

# **The Corporation of the City of Kawartha Lakes**

## **By-Law 2024-**

### **A By-law to Repeal and Replace By-Law 2023-120, being a By-Law to Authorize a Grant of Easement in Favour of Enbridge Gas Inc. Over a Parcel Legally Described as Peel St PI Town Plot N of Lt 1 And 2 S/S Peel St; Pt Lt 1 S/S Peel St, 2 S/S Peel St PI Town Plot As In TI21147; City of Kawartha Lakes**

#### **Recitals**

1. Authorize a grant of easement in favour of Enbridge Gas Inc. for the purpose of operation, repair and maintenance of natural gas infrastructure located on the City Lands described above.
2. Council to allow for the Mayor and Clerk to execute all documentation related to the Grant of Easement.

**Accordingly, the Council of The Corporation of the City of Kawartha Lakes enacts this By-law 2024-**

#### **Section 1.00: Definitions and Interpretation**

##### **1.01 Definitions:** In this by-law,

**“City”, “City of Kawartha Lakes” or “Kawartha Lakes”** means The Corporation of the City of Kawartha Lakes and includes its entire geographic area;

**"City Clerk"** means the person appointed by Council to carry out the duties of the clerk described in section 228 of the Municipal Act, 2001;

**“Council” or “City Council”** means the municipal council for the City;

##### **1.02 Interpretation Rules:**

(a) The Schedules attached to this by-law form part of the by-law, and are enforceable as such.

(b) The words “include” and “including” are not to be read as limiting the meaning of a word or term to the phrases or descriptions that follow.

##### **1.03 Statutes:** References to laws in this by-law are meant to refer to the statutes, as amended from time to time, that are applicable within the Province of Ontario.

##### **1.04 Severability:** If a court or tribunal of competent jurisdiction declares any portion of this by-law to be illegal or unenforceable, that portion of this by-law shall be considered to be severed from the balance of the by-law, which shall continue to operate in full force and effect.

## **Section 2.00: Easement**

- 2.01 **Easement:** Enbridge Gas Inc. has requested to have the City of Kawartha Lakes grant an easement in their favour for the purpose of operation, repair and maintenance of natural gas infrastructure located on City land as described as Peel St PI Town Plot N of Lt 1 And 2 S/S Peel St; Pt Lt 1 S/S Peel St, 2 S/S Peel St PI Town Plot As In TI21147; City of Kawartha Lakes, and designated as Part 1 on Plan 57R10919.

## **Section 3.00: Effective Date**

- 3.01 **Effective Date:** This By-law shall come into force on the date it is finally passed.

## **Section 4.00: Repeals**

- 4.01 **Repeal:** By-Law 2023-120 is repealed.

By-law read a first, second and third time, and finally passed, this 21<sup>st</sup> day of May, 2024

---

Doug Elmslie, Mayor

---

Cathie Ritchie, City Clerk

## Schedule A

### AGREEMENT TO GRANT AN EASEMENT

Between:

THE CORPORATION OF THE CITY OF KAWARTHA LAKES

(herein called the "Grantor")

offers to grant an easement to

ENBRIDGE GAS INC.

(herein called the "Grantee")

**BACKGROUND:** Pursuant to a prior license agreement with Her Majesty the Queen in Right of Canada Grantee originally installed and has operated and maintained its natural gas infrastructure in the lands defined herein as the Easement Lands. The Grantor and the Grantee seek to confirm the basis upon which the Grantee continues to operate and maintain the natural gas infrastructure through the grant of the Easement as defined herein.

**EASEMENT PROPERTY:** PIN: 63222-0149 Described as: Peel Street on the Plan Town Plot north of Lot 1 and 2 on the south side of Peel Street; Part of Lot 1 and 2 on the south side of Peel Street of Plan Town Plot as in TL21147, in the Geographic Town of Lindsay, City of Kawartha Lakes, specifically described as Part 1 on Plan 57R-10919(the "Easement Lands")

**PRICE:** The Grantee agrees to compensate the Grantor in the amount of Two Dollars (CDN\$2.00) (the "Price").

**ADDITIONAL COSTS:** The Grantee agrees to reimburse the Grantor for all reasonable and documented external legal costs incurred to complete the closing arrangements as provided for in Section 4 of this agreement (the "Agreement") upon receiving a receipt from the Grantor's solicitor (the "Additional Costs").

**TERM:** The Grantor acknowledges that the easement allows for the Grantee to be able to carry out among other things operation, repair and maintenance of natural gas infrastructure (the "Easement"). The Easement shall commence as of the date of the execution by the Grantor. More specific terms shall be set out in Schedule "A" attached to this Agreement. These terms shall be attached to the easement documents registered on title.

**BALANCE:** The Grantor agrees to pay the balance of and Price the Additional Costs, by bank draft or certified cheque, to the Grantor's solicitor in trust on closing, subject to the usual adjustments.

#### FURTHER CLAUSES AND CONDITIONS:

1. **COMPLETION DATE:** This Agreement shall be completed and registered on title by no later than 5:00 p.m. on or before the 30th day following the execution of both the Grantor and Grantee of this Agreement. If the 30th day is not a business day, it shall be the next business day and if said not that day then mutually agreed upon by both the Grantor and Grantee.
2. **HST:** If this transaction is subject to Harmonized Sales Tax (H.S.T.), then such tax shall be in addition to the Price. If this transaction is not subject to H.S.T., the Grantor agrees to certify on or before closing that the transaction is not subject to H.S.T.

3. **TITLE:** Title to the Easement Lands shall be good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered restrictions or covenants that run with the land providing that such are complied with; (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor registered easements for the supply of domestic utility or telephone services to the property or adjacent properties; and (d) any registered easements for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services which do not materially affect the present use of the property.
4. **CLOSING ARRANGEMENTS:** Where each of the Grantee and the Grantor retain a lawyer to complete the Agreement to enter into an Easement and where in the transaction will be completed by electronic registration pursuant to Part III of the *Land Registration Reform Act*, R.S.O. 1990, Chapter L4 and the *Electronic Registration Act* S.O. 1991, Chapter 44, and any amendments thereto, the Grantee and the Grantor acknowledge and agree that the exchange of closing funds, non-registrable documents and other items (the "Requisite Deliveries") and the release thereof to the Grantee and the Grantor will (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the lawyer(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers. The Grantee and Grantor irrevocably instruct the said lawyers to be bound by the document registration agreement, which is recommended from time to time by the Law Society of Upper Canada. Unless otherwise agreed to by the lawyers, such exchange of the Requisite Deliveries will occur in the applicable Land Titles Office or such other location by both lawyers.
5. **TIME LIMITS:** Time shall in all respects be of the essence hereof provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by Grantee and Grantor or by their respective lawyers who may be specifically authorized in that regard.
6. **TENDER:** Any tender documents or money hereunder may be made upon Grantee or Grantor or their respective lawyers on the day set for completion. Money may be tendered by bank draft or cheque certified by a Chartered Bank, Trust Company, Province of Ontario Savings Office, Credit Union or Caisse Populaire.
7. **AGREEMENT IN WRITING:** If there is conflict between any provision written or typed in this Agreement (including any Schedule attached hereto) and any provision in the printed portion hereof, the written or typed provision shall supersede the printed provision to the extent of such conflict. This Agreement including any Schedule attached hereto, shall constitute the entire Agreement between the Grantor and the Grantee. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. This Agreement shall be read with all changes of gender or number required by context.

8. **SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein.
9. **LEGAL ADVICE:** The Grantor and Grantee acknowledge that they have either received or waived the benefit of their own independent legal advice with respect to the execution of this Agreement.
10. **PUBLIC DOCUMENT:** The Grantee acknowledges that this Agreement is a public document, and consents to its disclosure pursuant to the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56.

DATED at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**THE CORPORATION OF THE CITY OF KAWARTHA LAKES**

Per: \_\_\_\_\_

Name: Doug Elmslie

Title: Mayor

Per: \_\_\_\_\_

Name: Cathie Ritchie

Title: Clerk

We have authority to bind the Corporation pursuant  
to By-Law \_\_\_\_\_

DATED at Toronto, this 21 day of February, 2024.

**ENBRIDGE GAS INC.**

Per:   
Samantha Mendell (PWSL, SDA 1033 887)

Name: Samantha Mendell

Title: Supervisor Land Contracts and Services

I/We have the authorization to bind the Corporation.



## SCHEDULE 'A'

### ADDITIONAL COVENANTS

**SERVIENT LANDS:** PIN: 63222-0149 Described as: Peel Street on the Plan Town Plot north of Lot 1 and 2 on the south side of Peel Street; Part of Lot 1 and 2 on the south side of Peel Street of Plan Town Plot as in TL21147, in the Geographic Town of Lindsay, City of Kawartha Lakes, specifically described as Part 1 on Plan 57R-10919

1. The Grantor hereby grants, transfers and conveys unto the Grantee in perpetuity, subject to Section 5, the free, uninterrupted and unobstructed right and easement to survey, lay, construct, install, operate, use, inspect, repair and maintain, replace, alter, enlarge, reconstruct, expand and remove gas pipelines on the Easement Lands together with any and all attachments, appurtenances, fixtures or works and other equipment thereto and including but not limited to meters and markers, as the Grantee may deem necessary or convenient thereto from time to time (all of the foregoing collectively referred to as the "Equipment") on, in, across, under and through the Easement Lands and including the right of the Grantee and its servants, agents, contractors and workmen with all necessary materials, equipment, machinery and vehicles to enter upon the Easement Lands at all times and to pass and re-pass thereon.
2. Grantee shall have the right at any time and from time to time to remove any boulder or rock and to sever, fell, remove or control the growth of any roots, trees, stumps, brush or other vegetation on or under the Easement Lands.
3. Grantor covenants with the Grantee (i) to keep the Easement Lands free and clear of any buildings, structures, fences or obstructions; (ii) not to deposit on or remove any fill from the Easement Lands or otherwise excavate, alter the grading, drill, install thereon any pit, well foundation and/or pavement which will obstruct or prevent the exercise and enjoyment by the Grantee of its rights hereunder; (iii) not to do or suffer to be done any other thing which may or might injure or damage any of the Equipment and without limiting the generality of the foregoing to comply with the Grantee's Third Party Requirements in the Vicinity of Natural Gas Facilities as the same may be amended or updated from time to time.
4. Grantor further covenants with the Grantee that:
  - a) it has the right to convey the rights hereby transferred to the Grantee;
  - b) Grantee shall have quiet enjoyment of the rights hereby transferred; and
  - c) Grantor has not done, omitted or permitted anything whereby the Easement Lands are or may be encumbered (except as the records of the Land Registry Office disclose).
5. The Grantor may terminate this easement and require the Grantor to relocate from the Easement Lands subject to satisfaction of the following conditions: (i) provision of reasonable notice to the Grantee of such termination; (ii) provision by the Grantor to the Grantee at no charge, of an alternate location for the Equipment acceptable to the Grantee (the "Alternate Location"); (iii) completion by the Grantee of the installation and energization of the Equipment in the Alternate Location, enabling the Grantee to continue to provide gas distribution services without interruption to all customers who are serviced, directly or indirectly, through Equipment located within the Easement Lands; and (iv) Equipment in the Easement Lands will be de-energized and abandoned in place by Grantee in accordance with Grantee's standard procedures with surface restoration being completed by the Grantee to a condition consistent with the original condition of the Easement Lands at time of grant of the easement pursuant to this Agreement. In the event of such termination and relocation, all costs, expenses and overheads

incurred by the Grantee in order to relocate the Equipment to the Alternate Location will be shared by the Grantee and Grantor using the formula set out in Section 12(c) and (d) of the franchise agreement entered into between the parties pursuant to Grantor's By-Law 2005-104 as detailed below: "12. 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 such relocation shall be shared between the Grantor and the Grantee on the basis of the total relocation costs, excluding the value of any contribution paid to the Grantee by others in respect to such relocation; for these purposes, the total relocation costs shall be the aggregate of the following:

i. the amount paid to the Grantee's employees up to and including field supervisors for the hours worked on the project plus the current cost of the 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 the Grantee's equipment while in use on the project,

iii. the amount paid by the Grantee to contractors for work related to the project,

iv. the cost of the Grantee for materials used in connection with the project, and

V. a reasonable amount for the 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.

12 d. The total relocation costs as calculated above shall be paid 35% by the Grantor and 65% by the Grantee, except where the part of the gas system required to be moved is located in an unassumed road allowance and the Grantor has not approved its location, in which case the Grantee shall pay 100% of the relocation costs." Grantor and Grantee each covenant to the other that it will execute such further assurances of the said rights and easement as may be required. ,

6. The Grantee shall at all times, indemnify and save harmless the Grantor 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 Grantee operating, constructing and maintaining its gas system for the carriage of gas owned by others. Provided that the Grantee shall not be required to indemnify or save harmless the Grantor 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 damage to any property, resulting from the negligence or wrongful act of the Grantor, its servants, agents or employees.

IT IS UNDERSTOOD and agreed that the burden of this easement and of all the covenants herein contained shall run with the Easement Lands and that this easement and all the covenants herein contained shall be binding upon and ensure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

SCHEDULE 1.

DOMINANT TENEMENTS - TRANSFEREE'S LANDS

PIN 64057-0029 (LT)

PT TWP LT 92, THLD, AS IN AA 90798 S/T & T/W AA90798; WELLAND

PIN 04161-0019 (LT)

PT LT 6 CON 6RF GLOUCESTER PART 1, 4R-10265 & PART 2, 5R-5963; GLOUCESTER

PIN 03187-0004 (LT)

PT W1/2 LT 30 CON 2 MARKHAM AS IN MA49406; RICHMOND HILL