

Municipal Operating Agreement

THIS AGREEMENT made this 14th day of August, 2000

BETWEEN:

THE CITY OF SAINT JOHN, a body corporate by Royal Charter

(the "Corporation")

- and -

ENBRIDGE GAS NEW BRUNSWICK INC., a corporation incorporated under the laws of Canada,

(the "Gas Company")

WHEREAS the Gas Company was granted a 20 year general franchise pursuant to the *Gas Distribution Act, 1999* commencing August 31, 1999 to distribute gas and provide customer services in the Province of New Brunswick;

AND WHEREAS the Gas Company desires, at its own cost, to install and operate its gas distribution system in the Municipality upon the terms and conditions provided in this Agreement;

AND WHEREAS the Corporation owns and maintains highways within the Municipality;

AND WHEREAS the parties consider the arrival of natural gas to be an attractive alternative to traditional sources of energy and wish to ensure the timely availability of natural gas to the residents of the Corporation;

AND WHEREAS subsection 7(5) of the *Municipalities Act* authorizes the Corporation to enter into an agreement with a distributor of natural gas respecting the use of the property of the Corporation and any other matter associated with the construction or operation of a natural gas distribution system;

AND WHEREAS by Resolution passed by the Common Council of the Corporation (the "Resolution"), the Mayor and the Common Clerk have been authorized to execute this Agreement on behalf of the Corporation;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of \$1.00 paid by each party to the other and other good and valuable consideration, the receipt

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and sufficiency of which are hereby acknowledged, the Corporation and the Gas Company agree as follows:

I. Definitions

1. In this Agreement:

- (a) "Claim" means a claim, demand, writ, process, notice, or written proceeding pertaining to damages to any property and/or injuries, including death, to any person or persons and includes any mandatory order, direction, or notice from a governmental authority requiring a party, its servants, agents, or employees, to monitor, remediate, repair, neutralize or otherwise address any environmental pollutant or contaminant;
- (b) "Engineer" means the Corporation's Chief City Engineer or his designate;
- (c) "gas" means any hydrocarbon or mixture of hydrocarbons that, at a temperature of 15 degrees Celsius and an absolute pressure of 101.325 kilopascals, is in a gaseous state;
- (d) "gas distribution system" means all property and works within the Municipality between the city gate station up to and including the meter including such mains, plants, pipes, meters, pipelines, conduits, services, valves, regulators, curb boxes, stations, drips or such other equipment as the Gas Company may reasonably require for the distribution of gas in or through the Municipality;
- (e) "highway" means all common and public highways (which includes any public street, road, lane, alley, way or catchbasin with roadwork) 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) "municipal infrastructure" means structures owned by the Corporation and contained within a highway including but not limited to water pipelines and all appurtenances thereto, sanitary and storm sewer pipelines and all appurtenances thereto, culverts, traffic control devices, signs, curbs, sidewalks, asphalt surface including sub-base, landscaping, trees, bridges, viaducts, street light standards, parking meters, civic monuments, and bus shelters;
- (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, and "Municipal" shall have a like meaning.


II. Non-exclusive Licence

1. To Use Road Allowances

- (a) Subject to the provisions of this Agreement, the Corporation hereby grants to the Gas Company a non-exclusive licence irrevocable for the Term and any renewal thereof to



enter upon all highways now or at any time hereafter under the jurisdiction of the Corporation and to install, construct, maintain, replace, remove, operate and repair a gas distribution system for the distribution of gas in and through the Municipality.

- (b) Notwithstanding the definition of highway, this Agreement does not grant a right to attach gas lines or other parts of a gas distribution system to any bridges or viaducts owned by the Corporation; the attachment of gas lines or other parts of the gas distribution system to such structures must be applied for explicitly by the Gas Company on a case by case basis and are subject to the prior written approval of the Engineer.
 - (c) The exercise of the non-exclusive licence granted in accordance with the terms and conditions of this Agreement must be carried out by the Gas Company in compliance with all applicable federal and provincial statutes, laws and regulations and municipal by-laws of general application save and except those sections of by-laws which impose permit or other fees and those sections of by-laws which are inconsistent with this Agreement, which sections of by-laws shall not be binding upon the Gas Company.
 - (d) The non-exclusive licence granted by this Agreement does not extend to the construction, operation or maintenance of any fibre optics cable or any other electronic communication system, except such communications as may form an integral part and be required for the proper operation of the gas distribution system.
2. Alternative Easement The Corporation will, in the event of the stopping up and closing of any highway or any part of a highway where a gas line has been constructed in accordance with this Agreement, give the Gas Company reasonable notice of such stopping up and closing and will provide the Gas Company with easements over that part of the highway stopped up and closed sufficient to allow the Gas Company to preserve any part of the gas distribution system in its then existing location, provided however where a stopping up and closing of any highway is carried out to facilitate development of adjacent lands, any gas line located within that part of the highway stopped up and closed may at the election of the Corporation and without cost to the Gas Company be relocated.
3. Duration of Agreement and Renewal Procedures
- (a) The non-exclusive licence hereby granted to the Gas Company shall be for a term of 20 years (the "Term") from August 31, 1999.
 - (b) At any time within two years prior to the expiration of this Agreement, either party may give notice to the other that it desires to enter into negotiations for a renewal upon such terms and conditions as may be agreed upon. In the event the parties do not agree on the terms and conditions of a renewal agreement prior to the end of the Term, either party may apply to the New Brunswick Board of Commissioners of Public Utilities (the "Board") to establish an appropriate renewal term and to resolve any other contractual issues that may not have been agreed to.
4. Ownership of Gas Distribution System The Corporation and the Gas Company acknowledge and agree that title to and ownership of the gas distribution system shall at
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all times during the Term, any renewal thereof and at all times following the expiration or termination thereof, be vested in the Gas Company notwithstanding any rule of law as to the immediate vesting of title to and ownership of the gas distribution system in the owner of the freehold.

III. Approvals and Other Conditions

1. Construction at Gas Company's Cost Subject to the terms and conditions contained herein, the Gas Company shall pay the costs of installing and operating its gas distribution system within the Municipality.
2. Approval of Construction/Permits
 - (a) On or before the 15th day of September of any calendar year, the Gas Company shall meet with the Engineer for the purposes of exchanging known or proposed projects of the Corporation and proposed servicing plans of the Gas Company during the next 12 months.
 - (b) At least 20 business days before beginning construction of, or any planned extension or change to, the gas distribution system saving and excepting service laterals, the Gas Company shall file with the Engineer a plan, stamped by a Professional Engineer registered in the Province of New Brunswick, satisfactory to the Engineer, drawn to scale and of sufficient detail considering the complexity of the specific location, showing the highways in which it proposes to lay its gas distribution system and the particular parts thereof it proposes to occupy. The plan shall show the location, depth and dimensions of the proposed pipelines and, to the extent information is provided by the Corporation in hard copy and/or electronic format, existing curbs, sidewalks, property lines, sewer pipes, water mains, service connections and other underground utilities within 3.0 metres of the proposed pipelines and, to the extent information is provided by the Corporation in electronic format, pavement surface, drainage ditches, trees, street lights, fire hydrants, curb stops, valve boxes and other relevant features with respect to the construction to be undertaken.
 - (c) Geodetic (vertical) information will not be required from the Gas Company except in complex urban intersections or in other locations specified by the Engineer in order to facilitate known or proposed projects which are reasonably anticipated by the Engineer to be installed or constructed in the future. Unless otherwise approved by the Engineer, the Gas Company and the Corporation agree that the gas distribution system, excluding service laterals, will be installed at a minimum depth of 900 mm from the existing or planned finished grade and the Gas Company will relocate, as required by the Corporation, gas lines originally installed less than 600 mm from the existing or planned finished grade in depth and shall be responsible for all costs associated with the relocation.
 - (d) The Engineer may require sections of the gas distribution system to be laid at a greater depth than required by CSA - Z662 to facilitate known or proposed projects or existing municipal infrastructure.

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- (e) The location of the work as shown on the plan submitted in accordance with subsection (b) above must be approved by the Engineer before the commencement of the work and the timing, special terms and conditions relating to the installation of such works shall be to his satisfaction. The Engineer shall be the final approval authority for the location of all portions of the gas distribution system located within the highways.
- (f) No excavation, opening, or work in, on or under a highway by the Gas Company will be commenced until an approval and/or permit therefor has first been obtained from the Engineer as provided in subsection (e). An application for an approval and/or permit shall be processed within 10 business days of receipt unless there are unusual circumstances. The approval of the Engineer shall not be unreasonably withheld. With respect to short main extensions, the Corporation shall make every effort to expedite the process unless there are unusual circumstances.
- (g) Notwithstanding subsection (f) above, where the Gas Company is undertaking construction of a service lateral running from a highway to a customer's property, the Gas Company shall, before undertaking construction, obtain an approval and/or permit. An application for an approval and/or permit under this paragraph shall be processed within three business days of receipt unless there are unusual circumstances. The approval of the Engineer shall not be unreasonably withheld.
- (h) In the event of any emergency, the Gas Company shall not be required to obtain an approval and/or permit prior to excavation but shall, on the next business day, submit a request for an approval and/or permit for the work undertaken.

IV. Construction

1. Reinstatement

- (a) The Gas Company shall, to the satisfaction of the Engineer, restore or cause to be restored, at its cost, all highways or municipal infrastructure which it may excavate or interfere with in the course of installing, constructing, repairing or removing its gas distribution system located within highways, and shall, to the satisfaction of the Engineer, make good any settling or subsidence thereafter caused by such excavation or interference. Unless otherwise agreed by the parties, where the excavation takes place on a highway that has been paved or surfaced after August 1, 1998 and within the previous five years and where the excavation requires a longitudinal cut of the asphalt surface in excess of 10 metres, the Gas Company will restore and resurface the affected area of highway or road allowance for the length of the excavation, from curb to curb.
- (b) Unless otherwise agreed by the parties, the Gas Company shall provide annually an Irrevocable Standby Letter of Credit issued by a Chartered Bank in the amount of \$25,000.00 to the Corporation to guarantee the cost of restoration of highways to the satisfaction of the Engineer. Should the Gas Company fail within a reasonable time to do any work required by Article IV 1.(a), the Corporation may do or cause such work to be done and the Gas Company shall, on demand, pay any reasonable account therefor as certified by the Engineer. Should the Gas Company fail to pay forthwith on demand, the Corporation will draw on the letter of credit to pay the sum demanded.

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- (c) The Gas Company hereby warrants and agrees that all restorations or reinstatement of highways will endure until the road foundation is reconstructed.

2.. Damage to Municipal Property

- (a) If any portion of any highway or municipal infrastructure is damaged by reason of defects in any portion of the gas distribution system, or by reason of any other cause arising directly from the installation, construction, maintenance, replacement, removal, operation or repair of the gas distribution system, the Gas Company shall, at its own expense, immediately repair any such damage and restore such portion of such damaged highway or municipal infrastructure to as good or better condition as existed before such defect or other cause of damage occurred, such work to be done under the direction of the Engineer, and to his satisfaction.
- (b) Trees within Municipal highways are to be protected at all times. The gas distribution system is to be designed on the premise that, unless approved by the Engineer, municipal trees are not to be adversely affected by the installation or operation of the gas distribution system.
- (c) If any tree within Municipal highways is damaged or destroyed by reason of defects in any portion of the gas distribution system maintained or constructed under this Agreement, or by reason of any other cause arising directly from the installation or operation of any gas distribution system constructed or maintained under this Agreement, the Gas Company shall, at its own cost and expense, repair any such damage or replace such trees under the direction and to the satisfaction of the Engineer.

3. Traffic Control The Gas Company shall be responsible for appropriate traffic control measures while working within the highways. Where such work requires the temporary re-routing of traffic within the highway, the Gas Company shall request approval from the Engineer at least two business days in advance of the re-routing; the Gas Company shall also notify the general public of such traffic diversions, through the local media, at least 24 hours prior to the re-routing.

4. As Built Drawings

- (a) The Gas Company shall not deviate from the approved location for any part of the gas distribution system unless the prior approval of the Engineer to do so has been received.
- (b) The Gas Company must, at its own expense, supply to the Corporation "as-built" drawings in hard copy form and in an electronic format compatible with the Corporation's corporate GIS system within 20 business days after commissioning that portion of the gas distribution system. The "as-built" drawings must horizontally locate the gas distribution system relative to the New Brunswick Grid Co-Ordinate System (NAD 83 or any system substituted in lieu thereof) and show depth of cover. The Gas Company must also supply an X - Y co-ordinate list of each point surveyed (and a Z co-ordinate where required by Article III 2.(c)) and shown on the as-built drawings.

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- (c) Paragraphs (a) and (b) do not apply to service laterals. In the case of service laterals, the Gas Company shall provide, if requested by the Corporation, the information maintained by the Gas Company on its Street Service Operations Records System.

5. Emergencies In the event of an emergency involving the gas distribution system, the Gas Company will proceed with the work to address the emergency and in any instance where prior approval of the Engineer is normally required, shall use its best efforts to immediately notify the Engineer of the location and nature of the emergency and the work being done.

6. Indemnification

(a) The Gas Company shall, at all times, indemnify and save harmless the Corporation, its agents, officers, elected officials and employees from and against all losses, damages, claims, costs or expenses incurred in connection with Claims arising out of the Gas Company installing, constructing, maintaining, replacing, removing, operating and repairing its gas distribution system in the Municipality, or utilizing its gas distribution 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 losses, damages, claims, costs or expenses incurred in connection with Claims resulting from the negligence or wrongful act of the Corporation, its servants, agents, officers, elected officials or employees, or for losses, damages, claims, costs or expenses incurred in connection with Claims related to environmental pollutants or contaminants not caused by the Gas Company.

(b) The obligation of the Gas Company provided in subsection (a) above shall survive the termination of this Agreement.

7. Insurance The Gas Company shall deliver to the Corporation a Certificate of Insurance naming the Corporation as an additional insured evidencing a policy of commercial general liability coverage on "an occurrence basis" and containing a cross-liability clause which policy has an inclusive limit of not less than \$10,000,000.00. The aforesaid certificate must provide that the coverage will stay in force and not be amended, cancelled or allowed to lapse without 20 business days prior written notice being given to the Corporation. The aforesaid insurance coverage must remain in full force and effect during the term of this Agreement and any renewal(s) thereof.

8. Public Notification The Gas Company will give reasonable notice to the public of all major construction taking place within a highway and respond to all inquiries relative to the installation of the gas distribution system.

V. Operational

1. Pipeline Relocation If in the course of constructing, reconstructing, changing, altering or improving any highway or any municipal infrastructure located in the highway, the Corporation, acting reasonably, deems that it is necessary to take up, remove or change the location of any part of the gas distribution system, the Gas Company shall upon

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notice from the Corporation remove and/or relocate within a reasonable period of time such part of the gas distribution system to a location approved by the Engineer.

2. Payment Where any part of the gas distribution system relocated in accordance with this section 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 distribution system, and deducting any contribution paid to the Gas Company by others in respect to such relocation as follows:

- (a) where the relocation is a result of highway work or conflicts in elevation with any sewer crossing(s) and occurs within two years of the installation of the portion of the gas distribution system to be relocated, the costs shall be paid 100% by the Corporation;
- (b) where the relocation is a result of highway work or conflicts in elevation with any sewer crossing(s) and occurs after the end of the second year following the installation of the portion of the gas distribution system to be relocated, but within five years, the costs shall be shared 65% by the Gas Company and 35% by the Corporation;
- (c) where the relocation is a result of highway work or conflicts in elevation with any sewer crossing(s) and occurs after the end of the fifth year following the installation of the portion of the gas distribution system to be relocated, the costs shall be paid 100% by the Gas Company; and
- (d) where the relocation is a result of any municipal infrastructure other than highway work or conflicts in elevation with any sewer crossing(s), the costs shall be paid 100% by the Corporation.

Where any part of the gas distribution system relocated in accordance with this section is located on a bridge, viaduct or structure, the Gas Company shall alter or relocate, at its sole expense, such part of the gas distribution system.

3. Disposition of Gas Distribution System

- (a) During the term of this Agreement, if the Gas Company abandons a part of its gas distribution system affixed to a bridge, viaduct or structure owned by the Corporation, the Gas Company shall, at its sole expense, remove that part of its gas distribution system affixed to the bridge, viaduct or structure.
- (b) If at any time the Gas Company abandons any part of its gas distribution system located within highways, it shall deactivate that part of its gas distribution system in the Municipality. Thereafter, the Gas Company shall have the right, but nothing herein contained shall require it, to remove that part of its gas distribution system. If the Gas Company fails to remove its gas distribution system and the Corporation requires the removal of all or any of the gas distribution 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 deactivated gas distribution system as the Corporation may require for such purposes and neither

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party shall have recourse against the other for any loss, costs, expenses or damage occasioned thereby.

VI. Fees and Contributions

1. Permit – Processing Costs

- (a) On or before the 31st day of December for the years 2000, 2001 and 2002, the Gas Company shall pay to the Corporation the sum of \$115,000.00 (plus HST) for professional services relating to plan review, processing of submission of drawings for installation and construction and field locates. In consideration of this payment, the Corporation will identify appropriate staff to the Gas Company to serve as the Corporation's primary contact for the Gas Company.
- (b) After December 31, 2002, the Gas Company will pay, at the time of submission of drawings for installation and construction of pipeline as set out in Article III 2.(b), a fee for the processing of the submission by the Corporation in the amount of \$6.50 (plus HST) per \$1,000 of construction value. Such fee is intended to reimburse the costs incurred by the Corporation for the reviewing of the submission, processing the necessary approvals and/or permits, record keeping and inspections.
- (c) Where the Gas Company is proposing to construct a service lateral which will not materially interfere with any municipal infrastructure or impede traffic on the relevant highway, no fee for processing the notification will be required.
- (d) Payment of the fees under this Article VI are in lieu of any municipal fees and, except to the extent provided in Articles IV 1.(b) and IV 6.(a) of this Agreement, the Gas Company shall not be required to make any other payments to the Corporation that in any way relate to the gas distribution system.

2. Training

- (a) The Gas Company will, in cooperation with and to the satisfaction of the Corporation, provide without charge to the Corporation within six weeks of the commencement of installation and construction of the gas distribution system within the Municipality, training (including refresher courses as necessary) for the municipal operations or public works staff as to the appropriate measures for excavating and working in the vicinity of gas pipelines.
- (b) The Gas Company will, in co-operation with and to the satisfaction of the Corporation, provide without charge to the Corporation within six weeks of the commencement of installation and construction of the gas distribution system within the Municipality, training (including refresher courses as necessary) for firefighting staff as to how to respond to emergencies arising in connection with the construction or operation of the gas distribution system.
- (c) The Gas Company will, in co-operation with and to the satisfaction of the Corporation, provide without charge to the Corporation within six weeks of the commencement of

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installation and construction of the gas distribution system within the Municipality, training (including refresher courses as necessary) for EMO officials as to how to respond to emergencies arising in connection with the construction or operation of the gas distribution system.

3. Locations The Gas Company will provide without charge, line location services to the Corporation, together with a 24 hour 7 day emergency locate service.

VII. Miscellaneous

1. Condition of Municipal Infrastructure

- (a) The Corporation makes no representations or warranties as to the state of repair of its highways or municipal infrastructure or the suitability of same for any business, activity or purpose whatsoever and the Gas Company hereby takes the said highways or municipal infrastructure on an "as is, where is" basis. Provided, however, that this paragraph shall not in any way limit the Corporation's responsibility or liability for its own negligence or wrongful acts.
 - (b) Notwithstanding Article VII 1.(a), in the event that the Gas Company encounters any existing environmental pollutant or contaminant while installing its pipelines, the Gas Company shall, at its cost and in an environmentally responsible manner in compliance with all applicable legislation, dispose of the material it removes in the course of installing its pipelines; provided, however, that the Corporation shall indemnify the Gas Company, its agents, officers, directors and employees from and against all losses, damages, claims, costs or expenses incurred in connection with or as a result of any order, direction or notice from a governmental authority requiring the Gas Company, its agents, officers, directors or employees to monitor, remediate, repair, neutralize or otherwise address the remaining environmental pollutant or contaminant, and the Corporation shall make no Claim against the Gas Company in relation to that environmental pollutant or contaminant. The foregoing shall survive the termination of this Agreement.
2. Dispute Resolution In the event of any dispute arising out of or relating to this Agreement, the parties agree that the matter at issue shall be referred to the City Manager on behalf of the Corporation and the Manager, Operations on behalf of the Gas Company for resolution. In the event that the said City Manager and Manager, Operations cannot resolve the matter at issue, either the Corporation or the Gas Company may refer the matter at issue to the Board whose decision shall be final and conclusive. Any responsibility for costs shall be determined by the Board.
 3. Acting Reasonably The Engineer, in carrying out his functions and obligations (which shall include granting approvals) pursuant to this Agreement shall act in a reasonable manner.
 4. Most Favoured Nation The Gas Company will provide to the Corporation copies of any other licence or operating agreements entered into between the Gas Company and other municipalities situated in the Province of New Brunswick. To the extent that provisions

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in such agreements are more favourable (other than the amounts set out in Article VI for professional services relating to plan review, processing of submission of drawings for installation and construction and field locates and permit processing fees) to the municipalities than the provisions in favour of the Corporation in this Agreement, the Corporation may request that the benefit of such provisions be extended to the Corporation and the Gas Company and the Corporation shall amend this Agreement accordingly. The election to adopt provisions from such other agreements shall be in the entire discretion of the Corporation but shall be made in a timely manner once the Corporation becomes aware of the provisions in such other agreements.

5. Amendments Except as herein otherwise provided, no amendment, waiver, discharge or termination of any provision of this Agreement and no waiver of any breach by any party of any provision of this Agreement shall be effective unless it is in writing, and then the amendment, waiver, discharge or termination shall be effective only in the specific instance, for the specific purpose and for the specific length of time for which it is given.
6. Notice Any notice, demand, approval, consent, information, request or other communication (hereinafter referred to as a "Notice") to be given under or in connection with this Agreement shall be in writing and shall be given by personal delivery, or by fax or other electronic communication which results in a written or printed notice being given, addressed or sent as set out below or to such other address or electronic number as may from time to time be the subject of a Notice:
 - (a) the Corporation:
The City of Saint John
P.O. Box 1971
Saint John, N.B. E2L 4L1

Attention: The Common Clerk
Tel: (506) 658-2862
Fax: (506) 658-2802
 - (b) the Gas Company:
Enbridge Gas New Brunswick Inc.
440 Wilsey Road, Suite 203
Fredericton, N.B. E3B 7G5
Attention: President
Tel: (506) 444-7773
Fax: (506) 452-2868

Any Notice, if personally delivered, shall be deemed to have been validly and effectively given and received on the date of such delivery and if sent by fax or other electronic communication with confirmation of transmission, shall be deemed to have been validly and effectively given and received on the Business Day following the day it was sent.

7. Entire Agreement This Agreement is the entire agreement between the Corporation and the Gas Company regarding the subject of this Agreement and it can be amended or

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supplemented only by a document executed in writing by both the Corporation and the Gas Company.

8. Relationship

- (a) Nothing herein or any acts of, nor arrangements between, the Corporation and the Gas Company shall be construed to mean or imply that the Corporation and the Gas Company are carrying on business as a joint venture, in partnership, as principal and agent, master and servant, or any other relationship.
- (b) The Corporation acknowledges that it will not assert that a joint venture, partnership or principal and agent relationship exists between the Province of New Brunswick and the Gas Company.

9. Further Assurances Each party to this Agreement shall from time to time promptly upon the reasonable request of the other party take such action, and execute and deliver such further documents, as shall be reasonably required in order to fully perform the terms of, and carry out the intention of, this Agreement. Such action, execution or delivery shall be done at the expense of the party so requesting.

10. Assignment Neither the Corporation nor the Gas Company shall assign or transfer this Agreement or the privileges given by it without the written consent of the other party first had and obtained, and the consent shall not be unreasonably withheld, provided, however, that the Corporation acknowledges that the Gas Company is in the process of assigning its general franchise to Enbridge Gas New Brunswick Limited Partnership and agrees that no consent shall be required for the Gas Company to assign this Agreement and the privileges given by it to Enbridge Gas New Brunswick Limited Partnership. Together with any request for consent, an assignor shall provide the other party with the assignee's written confirmation that the assignee is familiar with the terms of this Agreement and agrees to be bound by the terms of this Agreement.

11. Enurement This Agreement shall enure to the benefit of and be binding upon the Corporation and the Gas Company and their respective successors and the permitted assigns.

12. Counterparts This Agreement may be executed and delivered in counterparts, each of which, when so executed and delivered, shall be deemed to be an original and such counterparts together shall constitute one and the same agreement.

13. Number and Gender Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

14. Governing Law This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the Province of New Brunswick and of Canada applicable therein and the Gas Company and the Corporation irrevocably submit to the jurisdiction of the Courts of New Brunswick.

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15. Severability Any provision of this Agreement which is illegal, invalid or unenforceable shall not affect the legality, validity or enforceability of the remaining provisions.

16. Time of the Essence Time shall be of the essence in this Agreement.

IN WITNESS WHEREOF the parties hereto have duly executed these presents with effect from the date first above written.

THE CITY OF SAINT JOHN

by *Shirley W. Clary*
Mayor

Mary R. Thumford
Common Clerk

ENBRIDGE GAS NEW BRUNSWICK INC.

by *[Signature]*

[Signature]

PROVINCE OF NEW BRUNSWICK

COUNTY OF SAINT JOHN

I, MARY L. MUNFORD, of the City of Saint John, in the County of Saint John and Province of New Brunswick, MAKE OATH AND SAY:-

1. THAT I am the Common Clerk of the City of Saint John and have custody of the Common Seal hereof.
2. THAT the Seal to the foregoing instrument affixed is the Common Seal of the said The City of Saint John and that it was so affixed by Order of the Common Council of the said City.
3. THAT the signature "Shirley McAlary" to the said instrument is the signature of Shirley McAlary, Mayor of the said City, and the signature "Mary L. Munford" thereto is my own signature.
4. THAT we are the proper officers to sign the foregoing instrument on behalf of The City of Saint John.

SWORN BEFORE ME at the City)
of Saint John, in the County of)
Saint John and Province of New)
Brunswick this 16th day of)
August, 2000.)
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[Signature]
Commissioner of Oaths)
Being a Solicitor)
)
)

Mary L. Munford
Mary L. Munford

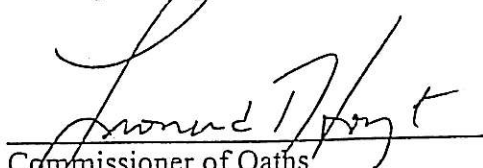
PROVINCE OF NEW BRUNSWICK

COUNTY OF YORK


I, ROCK MAROIS, of the City of Fredericton, in the County of York and Province of New Brunswick, MAKE OATH AND SAY:

1. I am the Manager, Corporate Services of Enbridge Gas New Brunswick Inc. (hereinafter called the "Company"), and as such have personal knowledge of all matters sworn to herein.
2. The seal affixed to the foregoing instrument is the seal of the Company and was affixed thereto by order of the board of directors of the Company.
3. The signature "A. J. Pleckaitis" subscribed to the foregoing instrument is the signature of Arunas J. Pleckaitis who is the President of the Company and the signature "R. Marois" subscribed thereto is my signature.
4. The President and the Manager, Corporate Services are the officers of the Company duly authorized to execute the foregoing instrument.

SWORN TO BEFORE ME at the City)
of Fredericton, in the County of York)
and Province of New Brunswick, this)
14th day of August, 2000.)
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Commissioner of Oaths
Being a Solicitor



ROCK MAROIS

