



Enbridge Gas Inc.
50 Keil Drive North
Chatham, Ontario, Canada
N7M 5M1

September 10, 2019

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Enbridge Gas Inc.
Application for Renewal of Franchise Agreement
City of Timmins**

Attached is an Application by Enbridge Gas Inc. for Orders of the Ontario Energy Board with respect to a Franchise Agreement with the City of Timmins. An agreement has been reached between Enbridge Gas Inc. and the City of Timmins with regards to the terms and conditions of the proposed Franchise Agreement.

Should you have any questions on this application, please do not hesitate to contact me. I look forward to the receipt of your instructions.

Yours truly,

[Original Signed By]

Patrick McMahon
Specialist, Regulatory Research and Records
patrick.mcmahon@enbridge.com
(519) 436-5325

Encl.

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Municipal Franchises Act*, R.S.O. 1990, c.M.55, as amended;

AND IN THE MATTER OF an Application by Enbridge Gas Inc. for an Order approving the terms and conditions upon which, and the period for which, the Corporation of the City of Timmins is, by by-law, to grant to Enbridge Gas Inc. the right to construct and operate works for the distribution, transmission and storage of natural gas and the right to extend and add to the works in the City of Timmins;

AND IN THE MATTER OF an Application by Enbridge Gas Inc. for an Order directing and declaring that the assent of the municipal electors of the City of Timmins to the by-law is not necessary.

APPLICATION

1. Enbridge Gas Inc. ("Enbridge Gas"), a regulated public utility, is a corporation incorporated under the laws of the Province of Ontario, with its offices in the City of Toronto and the Municipality of Chatham-Kent.
2. The Corporation of the City of Timmins ("Municipality") is a municipal corporation incorporated under the laws of the Province of Ontario. Attached hereto and marked as Schedule "A" is a map showing the geographical location of the Municipality and a customer density representation of Enbridge Gas' service area. Enbridge Gas currently serves approximately 11,321 customers in the Municipality.
3. The City of Timmins is a single-tier municipality in the Cochrane District which was incorporated in 1973 as the former Town of Timmins amalgamated with the former Township of Mountjoy, the former Township of Tisdale and the former Township of Whitney.
4. Enbridge Gas has a Franchise Agreement with the City of Timmins (approved by Decision and Order RP-2000-0008 / EB-2000-0023) which expires March 17, 2020 and a Certificate of Public Convenience and Necessity for the City of Timmins (RP-2000-0008 / EB-2003-0085) dated October 20, 2003 which are attached as Schedule "B".
5. Enbridge Gas applied to the Council of the Municipality for a renewal of the franchise agreement permitting Enbridge Gas to construct and operate works for the distribution, transmission and storage of natural gas and the right to extend and add to the works in the City of Timmins.

6. On July 9, 2019, the Council of the Municipality gave approval to the form of a Franchise Agreement in favour of Enbridge Gas and authorized Enbridge Gas to apply to the Ontario Energy Board for approval of the terms and conditions upon which and the period for which the Franchise Agreement is proposed to be granted.
7. Attached hereto as Schedule "C" is a copy of the Resolution of the Council of the Municipality approving the form of the draft by-law and Franchise Agreement, authorizing this submission to the Ontario Energy Board, and requesting an Order declaring and directing that the assent of the municipal electors to the by-law and Franchise Agreement is not necessary.
8. Attached hereto as Schedule "D" is a copy of By-law 2019-8354 and the proposed Franchise Agreement. The City of Timmins has provided first and second readings of its by-law.
9. Enbridge Gas has Franchise Agreements with and Certificates of Public Convenience and Necessity for the Town of Iroquois Falls and the Township of Black River-Matheson, which are immediately adjacent to the Municipality. There is no other natural gas distributor nearby.
10. The proposed Franchise Agreement covers the same territory as that covered by the existing Franchise Agreement, is in the form of the 2000 Model Franchise Agreement with no amendments, and is for a term of twenty (20) years.
11. The address of the Municipality is as follows:

City of Timmins
220 Algonquin Blvd. East
Timmins, Ontario P4N 1B3
Attention: Steph Palmateer, City Clerk
Telephone: (705) 360-2602
Email: Steph.Palmateer@timmins.ca

The address for Enbridge Gas' regional operations office is:

Enbridge Gas Inc.
36 Charles Street East, Box 3040
North Bay, ON P1B 8K7
Attention: Luke Skaarup, Director, Northern Region Operations
Telephone: (705) 475-7913
Email: luke.skaarup@enbridge.com

12. The English language newspaper having the highest circulation in the City of Timmins is the *Timmins Daily Press*. The French language newspaper having the highest circulation in the City of Timmins is *Le Voyageur*. These are the newspapers used by the Municipality for its notices.
13. Enbridge Gas now applies to the Ontario Energy Board for:
 - (a) an Order under s.9(3) approving the terms and conditions upon which, and the period for which, the Municipality is, by by-law, to grant Enbridge Gas the right to construct and operate works for the distribution, transmission and storage of natural gas and the right to extend and add to the works; and
 - (b) an Order pursuant to s.9(4) directing and declaring that the assent of the municipal electors of the Municipality is not necessary for the proposed franchise agreement by-law under the circumstances.

DATED at the Municipality of Chatham-Kent, in the Province of Ontario this 10th day of September, 2019.

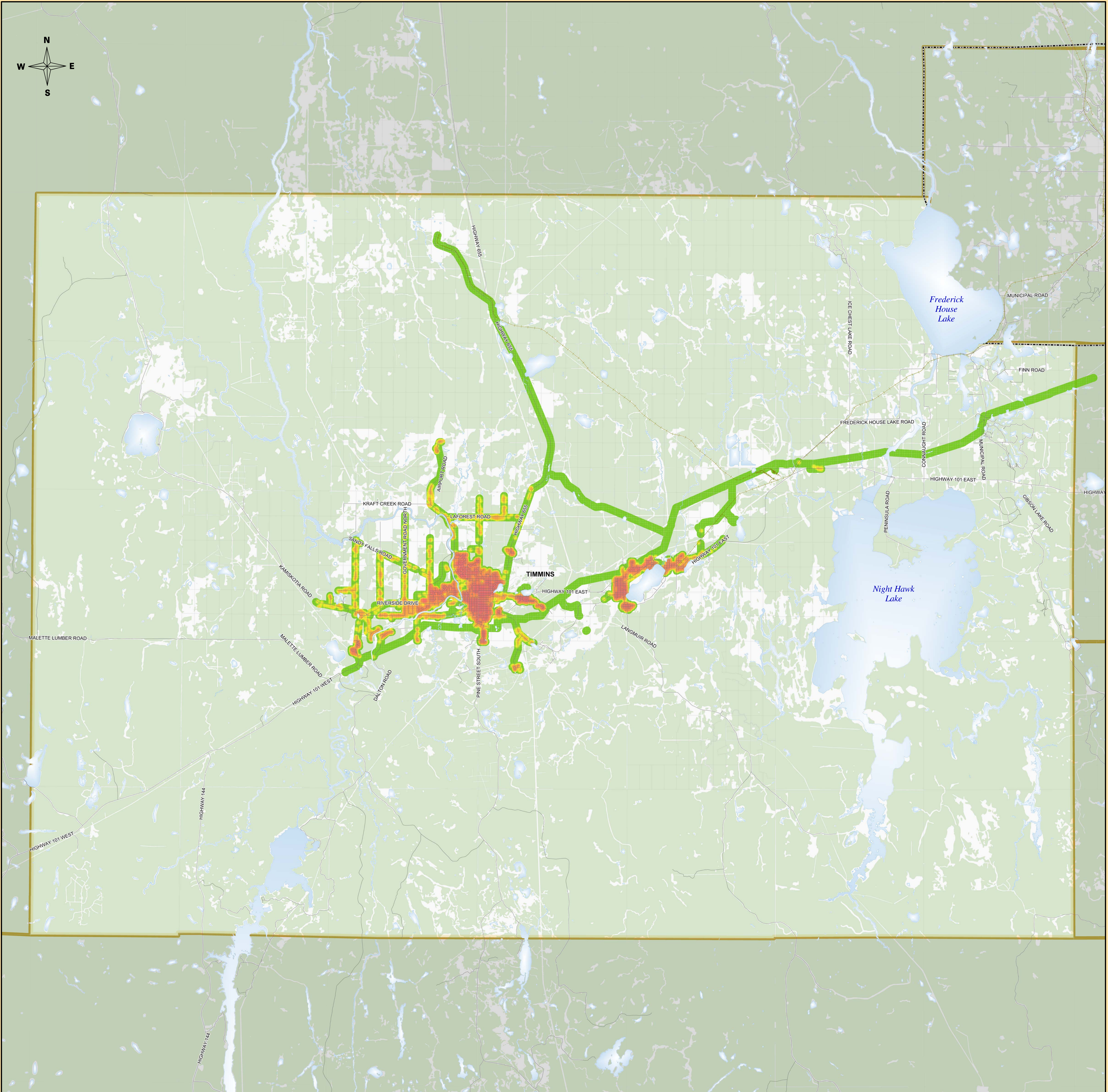
ENBRIDGE GAS INC.

[Original Signed By]

Patrick McMahon
Specialist, Regulatory Research and Records

Comments respecting this Application should be directed to:

Mr. Patrick McMahon
Specialist, Regulatory Research and Records
Enbridge Gas Inc.
50 Keil Drive North
Chatham, ON N7M 5M1
patrick.mcmahon@enbridge.com
Telephone: (519) 436-5325



City of Timmins

Legend

- Enbridge Gas Pipeline Coverage Area
- City of Timmins
- Roads
- Railways
- Municipal and Township Boundaries
- First Nation Boundaries

Customer Density



Disclaimer:
The map is provided with no warranty express or Implied and is subject to change at any time. Any Person using the Density Map shall do so at its own Risk and the Density Map is not intended in any way As a tool to locate underground infrastructure for the purposes of excavation



Location map





RP-2000-0008

EB-2000-0023

IN THE MATTER OF the *Municipal Franchises Act*, R.S.O. 1990, c. M.55;

AND IN THE MATTER OF an application by Union Gas Limited for an order approving the terms and conditions upon which the Corporation of the City of Timmins is by by-law to grant Union Gas Limited the right to construct and operate works for the distribution of gas; the right to extend and add to the works; and the period for which such rights are granted;

AND IN THE MATTER OF an application by Union Gas Limited for an order dispensing with the assent of the municipal electors of the City of Timmins regarding the by-law.

By delegation, before: Mark C. Garner

DECISION AND ORDER

Union Gas Limited filed an application dated April 4, 2003 with the Ontario Energy Board under the *Municipal Franchises Act*, R.S.O. 1990, c. M.55 for an order of the Board approving the terms and conditions upon which and the period for which the Corporation of the City of Timmins (the "Corporation") is by by-law to grant to Union Gas the right to construct and operate works for the distribution of gas, and the right to extend and add to the works in the City of Timmins (the "Municipality"). Union Gas also applied for an order of the Board declaring and directing that the assent of the electors of City of Timmins to the by-law is not necessary. The Board assigned File No. RP-2000-0008/EB-2000-0023 to this application.

Union Gas submitted a resolution passed by the Council of the Corporation, approving the draft by-law and requesting the Board to declare and direct that the assent of the municipal electors to the by-law is not necessary.

The Board's Notice of Application and Written Hearing was published on July 16, 2003. There were no intervenors.

Union Gas is presently serving the Municipality and holds a Certificate of Public Convenience and Necessity (RP-2000-0008\EB-2003-0085).

The proposed franchise agreement is in the form of the 2000 Model Franchise Agreement, with the following exceptions that have been agreed to by the parties:

- the duration of the agreement is for 20 years from March 17, 2000;
- certain rights of the Corporation accruing upon termination of the Agreement are based on rights found in the existing franchise agreement dated March 17, 1980;
- Union Gas is to provide compatible electronic copies of "as built" drawings to the City;
- responsibility for final restoration costs is clarified; and
- the ability to assign the rights granted in the agreement is restricted.

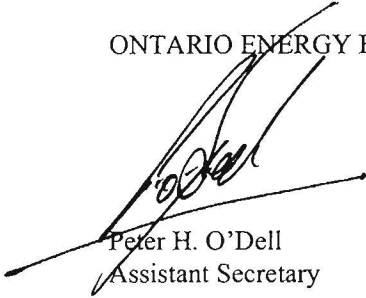
Based on the information provided in the application, including the history of the proposed agreements, granting the application is in the public interest. Further, in all the circumstances, the assent of the municipal electors can properly be dispensed with.

IT IS ORDERED THAT:

- 1 The terms and conditions upon which, and the period for which, the Corporation of the City of Timmins is by by-law to grant to Union Gas Limited the right to construct and operate works for the distribution of gas, and the right to extend and add to the works, as set out in the franchise agreement attached as Appendix A, are approved.
- 2 The assent of the municipal electors of the City of Timmins to the by-law is not necessary.

DATED at Toronto, December 9, 2003.

ONTARIO ENERGY BOARD


Peter H. O'Dell
Assistant Secretary

**APPENDIX "A" TO
BOARD DECISION AND ORDER
NO. RP-2000-0008/EB-2000-0023**

22

Appendix A from this Decision and Order is not currently available in ERF electronic format. To access this documents, please contact the Ontario Energy Board.

23

Franchise Agreement

THIS AGREEMENT effective this day of , 2003.

BETWEEN:

THE CORPORATION OF THE CITY OF TIMMINS

hereinafter called the "City"

- and -

UNION GAS LIMITED

hereinafter called the "Gas Company"

WHEREAS the Gas Company desires to distribute, store and transmit gas in the Municipality upon the terms and conditions of this Agreement;

AND WHEREAS by by-law passed by the Council of the City (the "By-law"), the duly authorized officers have been authorized and directed to execute this Agreement on behalf of the City;

THEREFORE the City and the Gas Company agree as follows:

Part I - Definitions

1. In this Agreement

- (a) "decommissioned" and "decommissions" when used in connection with parts of the gas system, mean any parts of the gas system taken out of active use and purged in accordance with the applicable CSA standards and in no way affects the use of the term 'abandoned' pipeline for the purposes of the *Assessment Act*;
- (b) "Engineer/Road Superintendent" means the most senior individual employed by the City with responsibilities for highways within the Municipality or the person designated by such senior employee or such other person as may from time to time be designated by the Council of the Corporation;

- (c) "gas" means natural gas, manufactured gas, synthetic natural gas, liquefied petroleum gas or propane-air gas, or a mixture of any of them, but does not include a liquefied petroleum gas that is distributed by means other than a pipeline;
- (d) "gas system" means such mains, plants, pipes, conduits, services, valves, regulators, curb boxes, stations, drips or such other equipment as the Gas Company may require or deem desirable for the distribution, storage and transmission of gas in or through the Municipality;
- (e) "highway" means all common and public highways and shall include any bridge, viaduct or structure forming part of a highway, and any public square, road allowance or walkway and shall include not only the travelled portion of such highway, but also ditches, driveways, sidewalks, and sodded areas forming part of the road allowance now or at any time during the term hereof under the jurisdiction of the City;
- (f) "Model Franchise Agreement" means the form of agreement, which the Ontario Energy Board uses as a standard when considering applications under the *Municipal Franchises Act*. The Model Franchise Agreement may be changed from time to time by the Ontario Energy Board;
- (g) "Municipality" means the territorial limits of the City on the date when this Agreement takes effect, and any territory which may thereafter be brought within the jurisdiction of the City;
- (h) "Plan" means the plan described in Paragraph 6 of this Agreement required to be filed by the Gas Company with the Engineer/Road Superintendent prior to commencement of work on the gas system; and
- (i) whenever the singular, masculine or feminine is used in this Agreement, it shall be considered as if the plural, feminine or masculine has been used where the context of the Agreement so requires.

Part II - Rights Granted

2. To provide gas service

The consent of the City is hereby given and granted to the Gas Company to distribute, store and transmit gas in and through the Municipality to the City and to the inhabitants of the Municipality.

3. To Use Highways

Subject to the terms and conditions of this Agreement the consent of the City is hereby given and granted to the Gas Company to enter upon all highways now or at any time hereafter under the jurisdiction of the City and to lay, construct, maintain, replace, remove, operate and repair a gas system for the distribution, storage and transmission of gas in and through the Municipality.

4. Duration of Agreement and Renewal Procedures

- (a) The rights hereby given and granted shall be for a term of 20 years from March 17, 2000, provided that, if during the 20 year term of this Agreement, the Model Franchise Agreement is changed, then on the 7th anniversary, and on the 14th anniversary of the date of the passing of the By-law, this Agreement shall be deemed to be amended to incorporate any changes in the Model Franchise Agreement in effect on such anniversary date. Such deemed amendments shall not apply to alter the 20 year term or the provisions of section 5 hereof.
- (b) At any time within two years prior to the expiration of this Agreement, either party may give notice to the other that it desires to enter into negotiations for a renewed franchise upon such terms and conditions as may be agreed upon. Until such renewal has been settled, the terms and conditions of this Agreement shall continue, notwithstanding the expiration of this Agreement. This shall not preclude either party from applying to the Ontario Energy Board for a renewal of the Agreement pursuant to section 10 of the *Municipal Franchises Act*.

5. Rights Accruing After Termination

- (a) If the City fails to grant a new franchise on terms agreeable to both parties hereto and the Ontario Energy Board has not made an order for a renewal of or an extension of the term of the right, then the Gas Company may, subject to the provisions of Paragraph 5(b) and to Section 10 of the *Municipal Franchises Act*, at its option, either:
 - (i) Sell or dispose of the gas distribution system forthwith to any person, firm or corporation and at such price and on such conditions as the Gas Company may deem advisable; or
 - (ii) Within twelve months following such termination of the term of this franchise remove the gas distribution system or any portion or portions thereof from the public property, provided that failure to effect such removal shall not deprive the Gas Company of title to the gas distribution system or any portion or portions thereof.

Should the City, at any time after a lapse of one year from termination, require the removal of all or any of the Gas Company's said facilities for the purpose of altering or improving public property or in order to facilitate the construction of utility or other

works in the highway, the City may remove or dispose of so much of the Gas Company's said facilities as the City may require for such purposes, and neither party shall have recourse against the other for any loss or expense occasioned thereby.

- (b) At any time following the termination of the franchise, the City may, by notice given to the Gas Company, require the Gas Company to sell the gas system, or such portion or portions thereof as shall not have been removed as provided in paragraph 5(a) to the City or to any person, firm or corporation designated in such notice by the City; and with all reasonable dispatch after the giving of such notice, but subject to Section 10 of the *Municipal Franchises Act*, the Gas Company shall sell such system or such portion thereof accordingly, at such price as may be agreed between the parties hereto or, if the parties hereto shall be unable to agree upon such price and one of them shall refer the determination thereof to arbitration under the provisions of Paragraph 5(c) hereof, at such price as the arbitrator or arbitrators appointed under the said Paragraph 5(c) shall fix as fairly representing the value of such gas distribution system or such portion thereof, as a going concern and as though the Gas Company were still entitled to use the public property for the operation of such system or portion.
- (c) The procedure upon an arbitration pursuant to Paragraph 5(b) shall be as follows:

Within twenty days after the written request of either of the parties hereto for arbitration, each of them shall appoint one arbitrator and the two so appointed shall, within twenty days after the expiry of such twenty-day period, select a third. In case either of the parties hereto fails to name an arbitrator within twenty days after the said written request for arbitration, the arbitrator appointed shall be the only arbitrator. In case the two arbitrators so appointed are unable to agree on a third arbitrator within twenty days after the expiry of the first twenty-day period above mentioned, application shall be made as soon as reasonably possible to any Judge of the Superior Court of Justice for the appointment of such third arbitrator. The arbitrator or arbitrators so appointed shall have all the powers accorded arbitrators by the *Arbitrations Act, 1991* as from time to time amended, or any Act in substitution therefore. The decision of the said arbitrator or arbitrators (or a majority of such arbitrators) shall be final and binding on the parties hereto.

Part III – Conditions

6. Approval of Construction

- (a) The Gas Company shall not undertake any excavation, opening or work which will disturb or interfere with the surface of the travelled portion of any highway unless a permit therefore has first been obtained from the Engineer/Road Superintendent and all work done by the Gas Company shall be to his satisfaction.
- (b) Prior to the commencement of work on the gas system, or any extensions or changes to it (except service laterals which do not interfere with municipal works in the highway), the Gas Company shall file with the Engineer/Road Superintendent a

Plan, satisfactory to the Engineer/Road Superintendent, drawn to scale and of sufficient detail considering the complexity of the specific locations involved, showing the highways in which it proposes to lay its gas system and the particular parts thereof it proposes to occupy.

- (c) The Plan filed by the Gas Company shall include geodetic information for a particular location whenever that information is available to the Gas Company and:
 - (i) in any event, whenever circumstances are complex, in order to facilitate known projects, including projects which are reasonably anticipated by the Engineer/Road Superintendent, or
 - (ii) when requested, where the City has geodetic information for its own services and all others at the same location.
- (d) The Engineer/Road Superintendent may require sections of the gas system to be laid at greater depth than required by the latest CSA standard for gas pipeline systems to facilitate known projects or to correct known highway deficiencies.
- (e) Prior to the commencement of work on the gas system, the Engineer/Road Superintendent must approve the location of the work as shown on the Plan filed by the Gas Company, the timing of the work and any terms and conditions relating to the installation of the work.
- (f) In addition to the requirements of this Agreement, if the Gas Company proposes to affix any part of the gas system to a bridge, viaduct or other structure, if the Engineer/Road Superintendent approves this proposal, he may require the Gas Company to comply with special conditions or to enter into a separate agreement as a condition of the approval of this part of the construction of the gas system.
- (g) Where the gas system may affect a municipal drain, the Gas Company shall also file a copy of the Plan with the City's Drainage Superintendent for purposes of the *Drainage Act*, or such other person designated by the City as responsible for the drain.
- (h) The Gas Company shall not deviate from the approved location for any part of the gas system unless the prior approval of the Engineer/Road Superintendent to do so is received.
- (i) The Engineer/Road Superintendent's approval, where required throughout this Paragraph, shall not be unreasonably withheld.

- (j) The approval of the Engineer/Road Superintendent is not a representation or warranty as to the state of repair of the highway or the suitability of the highway for the gas system.

7. As Built Drawings

The Gas Company shall, within six months of completing the installation of any part of the gas system, provide two copies of "as built" drawings to the Engineer/Road Superintendent. These drawings must be sufficient to accurately establish the location, depth (measurement between the top of the gas system and the ground surface at the time of installation) and distance of the gas system. The "as built" drawings shall be of the same quality as the Plan and, if the approved pre-construction plan included elevations that were geodetically referenced, the "as built" drawings shall similarly include elevations that are geodetically referenced. Upon the request of the Engineer/Road Superintendent, the Gas Company shall provide one copy of the drawings as a hard copy drawing and one copy in an electronic format. Union shall make reasonable efforts to provide the electronic copy in a format that is compatible with the software system in use by the City, but Union shall not be required to purchase new software to fulfill this requirement.

8. Emergencies

In the event of an emergency involving the gas system, the Gas Company shall proceed with the work required to deal with the emergency, and in any instance where prior approval of the Engineer/Road Superintendent is normally required for the work, the Gas Company shall use its best efforts to immediately notify the Engineer/Road Superintendent of the location and nature of the emergency and the work being done and, if it deems appropriate, notify the police force, fire or other emergency services having jurisdiction. The Gas Company shall provide the Engineer/Road Superintendent with at least one 24 hour emergency contact for the Gas Company and shall ensure the contacts are current.

9. Restoration

The Gas Company shall well and sufficiently restore, to the reasonable satisfaction of the Engineer/Road Superintendent, all highways, municipal works or improvements which it may excavate or interfere with in the course of laying, constructing, repairing or removing its gas system, and shall make good any settling or subsidence thereafter caused by such excavation or interference. If the Gas Company fails at any time to do any work required by this Paragraph within a reasonable period of time, the City may do or cause such work to be done and the Gas Company shall, on demand, pay the City's reasonably incurred costs, as certified by the Engineer/Road Superintendent. At all times the City reserves the right to undertake final restoration of Gas Company service trenches, after one winter season and within the year of the excavation, and all associated costs shall be billed to the Gas Company.

10. Indemnification

The Gas Company shall, at all times, indemnify and save harmless the City from and against all claims, including costs related thereto, for all damages or injuries including death to any person or persons and for damage to any property, arising out of the Gas Company operating, constructing, and maintaining its gas system in the Municipality, or utilizing its gas system for the carriage of gas owned by others. Provided that the Gas Company shall not be required to indemnify or save harmless the City from and against claims, including costs related thereto, which it may incur by reason of damages or injuries including death to any person or persons and for damage to any property, resulting from the negligence or wrongful act of the City, its servants, agents or employees.

11. Insurance

- (a) The Gas Company shall maintain Comprehensive General Liability Insurance in sufficient amount and description as shall protect the Gas Company and the City from claims for which the Gas Company is obliged to indemnify the City under Paragraph 10. The insurance policy shall identify the City as an additional named insured, but only with respect to the operation of the named insured (the Gas Company). The insurance policy shall not lapse or be cancelled without sixty (60) days' prior written notice to the City by the Gas Company.
- (b) The issuance of an insurance policy as provided in this Paragraph shall not be construed as relieving the Gas Company of liability not covered by such insurance or in excess of the policy limits of such insurance.
- (c) Upon request by the City, the Gas Company shall confirm that premiums for such insurance have been paid and that such insurance is in full force and effect.

12. Alternative Easement

The City agrees, in the event of the proposed sale or closing of any highway or any part of a highway where there is a gas line in existence, to give the Gas Company reasonable notice of such proposed sale or closing and, if it is feasible, to provide the Gas Company with easements over that part of the highway proposed to be sold or closed sufficient to allow the Gas Company to preserve any part of the gas system in its then existing location. In the event that such easements cannot be provided, the City and the Gas Company shall share the cost of relocating or altering the gas system to facilitate continuity of gas service, as provided for in Paragraph 13 of this Agreement.

13. Pipeline Relocation

- (a) If in the course of constructing, reconstructing, changing, altering or improving any highway or any municipal works, the City deems that it is necessary to take up,

remove or change the location of any part of the gas system, the Gas Company shall, upon notice to do so, remove and/or relocate within a reasonable period of time such part of the gas system to a location approved by the Engineer/Road Superintendent.

- (b) Where any part of the gas system relocated in accordance with this Paragraph is located on a bridge, viaduct or structure, the Gas Company shall alter or relocate that part of the gas system at its sole expense.
- (c) Where any part of the gas system relocated in accordance with this Paragraph is located other than on a bridge, viaduct or structure, the costs of relocation shall be shared between the City and the Gas Company on the basis of the total relocation costs, excluding the value of any upgrading of the gas system, and deducting any contribution paid to the Gas Company by others in respect to such relocation; and for these purposes, the total relocation costs shall be the aggregate of the following:
 - (i) the amount paid to Gas Company employees up to and including field supervisors for the hours worked on the project plus the current cost of fringe benefits for these employees,
 - (ii) the amount paid for rental equipment while in use on the project and an amount, charged at the unit rate, for Gas Company equipment while in use on the project,
 - (iii) the amount paid by the Gas Company to contractors for work related to the project,
 - (iv) the cost to the Gas Company for materials used in connection with the project, and
 - (v) a reasonable amount for project engineering and project administrative costs which shall be 22.5% of the aggregate of the amounts determined in items (i), (ii), (iii) and (iv) above.
- (d) The total relocation costs as calculated above shall be paid 35% by the City and 65% by the Gas Company, except where the part of the gas system required to be moved is located in an unassumed road or in an unopened road allowance and the City has not approved its location, in which case the Gas Company shall pay 100% of the relocation costs.

Part IV - Procedural And Other Matters

14. Municipal By-laws of General Application

The Agreement is subject to the provisions of all regulating statutes and all municipal by-laws of general application, except by-laws, which have the effect of amending this Agreement.

15. Giving Notice

Notices may be delivered to, sent by facsimile or mailed by prepaid registered post to the Gas Company at its head office or to the authorized officers of the City at its municipal offices, as the case may be.

16. Disposition of Gas System

- (a) If the Gas Company decommissions part of its gas system affixed to a bridge, viaduct or structure, the Gas Company shall, at its sole expense, remove the part of its gas system affixed to the bridge, viaduct or structure.
- (b) If the Gas Company decommissions any other part of its gas system, it shall have the right, but is not required, to remove that part of its gas system. It may exercise its right to remove the decommissioned parts of its gas system by giving notice of its intention to do so by filing a Plan as required by Paragraph 6 of this Agreement for approval by the Engineer/Road Superintendent. If the Gas Company does not remove the part of the gas system it has decommissioned and the City requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in any highway, the City may remove and dispose of so much of the decommissioned gas system as the City may require for such purposes and neither party shall have recourse against the other for any loss, cost, expense or damage occasioned thereby. If the Gas Company has not removed the part of the gas system it has decommissioned and the City requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in a highway, the Gas Company may elect to relocate the decommissioned gas system and in that event Paragraph 13 applies to the cost of relocation.

17. Use of Decommissioned Gas System

- (a) The Gas Company shall provide promptly to the City, to the extent such information is known:
 - (i) the names and addresses of all third parties who use decommissioned parts of the gas system for purposes other than the transmission or distribution of gas; and
 - (ii) the location of all proposed and existing decommissioned parts of the gas system used for purposes other than the transmission or distribution of gas.
- (b) The Gas Company may allow a third party to use a decommissioned part of the gas system for purposes other than the transmission or distribution of gas and may charge a fee for that third party use, provided
 - (i) the third party has entered into a municipal access agreement with the City; and
 - (ii) the Gas Company does not charge a fee for the third party's right of access to the highways.
- (c) Decommissioned parts of the gas system used for purposes other than the transmission or distribution of gas are not subject to the provisions of this Agreement. For decommissioned parts of the gas system used for purposes other than the transmission and distribution of gas, issues such as relocation costs will be governed by the relevant municipal access agreement.

18. Franchise Handbook

The Parties acknowledge that operating decisions sometimes require a greater level of detail than that which is appropriately included in this Agreement. The Parties agree to look for guidance on such matters to the Franchise Handbook prepared by the Association of Municipalities of Ontario and the gas utility companies, as may be amended from time to time.

19. Other Conditions

None.

20. **Agreement Binding Parties**

This agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. This agreement may only be assigned by the Gas Company with the consent of the City, provided that the Gas Company may, without the consent of the City, assign, mortgage, pledge or charge this agreement as security for bonds, debentures, or other indebtedness of the Gas Company and on any enforcement of such security.

IN WITNESS WHEREOF the parties have executed this Agreement effective from the date written above.

THE CORPORATION OF THE CITY OF TIMMINS

Per: _____
Jamie Lim, Mayor

Per: _____
R. Jack Watson, Clerk

UNION GAS LIMITED

Per: _____
Christine L. Jackson
Assistant Secretary



RP-2000-0008

EB-2003-0085

IN THE MATTER OF the *Municipal Franchises Act*,
R.S.O. 1990, c. M.55, as amended;

AND IN THE MATTER OF an application by an applica-
tion by Union Gas Limited for an order cancelling existing
Certificates of Public Convenience and Necessity for certain
geographic areas now incorporated with the City of Timmins
and replacing these with a single expanded Certificate of Pub-
lic Convenience and Necessity for the City of Timmins.

Before:

Art Birchenough
Presiding Member

Paul Vlahos
Member

DECISION AND ORDER

Union Gas Limited filed an application dated April 4, 2003 with the Ontario Energy Board under the *Municipal Franchises Act*, R.S.O. 1990, c. M.55 for an order of the Board that cancels the existing Certificates of Public Convenience and Necessity for several former municipalities now incorporated within the City of Timmins (the "Municipality") and replaces these with a new expanded Certificate of Public Convenience and Necessity for the entire Municipality. The Board assigned File No. RP-2000-0008/EB-2003-0085 to this application.

The Board's Notice of Application was published on July 16, 2003. There were no intervenors.

On January 1, 1973, the Town of Timmins, the Township of Tisdale, the Township of Whitney, the Township of Mountjoy, the Township of Hoyle and 31 unorganized townships were amalgamated to form the City of Timmins. Union Gas is presently serving the Municipality and has Certificates of Public Convenience and Necessity as follows: the Town of Timmins (F.B.C. 32), the Township of Mountjoy (F.B.C. 309, F.B.C. 34), the Township of Hoyle (E.B.C. 37) the Township of Whitney

(F.B.C. 39), and the Township of Tisdale (F.B.C. 38). Union Gas does not have Certificates for the 31 unorganized townships.

The replacement Certificate grants Union Gas additional rights to those it held under the predecessor certificates, and is requested by Union in order to recognize new municipal boundaries. In considering this request for additional rights, the Board notes that no other gas utility has infrastructure in proximity to the City of Timmins, nor has any other gas utility intervened in this application.


The Board finds that it is in the public interest to grant the application and that public convenience and necessity appear to require that approval be given.

IT IS THEREFORE ORDERED THAT:

1. The Certificates of Public Convenience and Necessity for the former Town of Timmins (F.B.C. 32), the former Township of Mountjoy (F.B.C. 309, F.B.C. 34), the former Township of Hoyle (E.B.C. 37), the former Township of Whitney (F.B.C. 39), and the former Township of Tisdale (F.B.C. 38) are cancelled.
2. A Certificate of Public Convenience and Necessity, attached as Appendix A [12TZH-0:1], is granted to Union Gas Limited to construct works to supply gas in the City of Timmins.

DATED at Toronto, October 20, 2003.

ONTARIO ENERGY BOARD



Peter H. O'Dell
Assistant Secretary

Appendix A
to Board Decision and Order
RP-2000-0008/EB-2003-0085
Dated: October 20, 2003
Certificate of Public Convenience and Necessity for the City of Timmins
[12TZH-0:1]



RP-2000-0008

EB-2003-0085

Certificate of Public Convenience and Necessity

The Ontario Energy Board hereby grants

Union Gas Limited


approval under section 8 of the *Municipal Franchises Act*, R.S.O. 1990, c. M.55, to construct works to supply gas to the

City of Timmins.

This certificate replaces the certificates of the former municipalities that are now within the City of Timmins and gives approval to Union Gas to construct works to supply gas throughout the City of Timmins.

DATED at Toronto, October 20, 2003.

ONTARIO ENERGY BOARD


Peter H. O'Dell
Assistant Secretary

The Corporation of the City of Timmins

RESOLUTION

Moved by Councillor Auger

19-190

Seconded by Councillor Marks

BE IT RESOLVED THAT the following by-laws be given first and second reading:

2019-8352 being a by-law to enter into an agreement with ADR Chambers Inc. to appoint an Integrity Commissioner for the City of Timmins

2019-8353 being a by-law to enter into an agreement with Sewer Technologies regarding the relining of Sanitary Sewer along Town Creek and Associated Works

2019-8354 being a by-law to renew the franchise agreement with Enbridge Gas Inc.

2019-8355 being a by-law to enter into an agreement with Superior Propane respecting Hallnor Industrial Park

2019-8356 being a by-law to authorize the direct sale of land to Amen Holding Inc.

CARRIED

CERTIFIED TRUE COPY
OF RESOLUTION 19-190



Steph Palmateer, City Clerk

Date July 9, 2019

THE CITY OF TIMMINS
BY-LAW No. 2019-8354

Being a by-law to authorize the Corporation of the City of Timmins to authorize a franchise agreement between the Corporation of the City of Timmins and Enbridge Gas Inc.

WHEREAS the Council of the Corporation of the City of Timmins deems it expedient to enter into the attached franchise agreement (the "Franchise Agreement") with Enbridge Gas Inc.;

AND WHEREAS the Ontario Energy Board by its Order issued pursuant to the Municipal Franchises Act on the day of , 20 has approved the terms and conditions upon which and the period for which the franchise provided in the Franchise Agreement is proposed to be granted, and has declared and directed that the assent of the municipal electors in respect of this By-Law is not necessary:


NOW THEREFORE the Council of the Corporation of the City of Timmins enacts as follows:

1. THAT the Franchise Agreement between the Corporation of the City of Timmins and Enbridge Gas Inc. attached hereto and forming part of this by-law, is hereby authorized and the franchise provided for therein is hereby granted.
2. THAT the Mayor and Clerk be and they are hereby authorized and instructed on behalf of the Corporation of the City of Timmins to enter into and execute under its corporate seal and deliver the Franchise Agreement, which is hereby incorporated into and forming part of this By-Law.
3. THAT the following by-law be hereby repealed:
 - By-law #2004-6009 for the Corporation of the City of Timmins, passed in Council on the 27th day of September, 2004.
4. THAT this by-law shall come into force and take effect as of the final passing thereof.

READ a first and second time this 9th day of July, 2019.

**CERTIFIED TRUE COPY
OF BY-LAW NO. 2019-8354**

**(SGD) GEORGE PIRIE
MAYOR**


CLERK

**(SGD) STEPH PALMATEER
CLERK**

2000 Model Franchise Agreement

THIS AGREEMENT effective this day of , 2019

BETWEEN:

THE CORPORATION OF THE CITY OF TIMMINS

hereinafter called the "Corporation"

- and -

ENBRIDGE GAS INC.

hereinafter called the "Gas Company"

WHEREAS the Gas Company desires to distribute, store and transmit gas in the Municipality upon the terms and conditions of this Agreement;

AND WHEREAS by by-law passed by the Council of the Corporation (the "By-law"), the duly authorized officers have been authorized and directed to execute this Agreement on behalf of the Corporation;

THEREFORE the Corporation and the Gas Company agree as follows:

Part I - Definitions

1. In this Agreement

- (a) "decommissioned" and "decommissions" when used in connection with parts of the gas system, mean any parts of the gas system taken out of active use and purged in accordance with the applicable CSA standards and in no way affects the use of the term 'abandoned' pipeline for the purposes of the *Assessment Act*;
- (b) "Engineer/Road Superintendent" means the most senior individual employed by the Corporation with responsibilities for highways within the Municipality or the person designated by such senior employee or such other person as may from time to time be designated by the Council of the Corporation;

- (c) "gas" means natural gas, manufactured gas, synthetic natural gas, liquefied petroleum gas or propane-air gas, or a mixture of any of them, but does not include a liquefied petroleum gas that is distributed by means other than a pipeline;
- (d) "gas system" means such mains, plants, pipes, conduits, services, valves, regulators, curb boxes, stations, drips or such other equipment as the Gas Company may require or deem desirable for the distribution, storage and transmission of gas in or through the Municipality;
- (e) "highway" means all common and public highways and shall include any bridge, viaduct or structure forming part of a highway, and any public square, road allowance or walkway and shall include not only the travelled portion of such highway, but also ditches, driveways, sidewalks, and sodded areas forming part of the road allowance now or at any time during the term hereof under the jurisdiction of the Corporation;
- (f) "Model Franchise Agreement" means the form of agreement which the Ontario Energy Board uses as a standard when considering applications under the *Municipal Franchises Act*. The Model Franchise Agreement may be changed from time to time by the Ontario Energy Board;
- (g) "Municipality" means the territorial limits of the Corporation on the date when this Agreement takes effect, and any territory which may thereafter be brought within the jurisdiction of the Corporation;
- (h) "Plan" means the plan described in Paragraph 5 of this Agreement required to be filed by the Gas Company with the Engineer/Road Superintendent prior to commencement of work on the gas system; and
- (i) whenever the singular, masculine or feminine is used in this Agreement, it shall be considered as if the plural, feminine or masculine has been used where the context of the Agreement so requires.

Part II - Rights Granted

2. To provide gas service

The consent of the Corporation is hereby given and granted to the Gas Company to distribute, store and transmit gas in and through the Municipality to the Corporation and to the inhabitants of the Municipality.

3. To Use Highways

Subject to the terms and conditions of this Agreement the consent of the Corporation is hereby given and granted to the Gas Company to enter upon all highways now or at any time hereafter under the jurisdiction of the Corporation and to lay, construct, maintain, replace, remove, operate and repair a gas system for the distribution, storage and transmission of gas in and through the Municipality.

4. Duration of Agreement and Renewal Procedures

(a) If the Corporation has not previously received gas distribution services, the rights hereby given and granted shall be for a term of 20 years from the date of final passing of the By-law.

or

(b) If the Corporation has previously received gas distribution services, the rights hereby given and granted shall be for a term of 20 years from the date of final passing of the By-law provided that, if during the 20 year term of this Agreement, the Model Franchise Agreement is changed, then on the 7th anniversary and on the 14th anniversary of the date of the passing of the By-law, this Agreement shall be deemed to be amended to incorporate any changes in the Model Franchise Agreement in effect on such anniversary dates. Such deemed amendments shall not apply to alter the 20 year term.

(c) At any time within two years prior to the expiration of this Agreement, either party may give notice to the other that it desires to enter into negotiations for a renewed franchise upon such terms and conditions as may be agreed upon. Until such renewal has been settled, the terms and conditions of this Agreement shall continue, notwithstanding the expiration of this Agreement. This shall not preclude either party from applying to the Ontario Energy Board for a renewal of the Agreement pursuant to section 10 of the *Municipal Franchises Act*.

Part III – Conditions

5. Approval of Construction

- (a) The Gas Company shall not undertake any excavation, opening or work which will disturb or interfere with the surface of the travelled portion of any highway unless a permit therefor has first been obtained from the Engineer/Road Superintendent and all work done by the Gas Company shall be to his satisfaction.
- (b) Prior to the commencement of work on the gas system, or any extensions or changes to it (except service laterals which do not interfere with municipal works in the highway), the Gas Company shall file with the Engineer/Road Superintendent a Plan, satisfactory to the Engineer/Road Superintendent, drawn to scale and of sufficient detail considering the complexity of the specific locations involved, showing the highways in which it proposes to lay its gas system and the particular parts thereof it proposes to occupy.
- (c) The Plan filed by the Gas Company shall include geodetic information for a particular location:
 - (i) where circumstances are complex, in order to facilitate known projects, including projects which are reasonably anticipated by the Engineer/Road Superintendent, or
 - (ii) when requested, where the Corporation has geodetic information for its own services and all others at the same location.
- (d) The Engineer/Road Superintendent may require sections of the gas system to be laid at greater depth than required by the latest CSA standard for gas pipeline systems to facilitate known projects or to correct known highway deficiencies.
- (e) Prior to the commencement of work on the gas system, the Engineer/Road Superintendent must approve the location of the work as shown on the Plan filed by the Gas Company, the timing of the work and any terms and conditions relating to the installation of the work.
- (f) In addition to the requirements of this Agreement, if the Gas Company proposes to affix any part of the gas system to a bridge, viaduct or other structure, if the Engineer/Road Superintendent approves this proposal, he may require the Gas Company to comply with special conditions or to enter into a separate agreement as a condition of the approval of this part of the construction of the gas system.

- (g) Where the gas system may affect a municipal drain, the Gas Company shall also file a copy of the Plan with the Corporation's Drainage Superintendent for purposes of the *Drainage Act*, or such other person designated by the Corporation as responsible for the drain.
- (h) The Gas Company shall not deviate from the approved location for any part of the gas system unless the prior approval of the Engineer/Road Superintendent to do so is received.
- (i) The Engineer/Road Superintendent's approval, where required throughout this Paragraph, shall not be unreasonably withheld.
- (j) The approval of the Engineer/Road Superintendent is not a representation or warranty as to the state of repair of the highway or the suitability of the highway for the gas system.

6. As Built Drawings

The Gas Company shall, within six months of completing the installation of any part of the gas system, provide two copies of "as built" drawings to the Engineer/Road Superintendent. These drawings must be sufficient to accurately establish the location, depth (measurement between the top of the gas system and the ground surface at the time of installation) and distance of the gas system. The "as built" drawings shall be of the same quality as the Plan and, if the approved pre-construction plan included elevations that were geodetically referenced, the "as built" drawings shall similarly include elevations that are geodetically referenced. Upon the request of the Engineer/Road Superintendent, the Gas Company shall provide one copy of the drawings in an electronic format and one copy as a hard copy drawing.

7. Emergencies

In the event of an emergency involving the gas system, the Gas Company shall proceed with the work required to deal with the emergency, and in any instance where prior approval of the Engineer/Road Superintendent is normally required for the work, the Gas Company shall use its best efforts to immediately notify the Engineer/Road Superintendent of the location and nature of the emergency and the work being done and, if it deems appropriate, notify the police force, fire or other emergency services having jurisdiction. The Gas Company shall provide the Engineer/Road Superintendent with at least one 24 hour emergency contact for the Gas Company and shall ensure the contacts are current.

8. **Restoration**

The Gas Company shall well and sufficiently restore, to the reasonable satisfaction of the Engineer/Road Superintendent, all highways, municipal works or improvements which it may excavate or interfere with in the course of laying, constructing, repairing or removing its gas system, and shall make good any settling or subsidence thereafter caused by such excavation or interference. If the Gas Company fails at any time to do any work required by this Paragraph within a reasonable period of time, the Corporation may do or cause such work to be done and the Gas Company shall, on demand, pay the Corporation's reasonably incurred costs, as certified by the Engineer/Road Superintendent.

9. **Indemnification**

The Gas Company shall, at all times, indemnify and save harmless the Corporation from and against all claims, including costs related thereto, for all damages or injuries including death to any person or persons and for damage to any property, arising out of the Gas Company operating, constructing, and maintaining its gas system in the Municipality, or utilizing its gas system for the carriage of gas owned by others. Provided that the Gas Company shall not be required to indemnify or save harmless the Corporation from and against claims, including costs related thereto, which it may incur by reason of damages or injuries including death to any person or persons and for damage to any property, resulting from the negligence or wrongful act of the Corporation, its servants, agents or employees.

10. **Insurance**

- (a) The Gas Company shall maintain Comprehensive General Liability Insurance in sufficient amount and description as shall protect the Gas Company and the Corporation from claims for which the Gas Company is obliged to indemnify the Corporation under Paragraph 9. The insurance policy shall identify the Corporation as an additional named insured, but only with respect to the operation of the named insured (the Gas Company). The insurance policy shall not lapse or be cancelled without sixty (60) days' prior written notice to the Corporation by the Gas Company.
- (b) The issuance of an insurance policy as provided in this Paragraph shall not be construed as relieving the Gas Company of liability not covered by such insurance or in excess of the policy limits of such insurance.
- (c) Upon request by the Corporation, the Gas Company shall confirm that premiums for such insurance have been paid and that such insurance is in full force and effect.

11. **Alternative Easement**

The Corporation agrees, in the event of the proposed sale or closing of any highway or any part of a highway where there is a gas line in existence, to give the Gas Company reasonable notice of such proposed sale or closing and, if it is feasible, to provide the Gas Company with easements over that part of the highway proposed to be sold or closed sufficient to allow the Gas Company to preserve any part of the gas system in its then existing location. In the event that such easements cannot be provided, the Corporation and the Gas Company shall share the cost of relocating or altering the gas system to facilitate continuity of gas service, as provided for in Paragraph 12 of this Agreement.

12. **Pipeline Relocation**

- (a) If in the course of constructing, reconstructing, changing, altering or improving any highway or any municipal works, the Corporation deems that it is necessary to take up, remove or change the location of any part of the gas system, the Gas Company shall, upon notice to do so, remove and/or relocate within a reasonable period of time such part of the gas system to a location approved by the Engineer/Road Superintendent.
- (b) Where any part of the gas system relocated in accordance with this Paragraph is located on a bridge, viaduct or structure, the Gas Company shall alter or relocate that part of the gas system at its sole expense.
- (c) Where any part of the gas system relocated in accordance with this Paragraph is located other than on a bridge, viaduct or structure, the costs of relocation shall be shared between the Corporation and the Gas Company on the basis of the total relocation costs, excluding the value of any upgrading of the gas system, and deducting any contribution paid to the Gas Company by others in respect to such relocation; and for these purposes, the total relocation costs shall be the aggregate of the following:
 - (i) the amount paid to Gas Company employees up to and including field supervisors for the hours worked on the project plus the current cost of fringe benefits for these employees,
 - (ii) the amount paid for rental equipment while in use on the project and an amount, charged at the unit rate, for Gas Company equipment while in use on the project,
 - (iii) the amount paid by the Gas Company to contractors for work related to the project,

- (iv) the cost to the Gas Company for materials used in connection with the project, and
 - (v) a reasonable amount for project engineering and project administrative costs which shall be 22.5% of the aggregate of the amounts determined in items (i), (ii), (iii) and (iv) above.
- (d) The total relocation costs as calculated above shall be paid 35% by the Corporation and 65% by the Gas Company, except where the part of the gas system required to be moved is located in an unassumed road or in an unopened road allowance and the Corporation has not approved its location, in which case the Gas Company shall pay 100% of the relocation costs.

Part IV - Procedural And Other Matters

13. Municipal By-laws of General Application

The Agreement is subject to the provisions of all regulating statutes and all municipal by-laws of general application, except by-laws which have the effect of amending this Agreement.

14. Giving Notice

Notices may be delivered to, sent by facsimile or mailed by prepaid registered post to the Gas Company at its head office or to the authorized officers of the Corporation at its municipal offices, as the case may be.

15. Disposition of Gas System

- (a) If the Gas Company decommissions part of its gas system affixed to a bridge, viaduct or structure, the Gas Company shall, at its sole expense, remove the part of its gas system affixed to the bridge, viaduct or structure.
- (b) If the Gas Company decommissions any other part of its gas system, it shall have the right, but is not required, to remove that part of its gas system. It may exercise its right to remove the decommissioned parts of its gas system by giving notice of its intention to do so by filing a Plan as required by Paragraph 5 of this Agreement for approval by the Engineer/Road Superintendent. If the Gas Company does not remove the part of the gas system it has decommissioned and the Corporation requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in any highway, the Corporation may remove and dispose of so much of the decommissioned gas system

as the Corporation may require for such purposes and neither party shall have recourse against the other for any loss, cost, expense or damage occasioned thereby. If the Gas Company has not removed the part of the gas system it has decommissioned and the Corporation requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in a highway, the Gas Company may elect to relocate the decommissioned gas system and in that event Paragraph 12 applies to the cost of relocation.

16. Use of Decommissioned Gas System

- (a) The Gas Company shall provide promptly to the Corporation, to the extent such information is known:
 - (i) the names and addresses of all third parties who use decommissioned parts of the gas system for purposes other than the transmission or distribution of gas; and
 - (ii) the location of all proposed and existing decommissioned parts of the gas system used for purposes other than the transmission or distribution of gas.
- (b) The Gas Company may allow a third party to use a decommissioned part of the gas system for purposes other than the transmission or distribution of gas and may charge a fee for that third party use, provided
 - (i) the third party has entered into a municipal access agreement with the Corporation; and
 - (ii) the Gas Company does not charge a fee for the third party's right of access to the highways.
- (c) Decommissioned parts of the gas system used for purposes other than the transmission or distribution of gas are not subject to the provisions of this Agreement. For decommissioned parts of the gas system used for purposes other than the transmission and distribution of gas, issues such as relocation costs will be governed by the relevant municipal access agreement.

17. Franchise Handbook

The Parties acknowledge that operating decisions sometimes require a greater level of detail than that which is appropriately included in this Agreement. The Parties agree to look for guidance on such matters to the Franchise Handbook prepared by the Association of Municipalities of Ontario and the gas utility companies, as may be amended from time to time.

18. **Other Conditions**

None.

19. **Agreement Binding Parties**

This Agreement shall extend to, benefit and bind the parties thereto, their successors and assigns, respectively.

IN WITNESS WHEREOF the parties have executed this Agreement effective from the date written above.

**THE CORPORATION OF THE
CITY OF TIMMINS**

Per:

George Pirie, Mayor

Per:

Stephane Palmateer, Clerk

ENBRIDGE GAS INC.

Per:

Mark Kitchen, Director
Regulatory Affairs

Per:

Luke Skaarup, Director,
Northern Region Operations