to purchase the contractor's street railway lines both within and without the municipality, have the right to buy the hydro electric installation as herein defined, and the transmission lines of the contractor at replacement value, less depreciation, together with a proper allowance for the franchise rights and good will, and shall have the like right upon notice aforesaid at the end of each succeeding period of five years.

**59** Unless the corporation renews this agreement as to power as hereinbefore provided, or unless either before or after such renewal and at or before the expiration of thirty years from the final execution of this agreement, it exercises the right of purchase given by the last preceding clause, then the corporation shall give to the contractor the right to construct and maintain a power distribution system with the municipality on terms to be agreed upon or settled by arbitration.

#### OTHER DAMS

**60** It is understood and agreed that this agreement shall not apply to the power generated at any second or other dam which the contractor may construct.

DISPUTES AND ARBITRATION

61 The contractor may appeal to the council of the corporation against any decision of the city engineer with respect to any of the matters provided for in this agreement. If the corporation and the contractor disagree as to the reasonableness of the exercise of any powers vested in the engineer or the council, or as to the price to be paid upon the purchase by the corporation of any part of the railway or of the hydro electric installation, or upon any other matter arising under the provisions of this agreement, such disagreement shall be settled by a board of three arbitrators, one of whom shall be appointed by the corporation, one by the contractor, and the third by the chief justice or one of the other judges of the Supreme Court of Saskatchewan; and the award of a majority of such board shall be final. Such arbitration shall be under the provisions of *The Arbitration Act*.

APPLICATION OF AGREEMENT

62 The agreement shall extend to and be binding upon the successors and assigns of the corporation, and the heirs, executors, administrators and assigns of the contractor, and upon the incorporation of a company for the purpose of adopting this agreement, and its adoption by such company, shall be binding upon it, its successors and assigns, to the exclusion of the contractor, as if the agreement had been made with such company.

In witness whereof the party hereto of the first part has affixed its corporate seal and signed by the hands of its proper officers, and the second party has set his hand and seal the day and year first above written.

Signed, sealed and delivered }  
in the presence of }  
(Sgd.) A.R. Scoble }

\_\_\_\_\_  
(Sgd.) Jas. Clinkskill, Mayor.

\_\_\_\_\_  
(Sgd.) A. Leslie, City Clerk.

\_\_\_\_\_  
(Sgd.) H.M.E. Evans

(Seal)