

PIPELINE EASEMENT

THIS AGREEMENT made the ____ day of _____, 2020.

BETWEEN:

**EPCOR NATURAL GAS LIMITED PARTNERSHIP
("EPCOR")**

- and -

THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE (the "Owner")

WHEREAS:

- A. The Owner is the registered owner of an estate in fee simple, subject to such encumbrances, liens and interests as are at the date hereof set forth in the parcel register, in the lands situated in the Province of Ontario and legally described as:

PIN [●]

- B. The Owner has agreed to grant to EPCOR a right-of-way and easement across all or a portion of the Lands (as defined below) in accordance with the terms and conditions contained in this Agreement.

IN CONSIDERATION OF the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by each of the parties, and in consideration of the payment of the Fee (as defined below) by EPCOR to the Owner, EPCOR and the Owner agree as follows:

1. GRANT

- 1.1 The Owner hereby grants, conveys and transfers unto EPCOR a non-exclusive right, license, liberty, privilege and easement for a term of 21 years' less a day on, over, across, along, in, under and through that portion of the Lands (as defined below) outlined in red and/or shown as cross-hatched on the attached Schedule "A" and described as follows those parts of:

[●];

being parts ● on Reference Plan ●](the "**Lands**").

to lay down, construct, operate, maintain, inspect, patrol (including aerial patrol), alter, relocate, remove, replace, reconstruct and repair a line of pipe together with all facilities or works of EPCOR useful in connection with or incidental to its undertaking, including, but without limiting the generality of the foregoing, all such pipes, drips, valves, fittings, connections, meters, cathodic protection equipment and other equipment and appurtenances, whether or not similar to the foregoing, as may be useful or convenient in connection therewith or incidental thereto for the carriage, transmission, conveyance, transportation and handling of oil, natural and

artificial gas and other gaseous or liquid hydrocarbons and any product or by-product thereof (such line of pipe together with such related facilities or works being referred to collectively as the "**Pipeline**"). Notwithstanding anything else herein, the Owner shall not grant any of the foregoing rights to any other person without the prior written consent of EPCOR which shall not be unreasonably withheld.

2. FEE

2.1 Upon the execution of this Agreement by EPCOR and the Owner, EPCOR shall pay to the Owner the sum of One Dollar (\$1.00) exclusive of Harmonized Sales Tax (the "**Fee**"), the receipt of which is acknowledged by the Owner. The payment of the Fee by EPCOR is the sole consideration and inducement for the execution by the Owner of this Agreement and is the total compensation payable by EPCOR to the Owner for the right to use the Lands as stated in this Agreement.

3. RIGHT OF ACCESS

3.1 EPCOR shall have the right at any time and from time to time to do whatever may be required for the enjoyment of the rights granted under this Agreement, including the removal of any boulder or rock or the trimming and removal of all trees, shrubs and other vegetation on, over, across, along, in, under and through the Lands.

3.2 Upon execution of this Agreement by EPCOR and the Owner, EPCOR may ingress and egress at any and all times on, over, along, across, along, in, under and through the Lands with its servants, agents, employees, contractors and subcontractors (collectively, the "**Authorized Representatives**"), on foot and/or with vehicles, supplies, machinery and equipment, for all purposes useful or convenient in connection with or incidental to the exercise and enjoyment of the rights granted pursuant to this Agreement.

3.3 EPCOR and its Authorized Representatives shall have the right of ingress and egress from the Lands at any and all times on, over across, along, in, under and through the Lands for the purposes of exercising the rights granted under this Agreement. This right of access shall be used only in cases of necessity or emergency, as determined by EPCOR in EPCOR's sole and absolute discretion. EPCOR shall pay reasonable compensation to the Owner of the Lands for any damage caused by EPCOR and its Authorized Representatives in the exercise of the right of access as granted to EPCOR under this Clause 3.3.

3.4 The rights, licenses, liberties, privileges and easements specifically described in Clauses 1 and 3 are being referred to collectively as the "**Easement Rights**".

4. PIPELINE

4.1 Notwithstanding any rule of law or equity to the contrary, the Pipeline shall at all times remain a chattel and the personal property of EPCOR or its assigns and shall not become part of the Lands, notwithstanding that it may be annexed or affixed to the Lands or abandoned by EPCOR.

- 4.2 EPCOR shall install, construct, operate and maintain the Pipeline in a responsible manner so as to minimize damage to the Lands and shall, where practicable, after any such work restore the Lands to substantially its original level and condition, save and except for any soil rise above grade to allow for soil settlement (the "**Restoration Work**"). EPCOR shall not be responsible for any damages caused by subsidence after levelling is completed, provided the subsidence does not occur as a result of negligence on the part of EPCOR. Notwithstanding the foregoing, or Clause 7.1, EPCOR shall only be obligated to compensate the Owner for damage to buildings or improvements that may be placed within the Lands, and arising from the exercise by EPCOR of its rights under this Agreement, if EPCOR has given its prior written consent pursuant to Clause 5.2 to the placement of such buildings or improvements within the Lands.
- 4.3 If EPCOR has not commenced the Restoration Work within a period of ninety (90) days following completion of the Pipeline, the Owner may after thirty (30) days prior written notice, complete the Restoration Work, in accordance with all applicable requirements including TSSA requirements and if such requirements must be completed by a natural gas utility the Owner shall not complete any portion of the Restoration Work governed by those requirements, provided there is no interference with the Easement Rights. EPCOR shall pay to the Owner within fifteen (15) business days following demand, all reasonable amounts paid by the Owner in respect of such Restoration Work.
- 4.4 EPCOR shall have the right to temporarily fence and use such portions of the Lands as may in its opinion be required. If at any time EPCOR shall require temporary fencing for maintenance or operational reasons, such fencing shall be temporary and EPCOR shall obtain the prior written consent of the Owner, acting reasonably, as to the type, term and location of any fencing and shall locate such temporary fencing insofar as may be practicable so to do, in such a fashion as to provide a minimum of inconvenience to the Owner. EPCOR shall furnish to the Owner a plan of the intended location. EPCOR shall within a period of thirty (30) days following completion of the Pipeline, compensate the Owner for any inconvenience caused to the Owner and for all damage occurring as a result of fencing any such portion of the Lands.
- 4.5 EPCOR may at any time for whatsoever reason or cause abandon the Pipeline in accordance with the then-applicable legislation, regulations and governmental directions. In the event of the abandonment of the Pipeline, EPCOR may, at its option, either leave the Pipeline in place or remove it provided this option remains in accordance with the then-applicable legislation. If EPCOR leaves the Pipeline in place EPCOR shall complete decommissioning procedures and comply with all applicable legislation. In the event of removal, EPCOR shall conserve, reclaim and remediate the portion of the Lands affected by the exercise of the rights herein granted, insofar as it is practicable to do so and in accordance with the then-applicable legislation, regulations and governmental directions. In the event of removal or decommissioning, as the case may be, and subject to the then-applicable legislation, EPCOR agrees to discharge this Agreement and the Easement Rights in the appropriate Land Registry Office within 180 days from the effective date of the removal of the Pipeline or the completion of the decommissioning of the Pipeline.

5. OWNER'S USE OF LANDS

- 5.1 The Owner shall not use the Lands in any manner which may conflict with the rights of EPCOR as granted to EPCOR pursuant to this Agreement.
- 5.2 The Owner shall not, without the prior written consent of EPCOR which consent shall not be unreasonably withheld, stockpile, excavate, drill, install, erect, construct or place above, through, on or under the Lands any pavement, building, fence, pit, well, pipe, foundation, sidewalk, or other structure or improvement, or do or permit to be done any mining, quarrying, land levelling or other work or activity of any like or similar nature on, in or under the Lands. The Owner shall not permit any of these activities to occur by others.
- 5.3 The Owner shall not alter the surface grade level of the Lands in any manner which would affect the rights granted to EPCOR pursuant to this Agreement.
- 5.4 The Owner shall not plant any trees within the Lands. Existing trees on the Lands shall not be removed without the prior written consent of the Owner.
- 5.5 The Owner shall not store or otherwise place toxic, hazardous, dangerous, flammable, potentially explosive, noxious or waste substances or contaminants (the "**Hazardous Materials**") within the Lands, nor shall the Owner permit the storage or placement by a third party of such substances within the Lands.
- 5.6 The Owner shall be responsible for the maintenance of the Lands, including but not limited to such items as grass cutting and clean-up, replacement and repair of the Lands in such a manner that it shall be suitable at all times for EPCOR's use as permitted by this Agreement. The Owner shall undertake any maintenance directed by EPCOR to maintain the said Lands within sixty (60) days of receiving written notification.
- 5.7 Subject to the foregoing and to the provisions of applicable legislation, regulations and governmental directions, and provided that there is no interference with the Easement Rights, the Owner shall have the right to use and enjoy the Lands. In addition, EPCOR hereby grants permission to the Owner to cross the buried Pipeline with ordinary farming vehicles as necessary in connection with ordinary cultivation, as such vehicles are defined by EPCOR from time to time and communicated in writing to the Owner at the address set out in Clause 9.

6. ENVIRONMENTAL OBLIGATIONS

- 6.1 EPCOR and the Owner shall comply with all applicable legislation, regulations and governmental direction dealing with environmental issues, including the Hazardous Materials (the "**Environmental Laws**"), related to the Lands.
- 6.2 The Owner represents and warrants that the Lands have not been used for the storage of the Hazardous Materials. If EPCOR encounters any Hazardous Materials in undertaking any work within the Lands, it shall give notice to the Owner. At the expense of the Owner, EPCOR (or, at EPCOR's option, the Owner) shall effect the removal of such Hazardous Materials in accordance with the Environmental Laws.

- 6.3** The responsibility of EPCOR and the Owner with respect to environmental obligations, as required by this Agreement, shall continue to be enforceable during and after the termination of this Agreement.

7. INDEMNITY AND COMPENSATION

- 7.1** EPCOR acknowledges and agrees that, in exercising any of its rights under this Easement Agreement, it shall do so at its own risk and expense. Unless the loss or damage is directly attributable to the negligence or willful misconduct of the Owner, its elected officials, officers, employees and agents and those persons for whom the Owner is responsible in law, EPCOR shall not have a claim against the Owner for any loss or damage by whomsoever caused to EPCOR's property. Except for the gross negligence or willful misconduct of the Owner, its employees, agents, contractors, subcontractors and those persons for whom the Owner is responsible in law, EPCOR shall:

- (a) be liable to the Owner for; and
- (b) indemnify and save harmless the Owner, its employees, agents, contractors, subcontractors and those persons for whom the Owner is responsible in law from and against

any and all claims, suits, actions, demands, expenses, damages and costs which may be brought or made against the Owner or which the Owner may pay or incur by reason of any breach, violation or non-performance by EPCOR of any covenant, term or provision of this Agreement or by reason of the gross negligence or willful misconduct of EPCOR, its agents, employees, contractors, subcontractors and those persons for whom EPCOR is responsible in law, in the exercise of the rights as granted to EPCOR under this Agreement. This indemnity shall be in addition to and not in lieu of any insurance to be provided by EPCOR in accordance with this Easement Agreement and shall survive this Easement Agreement.

8. QUIET ENJOYMENT

- 8.1** EPCOR by performing and observing the terms and conditions of this Agreement shall and may peaceably hold and enjoy all the rights granted under this Agreement, without hindrance, molestation or interruption on the part of the Owner or any person claiming by, through, under, from or in trust for, the Owner.

9. ADDRESS FOR CONSENT OR NOTICE

- 9.1** Any written consent required to be obtained from, and any notices to be given to, EPCOR or the Owner, as the case may be, pursuant to this Agreement shall be in writing and obtained or effected by delivering the request or notice to EPCOR or the Owner in person or by email, registered mail, postage prepaid, addressed as follows:

To EPCOR:

EPCOR Natural Gas Limited Partnership
Attention: General Manager

39 Beech Street East
Alymer ON N5H 3J6

Email: _____

To the Owner:

The Corporation of the Municipality of Kincardine

1475 Concession 5
Kincardine, ON
N2Z 2X6
Attention: Clerk
Email: _____

A notice will be effective on: (i) the other party's receipt of it; or (ii) if sent by registered mail, on the earlier of the other party's receipt of it and the seventh day after mailing it.

10. DISPUTE RESOLUTION

- 10.1** In the event of a determination by either party in regard to a matter in dispute between EPCOR and the Owner as to the interpretation or effect of any of the terms or conditions of this Agreement, and where notice of such determination has been delivered to EPCOR or the Owner, as the case may be, the determination shall be conclusively deemed to have been accepted by the parties, unless, within ten (10) days of the receipt of notice of the determination the party receiving the notice gives written notice to the other party (the "**Arbitration Notice**") of their desire to have the matter in dispute resolved by arbitration.
- 10.2** Within seven (7) days of receipt of the Arbitration Notice, the parties shall mutually appoint an arbitrator (the "**Arbitrator**"). In the event that the parties shall fail to agree on the appointment of the Arbitrator, then either party may, on written notice to the other, apply to the Ontario Superior Court of Justice for the appointment of the Arbitrator, pursuant to the *Arbitration Act*, 1991, S.O. 1991, c. 17, as amended (the "**Arbitration Act**").
- 10.3** The seat of arbitration shall be Kincardine, Ontario.
- 10.4** The Arbitrator shall be directed to make its determination on the basis of a presumption that this Agreement does not require amendments. Any determination of the Arbitrator shall include a determination as to payment of the costs of the arbitration. The determination of the Arbitrator shall be final and binding on the parties and there shall be no right to appeal of such decision to the courts.

10.5 Except as modified by this Agreement, the provisions of the Arbitration Act and its regulations or any successive legislation shall apply.

11. GENERAL

11.1 Entire Agreement

There are no conditions, either subsequent or precedent, except as stated in this Agreement and in the letter of understanding between the Parties dated October ____, 2020 (the “**LOU**”). This Agreement and the LOU represent the entire agreement between EPCOR and the Owner and no representations or warranties have been made by EPCOR, except as stated in this Agreement and the LOU.

11.2 Governing Law

This Agreement shall be governed by and construed in accordance with the laws in force in the Province of Ontario and the laws of Canada applicable therein.

11.3 Easement in Gross

The rights granted under this Agreement, including the Easement Rights, are declared to be an easement in gross.

11.4 Further Assurances

The parties hereto will execute such further assurances of the Lands and the rights granted under this Agreement as may be required.

11.5 Assignment

EPCOR shall, without the consent of the Owner, but upon seven (7) days prior written notice, have the right to assign, in whole or in part, to any person, partnership, trust, government, agency or corporation, the rights granted, transferred and conveyed under this Agreement, including the Easement Rights, provided that the assignee shall execute and deliver an assignment agreement in a form to be provided by EPCOR, whereby the assignee agrees to assume and be bound by the terms and conditions of this Agreement. Such notice shall include the notice particulars as required by Clause 9.1.

11.6 EPCOR's use of Lands

EPCOR shall, without the consent of the Owner, have the right to grant the right to use the Lands, in whole or in part, in accordance with the terms and conditions contained in this Agreement to any person, partnership, trust, government, agency or corporation.

11.7 Enurement

This Agreement, including all covenants contained herein and all rights granted hereunder, is and shall be of the same force and effect for all intents and purposes

as a covenant running with the Lands and shall extend to, be binding upon and enure for the benefit of the heirs, executors, administrators, successors-in-title and assigns of the parties respectively.

11.8 Severability

If any term or condition of this Agreement is invalid or unenforceable under any applicable statute or is declared invalid or unenforceable by a court of competent jurisdiction, then such term or condition shall be deemed to be severed from this Agreement, provided however, that the remainder of this Agreement shall not be affected, shall continue in full force and effect and each remaining term and condition shall be valid and be enforced to the fullest extent permitted by law.

11.9 Additional Taxes

EPCOR agrees that no taxes, rates, assessments, charges, levies or impositions of any kind or nature of any governmental authority. Including without limitation property taxes on the pipeline, shall be payable by or placed upon the Owner in relation to any use of the Lands by EPCOR pursuant to this Agreement, and if any such taxes, rates, assessments, charges, levies or impositions shall be levied, imposed, or placed, EPCOR shall make payment thereof. All taxes or assessments in the nature of sales taxes, good and services taxes or value added taxes which may be charged, levied or assessed as a result of this Agreement, whether or not such taxes are charged, levied or assessed as against the Owner, shall be the responsibility of EPCOR, and EPCOR shall on written demand by the Owner, pay to the Owner any and all such taxes.

11.10 Outstanding Charges, Taxes, Liens, etc.

Notwithstanding any other provision in this Agreement, if EPCOR determines that:

- (a) there are outstanding charges, taxes, builders' liens, writs of execution, judgments or other encumbrances which are registered against the Lands;
or
- (b) there are any overdue amounts outstanding under any agreement for sale, mortgage or other financial encumbrance that is registered against the Lands;

EPCOR may, but is not obligated to, pay all or a portion of the compensation or other amounts payable under this Agreement to the holder of such charge, lien, writ of execution, judgment, mortgage or other financial encumbrance, or to such vendor or mortgagee to satisfy and discharge such encumbrance or to obtain a postponement from the encumbrance holder. The payment of any amount to such third party shall be deemed to be payment of such amount to the Owner. For greater certainty, EPCOR shall not be required to obtain the Owner's consent prior to making such payment. EPCOR shall provide to the Owner written confirmation of any such payments within thirty (30) days of making such payments.

11.11 Sole Remedy

It is understood and agreed that notwithstanding any other provision in this Agreement and notwithstanding any rights that any person having an interest may have in law or in equity, should EPCOR fail to pay any payments payable hereunder, the sole remedy of any such person having an interest shall be to recover from EPCOR such amount and any interest payable thereon, and in no event shall such person having an interest for whatever reason, interfere with, hinder, molest or interrupt EPCOR in its enjoyment of any of the rights granted, transferred and conveyed under this Agreement, including the Easement Rights.

11.12 Personal Information

The Owner consents to the collection and use of its personal information within this Agreement. EPCOR collects this type of personal information for the purposes of general land rights acquisition and regulatory disclosure. The Owner consents to the collection, use and disclosure of its personal information for these legitimate business purposes in relation to land matters of EPCOR. The Owner is a municipal corporation incorporated pursuant to the *Municipal Act*, 2001, S.O. 2001, c. 25, as amended and is subject to the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended ("MIFPPA"). EPCOR agrees that MIFPPA applies to all information or records within EPCOR's custody or control that are collected or created specifically for the purposes of this Agreement.

11.13 Survival of Obligations

Any term or provision in this Agreement, which, in order to be given its fullest intended effect, must extend past the expiration or termination of this Agreement will survive the expiration or termination of this Agreement, including Articles 6, 7 and 10.

11.14 Insurance

Throughout the term of this Agreement, the Owner shall maintain in full force and effect insurance coverage to the levels of a reasonable owner.

Throughout the term of this Agreement, EPCOR will maintain in full force and effect the following insurance:

- (a) Commercial General Liability insurance in an amount of not less than \$10,000,000.00 per occurrence for bodily injury including death and/or property damage, which will include the following extensions: contractual liability, non-owned automobile, products and completed operations, broad form property damage, sudden and accidental pollution liability, cross liability and/or severability of interest, contingent employer's liability, and where applicable no exclusion for excavation, collapse, shoring and underpinning; and
- (b) Commercial Automobile Liability insurance covering all owned, leased or hired licensed motor vehicles used in connection with the Lands with a combined limit of not less than \$10,000,000.00 per occurrence for bodily injury including death and/or property damage.

- (c) An environmental impairment liability policy with a limit of ten million dollars (\$10,000,000) per occurrence to include the following:
 - (i) physical damage to property including loss of use and the prevention, control and clean-up of land, the atmosphere or any watercourse or body of water;
 - (ii) gradual or sudden and accidental pollution for events such as fire, explosion or a sudden spill, as well as seepage over time; and
 - (iii) first and third-party clean-up expenses, bodily injury and property damage arising from a pollution event.

All insurance policies required to be held by EPCOR under this Agreement:

- (a) must provide the Owner with 30 days written notice of cancellation;
- (b) where applicable, must be primary and not contributory with, or in excess of, any other insurance carried by the Owner;
- (c) may use primary and/or umbrella liability insurance to achieve required limits; and
- (d) EPCOR will be responsible for payment of all premiums and deductible amounts relating to the insurance policies required to be held by EPCOR under this Agreement.

11.15 Costs of Registration

Any costs related to the registration of document with the appropriate land registry office shall be the sole responsibility of EPCOR.

11.16 Minor Changes for Reference Plan

The parties agree that the Agreement may be executed without completion of the Reference Plan in Section 1.1 hereof. Upon completion of the Reference Plan, the parties agree that this Agreement may be modified to include insertion of the Reference Plan.

11.17 In this Agreement:

- 11.17.1** the word "shall" is to be read and interpreted as mandatory;
- 11.17.2** the word "may" is to be read and interpreted as permissive; and
- 11.17.3** the word "Owner" shall be read and interpreted as meaning an individual, a partnership, a corporation, a trust, an unincorporated organization, a government, or any department or agency thereof, and

the heirs, executors, administrators or other legal representatives of any individual.

11.18 Counterparts

This Agreement may be executed in any number of counterparts and all of which taken together will constitute one and the same instrument. All parties agree that this Agreement may be transmitted by telecopier or electronic transmission via email and that the reproduction of signatures by way of telecopier or electronic transmission via email were executed originals will be treated as though such reproduction were executed originals and each party undertakes to provide the other with a copy of this Agreement bearing original signatures within a reasonable time after written request therefore.

THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK

IN WITNESS WHEREOF EPCOR AND THE OWNER HAVE EXECUTED THIS AGREEMENT ON THE ____ DAY OF _____, 2020.

EPCOR:

**EPCOR NATURAL GAS LIMITED
PARTNERSHIP, by its general partner
EPCOR ONTARIO UTILITIES INC.**

Per: _____ c/s

Name:

Position:

I have authority to bind the Corporation

OWNER:

**THE CORPORATION OF THE
MUNICIPALITY OF KINCARDINE**

Per: _____

Anne Eadie, Mayor

Per: _____

Sharon Chambers, CAO

We have authority to bind the Corporation.

SCHEDULE "A"
LANDS