

Bill No. 257
2017

By-law No. A.-_____

A by-law to repeal the Municipal Access Agreement with Cities Heating Company Limited including all of its amendments, to authorize a Municipal Access Agreement between The Corporation of the City of London and Veresen District Energy Partnership, and to authorize the Mayor and the City Clerk to execute the Agreement with Veresen District Energy Partnership.

WHEREAS section 5(3) of the *Municipal Act, 2001* S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* S.O. 2001, c.25, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS Cities Heating Company Limited has divested its local assets to Veresen District Energy Partnership and it is deemed expedient for The Corporation of the City of London (the "City") to enter into a Municipal Access Agreement with Veresen District Energy Partnership, (the "Agreement");

AND WHEREAS it is appropriate to authorize the Mayor and the City Clerk to execute the Agreement on behalf of the City;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Agreement attached as Schedule "A" to this by-law, being a Municipal Access Agreement between the City and Veresen District Energy Partnership is hereby authorized and approved.
2. The Mayor and the City Clerk are hereby authorized to execute the Agreement authorized and approved under Section 1 of this by-law.
3. By-law No. P.U.-475-81 entitled "A by-law to authorize Cities Heating Company Limited, for a period of 30 years, to extend, lay and maintain pipes for conducting steam to supply heat on certain streets in the City of London within an area generally bounded by Oxford Street, Adelaide Street, the south branch of the Thames, Grand Avenue, Elmwood Avenue and Wharncliffe Road" and all of its amendments are hereby repealed.
4. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on June 13, 2017.

Matt Brown
Mayor

Catharine Saunders
City Clerk

First Reading – June 13, 2017
Second Reading – June 13, 2017
Third Reading – June 13, 2017

SCHEDULE "A"

MUNICIPAL ACCESS AGREEMENT

BETWEEN

THE CORPORATION OF THE CITY OF LONDON

AND

VERESEN DISTRICT ENERGY PARTNERSHIP

MUNICIPAL ACCESS AGREEMENT

This Agreement made this ● day of ●, 2017 (the “Effective Date”)

B E T W E E N:

THE CORPORATION OF THE CITY OF LONDON
(hereinafter referred to as “Municipality”)

- and -

VERESEN DISTRICT ENERGY PARTNERSHIP
(hereinafter referred to as “Veresen”)

(each, a “Party” and, collectively, the “Parties”)

WHEREAS Veresen is in the business of supplying energy in the form of steam heat and chilled water to inhabitants of the City of London;

AND WHEREAS, Veresen requires to construct, maintain and operate its Equipment in, on, over, under, across or along the highways, streets, road allowances and bridges which are under the jurisdiction of the Municipality (collectively, the “Rights of Way” or “ROWS”);

AND WHEREAS, Veresen requires the Municipality’s consent to construct and maintain its Equipment within the ROWs and the Municipality is willing to grant Veresen a non-exclusive right to access and use the ROWs; provided that such use will not unduly interfere with municipal operations, equipment or installations and the public use and enjoyment of the ROWs, nor any rights or privileges previously conferred by the Municipality on Third Parties to use or access the ROWs;

AND WHEREAS the Parties have agreed that it would be mutually beneficial to outline the terms and conditions pursuant under which the Municipality hereby provides its consent;

NOW THEREFORE in consideration of the mutual terms, conditions and covenants contained herein, the Parties agree and covenant with each other as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions.** In this Agreement, the following words and phrases shall have the following meanings:

- (a) “**Affiliate**” means “affiliate” as defined in the *Canada Business Corporations Act*;
- (b) “**Emergency**” means an unforeseen situation where immediate action must be taken to preserve the environment, public health or safety, or an essential service of either of the Parties;
- (c) “**Hazardous Substance**” means any harmful substance including, without limitation, electromagnetic or other radiation, contaminants, pollutants, dangerous substances, dangerous goods and toxic substances, as defined, judicially interpreted or identified in any applicable law (including the common law);
- (d) “**Equipment**” means the plant owned by Veresen comprising pipes, valves, manholes and ancillary structures and other equipment located within the ROWs;
- (e) “**City Engineer**” means the Municipality’s reviewing authority or the individual designated by him or her;

- (f) “**Municipal Consent**” or “**MC**” means the written consent of the Municipality, with or without conditions, to allow Veresen to perform Work within the ROWs;
- (g) “**Permit**” means an MC or a PAW or both;
- (h) “**Permit for Approved Works**” or “**PAW**” means a Permit issued by the Municipality authorizing Veresen to occupy the ROWs with its workforce, vehicles and other Equipment when performing the Work;
- (i) “**ROW**” means any highways, streets, road allowance and bridge under the jurisdiction of the Municipality but does not include easements;
- (j) “**Third Party**” means any person that is not a party to this Agreement nor an Affiliate, agent or contractor of either Party; and
- (k) “**Work**” means, but is not limited to, any installation, construction, maintenance, repair, replacement, relocation, removal, operation, adjustment or other alteration of the Equipment performed by Veresen within the ROWs, including the excavation, repair and restoration of the ROWs.

1.2 **Legislation.** All references to statutes in this Agreement shall include amendments thereto, regulations thereof, and successor legislation thereafter.

2. USE OF ROWS

2.1 **Consent to use ROWs.** The Municipality hereby consents to Veresen’s distribution of steam heat, hot water, chilled water and other services throughout the territory under the Municipality’s jurisdiction and Veresen’s use of the ROWs for the purpose of performing its Work, subject to the terms and conditions of this Agreement and in accordance with all applicable laws and municipal by-laws, rules, policies, standards and guidelines pertaining to the Equipment and the use of the ROWs.

2.2 **Restrictions on use.** Veresen shall not, in the exercise of its rights under this Agreement, unduly interfere with municipal operations, equipment or installations and rights and privileges already granted to third parties and the public use and enjoyment of the ROWs. To the knowledge of the Municipality, Veresen’s existing use of the ROWs does not conflict with rights of Third Parties.

2.3 **No ownership rights.** The Parties acknowledge and agree that:

- (a) the use of the ROWs under this Agreement shall not create nor vest in Veresen any ownership or property rights in the ROWs; and
- (b) the placement of the Equipment within the ROWs shall not create or vest in the Municipality any ownership or property rights to the Equipment.

2.4 **Condition of ROWs.** The Municipality makes no representations or warranties as to the state of repair of the ROWs or the suitability or fitness of the ROWs for any business, activity or purpose whatsoever, and Veresen hereby agrees to accept the ROWs on an “as is” basis.

3. PERMITS TO CONDUCT WORK

3.1 **Where Permits required.** Subject to **Section 3.4**, Veresen shall not do excavation, installation, construction or repair Work which will disturb, change or interfere with the surface of any ROW or its structural integrity or interfere with traffic movements on any ROW without first obtaining the applicable Permit for the specific Work activity as may be required by the Municipality from time to time.

- 3.2 **Submission of plans.** Veresen shall, prior to undertaking any Work that requires a Permit, submit construction plans of the proposed Work showing the locations of the proposed and existing Equipment, Municipal services, private utilities, topographical features, legal ROW limits and any other plans or information that may be required by the City Engineer such as traffic control plans for the purposes of issuing a Permit.
- 3.3 **Refusal to issue Permits.** The Municipality may refuse to issue a Permit in accordance with **Section 3.1** for any *bona fide* municipal purpose, including reasons of public safety and health, conflicts with existing infrastructure, proposed road construction, or the proper functioning of public services, all as identified in writing by the Municipality.
- 3.4 **No Permits for Routine Work.** Notwithstanding **Section 3.1**, Veresen may, without first obtaining a Permit, carry out routine maintenance and field testing of its Equipment provided there is no physical disruption or change to the ROW or its use without the Municipality's prior written consent.
- 3.5 **Restoration of Veresen's service during Emergencies.** Notwithstanding **Section 3.1**, in the event of an Emergency, Veresen shall be permitted to perform such remedial Work as is reasonably necessary to restore its services without complying with **Section 3.1**; provided that such Work does not unduly disrupt any Municipal service or activity and provided that Veresen does comply with **Section 3.1** within five (5) business days of completing the Work.

4. MANNER OF WORK

- 4.1 **Compliance with Applicable Laws, etc.** All Work shall be conducted and completed to the satisfaction of the Municipality and acting reasonably and in accordance with:
- (a) the applicable laws (and, in particular, all laws and codes relating to occupational health and safety);
 - (b) this Agreement; and
 - (c) the applicable Permits issued under **Section 3.1**.
- 4.2 **Stoppage of Work.** The Municipality may order the stoppage of excavation, installation, construction or repair Work or other activities that interfere with traffic movements for any *bona fide* municipal purpose. In such circumstances, the Municipality shall provide Veresen with a verbal order and reasons to stop such Work and Veresen shall cease such Work immediately. Within two (2) business days of the verbal order, the Municipality shall provide Veresen with a written stop work order with reasons. When the reasons for the Work stoppage have been resolved, the Municipality shall advise Veresen immediately that it can recommence the Work.
- 4.3 **Coordination of Work.** Veresen shall use its reasonable efforts to minimize the necessity for road cuts, construction and the placement of new Equipment within the ROW by coordinating its Work and sharing the use of support structures with other existing and new occupants of the ROWs.
- 4.4 **Identification of contractors.** Veresen shall ensure that all of its contractors have proper identification visible on the Work site displaying the name of the company for which they work.
- 4.5 **Emergency contact personnel.** Veresen and the Municipality shall provide to each other a list of twenty-four (24) hour emergency contact personnel available at all times and shall ensure that the list is kept current.
- 4.6 **Emergency work by Municipality.** In the event of an Emergency, the Municipality may take such measures it deems necessary to re-establish a safe environment, and Veresen

shall pay the Municipality's reasonable and verifiable costs arising from such Emergency that are directly attributable to the Work or the presence of the Equipment in the ROWs.

- 4.7 **“As-built” drawings.** Where required and requested by the Municipality, Veresen shall, no later than forty-five (45) days after completion of any excavation, installation or construction Work, provide the City Engineer with “as-built” drawings, prepared in accordance with such standards as may be required by the City Engineer, to accurately establish the location of the Equipment installed within the ROWs for the future use of the Municipality.

5. REMEDIAL WORK

- 5.1 **General.** Following the completion of any Work, Veresen shall leave the ROW in a neat, clean, and safe condition and free from nuisance, all to the satisfaction of the Municipality. Subject to **Section 5.2**, where Veresen is required to break or disturb the surface of a ROW to perform its Work, it shall repair and restore the surface of the ROW to the same or better condition it was in before the Work was undertaken, all to the satisfaction of the Municipality.

- 5.2 **Temporary repair.** Where weather limitations or other external conditions beyond the control of Veresen do not permit it to complete a final repair to the ROW within the expected period of time, as projected by Veresen, Veresen may complete a temporary repair to the ROW; provided that Veresen replaces the temporary repair with a final repair within a reasonable period of time. All repairs to the ROW by Veresen shall be performed to the satisfaction of the Municipality.

- 5.3 **Warranty of repairs.** Veresen warrants its temporary repair, to the satisfaction of the Municipality, for a period of one (1) year from the date of its completion, and its final repairs for a period of two (2) years from the date of their completion.

- 5.4 **Repairs completed by Municipality.** Where Veresen:

(a) fails to complete a temporary repair to the satisfaction of the Municipality within seventy-two (72) hours of being notified in writing by the Municipality, or such other period as may be agreed to by the Parties; or

(b) Veresen and the Municipality agree that the Municipality should perform the repair, then the Municipality may effect such work necessary to perform the repair and Veresen shall pay the Municipality's reasonable and verifiable direct costs of performing the repair.

6. LOCATING FACILITIES IN ROWS

- 6.1 **Locates.** Each Party is responsible for providing the physical location of its respective facilities by marking the ROW using paint, staking or other suitable identification method (collectively, “**Locates**”) at their own cost and must fully comply with the Underground Infrastructure Notification System Act and its associated regulations.

- 6.2 **Utility co-ordination committee.** Veresen shall participate in the Municipality's Utilities Coordinating Committee.

- 6.3 **Provision of Engineering Record Drawings.** Veresen agrees to respond to requests for engineering record drawings showing Equipment location within the ROW within five (5) business days of receiving the request.

- 6.4 **Inaccurate Locates.** Where Veresen's Locates are found to be in error and, as a result, the Municipality is unable to install its facilities within the affected ROWs in the manner it expected based on the Locates provided by Veresen, the Municipality will notify Veresen

of the error, following which Veresen shall attempt to resolve the conflict. If Veresen is unable to resolve the conflict in a reasonable time commensurate with the situation and to the Municipality's satisfaction, Veresen will pay the Municipality for its reasonable and verifiable costs incurred as a direct result of the conflict.

7. RELOCATION OF PLANT

7.1 **General.** Where the Municipality requires and requests Veresen to relocate its Equipment for *bona fide* municipal purposes, the Municipality shall notify Veresen in writing and, subject to **Section 7.3**, Veresen shall, within ninety (90) days thereafter or such other time as agreed to by the Parties having regard to the schedules of the Parties and the nature of the relocation required, perform the relocation and any other required and associated Work.

7.2 **Municipality's efforts.** The Municipality will make good faith efforts to provide alternative routes for the Equipment affected by the relocation. The Municipality shall also provide, in a timely fashion, all Permits and approvals required to allow Veresen to relocate the Equipment.

7.3 **Reimbursement by Municipality for Veresen's Relocation Costs.** The Municipality shall reimburse Veresen for all or part of its reasonable and verifiable costs of completing any relocation requested by the Municipality (the "**Relocation Costs**") based upon the following criteria:

- (a) For Equipment that is not located in an ROW as at the date of this Agreement or within 1 metre measured horizontally from the location approved by a Permit or in a "standard location", as the case may be, there shall be no cost to the Municipality to relocate the Equipment.
- (b) For Equipment already located in an ROW or for which a Permit is issued (where such Equipment was constructed in compliance with the Permit), the Municipality shall pay 35% of Veresen's Relocation Costs (including, without limitation, "in kind" or "like-for-like" Equipment).
- (c) Within thirty (30) days of receiving the request from the Municipality to relocate the Equipment, Veresen shall provide the Municipality with a written estimate of the Relocation Costs for such relocation, including an estimate of the Municipality's reimbursement under the **subsection (b)**.
- (d) Within sixty (60) days of completing the relocation, Veresen may provide Municipality with a written invoice for the actual Relocation Costs in a format that clearly identifies the Municipality's reimbursement under **subsection (b)** and delineates materials, labour, and any other project costs.

7.4 **Equipment affected by Municipality's Capital Works Plan.** Prior to the issuance of a Permit, the Municipality will advise Veresen in writing whether Veresen's proposed location for new Equipment will be affected by the Municipality's ten-year (10 year) capital works plan (the "**Capital Works Plan**"). If the Municipality advises that the new Equipment will be so affected and Veresen, despite being advised of such, requests the Municipality to issue the Permit, then the Municipality may issue a conditional Permit stating that, if the Municipality requires, pursuant to any project identified in the Capital Works Plan as of the date of approval, Veresen to relocate the Equipment within ten (10) years of the date of the Permit, Veresen will be required to relocate the Equipment at its own cost, notwithstanding **Section 7.3**.

7.5 **Municipality not responsible for Third Party Relocation Costs.** Unless otherwise agreed to between the Municipality and the Third Party, in no event shall the Municipality be responsible under this Agreement for:

- (a) the costs of Veresen to relocate Equipment at the request of a Third Party; or
- (b) the costs of relocating the facilities of a Third Party installed on or in the Equipment; or
- (c) the costs of Veresen to relocate Equipment where Veresen is a Third Party to the owner of the Equipment.

7.6 **Emergency temporary relocation.** In cases of an Emergency that requires Veresen to temporarily relocate the Equipment, the Parties shall work co-operatively and expeditiously to complete the relocation as soon as practicably possible; provided, however, that the Municipality may, with at least twenty-four (24) hour prior notice to Veresen, take any measures it deems necessary for reasons of public health and safety.

7.7 **Relocation performed by Municipality.** If Veresen fails to complete the relocation in accordance with **Section 7.1** the Municipality may, at its option, complete such relocation and Veresen shall pay the Municipality's reasonable and verifiable costs of the relocation.

7.8 **Discontinuance of ROW.** Where the Municipality authorises the legal closing of a ROW under its jurisdiction as public highway either by Court Order or By-law, the Municipality shall be responsible for registering an easement against the property in favour of Veresen unless alternative arrangements have been made, all to the satisfaction of Veresen.

8. REPAIR OF PLANT

8.1 Where Veresen's Equipment or operations interferes with municipal operations, equipment or installations, or interferes with the public use and enjoyment of the ROWs, or interferes with any rights or privileges previously conferred by the Municipality on Third Parties to use or access the ROWs, Veresen shall make all necessary repairs, alterations or procedural adjustments necessary to remove the interference to the satisfaction of the City Engineer within 7 business days of receiving written notice or within the timeline agreed upon by the City Engineer, acting reasonably.

9. TERM AND TERMINATION

9.1 **Initial term and renewal.** This Agreement shall have an initial term of twenty (20) years commencing on the Effective Date and shall be renewed automatically for successive five (5) year terms unless:

- (a) this Agreement is terminated by either Party in accordance with this Agreement;
- (b) a Party delivers initial notice of non-renewal to the other Party at least ninety (90) days prior to the expiration of the then current term; or
- (c) this Agreement is replaced by a new agreement between the Parties.

9.2 **Termination by either Party.** Either Party may terminate this Agreement without further obligation to the other Party, upon providing at least twenty-four (24) hours written notice in the event of a material breach of this Agreement by the other Party after written notice thereof and failure of the other Party to remedy or cure the breach within thirty (30) days of receipt of the notice.

9.3 **Termination by Municipality.** The Municipality may terminate this Agreement by providing Veresen with at least twenty-four (24) hours written notice in the event that:

- (a) Veresen becomes insolvent, makes an assignment for the benefit of its creditors, has a liquidator, receiver or trustee in bankruptcy appointed for it or becomes

voluntarily subject as a debtor to the provisions of the *Companies' Creditors Arrangement Act* or the *Bankruptcy and Insolvency Act*; or

- (b) Veresen assigns or transfers this Agreement or any part thereof other than in accordance with **Section 15.2**.

9.4 **Obligations and rights upon termination or expiry of Agreement.** Notwithstanding any other provision of this Agreement, if this Agreement is terminated (other than in accordance with **Section 9.3**) or expires without renewal, then this Agreement shall remain in full force and effect until a new municipal access agreement is executed by the Parties.

10. INSURANCE

10.1 **General.** Throughout the term of this Agreement and any renewals or extension thereto, Veresen shall maintain, at its sole expense, insurance in an amount and description as described below (the “**Veresen Insurance**”) to protect Veresen and the Municipality from claims for damages, bodily injury (including death) and property damage which may arise from Veresen’s operations under this Agreement, including the use or maintenance of the Equipment within the ROWs or any act or omission of Veresen and its employees, contractors and agents while engaged in the Work. The Veresen Insurance shall include all costs, charges and expenses reasonably incurred with any injury or damage.

10.2 **Comprehensive general liability occurrence-based insurance.** Without limiting the generality of the foregoing, Veresen shall obtain and maintain comprehensive general liability occurrence-based insurance coverage which:

- (a) covers claims and expenses for liability for personal injury, bodily injury and property damage in an amount not less than Five Million Dollars (\$5,000,000.00) per claim (exclusive of interest and costs);
- (b) extends to cover the contractual obligations of Veresen as stated within this Agreement;
- (c) names the Municipality as an additional insured; and
- (d) contains cross liability and severability of interest clauses.

10.3 **Insurance certificates.** As soon as possible after the execution of this Agreement, Veresen shall provide on the Municipality’s standard form, the Municipality with certificates of insurance in respect of the Veresen Insurance evidencing the cross liability and severability clauses and confirming the Municipality as an “additional insured”. Thereafter, Veresen shall provide the Municipality with evidence of all renewals of the Veresen Insurance in a form acceptable to the Municipality.

10.4 **General insurance conditions.**

- (a) The Veresen Insurance shall not be construed to, and shall in no manner, limit or restrict Veresen’s liability or obligations under this Agreement.
- (b) The Municipality shall not be liable for any premiums relating to policies under the Veresen Insurance.
- (c) The policies under the Veresen Insurance shall provide:
 - (i) that they are primary insurance which will not call into contribution any other insurance available to the Municipality;
 - (ii) a waiver for severability of interest; and

- (iii) that the Veresen Insurance shall not be cancelled, lapsed or materially changed to the detriment of the Municipality without at least thirty (30) business days' notice to the Municipality by registered mail.
- (d) Veresen will immediately notify the Municipality of any changes to or cancellation of the Veresen Insurance if they will directly affect or reduce the coverage made available to the Municipality.

11. LIABILITY AND INDEMNIFICATION

11.1 General. For the purpose of this **Article 11**,

- (a) “**Municipality**” means the Municipality and its Chief Administrative Officer, the City Engineer, Council members, officers, employees, contractors, agents, successors and assigns;
- (b) “**Veresen**” means Veresen, and its Affiliates, directors, officers, employees, contractors, agents, successors and assigns;
- (c) “**Claims**” means any and all claims, actions, causes of action, complaints, demands, suits or proceedings of any nature or kind; and
- (d) “**Losses**” means, in respect of any matter, all losses, damages, liabilities, deficiencies, costs and expenses (including, without limitation, all legal and other professional fees and disbursements, interest, liquidated damages and amounts paid in settlement, whether from a Third Party or otherwise), and for the purposes of this definition, “costs” shall mean those costs awarded in accordance with the order of a court of competent jurisdiction, the order of a board, tribunal or arbitrator or costs negotiated in the settlement of a claim or action.

11.2 No liability, Municipality. Except for Claims or Losses arising, in whole or in part, from the negligence or wilful misconduct of the Municipality or its agents, employees, contractors or others for whom it is at law responsible, the Municipality shall not:

- (a) be responsible, either directly or indirectly, for any damage to the Equipment howsoever caused that may occur as a result of any Work by Veresen; and
- (b) be liable to Veresen for any Losses whatsoever suffered or incurred by Veresen on account of any actions or omissions of the Municipality working within the ROWs.

11.3 No liability, both Parties. Notwithstanding anything else in this Agreement, neither Party shall be liable to any person in any way for special, incidental, indirect, consequential, exemplary or punitive damages, including damages for pure economic loss or for failure to realize expected profits, howsoever caused or contributed to, in connection with this Agreement and the performance or non-performance of its obligations hereunder.

11.4 Indemnification by Veresen. Except for Claims or Losses arising, in whole or in part, from the negligence or wilful misconduct of the Municipality or its agents, employees, contractors or others for whom it is at law responsible, Veresen covenants and agrees to indemnify, defend and save harmless the Municipality from and against any and all Claims or Losses that the Municipality may suffer or incur arising from:

- (a) Veresen's exercise of any of its rights under this Agreement;
- (b) Veresen's performance of any Work within the ROWs and the operation or use of the Equipment by Veresen or any other person that is acting on behalf of, or at the direction of, Veresen;

- (c) Veresen undertaking any activity within the ROWs which is ancillary to Veresen's exercise of its rights under this Agreement; and
- (d) any breach of this Agreement by Veresen.

11.5 **Survival.** The obligation of Veresen to indemnify, defend and save harmless the City shall survive the termination or expiry of this Agreement.

12. ENVIRONMENTAL LIABILITY

12.1 **Municipality not responsible.** The Municipality is not responsible, either directly or indirectly, for any damage to the natural environment or property, including any nuisance, trespass, negligence, or injury to any person, howsoever caused, arising from the presence, deposit, escape, discharge, leak, spill or release of any Hazardous Substance in connection with Veresen's occupation or use of the ROWs, unless such damage was caused directly or indirectly by the negligence or wilful misconduct of the Municipality or its agents, employees, contractors, or others for which it is responsible in law.

12.2 **Veresen to assume environmental liabilities.** Veresen agrees to assume all environmental liabilities, claims, fines, penalties, obligations, costs or expenses whatsoever relating to its use of the ROWs, including, without limitation, any liability for the clean-up, removal or remediation of any Hazardous Substance on or under the ROWs that result from:

- (a) the occupation, operations or activities of Veresen, its contractors, agents or employees or by any person with the express or implied consent of Veresen within the ROWs; or
- (b) any Equipment brought or placed within the ROWs by Veresen, its contractors, agents or employees or by any person with the express or implied consent of Veresen,

unless such damage was caused directly or indirectly in whole or in part by the negligence or wilful misconduct on the part of the Municipality or its agents, employees, contractors, or others for which it is responsible in law.

13. FORCE MAJEURE

Except for the Parties' obligations to make payments to each other under this Agreement, neither Party shall be liable for a delay in its performance or its failure to perform hereunder due to causes beyond its reasonable control, including, but not limited to, acts of God, fire, flood, or other catastrophes; government, legal or statutory restrictions on forms of commercial activity; or order of any civil or military authority; national emergencies, insurrections, riots or wars or strikes, lock-outs or work stoppages ("**Force Majeure**"). In the event of any one or more of the foregoing occurrences, notice shall be given by the Party unable to perform to the other Party and the Party unable to perform shall be permitted to delay its performance for so long as the occurrence continues. Should the suspension of obligations due to Force Majeure exceed two (2) months, either Party may terminate this Agreement without liability upon delivery of written notice to the other Party.

14. NOTICES

Any notice required or permitted to be given hereunder or any tender or delivery of documents may be sufficiently given by personal delivery or, if other than the delivery of an original document, by facsimile transmission to the Municipality at the following address:

300 Dufferin Ave,
London ON N6A 4L9

Or to Veresen at the following address:

Veresen District Energy Partnership
Livingston Place, South Tower
900 – 222 3rd Avenue SW
Calgary, AB T2P 0B4
Attention: Kevan S. King, Senior Vice President and General Counsel

Any notice may also be given by prepaid registered mail mailed within the Province of Ontario and such notice shall be effective five (5) business days following the date of mailing, except in the event that there shall be a disruption in postal services at the date of mailing, in which case notice shall be effective by personal delivery or a facsimile transmission as stated above.

15. GENERAL

- 15.1 **Entire agreement.** This Agreement, together with the Schedules attached hereto, constitute the complete and exclusive statement of the understandings between the Parties with respect to the rights and obligations hereunder and supersedes all proposals and prior agreements, oral or written, between the Parties.
- 15.2 **Assignment.** This Agreement may not be assigned or transferred, in whole or in part, without the prior written consent of the other Party, such consent not to be unreasonably withheld. Notwithstanding the foregoing, Veresen (and its successors and permitted assigns) shall, provided that it is not in material breach of this Agreement: (i) have the right to assign this Agreement to an Affiliate, and (ii) have the right to assign this Agreement to London District Energy LP or any Affiliate of London District Energy LP's general partner, without the consent of the Municipality provided that Veresen has given notice to the Municipality.
- 15.3 **Parties to act reasonably.** Each Party shall at all times act reasonably in the performance of its obligations and the exercise of its rights and discretion under this Agreement.
- 15.4 **Amendments.** Except as expressly provided in this Agreement, no modification of or amendment to this Agreement shall be effective unless agreed to in writing by the Municipality and Veresen.
- 15.5 **Survival.** The terms and conditions contained in this Agreement that by their sense and context are intended to survive the performance thereof by the Parties hereto shall so survive the completion of performance, the expiration and termination of this Agreement, including, without limitation, provisions with respect to indemnification and the making of any and all payments due hereunder.
- 15.6 **Governing law.** This Agreement shall be governed by the laws of the Province of Ontario and all federal laws of Canada applicable therein.
- 15.7 **Waiver.** Failure by either Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.
- 15.8 **Severability.** If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision and everything else in this Agreement shall continue in full force and effect.

15.9 **Inurement.** This Agreement is and shall be binding upon and inure to the benefit of the Parties hereto and their respective legal representatives, successors, and permitted assigns, and may not be changed or modified except in writing, duly signed by the Parties hereto.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement by their duly authorized representatives.

**THE CORPORATION OF THE CITY
OF LONDON**

**VERESEN DISTRICT ENERGY
PARTNERSHIP** by its managing partner
**VERESEN ENERGY
INFRASTRUCTURE INC.**

Name: Matt Brown
Title: Mayor

Name:
Title:

Name: Catherine Saunders
Title: City Clerk

Name:
Title: