



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

January 18, 2022

Ms. Nancy Marconi  
Acting Registrar  
Ontario Energy Board  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, ON M4P 1E4

Dear Ms. Marconi:

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

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 Hamilton. An agreement has been reached between Enbridge Gas Inc. and the City of Hamilton 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,

Patrick McMahon  
Technical Manager  
Regulatory Research and Records  
[patrick.mcmahon@enbridge.com](mailto: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 Hamilton 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 Hamilton;

**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 Hamilton 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 Hamilton (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 173,400 customers in the Municipality.
3. The City of Hamilton is a single-tier municipality. On January 1, 2001, the current City of Hamilton was created through the amalgamation of the original city and the neighbouring municipalities of the Town of Ancaster, the Town of Dundas, the Town of Flamborough, the Township of Glanbrook and the City of Stoney Creek.
4. Enbridge Gas has a Certificate of Public Convenience and Necessity for the City of Hamilton (EB-2006-0284) dated February 6, 2007 which is attached as Schedule "B".
5. Enbridge Gas applied to the Council of the Municipality for a 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 Hamilton.
6. On December 15, 2021, 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. The Public Works Committee Report 21-018 referenced in the Resolution is attached as an addendum.
8. Attached hereto as Schedule "D" is a copy of the By-law and the proposed franchise agreement. The City of Hamilton 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 County of Brant, the City of Burlington, the Town of Grimsby, Haldimand County, the Town of Milton, the Township of North Dumfries, the Township of Puslinch and the Township of West Lincoln which are immediately adjacent to the Municipality. There is no other natural gas distributor in the area.
10. The proposed 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 Hamilton  
71 Main Street West  
Hamilton, ON L8P 4Y5  
Attention: Andrea Holland, City Clerk  
Telephone: (905) 546-2424 ext. 5409  
Email: [andrea.holland@hamilton.ca](mailto:andrea.holland@hamilton.ca)

The address for Enbridge Gas' regional operations office is:

Enbridge Gas Inc.  
603 Kumpf Drive  
Waterloo, ON N2J 4A4  
Attention: Murray Costello, Director, Southeast Region Operations  
Telephone: (519) 885-7425  
Email: [murray.costello@enbridge.com](mailto:murray.costello@enbridge.com)

12. The English language newspaper having the highest circulation in the City of Hamilton is the *Hamilton Spectator*. This is the newspaper 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 City of Hamilton 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 City of Hamilton 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 18<sup>th</sup> day of January 2022.

**ENBRIDGE GAS INC.**

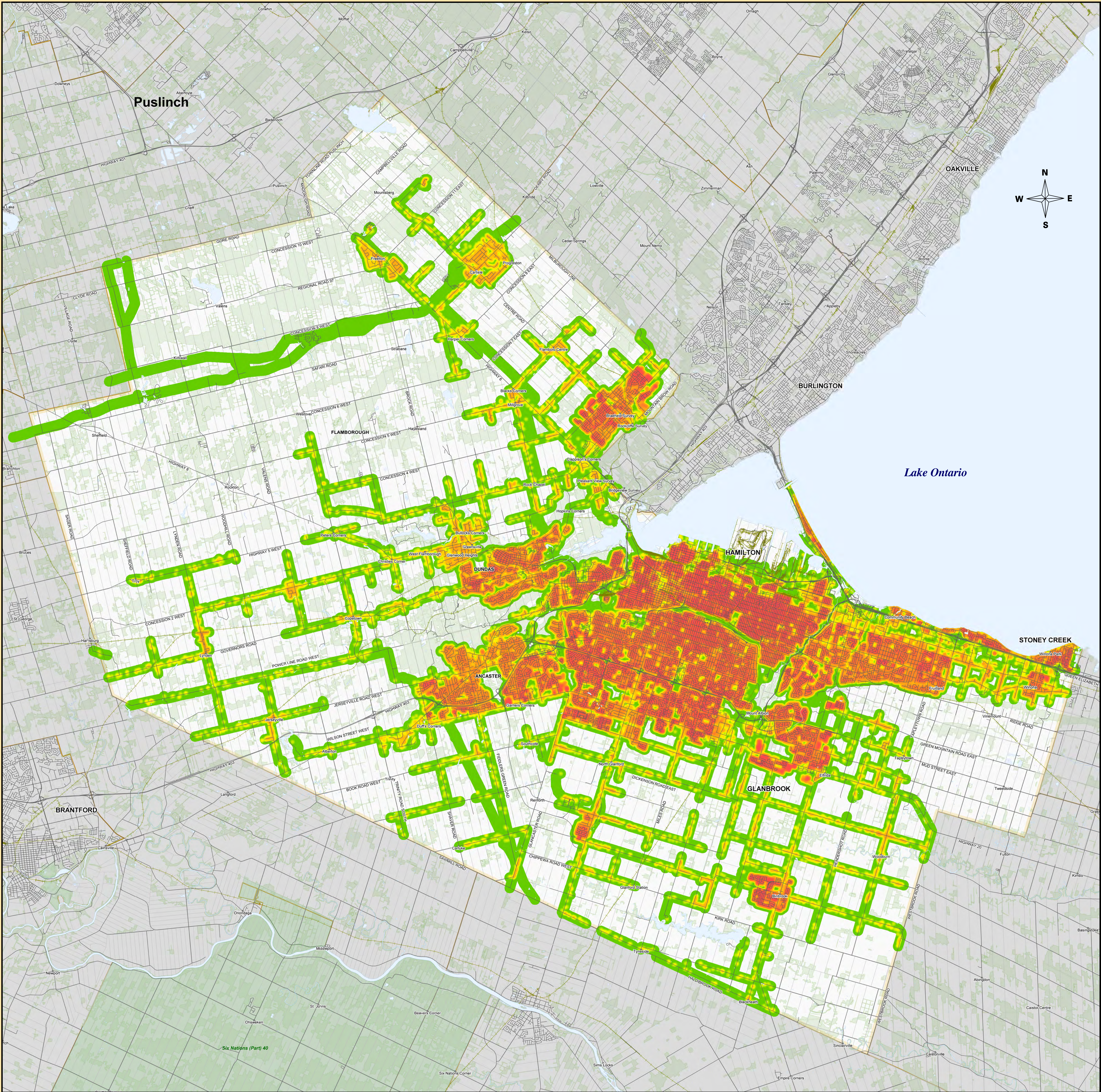
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Patrick McMahon  
Technical Manager  
Regulatory Research and Records

Comments respecting this Application should be directed to:

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





# City of Hamilton



## Legend

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

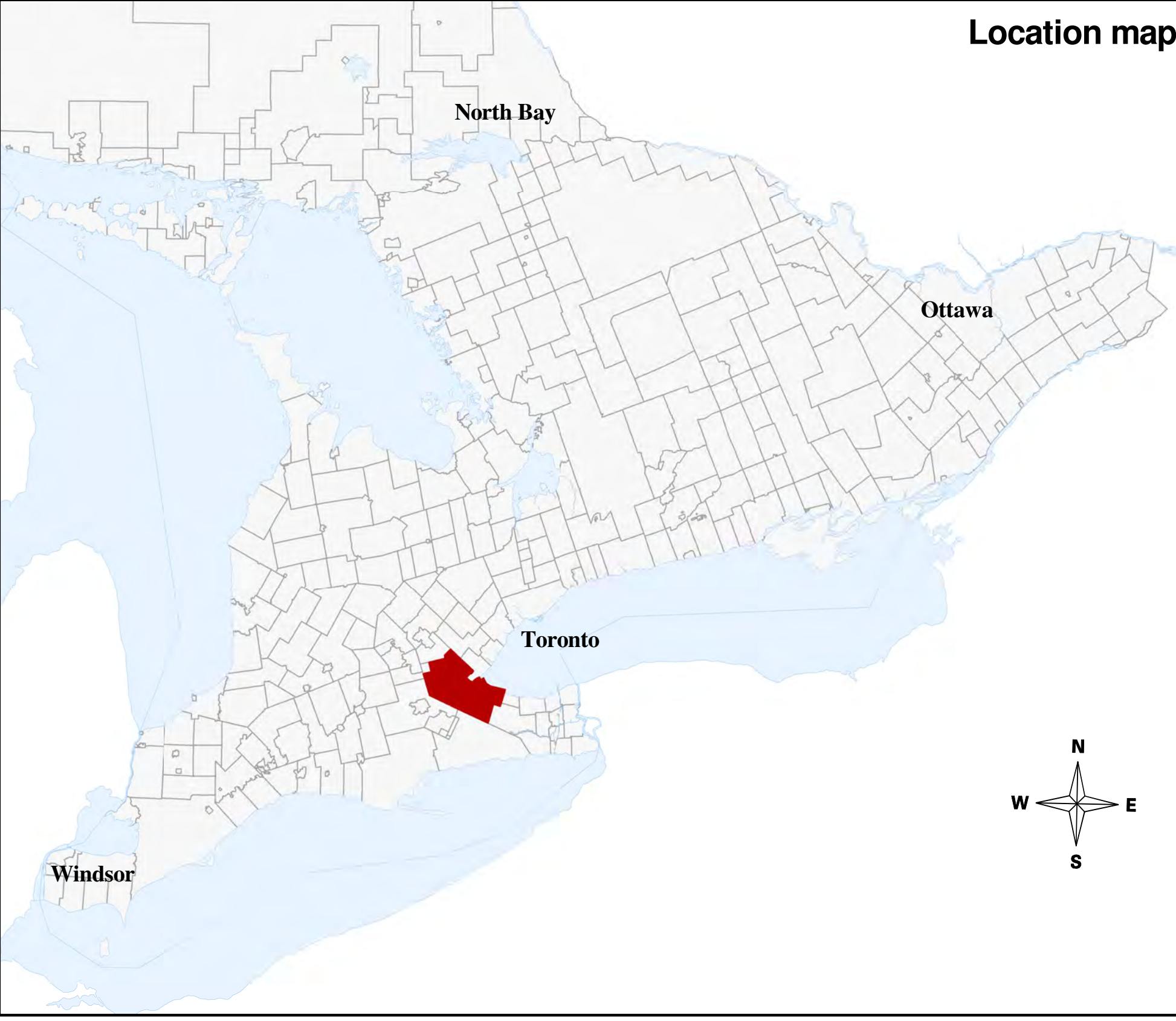
## Customer Density



**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





**EB-2006-0284**

## **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, as amended, to construct works to supply gas to

### **The City of Hamilton**

This certificate replaces the certificates of the former municipalities that are now within the City of Hamilton.

**DATED** at Toronto, February 6, 2007

ONTARIO ENERGY BOARD

*Original signed by*

Mark C. Garner  
Managing Director, Market Operations



City of Hamilton  
71 Main Street West  
Hamilton, ON L8P 4Y5  
www.hamilton.ca

**Hamilton**

**5. Renewal of Enbridge Gas Inc. Franchise Agreement with the City of Hamilton (PW21070) (City Wide) (Item 11.1)**

- (a) That Council approve the 2000 Model Franchise Agreement (MFA), attached to Public Works Committee Report 21-018 as Appendix "A" and the Letter of Understanding (LOU) attached to Public Works Committee Report 21-018 as Appendix "B", dated August 25, 2021 with Enbridge Gas Inc. (Formerly Union Gas);
- (b) That Council authorizes the submission of these to the Ontario Energy Board (OEB) for approval pursuant to the provisions of Section 9 of The Municipal Franchises Act;
- (c) That Council pass and enact the attached by-law upon receipt of an Order from the Ontario Energy Board;
- (d) That the General Manager of Public Works be authorized and directed to request the Ontario Energy Board to make an Order declaring and directing that the assent of the municipal electors to the By-law attached to Report PW21070 as Appendix "C" and franchise agreement pertaining to the City of Hamilton is not necessary pursuant to the provisions of Section 9(4) of the Municipal Franchises Act;
- (e) That the Mayor and City Clerk be authorized and directed to execute the necessary documents, all documents being in a form satisfactory to the City Solicitor.

I hereby certify the foregoing to be a true copy of  
item 5, of the Public Works Committee  
Report 21-018, approved by City of  
Hamilton Council on December 15, 2021

Dated at the City of Hamilton on this 6<sup>th</sup> day of January 2022.

*[Original Signed By]*

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A. Holland, City Clerk



## **PUBLIC WORKS COMMITTEE REPORT 21-018**

1:30 p.m.  
Monday, December 6, 2021  
Council Chambers  
Hamilton City Hall  
71 Main Street West

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**Present:** Councillors A. VanderBeek (Chair), N. Nann (Vice-Chair), J.P. Danko, J. Farr, L. Ferguson, T. Jackson, S. Merulla, E. Pauls, M. Pearson and R. Powers

**Absent with  
Regrets:** Councillor T. Whitehead – Personal

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### **THE PUBLIC WORKS COMMITTEE PRESENTS REPORT 21-018 AND RESPECTFULLY RECOMMENDS:**

#### **1. APPOINTMENT OF COMMITTEE CHAIR AND VICE-CHAIR FOR 2022 (Item 2)**

- (a) That Councillor Nann be appointed as Chair of the Public Works Committee for 2022.
- (b) That Councillor Powers be appointed as Vice-Chair of the Public Works Committee for 2022.

#### **2. Trillium Open Space - Erosion Protection Plan and Disaster Mitigation and Adaptation Fund Project Update (PW21072) (City Wide) (Item 8.1)**

That the report respecting Trillium Open Space - Erosion Protection Plan and Disaster Mitigation and Adaptation Fund Project Update (PW21072) (City Wide), be received.

#### **3. Intersection Control List (PW21001(e)) (Ward 5) (Item 8.2)**

That the appropriate By-law be presented to Council to provide traffic control as follows:



Intersection			Stop Control Direction		Class	Comments / Petition	Ward
Street 1	Street 2	Existing	Requested				
Section "E" Hamilton							
(a)	Riverbank Court	Berkindale Drive	NC	NB	A	Missing stop control	5

**Legend**

No Control Existing (New Subdivision) - **NC**

Intersection Class: **A** - Local/Local **B** - Local/Collector **C** - Collector/Collector

**4. Stormwater Gap Evaluation (PW21074) (City Wide) (Item 9.1)**

- (a) That Report PW21074, respecting Stormwater Gap Evaluation, be received; and
- (b) That the appropriate staff report back to the Public Works Committee with a review of the benefits and challenges of various stormwater program funding options including water rates, a dedicated stormwater fee or tax levy or any other options and provide a recommendation for the preferred financing model for the City's stormwater programs, including a preliminary plan and any resource requirements necessary to conduct a detailed review of the preferred financing model.

**5. Renewal of Enbridge Gas Inc. Franchise Agreement with the City of Hamilton (PW21070) (City Wide) (Item 11.1)**

- (a) That Council approve the 2000 Model Franchise Agreement (MFA), attached to Public Works Committee Report 21-018 as Appendix "A" and the Letter of Understanding (LOU) attached to Public Works Committee Report 21-018 as Appendix "B", dated August 25, 2021 with Enbridge Gas Inc. (Formerly Union Gas);
- (b) That Council authorizes the submission of these to the Ontario Energy Board (OEB) for approval pursuant to the provisions of Section 9 of The Municipal Franchises Act;
- (c) That Council pass and enact the attached by-law upon receipt of an Order from the Ontario Energy Board;
- (d) That the General Manager of Public Works be authorized and directed to request the Ontario Energy Board to make an Order declaring and directing that the assent of the municipal electors to the By-law attached to

**Council – December 15, 2021**



Report PW21070 as Appendix “C” and franchise agreement pertaining to the City of Hamilton is not necessary pursuant to the provisions of Section 9(4) of the Municipal Franchises Act;

- (e) That the Mayor and City Clerk be authorized and directed to execute the necessary documents, all documents being in a form satisfactory to the City Solicitor.

**6. Truck Route Sub-Committee Report 21-001, November 29, 2021 (Item 11.2)**

**(a) Truck Route Master Plan Update (PED19073(b)) (City Wide) (Item 8.1)**

- (a) That the Truck Route Master Plan Update (PED19073(b)) (City Wide), be received, and;
- (b) That staff be directed to review the recommendations in Report PED19073(b) Truck Route Master Plan Update with prioritization given to the Terms of Reference ratified by Council, including an analysis that would permit a ring road approach for the Truck Route Master Plan Update and report back to the Truck Route Sub-Committee by March 31, 2022.

**7. Lymantria dispar dispar (LDD) Aerial Control Program (PW21069) (City Wide) (Item 11.3)**

- (a) That the amending By-law, attached as Appendix “A” to Report PW21069, being a By-law to Amend By-law 08-070, respecting Gypsy Moth Infestation, which has been prepared in a form satisfactory to the City Solicitor, be enacted and effective immediately;
- (b) That, pursuant to By-law 08-070, respecting Gypsy Moth Infestation, staff be directed to implement a Lymantria dispar dispar (LDD) Aerial Control Program involving aerial application of the biological control agent bacillus thuringiensis ‘kurstaki’ (Btk);
- (c) That infested areas which exceed 2,500 egg masses per hectare, as identified in By-law 08-070 as the treatment threshold, be the areas to receive aerial application of the biological control agent bacillus thuringiensis ‘kurstaki’ (Btk);
- (d) That the direction provided to staff in Closed Session, as detailed in confidential Appendix “B” to Report PW21069, respecting Lymantria dispar dispar (LDD) Aerial Control Program, be approved;
- (e) That Appendix “B” to Report PW21069, respecting Lymantria dispar dispar (LDD) Aerial Control Program, remain confidential until after a contract has been executed with Zimmer Air Services Inc. or negotiations have



ceased with no intent of executing a contract with Zimmer Air Services Inc.; and

- (f) That staff be directed to report back to Public Works Committee in Q1 of 2022 detailing the terms of the agreement with Zimmer Air Services Inc., the recommended aerial treatment areas and to seek approval to execute the contract.

**8. Hamilton Cycling Committee Budget 2022 (PED21189) (City Wide) (Item 11.4)**

- (a) That the Hamilton Cycling Committee 2022 Base Budget submission, in the amount of \$10,000, as described in Appendix “C” to Public Works Committee Report 21-018, be approved and referred to the 2022 Budget process for consideration;
- (b) That, in addition to the base funding, a one-time budget allocation for 2022 of \$4,000 to support community events and initiatives that meet the mandate of the Committee, funded by the Hamilton Cycling Committee Reserve, be approved and referred to the 2022 Budget process for consideration;
- (c) That remaining funds from the 2021 Hamilton Cycling Committee Budget be allocated into the Hamilton Cycling Committee Reserve, to the upmost allowable amount.

**9. Playground Addition Armstrong Park Hamilton (Ward 7) (Item 12.1)**

WHEREAS, the Hamilton Wentworth District School Board has provided space on their property at 460 Concession Street, Hamilton, for an existing play structure that is available for public use;

WHEREAS, the existing structure has reached its end of life and requires removal or replacement; and

WHEREAS, these community amenities are valuable recreation opportunities for children, youth and families within the Burkholme neighbourhood;

THEREFORE BE IT RESOLVED:

- (a) That the design and installation of a new play structure at 460 Concession Street, Hamilton (G.L. Armstrong School), at an upset limit of \$125,000, allocated from Ward 7 Special Capital Re-Investment Reserve Fund (#108057), be approved; and
- (b) That a formal agreement for the operation and maintenance of the proposed structure as a public amenity on non-City owned lands be



executed between the City and the Hamilton Wentworth District School Board; and

- (c) That the Mayor and City Clerk be authorized and directed to execute any required agreement(s) and ancillary documents for the installation and ongoing maintenance of the play structure located at 460 Concession Street, Hamilton, with such terms and conditions in a form satisfactory to the City Solicitor.

**10. Investment in Victoria Park (Ward 1) (Item 12.2)**

WHEREAS, the City of Hamilton owned fieldhouse facilities in Ward 1 are maintained by the City of Hamilton's Facilities Operations & Maintenance Section of the Energy, Fleet & Facilities Management Division, Public Works;

WHEREAS, many of the current fieldhouses in Ward 1 need lifecycle repair and accessibility upgrades;

WHEREAS, flexible community space will enhance all season programming at Victoria Park, and will draw more users to the Park; and,

WHEREAS, the Victoria Park Field House has been identified by the community as a priority facility in need of improved accessibility, including accessible washrooms to support the field house users;

THEREFORE, BE IT RESOLVED:

- (a) That Public Works Facilities staff be authorized and directed to retain a Prime Design Consultant to undertake both a feasibility study of accessibility improvements, as well as a Cultural Heritage Study, of Victoria Park Field House to determine recommendations for upgrades to support the community and programming uses;
- (b) That the funding for the feasibility study of accessibility improvements, as well as a Cultural Heritage Study, of the Victoria Park Field House, at a cost of \$150,000, to be funded from the Ward 1 Area Rating Reserve Account (108051) be approved; and,
- (c) That the Mayor and City Clerk be authorized and directed to execute any required agreement(s) and ancillary documents, with such terms and conditions in a form satisfactory to the City Solicitor.

**11. Commemorative Plaque and Tree at Woodlands Park in Honour of Holly Ellsworth-Clark (Ward 3) (Item 12.3)**

WHEREAS, the tragic disappearance of Holly Ellsworth-Clark in January 2020 was of deep community concern, responded to with compassion and care by hundreds of Hamiltonians engaging in the search efforts; and,

**Council – December 15, 2021**



WHEREAS, to support community healing and provide an accessible location for ongoing reflection for the Ellsworth-Clark family and community members, a commemorative tree and plaque was requested for installation in Woodlands Park;

THEREFORE, BE IT RESOLVED:

- (a) That a commemorative plaque and tree in honour of Holly Ellsworth-Clark be installed in Woodlands Park; and
- (b) That the installation costs of the commemorative plaque and tree in the honour of Holly Ellsworth-Clark in Woodlands Park, be funded from the Ward 3 Capital Discretionary Account 3301909300 at an upset limit, including contingency, not to exceed \$1,000.

**FOR INFORMATION:**

**(a) CHANGES TO THE AGENDA (Item 3)**

The Committee Clerk advised of the following changes to the agenda:

**8. CONSENT ITEMS**

8.3 Hamilton Cycling Committee Minutes - November 3, 2021

**11. DISCUSSION ITEMS**

11.3 Lymantria dispar dispar (LDD) Aerial Control Program (PW21069)  
(City Wide)

11.4 Hamilton Cycling Committee Budget 2022 (PED21189) (City Wide)

**14. GENERAL INFORMATION / OTHER BUSINESS**

14.1 (b) Items Requiring a New Due Date:

14.1 (b) (a) HSR / ATS / DARTS Passenger Policies for Persons  
with Disabilities  
Item on OBL: ABR  
Current Due Date: December 6, 2021  
Proposed New Due Date: November 28, 2022

**15. PRIVATE AND CONFIDENTIAL**

**15.1 Appendix "B" to Report PW21069 respecting Lymantria dispar  
dispar (LDD) Aerial Control Program**

Pursuant to Section 9.1, Sub-section (k) of the City's Procedural  
By-law 21-021, and Section 239(2), Sub-section (k) of the Ontario



Municipal Act, 2001, as amended, as the subject matter pertains to a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.

The agenda for December 6, 2021 Public Works Committee meeting was approved, as amended.

**(b) DECLARATIONS OF INTEREST (Item 4)**

Councillor Danko declared an interest to Item 12.1, Motion respecting the Playground Addition to Armstrong Park Hamilton (Ward 7), as his wife is Chair of the Hamilton-Wentworth District School Board.

**(c) APPROVAL OF MINUTES OF PREVIOUS MEETING (Item 5)**

The Minutes of the November 15, 2021 meeting of the Public Works Committee were approved, as presented.

**(d) COMMUNICATIONS (Item 6)**

The following Communication Items were received and referred to the consideration of the Truck Route Sub-Committee Report 21-001, November 29, 2021 (Item 11.2):

- 6.1 Correspondence from Michelle Blanchette respecting concern regarding the Truck Route Master Plan designating Grays Road, Frances Avenue and Drakes Drive as a truck route
- 6.2 Correspondence from Hamilton Health Sciences regarding heavy truck traffic in the Hamilton General Hospital zone

For disposition of this matter, please refer to Item 6.

**(e) CONSENT ITEMS (Item 8)**

**(i) Hamilton Cycling Committee Minutes - November 3, 2021 (Item 8.3)**

The Hamilton Cycling Committee Minutes for November 3, 2021 were received.

**(f) STAFF PRESENTATIONS (Item 9)**

**(i) Stormwater Gap Evaluation (PW21074) (City Wide) (Item 9.1)**

Cassandra Kristalyn, Senior Project Manager, Public Works, addressed Committee respecting Report PW21074, Stormwater Gap Evaluation, with the aid of a presentation.



The presentation respecting Report PW21074, Stormwater Gap Evaluation, be received.

For disposition of this matter, refer to Item 4.

**(g) GENERAL INFORMATION / OTHER BUSINESS (Item 14)**

That the following amendments to the Public Works Committee's Outstanding Business List, be approved, ***as amended***:

**(1) Items Considered Complete and Needing to be Removed (Item 14.1 (a)):**

- (i) Sidewalk Snow Clearing Trillium Open Space - Erosion Protection Plan and Disaster Mitigation and Adaptation Fund Project Update Addressed as Item 8.1 on today's agenda - Report (PW21072) (City Wide)**  
Item on OBL: ABP  
(Item 14.1 (a) (i))

~~**(ii) Stormwater Gap Evaluation**~~  
~~**Addressed as Item 8.2 on today's agenda - Report (PW21074)**~~  
~~**(City Wide)**~~  
~~**Item on OBL: ABM**~~  
~~**(Item 14.1 (a) (ii))**~~ (Refer to Item 14.1 (b) (ii) for amendment)

**(2) Items Requiring a New Due Date (Item 14.1 (b)):**

- (i) HSR / ATS / DARTS Passenger Policies for Persons with Disabilities**  
Item on OBL: ABR  
Current Due Date: December 6, 2021  
Proposed New Due Date: November 28, 2022

**(ii) Stormwater Gap Evaluation**  
**Item on OBL: ABM**  
**Current Due Date: December 6, 2021**  
**Proposed New Due Date: Q1 2022**

**(h) PRIVATE AND CONFIDENTIAL (Item 15)**

- (i) Appendix "B" to Report PW21069 respecting Lymantria dispar dispar (LDD) Aerial Control Program (Item 15.1)**

Committee determined that it was not necessary to move into Closed Session to discuss Appendix "B" to Report PW21069, respecting Lymantria dispar dispar (LDD) Aerial Control Program.

For disposition of this matter, please refer to Item 7.

**Council – December 15, 2021**



**(i) ADJOURNMENT (Item 16)**

There being no further business, the Public Works Committee adjourned at 4:00 p.m.

Respectfully submitted,

Councillor A. VanderBeek Chair,  
Public Works Committee

Carrie McIntosh  
Legislative Coordinator  
Office of the City Clerk



## **2000 Model Franchise Agreement**

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THIS AGREEMENT effective this                      day of                      , 2021

BETWEEN:

### **THE CITY OF HAMILTON**

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 7<sup>th</sup> anniversary and on the 14<sup>th</sup> 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**

Notwithstanding the cost sharing arrangements described in Paragraph 12, if any part of the gas system altered or relocated in accordance with Paragraph 12 was constructed or installed prior to January 1, 1981, the Gas Company shall alter or relocate, at its sole expense, such part of the gas system at the point specified, to a location satisfactory to the Engineer/Road Superintendent.

**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.

**CITY OF HAMILTON**

Per:

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Fred Eisenberger, Mayor

Per:

---

Andrea Holland, City Clerk

**ENBRIDGE GAS INC.**

Per:

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Mark Kitchen, Director  
Regulatory Affairs

Per:

---

Murray Costello, Director,  
Southeast Region Operations





Enbridge Gas Inc.  
603 Kumpf Drive  
Waterloo, Ontario  
N2J 4A4

August 25, 2021

City of Hamilton  
Gord McGuire  
Director of Engineering  
City Hall, 71 Main Street West  
Hamilton, ON L8P 4Y5

Dear Gord:

**Re: Enbridge Gas Inc. ("Enbridge Gas")  
Franchise Agreement with City of Hamilton (the "City")**

This is further to recent discussions between Enbridge Gas and the City related to renewal of the Franchise Agreement between Enbridge Gas and the City ("FA").

This letter serves to clarify certain matters related to Enbridge Gas' operations within the City pursuant to the FA.

Enbridge Gas does not intend for the information provided in this letter to amend or modify the terms of the FA in any way.

In this regard, Enbridge Gas confirms as follows (references are to sections of the FA, if related):

- 1) **Bridge or viaduct (section 5f.):** Enbridge Gas confirms it will not use any bridge or viaduct without the prior, written permission of the City Engineer/Road Superintendent for installation of new or relocated pipeline. In those cases where Enbridge Gas currently uses a bridge or viaduct in the City, this use will continue.
- 2) **As Built Drawings (section 6):** Enbridge Gas confirms the electronic format of the drawings provided to the City will be the type of electronic format the City Engineer/Road Superintendent requires. Note that Enbridge Gas currently has a master data sharing agreement with the City; The License Agreement between Enbridge Gas and the City is dated 2001.
- 3) **Restoration (section 8):** Enbridge Gas confirms it will continue to follow the restoration requirements of the City of Hamilton By-law 15-091 ("By-law"), (Roads – Equipment Installation By-law) and the Roads – Equipment Installation Manual, as referenced in the By-law 15-091 (currently known as the Right of Way Utility Installation and Permit Manual). Further, if Enbridge Gas is unable to repair or restore the surface of the highway to substantially the same condition it was in before the work was undertaken per the terms of the By-law in a timely manner, Enbridge Gas may, with the written permission of City and within twenty-four (24) hours of the completion of all applicable work, temporarily repair the surface of the highway to a working condition and perform permanent repairs or restoration to the surface of the highway to substantially the same



condition it was in before the work, by a date set by the City Engineer/Road Superintendent, which shall not be any later than two (2) years after the date Enbridge Gas broke the paved surface of the highway. In all instances, Enbridge Gas confirms it will use a contractor approved by the City Engineer/Road Superintendent, acting reasonably, for any repair or restoration to the highway under the FA.

- 4) **Locate information:** Enbridge Gas will continue to follow *Ontario Underground Infrastructure Notification System Act, 2012* and other applicable laws.
- 5) **Pipeline Relocation (section 12):** Enbridge Gas confirms that the costs and obligations of each party pursuant to this section of the FA are only applicable to the gas system, as defined in the FA located within a Highway as defined in the FA. Enbridge Gas agrees that in the event the City acquires additional lands and incorporates those lands into a new Highway, that Enbridge Gas will surrender any easement rights which it holds within the new expanded Highway. Notwithstanding the surrender by Enbridge Gas of any rights as aforementioned the parties agree that the City shall be solely responsible for all costs relating to the relocation of the gas system, in the first instance, and any subsequent relocation of the gas systems within the Highway will be governed by the terms and conditions of the FA.
- 6) **Cost of relocations (section 12):** Enbridge Gas confirms that prior to commencing or undertaking any relocation of its gas system in accordance with the requirements of the FA, Enbridge Gas will provide the City with an estimate of the costs for its information only. Enbridge Gas will be pleased to provide information to the City to demonstrate to the City that costs are reasonably and diligently constructed.
- 7) **Dispute resolution:** Enbridge Gas has a long and respected practice of working with municipalities in the event of issues arising with respect to the application of the terms of the franchise agreement and other operational matters. It is Enbridge Gas' intent to continue to maintain this commitment through dialogue and consultation with the City in order to resolve any issues related to the FA. In the event the City and Enbridge Gas cannot come to a mutually agreeable solution, Enbridge Gas or the City may raise any concerns related to the FA with the Ontario Energy Board.
- 8) **Insurance (section 10):** Enbridge Gas has a general obligation to maintain insurance as set out in section 10 of the FA and for all municipalities with which Enbridge Gas also has a model franchise agreement in place. If requested from time to time for a specific purpose, Enbridge Gas can provide a certificate of insurance to the City as evidence that insurance required pursuant to section 10c. of the FA is in place. Enbridge Gas notes that, as set out in section 10b. of the FA, the required insurance policy does not relieve the Gas Company of liability not covered by such insurance or in excess of the policy limits of such insurance.

We look forward to continuing Enbridge Gas' strong relationships with the City in relation to providing gas service to Hamilton residents.

Sincerely,

*[Original Signed By]*

Murray Costello, P.Eng.  
Director, Southeast Operations, Enbridge Gas Inc.  
[Murray.Costello@enbridge.com](mailto:Murray.Costello@enbridge.com)



**CITY OF HAMILTON  
BY-LAW NO. 21-**

**A BY-LAW TO AUTHORIZE A FRANCHISE AGREEMENT BETWEEN**

**CITY OF HAMILTON  
and  
ENBRIDGE GAS INC.**

**To Repeal, Amend, Adopt, Regulate Etc.**

**WHEREAS** the Council of the City of Hamilton 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 City of Hamilton enacts as follows:  
the Council of the City of Hamilton enacts as follows:

1. **THAT** the Franchise Agreement between the City of Hamilton 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 City Clerk be and they are hereby authorized and instructed on behalf of the City of Hamilton 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 #07-090 for the City of Hamilton, passed in Council on March 28, 2007.

4. **THAT** this by-law is subject to, and shall come into force and take effect as of the later of: final passing thereof; and the approval of the Franchise Agreement by Ontario Energy Board.

**PASSED** this    day of    , 2021.

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F. Eisenberger  
Mayor

---

A. Holland  
City Clerk



# **2000 Model Franchise Agreement**

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THIS AGREEMENT effective this                      day of                      , 2022

BETWEEN:

## **THE CITY OF HAMILTON**

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 7<sup>th</sup> anniversary and on the 14<sup>th</sup> 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.

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- (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**

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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**

Notwithstanding the cost sharing arrangements described in Paragraph 12, if any part of the gas system altered or relocated in accordance with Paragraph 12 was constructed or installed prior to January 1, 1981, the Gas Company shall alter or relocate, at its sole expense, such part of the gas system at the point specified, to a location satisfactory to the Engineer/Road Superintendent.

**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.

**CITY OF HAMILTON**

Per:

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Fred Eisenberger, Mayor

Per:

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Andrea Holland, City Clerk

**ENBRIDGE GAS INC.**

Per:

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Mark Kitchen, Director  
Regulatory Affairs

Per:

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Murray Costello, Director,  
Southeast Region Operations