

ROAD USER AGREEMENT

THIS ROAD USER AGREEMENT made in duplicate this [___] day of May, 2020 (the "**Effective Date**")

B E T W E E N:

THE CORPORATION OF THE COUNTY OF ESSEX
(hereinafter referred to as the "County")

OF THE FIRST PART

- and -

ENBRIDGE GAS INC. (hereinafter referred to as the "**Gas Company**", and together with the County, the "**Parties**")

OF THE SECOND PART

WHEREAS the Gas Company is a corporation, amalgamated pursuant to the laws of the Province of Ontario;

AND WHEREAS the Gas Company, as successor to Union Gas Limited, currently operates and maintains pipelines and distributes Gas to the residents of the County pursuant to the terms of an existing Agreement, dated December 11, 1957 (the "**Union Gas Agreement**");

AND WHEREAS the Parties acknowledge and agree that the Union Gas Agreement remains in full force and effect, and that this Road User Agreement is made to permit construction of a pipeline governed by the Union Gas Agreement;

AND WHEREAS pursuant to the Union Gas Agreement the Gas Company wishes to occupy certain Highways owned by the County and to utilize the County's right of way to install a NPS 6 pipeline (the "**Installation**") and carry out additional Works on the Highways for the distribution of Gas to the residents of the County, including the Decommissioning of the Old Line (the "**Road Use**"), all as specified in Schedule "C" to this Agreement (the "**Project**");

AND WHEREAS the County has agreed to grant to the Gas Company the rights described in this Agreement upon the terms and conditions of this Agreement;

AND WHEREAS the Gas Company has agreed to implement and comply with the Schedules attached to this Agreement;

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

AND WHEREAS the Effective date of this Agreement shall be the date this Agreement is executed by the County, which execution shall not occur until all Schedules have been finalized, approved by the County and attached to this Agreement, and the Agreement has been executed by the Gas Company;

NOW THEREFORE IN CONSIDERATION of the undertakings and covenants hereinafter expressed and upon the terms hereinafter set forth, and other valuable consideration, the receipt and sufficiency of which is hereto acknowledged, the County and the Gas Company mutually covenant and agree as follows:

1. RECITALS

1. The Parties warrant that the above recitals are true and that same form an integral part of this Agreement and are accordingly hereby incorporated into this Agreement by reference.

2. DEFINITIONS

1. In this Agreement:
 - (a) "**Applicable Laws**" means any an all applicable laws, statutes, codes, ordinances, principles of common and civil law and equity, rules, approvals, regulations, and municipal by-laws which are binding upon and applicable to the Project;
 - (b) "**Approved Plan**" means, as applicable, the approved layout of the pipeline (as may be amended from time to time) or the approved Plans (as may be amended from time to time) as approved by the County Engineer in accordance with the provisions of this Agreement;
 - (c) "**County Engineer**" means the most senior individual employed by the County with responsibilities for highways within the County 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 County;
 - (d) "**Crossing(s)**" means any place where any component(s) of the pipeline cross, in whole or in part, any travelled portion of a Highway;
 - (e) "**Decommission(s)**", "**Decommissioned**", and/or "**Decommissioning**" 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*;
 - (f) "**Environmental Plan**" means the environmental plan prepared by Stantec Consulting Limited for the Gas Company, dated July 16, 2019, as filed with

the Ontario Energy Board as part of the Gas Company's Windsor Pipeline Replacement Project;

- (g) "**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;
- (h) "**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 County;
- (i) "**Highway(s)**" means all common and public highways, street, roadway, avenue, parkway, driveway, square, bridge, viaduct or trestle, any part of which is intended to be used for or is used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof 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 County, as more fully described in **Schedule "B"**. For greater clarity, the location and general site plan details of the Project, and the portions of the Highway affected by this Agreement are more particularly depicted on **Schedule "A-1"** to this Agreement, and those Highways affected by the Agreement are further particularly described in **Schedule "A-2"** to this Agreement;
- (j) "**Party**") means, singularly, either the County or the Gas Company and "**Parties**" means, collectively, both the County and the Gas Company;
- (k) "**Plan**" means any plan required to be provided by the Gas Company to the County pursuant to this Agreement;
- (l) "**Project**" has the meaning given to such term in the Recitals;
- (m) "**Distribution System**" means the pipeline to be installed by the Gas Company for the distribution of gas, including the high pressure pipeline and other related pipelines as depicted on **Schedule "C"** to this Agreement;
- (n) "**Distribution Pipeline Plan**" means the plan drawn to scale, showing the permitted routing for the Distribution System, as more particularly set out in **Schedule "B"** to this Agreement;
- (o) "**Tree Work**" means cutting, trimming, removing, and/or replacing trees or hedges growing on the Highway(s);
- (p) "**Work**" or "**Works**") means any work related to the Project to be undertaken by the Gas Company or its agents or contractors in connection

with the Highways, including, without limitation the Road Use, the Installation, and the Decommissioning; and

- (q) 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.

3. SCHEDULES

1. The following Schedules (as may be amended from time to time by mutual agreement of the Parties) are attached hereto and form part of this Agreement:

Schedule "A" – Map depicting boundaries of Project

Schedule "B" – List of Highways upon which Distribution System located

Schedule "C" – Distribution Pipeline Plan comprised of:

Schedule "C-1" – List of Drawings

Schedule "C-2" – Drawings reference with full and approved drawings on file with the County

Schedule "D" – Schedule of Permits, Fees, and Charges

4. GRANT

1. The consent, permission, and authority of the County is hereby given and granted to the Gas Company, its employees, agents, and contractors:
 - (a) to enter upon the Highways under the jurisdiction of the County in accordance with the timelines provided for in Section 13 hereto, or as amended, to lay and construct the Distribution System under the road allowance of the Highways for the distribution of gas in connection with the Project as shown on the approved Distribution Pipeline Plan at Schedule "C" (with detailed plan on file with the County) to carry out the Works contemplated in this Agreement. The consent, permission, and authority hereby given extends only to the Highways-as shown in Schedule "A" and listed in Schedule "B", attached hereto, and the County shall not be obligated to provide any further right-of-way for the Distribution System, as part of the Project;
 - (b) to complete installation of the Distribution System, which shall be comprised of a single NPS 6 pipeline with maximum pressure of 3450 kPa,

and based on provincial guidelines, and the nature of the proposed pipeline, shall be installed at the below required depths:

- (i) a minimum depth of cover of 1.0 metre where the horizontal distance from the edge of the pavement is in excess of 6.0 metres (ground elevation);
- (ii) subject to subparagraph (iii) below, a minimum depth of cover of 1.5 metres where the horizontal distance from the edge of the pavement is located at or closer than 6.0 metres (pavement surface);
- (iii) where the Gas Company has prepared a study by a qualified professional engineer, to the satisfaction of the County Engineer, in her sole and absolute discretion, certifying that a variation in depth will not compromise the Highway(s) or the pipeline, and showing the load stress on the pipeline within 6.0 metres of the horizontal edge of the pavement is acceptable and safe, the minimum depth cover may be reduced to 1.0 metre; and
- (iv) to do such other things as may be required by the terms of this Agreement and approved by the County to complete the Project.

2. The consent, permission, and authority hereby given and granted shall be subject to:

- (a) the rights and obligations of the County to construct, maintain, reconstruct, rehabilitate, and use at any and all times all Highways under the jurisdiction of the County;
- (b) the right of free and legal use of all Highways by all persons entitled to use them;
- (c) the rights of the owners of properties adjoining the Highways to enjoy full access to and from the Highways and of constructing crossings and approaches from their properties; and
- (d) the rights and privileges that the County has granted or may grant to other persons (including, but not limited to, commuters, agricultural vehicles, overweight/oversized loads, and maintenance crews for maintenance of drainage ditches and roadway repairs) on the Highways;

all of which rights are expressly reserved.

3. Save as hereinafter provided, the consent, permission, and authority hereby given and granted to the Gas Company to enter upon the Highways shall at all times be subject to the prior approval of the County Engineer which shall be administered in accordance with the procedures set forth in this Agreement. All Work from time to time under this Agreement is subject to the prior approval of the County

Engineer, acting reasonably, who has full power and authority to give such directions and orders that the County Engineer considers in the best interest of the County, and the Gas Company will follow all directions and orders that the County Engineer provides that are issued in accordance with the provisions of this Agreement and Applicable Laws.

5. TERM

1. The rights hereby given and granted shall commence on the Effective Date and shall continue and be in force and effect until such time as the completion of the Work associated with the Project, when all phases of construction of the Project have been completed to the satisfaction of the County which is confirmed in writing by the County (the "**Term**").
2. The Parties acknowledge that the Union Gas Agreement shall continue to apply, but nothing in this Agreement shall prevent the Parties from negotiating a Franchise Agreement to replace the Union Gas Agreement.

6. APPROVAL PROCESS

1. Before commencing any Works under this Agreement, the Gas Company will deposit both a digital copy and a hard copy of the Distribution Pipeline Plan (including any amendments thereto) and its plan for the Decommissioning of the Old Line with the County Engineer for review pursuant to the terms of this Section 6.
2. The County Engineer shall review and consider the Distribution Pipeline Plan and any other Plans submitted by the Gas Company and, within a reasonable period of time following submission of such Plans, shall either approve or not approve the Work as presented in the applicable Plan. In the event the County Engineer does not approve the Distribution Pipeline Plan or any other Plan, the County Engineer shall issue written instructions to the Gas Company with any additional information or modifications which are reasonably required by the County Engineer with respect to the Distribution Pipeline Plan or any other Plan, including the imposition of any reasonable terms and conditions as the County Engineer considers in the best interest of the County in its capacity as custodian of the Highways. The Parties agree to work together in good faith to consider amendments to the Distribution Pipeline Plan or any other Plan which may be required by the County provided such amendments comply with Applicable Laws. The Gas Company shall not undertake Work of any kind until they are in receipt of the Approved Plan or an amended Approved Plan, as the case may be, and the issuing of the relevant permits.
3. Should there be any disagreement between the County and the Gas Company regarding the requirements of the Distribution Pipeline Plan or any other Plans

submitted by the Gas Company or required by the County, the opinion and requirement of the County Engineer, in her sole discretion, shall prevail.

4. The Gas Company is required to consult with the County Engineer in advance of commencing with the Project in order to determine what permits are required and agrees to apply for and obtain all permits from the County for the Project.
5. The Gas Company further agrees that prior to commencement of any Work pursuant to this Agreement, it shall obtain all permits and approvals which are required pursuant to any Applicable Laws, including, where necessary, the approval of any federal, provincial, and/or lower tier municipal government, any agency, and the County, and to satisfy the County that the Works will be completed to and meet the minimum standards of the County, in order to commence any of the Works.
6. Furthermore, it shall be the sole and absolute responsibility of the Gas Company to notify any other person or body of which it is aware or otherwise notified by the County, which is operating any equipment, installations, utilities, or other facilities, within the Highways where such Work is to be conducted, of the details of the anticipated Work so as to minimize the potential interference with or damage to such existing equipment, installation, utilities, and other facilities by the said Work, and so as to maintain the integrity and security thereof. Should any dispute arise between the Gas Company and any other user of the Highway(s) and the associate right-of-way, it is the sole responsibility of the Gas Company to resolve the dispute to the satisfaction of itself and any affected third party.

7. HIGHWAYS

1. Both the County and the Gas Company acknowledge that the Highways shown on **Schedule "A"** and listed on **Schedule "B"**, and only such Highways, are authorized for use by the Gas Company, its agents and/or contractors, for the Project.
2. If and to the extent the Gas Company wishes, after the commencement of the Project, to use any additional Highway(s) under the jurisdiction of the County for the Project not reflected on **Schedule "A"** and **Schedule "B"**, or to alter the alignment or depth of any pipe forming part of the Distribution System, the Gas Company shall request and obtain the prior approval of the County Engineer for the addition of the use of those additional Highway(s) for use with the Project, prior to completing any Work on those additional Highway(s), and shall enter into such amendments to this Agreement, as the County may require.
3. In the event it becomes necessary, during the Project, for the Gas Company to transport goods for use on the Project by way of oversized loads on any County Highway(s), the Gas Company shall obtain all of the necessary permits from the

County to do so, including posting any security required pursuant to such permits, and to comply with any reasonable conditions that may be required or imposed by the County at that time.

4. The Gas Company hereby agrees to comply with provision of all relevant By-laws of the County with respect to weight restrictions on the Highways, unless and until it receives the express written permission of the County Engineer to be exempted from the weight restrictions, with such permission and terms of such permission at the sole and absolute discretion of the County Engineer.

8. DECOMMISSIONING AND REMOVAL OF EXISTING UNION GAS LINE ALONG COUNTY ROAD 46

1. As part of seeking approval of the Approved Plan and the issuing of the relevant permits by the County, the Gas Company shall submit a plan, acceptable to the County Engineer, in her sole and absolute discretion, for the decommissioning and removal of the existing gas pipeline, and any appurtenances thereto, that was installed and maintained pursuant to the Union Gas Agreement and that are located on the Highways forming part of the Project (the "**Old Line**"). Except as otherwise provided below, the Old Line is to be completely decommissioned and removed, including the portions of the Old Line that cross driveways and portions of the Highway(s), including, but not limited to Crossings, subject to final approval of the plan, current uses of the affected Highway(s), and must obtain any necessary approvals from lower-tier municipalities for the said removal.
2. Notwithstanding the above, the County may, in its sole and absolute discretion, permit certain portions of the Old Line to be abandoned in place, if requested by the Gas Company with evidence to the satisfaction of the County, and provided that any approval to abandon in place remains subject to the sole and absolute discretion of the County and remains subject to all relevant approvals, including the method of abandonment.
3. The Gas Company expressly acknowledges and understands that the completion of the Decommissioning and removal of the Old Line is required by the County in consideration for entering into this Agreement and allowing the new proposed Distribution System to be installed.
4. The Gas Company further expressly acknowledges and agrees that should a dispute arise as to the timelines for the removal of the Old Line, the Gas Company shall abide by the conditions imposed by the relevant By-laws of the County as final, and, in any event shall complete the removal of the Old Line within twelve (12) months of the installation of the new Distribution System being completed.
5. The Project shall not be deemed to be complete until the Gas Company has completed the Decommissioning of the Old Line to the satisfaction of the County.

9. TREE CLEARING AND REPLACEMENT

1. In completing the Project, the Gas Company will comply with the Environmental Plan, including as it relates to Tree Work.
2. In the event that trees along the Highways are removed or damaged beyond repair by the Gas Company and thereby requiring removal (a "**Tree Removal**"), the Gas Company shall, at its own and sole expense, completely remove the tree(s), including any residual tree stumps to a level below grade and to restore and remediate the surface where the tree(s) were located to an even grade.
3. Further, for each Tree Removal, the Gas Company shall, at the option of the County, shall provide the County with a fee in accordance with **Schedule "D"** hereto.

10. METHOD OF CONSTRUCTION

1. The Gas Company shall install the Project by the method of construction identified in the Approved Plan as submitted to and approved by the County Engineer.
2. The County shall assign a consulting engineer, at the Gas Company's sole expense, to inspect the Work and monitor the Project (the "**Inspector**"), who can provide proof of training safety upon request, to satisfy the County that the Project is being completed in accordance with the Approved Plan. The said Consulting Engineer shall continue to be engaged until such time as the Project is completed to the sole and absolute satisfaction of the County.
3. All road crossings shall be installed via trenchless methods, including services, and shall be perpendicular to the Highway(s), ninety (90) degrees, except as otherwise approved.
4. The Gas Company shall, based on provincial guidelines, and the nature of the proposed pipeline, install the Distribution System in accordance with the Approved Plans and at the minimum depths required and agreed to in Article 4 of this Agreement.

11. BACKFILL AND RESTORATION

1. Prior to commencing any backfill and restoration work, the Gas Company shall submit a plan for approval to the County Engineer, and shall obtain any and all permits and approvals which are required pursuant to any Applicable Laws.

2. The Gas Company shall backfill the areas disturbed by the installation of the Distribution System by means of full granular backfill, as required, unless otherwise expressly approved by the County Engineer, in her sole discretion.
3. All backfill of trenches shall be placed in 0.3 metre layers and compacted in accordance with the requirements of the County. For backfilling not on the travelled portion of the Highway(s) and not on the gravelled shoulder of the Highways, native material can be used for backfilling, with necessary compaction requirements of the County being met. The Gas Company expressly acknowledges and agrees that excavated material cannot be used for backfilling the trenches on the travelled portion of the Highway(s) and/or on the gravelled shoulder of the Highway(s), with the excavated material being removed from the right-of-way by the Gas Company.
4. All backfilling of boring pits and trenches and compaction shall be completed every night, unless adequate protective safety barriers are erected to the satisfaction of the County Engineer, and which safety barriers do not impede traffic, to allow for full use of the paved portion of the Highway(s) after working hours.
5. The Gas Company expressly acknowledges and agrees that it shall complete the same backfilling and restoration work required by the County with respect to the removal and decommissioning of the Old Line, which may include, without limiting the generality of the foregoing, backfilling and seeding the affected area.

12. PROTECTION OF HIGHWAYS, ACCESS, AND FUTURE EXPANSION

Access and Future Expansion

1. The Gas Company expressly acknowledges and agrees that it is obligated to ensure the right of free and legal use of all Highways by all persons entitled to use them during completion of the Project;
2. The Gas Company further acknowledges and agrees that:
 - (a) the County has an overarching responsibility to ensure that the Highways, including the associated rights-of way, are operated and utilized in a manner that ensures safety of users and that maintains the traffic carrying ability and physical integrity of the Highways and associated rights of ways; and
 - (b) in light of the responsibility of the County, the Gas Company shall complete the Project in such a manner as to protect the structural integrity of the Highway(s) and associated rights-of-way, and to ensure the safety of users of the Highway(s) and associated rights-of-way, during completion of the Project.

3. The Gas Company further acknowledges and agrees that the County has advised the Gas Company that the Distribution System may need to be relocated to accommodate future expansion of the Highway(s) being utilized for the Project, which relocation shall be governed in accordance with the provisions of the Union Gas Agreement, applicable policies and procedures of the County, and by the Gas Company obtaining any and all necessary permits.

Protection of Highways from Damage

4. No tracked or overweight equipment shall be placed on the Highway(s) unless approved protection methods are in place, and with special care and attention being provided with respect to the paved surface of the Highways.

Accommodation of County Moving Permits

5. It is a requirement of this Agreement, that the Highway(s) remain open and available at all times for use by users of the Highways(s), including users who have been issued oversized/super-load permits by the County. To this end, the Gas Company shall ensure that there remains a minimum of 5.0 metres of passable lane available to traffic at all times.
6. Should a temporary closure of the Highway(s) be granted by the County for the completion of any part of the Work, the Gas Company shall, within 24 hours of being notified of a moving permit being issued by the County that effects the Highway(s) being utilized by the Gas Company for the Project, accommodate the party to whom the moving permit has been issued.

13. COMPLIANCE WITH APPROVED PLAN AND PERMITS

1. The Gas Company agrees to commence, perform, and complete the Installation and Decommissioning in accordance and compliance with the Approved Plan(s) for the Distribution System, including all permits and conditions, unless otherwise approved by the County Engineer, acting reasonably.
2. Any modifications, deviations or changes to the Approved Plan, Distribution Pipeline Plan, and/or other approved Plans (except for modifications, deviations, or changes deemed to be minor by the Inspector, which minor modifications the Inspector may approve or deny on behalf of the County), shall be sought from the County Engineer in writing, with approval to be obtained in advance of proceeding with any work that deviates from the Approved Plan, Distribution Pipeline Plan, or any other approved Plans. The Gas Company expressly acknowledges, agrees, and understands that the decision to grant or deny any request for modifications, deviations, or changes to the Approved Plan is in the sole and absolute discretion of the County Engineer and that any decision by her is binding and final, unless and until modified or reversed subject to the provisions of Article 39 hereto.

14. SCHEDULE OF PHASES

1. The Gas Company proposes to complete the Project in 3 phases in accordance with the following schedule commitments:

Phase	Item	Completion
Phase 1	Installation of new main including restoration	15-Dec-20
Phase 2	Service transfer from old main to new main	15-Dec-21
Phase 3	Decommissioning and removal of old main including restoration	15-Dec-21

15. TRAFFIC CONTROL PLANS

1. The Infrastructure Services Department is the contact department to submit traffic control plans, coordinate temporary traffic control, and to set the extent of traffic disruption allowed on County-owned Highways and rights-of-way, with this authority being granted through the County's Traffic Bylaw.
2. Prior to commencing work on each phase of the Project, the Gas Company shall provide the County with traffic control plans for review and approval in compliance with provincial standards, including OTM Book 7, and such other standards in excess of the requirements contained in OTM Book 7 required by the County that are specific to the Project.
3. The Gas Company acknowledges and agrees that Work that requires temporary traffic control requires a Temporary Traffic Control Plan, except for minor matters dealt with in the week-ahead traffic plan. The Temporary Traffic Control Plan(s) must be submitted at least three (3) days prior to the start date of the planned activity for review by the County and to seek approval from the County, to determine the effect the planned work may have on other planned activities requiring access to the Highway(s) and/or rights-of-way by any other public and/or private entity, including, but not limited to, solid waste collection, oversized loads, Emergency Services, Enforcement Services.

16. LANE RESTRICTIONS AND ROAD CLOSURES

1. The County agrees that the Gas Company may request that the County temporarily close or restrict lane access to portions of the Highways, but only where necessary, and for the purpose of safety, and with such requests shall be based on the bona fide requirements of the Project. The Gas Company expressly acknowledges and agrees that the granting or refusal of such requests is at the sole and absolute

discretion of the County Engineer, and for the time limits imposed by the County in its sole and absolute discretion.

2. In the completion of the Project, the Gas Company will use care and diligence to ensure that there will be no unnecessary interference with the Highways, or any other municipal works or improvements.
3. In the event that the impeding of traffic is approved by the County Engineer, all conditions of approval will be detailed on the permit, which condition may include, but are not limited to, advanced warning signs, the use of a pace vehicle, etc.
4. The Gas Company acknowledges and agrees that securing its worksite is necessary to protect the public from potentially hazardous conditions within the work zone. The Gas Company acknowledges and agrees that it is required to secure its worksite both while in use and during any period(s) of inactivity.
5. During any period(s) of time when traffic control signs are not required, they will be turned away from traffic, with such period(s) including, but not being limited to, shutdowns due to weather conditions, at the end of workdays, on weekends, and on holidays.

17. ENVIRONMENTAL LIABILITY

1. The County is not responsible, either directly or indirectly, for any damage to the natural environment or to any property, including any nuisance, trespass, negligence, or injury to any person, howsoever caused, arising from the presence, deposit, escape, discharge, leak, spill, or release, of any hazardous substance in connection with the Gas Company's occupation or use of the Highways as part of the Project, or previous use.
2. The Gas Company agrees to assume all environmental liabilities, claims, fines, penalties, obligations, costs, or expenses, whatsoever, relating to the Project, its removal and decommissioning of the Old Line, and/or its use of the Highways as part of the Project, including, without limitation, any liability for the clean-up, removal, or remediation of any hazardous substance on or under the Highways that result from:
 - (a) the occupation, operations, or activities of the Gas Company, its contractors, agents, or employees, or by any person with the express or implied consent of the Gas Company within the Highways; or
 - (b) any Works brought or placed within the Highway by the Gas Company, its contractors, agents, or employees, or any person with the express or implied consent of the Gas Company;

unless such environmental liabilities (including, without limitation, any liability for the clean-up, removal, or remediation of any hazardous substance) were caused directly or indirectly in whole or in part by the negligence or wilful misconduct on the part of the County or those for which it is responsible under Applicable Laws.

18. REQUIRED HIGHWAY UPGRADES TO ACCOMMODATE THE PROJECT

1. In the event that the standard condition or maintenance of any of the Highways is not sufficient to permit the Gas Company to carry out completion of the Project, or any of its obligations under this Agreement, the Gas Company shall be solely responsible for carrying out any required remedial work or maintenance required to upgrade or maintain the Highway(s), at its own and sole expense, but with the Gas Company not carrying out any such remedial work or maintenance without first obtaining the approval of the County Engineer and any necessary permit(s).
2. Should the Gas Company complete any remedial work or maintenance required to upgrade or maintain the Highway(s) to complete the Project, the Gas Company expressly agrees that it shall, at its own and sole expense, return the Highway(s) to the condition it was in prior to the remedial work or maintenance work being completed, unless the County expressly advises that the Gas Company is not required to do so.

19. EMERGENCY

1. In the event of an emergency involving the Distribution System during the Term hereof, the Gas Company shall notify the responsible police force immediately upon becoming aware of the situation and shall do all that is necessary and desirable to control the emergency, including such work in and to the Highways as may be required for the purpose. As soon as is reasonably possible after the emergency is discovered, the Gas Company shall advise the County Engineer by telephone and shall keep her advised throughout the emergency. If the emergency is caused by the Gas Company, the Gas Company shall reimburse the County for any and all costs incurred in connection with the emergency. Forthwith after it becomes necessary for the Gas Company to exercise its obligations under this Section, the Gas Company shall provide a written report to the County Engineer of what work was done and the further work to be undertaken, if any, and seek the approval of the County Engineer for the further work as contemplated in this Section, with the sufficiency of the completed work being subject to the approval of the County Engineer, in her sole and absolute discretion.
2. Should the Gas Company fail to comply with its obligations pursuant to this section of the Agreement to the satisfaction of the County Engineer, in her sole and absolute discretion, the County may complete any and all necessary work to address the

emergency involving the Distribution System, or retain a qualified third party contractor to do so, and shall charge the amounts for same, plus any and all other expenses incurred by the County, which includes, but is not limited to the time expended by the County to oversee the work and for any additional third party expenses, to the Gas Company. The Gas Company expressly agrees to pay for said charges forthwith upon demand from the County.

20. URGENT HIGHWAY REPAIRS

1. During the time the Project and associated Works are underway, should the County determine that urgent repairs to the Highway is required, and which repairs are not required as a result of the Works, the Gas Company shall immediately cease any Works related to the Project, to permit the County to complete the repairs it deems necessary, in the County's sole and absolute discretion.
2. During the time the Project and associated Works are underway, the County may give written notice to the Gas Company that urgent repairs are required to a Highway in order to maintain the Highway(s) in a passable condition for the everyday traffic load or to remove material and adverse safety risk or to prevent imminent harm to the users of such Highway in the normal course, provided that such repairs are required as a direct result of the Gas Company's use of such Highway. The need for such repairs shall be determined by the County Engineer, acting reasonably and based upon the advice of the Consulting Engineer. If the urgent repairs are not completed by the Gas Company within twenty-four (24) hours of the sending of the written notice by the County or, if the emergency repairs cannot be completed within such twenty-four (24) hour period, the Gas Company does not commence to diligently perform the urgent repairs within such twenty-four (24) hour period, the County may perform the emergency repairs at the Gas Company's sole expense and the Gas Company shall pay the County's invoice(s) for such urgent repairs immediately upon receipt. If the Gas Company fails to pay any invoice submitted by the County for urgent repairs within thirty (30) days of receipt, the County shall be entitled to draw upon the Security filed pursuant to this Agreement to recover the full amount of the unpaid invoice(s).

21. PRELIMINARY HIGHWAY CONDITION REPORT

1. The Parties agree that a report detailing the current condition of the Highways (the "**Preliminary Highway Condition Report**"), shall be prepared at the Gas Company's sole expense, with said Preliminary Highway Condition Report to be prepared as follows:
 - (a) the Parties shall jointly identify and engage, at the Gas Company's sole expense, a consulting engineer (the "**Consulting Engineer**") to inspect the

Highway(s) and prepare the aforesaid Preliminary Highway Condition Report, which report shall include, without limitation:

- (i) the identification of all Highways and structures that will or may be subject to damage in connection with any aspect of the Project and the use of the Highways for the Project;
 - (ii) the full scope and nature of the Preliminary Highway Condition Report shall be coordinated and agreed to by the County and the Gas Company jointly; and
 - (iii) draft and final copies of the Preliminary Highway Condition Report shall be provided to the Gas Company and the County as soon as they become available and the Gas company shall be afforded an opportunity to comment on the Preliminary Highway Condition Report before it is finalized. The draft Preliminary Highway Condition Report shall be subject to the approval of the County, not to be unreasonably withheld, after which final copies of the said Preliminary Highway Condition Report shall be provided to both Parties; or
- (b) The County acknowledges that the Gas Company, without prior consultation with the County or the County's approval as to the selection of and instructions to the Consulting Engineer, has prepared a Preliminary Highway Condition Report and provided a copy of same to the County. Should the Preliminary Highway Condition Report prepared by the Gas Company solely be acceptable to the County, or should it be capable of being revised to the satisfaction of the County, the County may waive, in its sole and absolute discretion, the requirements of 21.1.(a) above.

22. ONGOING HIGHWAY MONITORING

1. During the period that the Highway is in use by the Gas Company for the Project, the County or a designated Consulting Engineer shall, at the sole expense of the Gas Company, carry out inspections in respect of those Highways being used by the Gas Company and such inspections shall be carried out with such frequency as is reasonably required having regard to the frequency and nature of the use of the Highways by the Gas Company. Summary reports will be provided to the Gas Company and the County on a timely basis outlining the condition of the Highways and any urgent repair requirements.

23. FINAL HIGHWAY CONDITION REPORT

1. Within ten (10) days of completion of the entire Project, including the Installation and the Decommissioning, the Gas Company shall notify the County in writing that the Project is complete and the County shall then instruct the Consulting Engineer to conduct a further inspection, using the same methodologies employed in producing the Preliminary Highway Condition Report, and provide a supplemental report (the "**Final Highway Condition Report**"), at the Gas Company's sole expense, which Final Highway Condition Report shall include, without limitation:
 - (a) the identification of those portions of the Highways that, in the opinion of the Consulting Engineer, acting reasonably with reference to the Preliminary Highway Condition Report, have been damaged by the Gas Company (taking into consideration normal wear and tear during the period of time taken to complete the Project that would have been likely to occur in any event), its agents and/or contractors during the Project and their use of the Highways in completing the Project; and
 - (b) with respect to the portions of the Highways identified as having been determined to have been damaged pursuant to the subsection above, identification of the extent of repairs, replacements, or remedial work that would be necessary to repair or replace such Highways or otherwise restore such Highways to a condition that is the same or better than the condition demonstrated by the Preliminary Highway Condition Report.
2. The Parties shall use reasonable efforts to ensure that the Final Highway Condition Report is completed not later than thirty (30) business days following receipt by the County of notice of completion of the Project from the Gas Company. Notwithstanding the foregoing, the Final Highway Condition Report shall not be deemed complete or final until the Gas Company has had the opportunity to review and comment on same and the Consulting Engineer has had the opportunity to consider and adopt, where reasonably appropriate, the comments of the Producer with respect to such report.

24. GAS COMPANY'S DUTY REGARDING DAMAGED HIGHWAYS

1. The Gas Company shall well and sufficiently restore, to the reasonable satisfaction of the County Engineer, with reference to the Final Highway Condition Report, all Highways and property that it damages during the course of the Project. The Gas Company shall be solely responsible for all costs associated with the repair of any Highways damaged by the Gas Company or its employees, agents, or contractors as a result of the Works done in completing the Project, in accordance with the process set out herein and as determined by the County Engineer. Such restoration shall be equal to or better than the condition of the said Highway as it was in existence on the said Highway before the Project commenced. If the Gas Company

fails at any time to do, or commence and complete, any of the required work within a reasonable period of time following notification by the County (having regard to the nature of the required work), the County may do so, or may retain a qualified third party contractor to do so, and the County shall charge the amounts for same, plus any and all other expenses incurred by the County, which includes, but is not limited to the time expended by the County to oversee the work and for any additional third party expenses, to the Gas Company. The Gas Company expressly agrees to pay for said charges forthwith upon demand from the County.

2. The Gas Company expressly acknowledges and agrees that any required restoration works shall be paid for by the Gas Company, with the costs for same to be determined by the Consulting Engineer and the Inspector, based on the recommendations contained in the Final Highway Condition Report.

25. ADDITIONAL REPAIRS

1. Twelve (12) months following completion of the road repairs identified in the Final Highway Condition Report, the Parties shall jointly inspect the said repairs to confirm the repairs were properly completed. If following such joint inspection, the Parties agree that no additional repair is required, the County shall immediately return the Letter of Credit. If, however, the said repairs require further repair as a result of having been improperly completed and not as a result of the use of the Highways by third parties subsequent to the completion of the said repairs, the Gas Company shall complete such additional repairs forthwith ("**Additional Repairs**"). Following the completion of the Additional Repairs to the satisfaction of the County Engineer, the County shall immediately return the Letter of Credit to the Gas Company.

26. RECORD DRAWINGS

1. The Gas Company shall provide two (2) copies of the "as constructed" Distribution System (with sufficient detail to the satisfaction of the County, including but not limited to, both location and pipe depth) for the records of the County plus a final electronic copy prepared in an AUTOCAD, CAD, or GIS environment, prior to release of any deposits or securities (including the Security).

27. LOCATING OF DISTRIBUTION SYSTEM

1. The Gas Company agrees that throughout the Term of this Agreement it shall, at its own cost, record and maintain adequate records of the locations of the Distribution System. If requested by the County, the Gas Company shall, at its own expense,

physically locate the Distribution System by marking the applicable Highways using paint, staking, or other suitable identification methods ("**Locates**").

2. The Gas Company agrees to respond within sixty (60) days to any request from the County for a mark up of the Distribution System design drawings showing the location of any portion of the Distribution System within the portion of the Highways shown on the plans (the "**Mark-ups**") and shall provide such accurate and detailed information as may be reasonably required by the County.

28. ABANDONMENT OR RELOCATION OF DISTRIBUTION SYSTEM

1. Should the Gas Company require the abandonment or relocation of the Distribution System, or any part thereof, during the Term of this Agreement, then the Gas Company shall give written notice to the County that the Distribution System has been abandoned, or seek approval for the relocation of the Distribution System, or any part thereof, with the abandonment and/or relocation shall be governed in accordance with the provisions of the Union Gas Agreement, applicable policies and procedures of the County, and by the Gas Company obtaining any and all necessary permits.

29. INSURANCE

1. The Gas Company shall procure and maintain public liability insurance ("**Liability Insurance**"), which Liability Insurance shall:
 - (a) be comprised of primary and/or umbrella coverage with a limit of **TEN MILLION DOLLARS (\$10,000,000.00)** per occurrence, with not less than a limit of **THIRTY MILLION DOLLARS (\$30,000,000.00)** in the aggregate;
 - (b) include Commercial General Liability Insurance covering all operations and liability assumed under this Agreement with the County. The Commercial General Liability Insurance Policy shall be written on an occurrence form and include:
 - (i) Premises and Operations
 - (ii) Products and Completed Operations
 - (iii) Blanket Contractual
 - (iv) Broad Form Property Damage
 - (v) Contingent Employer's Liability

- (vi) Cross Liability
 - (vii) Severability of Interests
 - (viii) Owners and Contractors Protective
 - (ix) Personal Injury
 - (x) Employer's Liability
 - (xi) Employees as Additional Insureds
 - (xii) Non-owned Automobile including OEF #96
 - (xiii) Hostile Fire
 - (xiv) Attached Machinery
- (c) if the Works are to include shoring, underpinning, etc. this policy must not contain any exclusions with respect to the intended Works, and a copy of the endorsement or a letter from the insurer verifying coverage is to accompany the Certificate of Insurance;
 - (d) include coverage against liability for bodily injury and property damage caused by vehicles owned and/or operated by the Gas Company and used in conjunction with the Works either within or outside the terms of this Agreement, and shall have a limit of liability of not less than **FIVE MILLION DOLLARS (\$5,000,000.00)** inclusive for any one occurrence;
 - (e) include an Equipment Floater in sufficient amounts to provide full coverage for the Gas Company's equipment that may be located on the County's lands, from time to time, throughout the duration of this Agreement;
 - (f) provide that the policy or policies will not be cancelled or allowed to lapse without thirty (30) days prior written notice to the County; and
 - (g) include the County as an additional named insured.

30. SECURITY DEPOSIT

1. Prior to making any use of the Highways for the purpose described in this Agreement, the Gas Company shall provide the County with an irrevocable letter of credit as security for the Gas Company's performance of its obligations under this Agreement. The letter of credit shall be in a form acceptable to the County, and shall be in the amount of **TWO MILLION DOLLARS (\$2,000,000.00)** (the "**First LC**").

2. Prior to making any use of the Highways for the purposes described in this Agreement the Gas Company shall provide the County with an irrevocable letter of credit as security for the Gas Company's obligation to remove and decommission the Old Line to the Satisfaction of the County. The letter of credit shall be in a form acceptable to the County, and shall be in the amount of **SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS (\$750,000.00)** (the "**Second LC**").
3. Upon completion of the repairs identified in the Final Highway Condition Report to the satisfaction of the County Engineer, the County shall return the First LC to the Gas Company, and the Gas Company shall at the same time, provide a second irrevocable letter of credit, substantially in the same form as the First LC, but in the amount of **TWO HUNDRED THOUSAND DOLLARS (\$200,000.00)** (the "**Third LC**", and together with the First LC and the Second LC, the "**Security**"), to be held for the balance of the Term of the Agreement.
4. Upon completion of the removal and decommissioning of the Old Line to the satisfaction of the County, in its sole and absolute discretion, the County shall return the Second LC to the Gas Company.

31. SECURITY TERMS

1. The Security to be provided under this Agreement shall be held by the County on the following terms:
 - (a) The Gas Company acknowledges and agrees that the County reserves the right to draw on and use the proceeds from the First LC to complete repairs required to be done by the Gas Company under the terms of this Agreement; and
 - (b) The Gas Company acknowledges and agrees that the County reserves the right to draw on and use the proceeds from the Second LC to complete the removal and decommissioning of the Old Line, should the Gas Company fail to do so to the satisfaction of the County;
 - (c) The Gas Company acknowledges and agrees that the County reserves the right to draw on and use the proceeds from the Third LC to complete the Additional Repairs as provided for in this Agreement, provided that the Parties have first agreed on the repairs to be performed by the Gas Company and the Gas Company has not completed such repairs within ten (10) business days of the date of written notice from the County is provided with respect to the requirement to complete the Additional Repairs, or such further time as the Parties may agree in writing. Upon the completion of the Additional Repairs to the satisfaction of the County Engineer, the County shall immediately return the Third LC to the Gas Company.

32. COSTS AND PERMIT FEES

Permits

1. The Gas Company acknowledges and agrees that **Schedule "D"** attached hereto is a list of fees and charges associated with permits, which are consistent with fees and charges normally required by the County, and which may be requested and issued by the County in respect of the Project and the associated Works contemplated by this Agreement, and further undertakes and agrees to pay such fees and charges in accordance with **Schedule "D"**.

Approval and Construction

2. The Gas Company shall be responsible for the following payment obligations:
 - (a) Upon the presentation of invoices, the Gas Company shall reimburse the County, within thirty (30) business days of receipt of an invoice from the County, with respect to all reasonable out of pocket costs incurred in connection with the negotiation, preparation, execution, and implementation of this Agreement, including legal costs to a maximum aggregate cap of **THIRTY THOUSAND DOLLARS (\$30,000.00)**;
 - (b) A non-refundable administration fee in the amount of **TWENTY THOUSAND DOLLARS (\$20,000.00)** shall be paid to the County by the Gas Company within thirty (30) days of the execution of this Agreement by the Parties; and
 - (c) Upon the presentation of invoices, the Gas Company shall reimburse the County in connection with any inspections by the County and/or its designated Inspector during the use of the Highways by the Gas Company for the Project, and for necessary monitoring, inspections, and field work during the Project.

33. FORCE MAJEURE

1. If either Party is prevented from carrying out its obligations under this Agreement by reason of any cause beyond its control, such Party shall be relieved from such obligations while such inability continues; provided, however, that this Section shall not relieve the Gas Company from its obligations to indemnify the County as contemplated herein, and provided further that nothing herein shall require either Party to settle any labour or similar dispute unless it is in the best interests of such Party to do so.

34. APPLICABLE LAWS

1. It is acknowledged and agreed by the Parties that this Agreement is subject to the provisions of all Applicable Laws of the Province of Ontario.

35. NOTICES

1. Any notice to be given under any of the provisions of this Agreement shall be provided to the County by delivering the notice to the Clerk of the County, or by sending the notice by facsimile transmission to 519-776-4455, or by registered mail, postage prepaid, addressed to the attention of the Clerk of the County at **360 Fairview Avenue West, Suite 202, Essex, Ontario N8M 1Y6**, and to the Gas Company by delivering the same to its head office, or by sending same to its business office by registered mail, postage prepaid, addressed to the Gas Company as follows:

Enbridge Gas Inc.
50 Keil Drive North
Chatham, Ontario N7M 5J5

Attention: Manager Major Projects

If any notice is sent by facsimile transmission, the notice shall be deemed to have been given on the next business day following its transmission. If any notice is sent by mail, the same shall be deemed to have been given on the fourth (4th) day following the posting of the notice, provided that in the event of a disruption in postal service, either at the point of mailing or the point of delivery, any notice sent by mail shall be deemed to have been given on the day when it is actually received by the addressee of such notice.

36. ASSIGNMENT

1. The Gas Company may not assign any part of this Agreement without the express written consent of the County. The Gas Company acknowledges that any proposed assignee shall be required to covenant, in favour of the County, to assume full responsibility of this Agreement.

37. INDEMNIFICATION

1. The Gas Company shall indemnify and save harmless the County, its Councillors, officers, directors, employees, legal counsel, agents, and contractors from and against all claims, suits, demands, liabilities, losses, costs, damages, or other

expenses of every kind that the County may incur or suffer as a consequence of or in connection with the Project, or in any other way with the rights granted hereunder, except to the extent that such claims, liabilities, losses, costs, damages, and other expenses are caused by the County's negligence or breach of this Agreement.

38. BREACH BY GAS COMPANY

1. If the Gas Company commits a breach of or otherwise fails to comply with any of the provisions of this Agreement, the County shall give the Gas Company notice in writing specifying the breach complained of. In the event the Gas Company fails to remedy such breach within sixty (60) days of receipt of such notice (or such longer period of time having regard to the nature of the breach as the County may in its sole discretion deem appropriate), the matter shall be addressed in accordance with Article 39 of this Agreement, being the Dispute Resolution provisions provided for hereunder.

39. DISPUTE RESOLUTION

1. Any controversy, dispute, difference, question or claim arising between the Parties hereto in connection with the interpretation, performance, construction, or implementation of this Agreement that cannot be resolved by the County Engineer and a representative of the Gas Company (the "**Dispute**") shall be settled in accordance with this Section. The aggrieved Party shall send the other Party written notice identifying the Dispute, the amount involved (if any) and the remedy sought, and invoking the procedures in this Section. The Parties shall confer in an effort to resolve the Dispute themselves. If the Parties are unable to resolve the Dispute within five (5) business days after receipt of the written notice of the Dispute, then the Dispute is to be referred to a Mediator selected by Agreement between the Parties. If the Parties cannot agree on the selection of a Mediator, the final decision as to the Mediator shall be at the sole discretion of the County, provided that the Mediator selected is a certified Mediator, a senior, respected lawyer with experience as a mediator, or a retired Judge.
2. If the Dispute cannot be resolved by way of Mediation, the Parties may then pursue any remedies available to them at law.
3. Except to the extent that a matter is specifically the subject of a Dispute, both Parties shall continue to observe and perform the terms and conditions of this Agreement pending the resolution of the Dispute.

40. NUMBER AND GENDER

1. This Agreement shall be construed with all changes in number and gender as may be required by the context.

41. COVENANTS

1. All obligations herein contained, although not expressed to be covenants, shall be deemed to be covenants.

42. INCLUSIONS

1. Whenever a statement or provision in this Agreement is followed by words denoting inclusion or example and then a list of or reference to specific items, such list or reference shall not be read so as to limit the generality of that statement or provision, even if words such as "without limiting the generality of the foregoing" do not precede such list or reference.

43. SEVERABILITY

1. The Parties agree that all covenants and conditions contained in this Agreement shall be severable, and that should any covenant in the Agreement be declared invalid or unenforceable by a court of competent jurisdiction, the remaining covenants and conditions of the remainder of the Agreement shall remain valid and of full force and effect.

44. NO JOINT VENTURE, PARTNERSHIP, OR CO-OWNERSHIP

1. The Parties hereby acknowledge and agree that this Agreement is solely a road user agreement, and that no relationship is formed between the Parties in the nature of a joint venture, partnership, co-ownership arrangement or other similar relationship.

45. GOVERNING LAW

1. This Agreement shall be interpreted under and is governed by the laws of the Province of Ontario.

46. BINDING AGREEMENT

1. This Agreement shall extend to, benefit, and bind the Parties hereto, and their respective successors and permitted assigns.

IN WITNESS WHEREOF the Parties hereto have duly executed this Agreement, written on this and the preceding twenty-five (25) pages, with effect from the day first written above.

**THE CORPORATION OF THE
COUNTY OF ESSEX**

ENBRIDGE GAS INC.

Per: Gary McNamara
Title: Warden

Per:
Title:

I have authority to bind Enbridge.

Per: Mary Birch
Title: Clerk

We have authority to bind the County.

SCHEDULE A

Map depicting boundaries of Project



SCHEDULE B

List of Highways upon which Distribution System located

- County Road 46 from Enbridge's proposed station (05B-302), approximately 1 km west of Concession 9 Road, in the Town of Tecumseh to Rochester Townline in the Town of Lakeshore; and
 - 6.3 km's outside the travelled portion of the roadway (located at a distance of greater than 6.0 meters from the edge of pavement) installed at a depth of cover of 1.0 meters; and
 - 22.5 km's within the travelled portion of the roadway (located at a distance of 6.0 meters or less from the edge of pavement) installed at a depth of cover of 1.5 meters.

- County Road 1 from Lakeshore Road 309 to Goodreau Line
 - 2.1 km's outside the travelled portion of the roadway (located at a distance of greater than 6.0 meters from the edge of pavement) installed at a depth of cover of 1.0 meters.

SCHEDULE C

Distribution Pipeline Plan comprised of List of Drawings & Drawing reference
with full and approved drawings on file with the County

(TO BE APPENDED ONCE APPROVED DRAWINGS ARE RECEIVED)

SCHEDULE D

Schedule of Permits, Fees, and Charges



SCHEDULE - D

PERMIT FEES AND OTHER CHARGES

1. **Permit Fees**

Permit Fees and charges shall be as per the most recent County of Essex Permit Fee By-Law #2020-13

- a) Access Permits (and as per By-Law #2481)
- b) Setback Permit (and as per By-Law #2480)
- c) Moving Permits – Oversized Loads
- d) Work Permits (includes detour plans, traffic management, etc.)

2. **Fees not identified in County of Essex Permit Fee By-Law that require Permits**

- a) Tree clearing in the right-of-way (ROW)

3. **Producer Payment Obligations Regarding Engineering & Administrative Fees as per Road User Agreement**

- 1) Legal Fees – up to \$30,000.00 upon invoice
- 2) Administration Fee - \$20,000.00 (non-refundable)
- 3) Upon the presentation of invoices, the Gas Company shall reimburse the County in connection with any inspections by the County and/or its designated Inspector during the use of the Highways by the Gas

Company for the Project, and for necessary monitoring, inspections, and field work during the Project.

- 4) Removal Costs – Obligations of the Producer commencing on the day of activation of the New Line for a period of 2 years, the Producer shall bear 100% of the costs of Removal of the old line.