

THIS AGREEMENT made the 27th, day of May 1974

BETWEEN

THE CONSUMERS' GAS COMPANY

hereinafter called the "Company"

OF THE FIRST PART

— and —

THE CORPORATION OF THE TOWN

OF PELHAM

hereinafter called the "Municipality"

OF THE SECOND PART.

WHEREAS the Company desires to distribute and sell gas (which term shall mean and include natural gas, manufactured gas or any liquified petroleum gas, and includes any mixture of natural gas, manufactured gas or liquified petroleum gas, but does not include a liquified petroleum gas that is distributed by means other than a pipe line) in the Municipality upon the terms and conditions hereinafter set forth.

AND WHEREAS by By-law passed by the Council of the Municipality with the requisite assent thereto of the Ontario Energy Board, the Mayor and Clerk of the Municipality have been authorized and directed to execute, seal and deliver this Agreement on behalf of the

NOW THEREFORE THIS AGREEMENT WITNESSETH that for valuable consideration the parties hereto mutually covenant and agree as follows:

1. The consent, permission and authority of the said Municipality are hereby given and granted to the Company, to supply gas to the Municipality and to the inhabitants thereof and to enter upon all highways now or at any time hereafter within the jurisdiction of the Municipality and to lay, maintain, operate and repair such mains and pipes as the Company may require thereon for the transmission and supply of gas in and through the Municipality for fuel purposes together with the right to construct, maintain and repair all necessary regulators, valves, curb boxes, safety appliances and other appurtenances that may be necessary in connection with the transmission and supply of gas in the Municipality.
2. The Company shall well and sufficiently restore forthwith to as good condition as they were in before the commencement of the Company's operations to the satisfaction of the Municipal Engineer (which term means from time to time such employee of the Municipality as the Municipality shall have designated as such for the purposes of this Agreement, or failing such designation, the senior employee of the Municipality for the time being charged with the administration of public works and highways in the Municipality) all highways, squares and public places which it may excavate or interfere with in the course of laying, constructing, or repairing or removing of its mains, pipes, regulators, valves, curb boxes, safety appliances and other appurtenances and shall make good any settling or subsidence thereafter caused by such excavation, and further, in the event of the Company failing at any time to do any work required by this Section the Municipality may forthwith have such work done and charged to and collect from the Company the cost thereof and the Company shall on demand pay any reasonable account therefor certified by the Municipal Engineer.
3. The Company shall at all times wholly indemnify the Municipality from and against all loss, damage and injury and expense to which the Municipality may be put by reason of any damage or injury to persons or

property resulting from the imprudence, neglect or want of skill of the employees or agents of the Company in connection with the construction, repair, maintenance or operation by the Company of any of its works in the Municipality.

4. Except in the event of emergency no excavation, opening or work which shall disturb or interfere with the surface of any highway shall be made or done unless a permit therefor has first been obtained from the said Municipal Engineer and all such works shall be done under his supervision and to his satisfaction.

5. The location of all pipes and works on said highways shall be subject to the direction and approval of the Municipal Engineer and all such pipes and works, whenever it may be reasonable and practicable, shall be laid in and along the sides of said highways.

6. The Company before beginning any new work in the said Municipality under this Agreement, save and except lateral service pipes, shall file with the Municipal Engineer a plan drawn to scale showing the highways in which it proposes to lay mains, and pipes, and the particular parts thereof it proposes to occupy for any of such purposes together with definite written specifications of the mains, pipes and works proposed to be laid or constructed by it, specifying the materials and dimensions thereof, and the depth at which the same are to be laid, and similar plans and specifications shall be filed with the said Municipality of all extensions of, or additions to such mains, pipes, or works before any such extensions or addition shall be begun. Provided further that the Company shall provide the Municipal Engineer with a revised plan of the location of any main should there be any alteration in the plan originally filed with the Municipal Engineer.

7. The Company shall use at all times proper and practicable means to prevent the escape or leakage of gas from its mains and pipes and the causing of any damage or injury therefrom to any person or property.

8. The rates to be charged and collected by the Company for gas supplied by it under this franchise shall be the rates fixed by the Ontario Energy Board having jurisdiction to fix rates under the Ontario Energy Board Act or in case there shall be no such Board then such rates as may from time to time be fixed by any other person or body having jurisdiction to fix such rates; any such application hereunder may be made by either party hereto on notice to the other.

9. The Company will at its own expense tap its mains and connect the same with the Company's meter in the customers' buildings, provided that the company's meter is located at a distance not greater than one hundred (100') feet from the street line. Provided that should any customers require the meter to be located at a distance greater than one hundred (100') feet from the street line such customers shall pay the additional cost of installing the meter at such greater distance.

10. The Municipality will not build or permit any Commission or other public utility or person to build any structure or structures encasing any mains or pipes of the Company.

11. (a) This Agreement and the respective rights and obligations hereunto of the parties hereto are hereby declared to be subject to the provisions of the regulating statute and to all orders and regulations made thereunder and from time to time remaining in effect; and in event of any dispute or disagreement between the parties hereto as to the meaning or interpretation of anything herein contained or as to the performance or non-performance by either of such parties of any of the provisions hereof or as to the respective rights and obligations of the parties hereto hereunder, either or such parties may refer such dispute or disagreement to arbitration under the provisions of Paragraph 11(b) hereof.

(b) Whenever the Municipal Arbitrations Act R.S.O. 1970, Chapter 286 shall extend and apply to the Municipality any references to arbitration pursuant to the provisions of Paragraph 11(a) hereof shall be to the Official Arbitrator appointed under the Act and shall be governed by the provisions of that Act. At any other time the procedure upon an arbitration pursuant to the provisions of the said Paragraph 11(a) shall be as follows:

Within twenty days after the written request of either of the parties hereto for arbitration each of them shall appoint one arbitrator and the two so appointed shall, within twenty days after the expiring of such twenty day period select a third. In case either of the parties hereto shall fail to name an arbitrator within twenty days after the said written request for arbitration, the arbitrator appointed shall be the only arbitrator. In case the two arbitrators so appointed are unable to agree on a third arbitrator within twenty days after the expiry of the first twenty day period above mentioned, application shall be made as soon as reasonably possible to any Judge of the Supreme Court of Ontario for the appointment of such third arbitrator. The arbitrator or arbitrators so appointed shall have all the powers accorded arbitrators by the Arbitration Act, R.S.O. 1970, Chapter 25 as from time to time amended, or any Act in substitution therefor. The decision of the said arbitrator or arbitrators (or of a majority of such arbitrators) shall be final and binding on the parties hereto.

12. In the event of the Company being prevented from carrying out its obligations under this Agreement by reason of any clause beyond its control, the Company shall be relieved from such obligations while such disability continues and in the event of dispute as to the existence of such disability such dispute shall be determined as hereinbefore provided. Provided, however, that the provisions of this Paragraph 12 shall not relieve the Company from any of its obligations as set out in Paragraph 3 hereof.

13. The franchise hereby granted shall be for the term of Twenty years from and after the final passing of the By-law; provided that if at any time prior to the expiration of the said term of Twenty years or prior to the expiration of any renewal thereof, the Company shall notify the Municipality in writing that it desires a renewal thereof for a further period, the Municipality may but shall not be obliged to renew by By-law this Agreement from time to time, for further periods not exceeding Twenty years at any time.

14. The Company shall pay the cost, charges and expenses of the Municipality and of its Solicitor of and incidental to, the preparation and passing of such By-law and this Agreement.

15. For the purpose of this Agreement and of any matters arising out of same the Municipality shall act by the Council thereof.

16. Wherever the word "highway" is used in this Agreement or in the said By-law it shall mean common and public highways and shall include any bridge forming part of a highway on or over and across which a highway passes and any public square, or road allowance 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.

17. Upon the expiration of this franchise or any renewal thereof the Company shall have the right, but nothing herein contained shall require it, to remove its mains, pipes, plant and works laid in the said highway. Provided that forthwith upon the expiration of this franchise or any renewal thereof the Company shall deactivate such pipeline in the Municipality. Provided further that if the Company should leave its mains, pipes, plants and works in the highway as aforesaid and the Municipality at any time after a lapse of one year from termination require the removal of all or any of the Company's said facilities for the purpose of altering or improving the highway or in order to facilitate the construction of utility or other works in the highway the Municipality may remove and dispose of so much of the Company's said facilities as the Municipality may require for such purposes and neither party shall have recourse against the other for any loss, cost or expense occasioned thereby.

18. Any notice to be given under any of the provisions hereof may be effectually given to the Municipality by delivering the same to the Municipal Clerk or by sending the same to him by registered mail, postage prepaid, addressed to "the Clerk of the Corporation of the Town of Pelham Ontario," and to the Company by delivering the same to its Manager or other Chief Officer in charge of its place of business in the Town of Pelham, or by sending the same by registered mail, postage prepaid, addressed to "The Consumers' Gas Company, 19 Toronto Street,

Toronto 1, Ontario." If any notice is sent by mail the same shall be deemed to have been given on the day succeeding the posting thereof.

19. This Agreement shall extend to, benefit and bind the parties thereto, their successors and assigns, respectively.

IN WITNESS WHEREOF the said Company has hereunto caused its Corporate Seal to be affixed and these presents signed by its proper officers in that behalf and the said Corporation has hereunto caused its Corporate Seal to be affixed and these presents signed by the Municipality and Clerk.

THE CONSUMERS' GAS COMPANY

THE CORPORATION OF THE TOWN OF
PELHAM


Mayor


Clerk

