

The Corporation of the City of Kawartha Lakes

Council Report

Report Number DEV2017-002

Date: April 18, 2017

Time: 2:00 p.m.

Place: Council Chambers

Ward Community Identifier: All

Subject: Kawartha Lakes Healthy Environment Plan Data License
Agreements

Author/Title: Denise Williams
Strategy and Performance Specialist

Signature: 

Recommendation(s):

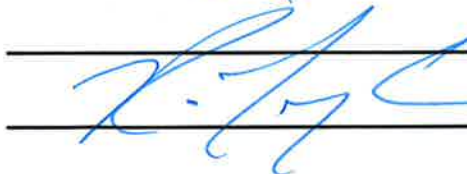
RESOLVED THAT Report DEV2017-002, Kawartha Lakes Healthy Environment Plan Data License Agreement, be received; and

THAT the Mayor and Clerk be authorized to execute the Data Usage A and License as outlined in Appendix A to report DEV2017-002.

Department Head:



Corporate Services Director / Other:



Chief Administrative Officer:



Background:

At the Council Meeting of June 28, 2016, Council adopted the following resolution:

RESOLVED THAT Report CAO 2016-004, **Corporate Energy Management**, be received;

THAT staff be directed to communicate to the Federation of Canadian Municipalities (FCM) that the City of Kawartha Lakes will participate in the Partners for Climate Protection (PCP) program and commit to achieving the milestones set out in the PCP five-milestone framework as outlined in the background section of this report; and

THAT the City of Kawartha Lakes appoints the following:

1. Corporate staff person (Name) Denise Williams, OSM
2. Elected Official (Name) Gord Miller, Councillor

to oversee implementation of the PCP milestones and be the points of contact for the PCP program within the municipality.

This report addresses that direction.

Rationale:

By joining Partners for Climate Protection, the City of Kawartha Lakes is undertaking the completion of five milestones:

1. Create an inventory of community greenhouse gas emissions and forecast
2. Set an emissions reduction target
3. Develop a local action plan
4. Implement the local action plan
5. Monitor progress and report results

In order to complete milestone one, the municipality will require access to data from utility companies such as Enbridge Gas who require a data licensing agreement with the municipality. The terms and conditions of a data licensing agreement explicitly state the manner in which we are allowed to use the data. The agreement provides assurance to the utility that the municipality will not sell, license, market, distribute, export, translate, merge, modify, loan, rent, share or sub-lease in any way or commercially exploit the data or create derivative works from the data.

The data will be extracted from Enbridge Gas Distribution by our recently on-boarded consultants, Land Use Research Associates with staff oversight.

In order to set targets and make improvements, we must first know our baseline greenhouse gas emissions. The data licenses provide access to some of the information to inform the baseline emissions.

Other Alternatives Considered:

N/A

Financial Considerations:

There are no costs to sign and execute the data licensing agreement.

Relationship of Recommendation(s) To The 2016-2019 Strategic Plan:

The Council Adopted Strategic Plan identifies these Strategic Goals:

- A Vibrant and Growing Economy
- An Exceptional Quality of Life
- A Healthy Environment

This report aligns with the Strategic Goal of a Healthy Environment.

By using data to set targets and inform action plans, we incorporate the values stated in Council's Strategic Plan – innovation, results, collaboration.

Review of Accessibility Implications of Any Development or Policy:

N/A

Servicing Comments:

N/A

Consultations:

Judy Currins, Clerk
Robyn Carlson, City Solicitor
Mike Dean, ICLEI
Jeff Garkowski, LURA

Attachments:

Appendix A: Data Usage Agreement and Licensing – EGD



Data Usage
Agreement Enbridge C

Phone: (705) 928-5931

E-Mail: dwilliams@city.kawarthalakes.on.ca

Department Head: Chris Marshall, Director of Development Services

Department File: CAO – E09 Energy

DATA USAGE AGREEMENT AND LICENCE

FILE NO.

E09

Enbridge Gas Distribution Inc. ("EGD") is the owner of certain aggregated, non-personally identifying, data concerning its customers' natural gas usage ("Data"). EGD is prepared to provide City of Kawartha Lakes ("Municipality") with the Data on the following terms and conditions:

1. **Acceptance:** By signing this Agreement, Municipality agrees to be bound by the terms and conditions set out below.
2. **EGD's Proprietary Rights.** Municipality acknowledges and agrees that as between it and EGD, EGD is the owner of all rights, title and interests including intellectual property rights in the Data and any modifications, additions or amendments thereto, regardless of who undertakes same. EGD reserves all rights not expressly licensed in this Agreement.
3. **License to and Limitations on Use of Licensed Data.** Subject to Municipality's compliance with the terms of this agreement, EGD grants Municipality a revocable, royalty-free, non-transferable, non-exclusive license to use the Data for the sole and exclusive purpose of preparing or complying with the Municipality's Community Energy Plan, or similar form of energy plan ("Purpose"). Except as expressly set out in this Agreement, the Municipality may not:
 - (a) sell, license, transfer or otherwise commercially exploit the Data;
 - (b) create derivative works from the Data;
 - (c) copy the Data (except to make a backup copy);
 - (d) market, distribute, export, translate, transmit, merge, modify, transfer, adapt, loan, rent, lease, share or sub-license the Data, in any way, in whole or in part.

Any report prepared by or on behalf of the Municipality in respect of the Purpose may reproduce the Data only in a form which retains its aggregated status, and to the least amount necessary for the purposes of illustrating such report.

4. **Sublicence and use of Data by Third Parties.** Municipality may sublicense and permit third parties to use the Data only on behalf of the Municipality and only for the Purpose. Municipalities must provide to such third parties a copy of this Agreement and obtain from such Third Parties a binding acknowledgement of the terms of this Agreement and such third parties' agreement to be bound by its terms.
5. **No Warranties.** The Data is provided with all faults on an "as is" and "as available" basis. EGD disclaims all warranties whether express or implied, including the warranties that the Data is free from defects; that it will meet Municipality's requirements; or that errors will be corrected. EGD further disclaims all implied warranties that the Data is of merchantable quality, accurate, fit for a particular purpose, or non-infringing. Municipality's use and any sublicenced or permitted of the Data is solely at its own risk.
6. **Limitation of Liability.** Under no circumstances shall EGD, its parent company, affiliates, officers, directors, employees or the officers, directors or employees of its parent company or affiliates or any of its agents (Collectively the "EGD Group") be liable for any indirect, special, incidental or consequential or exemplary damages that result from the use of, misuse of or reliance upon the Data. The liability of EGD to Municipality under any theory of law or equity, arising out of or in any way related to this Agreement shall be strictly limited in the aggregate to the lesser of the actual damages suffered by the Municipality and \$100.00.

7. **Indemnity.** Municipality agrees to defend, indemnify and save harmless the EGD Group from and against all losses, damages, costs, expenses, claims, demands, actions, proceedings and suits of every kind or nature whatsoever which may be brought against or suffered by the EGD Group as a result of Municipality's breach of this Agreement or as a result of Municipality's negligence or willful misconduct in connection with this Agreement.
8. **Term and Termination.** This Agreement and Municipality's rights to the Data may be terminated by EGD at any time without notice. Upon termination of Municipality's rights, Municipality agrees to immediately refrain from further use of the Data and to delete copies of same, using commercially reasonable means to do so.
9. **Assignment.** Municipality agrees that this Agreement may not be assigned.
10. **Governing law.** Municipality agrees that this Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and shall be treated, in all respects as an Ontario contract. Municipality agrees to submit to the exclusive jurisdiction of the courts of the Province of Ontario to resolve any disputes in respect of this Agreement.
11. **Severability and Entire Agreement.** This Agreement shall constitute the entire agreement between Municipality and EGD with respect to the Data and supersedes all prior written or oral agreements, representations and other communications between the Municipality and EGD. If any part of this Agreement is held to be unenforceable or invalid, it will be severed and the rest of this Agreement shall continue in full force and effect.

ACCEPTED AND AGREED, this _____ day of _____, 20XX.

Municipality/City name _____ (if there is second signatory at the Municipality)

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

I/we have the authority to bind the Municipality and the Municipality has all powers and authority necessary to enter into this Agreement.

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