

CENTRA GAS MANITOBA INC.
FRANCHISE AGREEMENT APPLICATION

AMENDMENTS TO THE SCHEDULE OF
THE GREATER WINNIPEG GAS DISTRIBUTION ACT

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6

7 **Attachments**

- 8 1. Existing Schedule of *The Greater Winnipeg Gas Distribution Act*
- 9 2. Negotiated Schedule of *The Greater Winnipeg Gas Distribution Act* (Black-lined)
- 10 3. Negotiated Schedule of *The Greater Winnipeg Gas Distribution Act* (Clean)

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1 **3.0 Introduction**

2 The purpose of this Tab is to provide material in support of the alterations in, and
3 additions to, the Schedule of *The Greater Winnipeg Gas Distribution Act* (the "Act") as
4 negotiated between Centra and the Greater Winnipeg Gas Distribution Negotiating
5 Committee (the "Negotiating Committee"). In this Tab, Centra also provides material in
6 support of its request for the Public Utilities Board ("PUB") to include the Rural
7 Municipality of Headingley ("RM of Headingley") as a municipality of Greater Winnipeg,
8 in order to formalize Centra's franchise rights in the RM of Headingley under the Act.

9

10 For reference purposes, Centra has included a copy of the existing Schedule to the Act
11 as Attachment 1 to Tab 3, which was approved by the PUB in 1982, by Order 204/82.
12 The black-lined Schedule included as Attachment 2 reflects the amendments as
13 negotiated between Centra and the Negotiating Committee. To assist in determining the
14 source of the additions to the Schedule, Centra has colour coded Attachment 2: black
15 text is from the existing Schedule, blue text is from the existing generic franchise
16 agreement (the "Generic Agreement") approved by the PUB by Order 109/94, and red
17 text is new. Centra has also included, as Attachment 3, a copy of the Schedule which
18 incorporates the negotiated amendments (the "Negotiated Schedule").

19

20

1 **3.1 Background**

2 *The Greater Winnipeg Gas Distribution Act* was enacted in 1959 giving exclusive
3 franchise rights for a 25 year term to The Greater Winnipeg Gas Company to construct
4 and operate a natural gas distribution system in Greater Winnipeg. Greater Winnipeg is
5 defined in the Act as the City of Winnipeg, the Rural Municipality of East St. Paul and the
6 Rural Municipality of West St. Paul. Pursuant to the Act and with PUB approval, The
7 Greater Winnipeg Gas Company expanded its system to 15 other municipalities. These
8 additional franchise areas were subject to the same terms and conditions contained in
9 the Schedule to the Act. The franchises were renewed for an additional 25 year term in
10 1982, to expire December 31, 2008.

11
12 On December 29, 2006, in accordance with Section 7(2) of the Act, Centra, as the legal
13 successor to The Greater Winnipeg Gas Company, provided notice to the Province of
14 Manitoba ("Manitoba") of its intention to renew all franchises granted under the Act.
15 Upon receiving Centra's notice and pursuant to Section 8 of the Act, Manitoba
16 constituted the Negotiating Committee which was comprised of a chair appointed by
17 Manitoba, two representatives appointed by the City of Winnipeg and two members
18 appointed from nominees put forth by the other municipalities subject to the Act.

19
20 Negotiations proceeded throughout the summer and fall of 2008 and concluded with
21 agreement on all but one issue. The Negotiating Committee provided its report to the
22 Minister responsible for the Act, and while Manitoba considered its options, the
23 franchises were extended for one year terms by Ministerial Orders dated November 24,
24 2008, November 23, 2009, and November 22, 2010. The Minister reconstituted the
25 Negotiating Committee in January 2011 to address the one unresolved item.

1 The outstanding issue from the first round of negotiations centered on the apportionment
2 of costs for municipally requested gas infrastructure relocations or removals. The Act
3 and other legacy franchise agreements are silent on the issue. For infrastructure moves
4 within the City of Winnipeg, consistent with Order 58/63, the City of Winnipeg pays the
5 costs associated with retiring the existing mains and equipment, and the Company is
6 responsible for the costs of constructing the distribution system in the new location. In
7 1994 the PUB approved the existing Generic Agreement, which has been used by the
8 Company for all new franchises since that time. The existing Generic Agreement
9 includes a clause formalizing the Company's practice of charging municipalities for all of
10 the costs for gas infrastructure removals or relocations required by the Municipality.

11

12 Centra's initial position in the first round of negotiations was to harmonize the Schedule
13 of the Act with the Generic Agreement, reflecting Centra's actual practice with all
14 municipalities with the exception of the City of Winnipeg. The Negotiating Committee's
15 original position was to incorporate the intent of Order 58/63 into the new Schedule so
16 that it would apply to all municipalities subject to the Act.

17

18 In the second round of negotiations, Centra proposed that costs be apportioned equally
19 between the Company and the Municipality. This was agreeable to the Negotiating
20 Committee provided that the City of Winnipeg retained its current treatment as per Order
21 58/63. The parties agreed "...that costs and expenses incurred in the removal and
22 replacement or the relocation shall be apportioned between the Company and the
23 Municipality in such a manner as they may agree upon, or in the absence of an
24 agreement, shall be apportioned equally." Centra has committed to enter into an
25 agreement with the City of Winnipeg to preserve the cost apportionment arrangement as

1 per Order 58/63. This agreement is scheduled to go before City Council for approval on
2 September 28, 2011.

3

4 On February 16, 2011, negotiations on the Schedule successfully concluded between
5 Centra and the Negotiating Committee. Centra received notice from the Negotiating
6 Committee on July 4, 2011 that it was satisfied that the franchises should be renewed
7 subject to, and in accordance with, the terms and conditions set out in the Negotiated
8 Schedule and agreed that Centra would prepare and pursue PUB approval on the
9 municipalities' behalf.

10

11 **3.2 Rural Municipality of Headingley**

12 When the Schedule to the Act was last renewed in 1982, the area that is now the RM of
13 Headingley was part of the City of Winnipeg. The RM of Headingley seceded from the
14 City of Winnipeg in 1992. Centra's franchise rights will continue in this municipality until
15 the expiry of the franchises. Centra is requesting that the PUB formally recognize the
16 RM of Headingley as a municipality of Greater Winnipeg pursuant to Section 4(3) of the
17 Act.

18

19 Centra notes that the RM of Headingley was provided an opportunity to nominate a
20 representative to the Negotiating Committee and has been included in all
21 correspondence and notifications of decisions made by the Negotiating Committee.

22

1 **3.3 Proposed Amendments to the Schedule of the Act**

2 The amendments to the Schedule are, for the most part, the result of additions or
3 rewording that originates from the existing Generic Agreement. Certain sections have
4 also been rearranged to follow a more logical order. A more detailed explanation of the
5 removal of certain sections from the Schedule and new provisions being proposed are
6 discussed in the following paragraphs, and are illustrated in Attachment 2.

7

8 **3.3.1 Sections from the Existing Schedule not Included in the Negotiated**
9 **Schedule**

10 Sections 3 and 9(1) - 9(4) found in the existing Schedule are not included in the
11 Negotiated Schedule. The obligations referred to in these Sections are now covered in
12 Section IV. D. 12 (c) and Section IV.B.2 of the General Terms and Conditions contained
13 in Centra's Schedule of Sales and Transportation Services and Rates, which can be
14 more easily updated, from time to time, as may be required.

15

16 **3.3.2 Request by the Municipality to Extend Gas Service**

17 The Negotiated Schedule contains a new provision in Subsection 2(2) pertaining to
18 requests from the Municipality to serve areas of a franchise that the Company does not
19 supply natural gas to. This new provision is intended to address exceptional situations
20 where a service extension request from the Municipality is highly uneconomic, as
21 determined by Centra's feasibility test. Where the Company receives a request from the
22 Municipality to supply gas upon the same terms and conditions as provided in the
23 Schedule, the Company will work together with the Municipality with a view of
24 developing a viable business model in relation to that portion of the Municipality. This
25 provision reflects Centra's practice of attempting to respond to all requests for natural

1 gas service.

2

3 **3.3.3 Limited Deliverability and Allocation of Natural Gas**

4 The terms contained in Subsection 2(b) of the existing Generic Agreement, which
5 absolve the Company of its obligation to construct or extend its mains or provide natural
6 gas if the Company is for any reason unable to obtain delivery of natural gas at or near
7 the limits of the Municipality, have been added in Subsection 2(4) of the Negotiated
8 Schedule.

9

10 The terms from Subsection 2(c) of the existing Generic Agreement have also been
11 incorporated into the Negotiated Schedule, which define the allocation of natural gas in
12 the event that the amount of gas available at or near the limits of the Municipality is
13 insufficient to meet the requirements of connected customers. Centra has the right to
14 prescribe rules and regulations for allocating the available supply of natural gas to
15 domestic, commercial and industrial customers in that order of priority and subject to the
16 provisions of *The Gas Allocation Act* and regulations thereto.

17

18 It was agreed by Centra and the Negotiating Committee that the allocation of gas under
19 this Subsection should also be subject to any orders made pursuant to *The Emergency*
20 *Measures Act* (the "EMA"), since the EMA provides for the provision of essential goods,
21 services and resources in a state of emergency. Section 12 of the EMA, establishes the
22 emergency powers granted to the minister responsible for the administration of the EMA
23 or the local authority during a state of emergency as follows:

24 *12 Upon the declaration of, and during a state of emergency or a state of local*

1 *emergency, the minister may, in respect of the province or any area thereof, or the*
2 *local authority may, in respect of the municipality or an area thereof, issue an order*
3 *to any party to do everything necessary to prevent or limit loss of life and damage*
4 *to property or the environment, including any one or more of the following things:*
5 *...*

6 *(i) authorize the procurement and distribution of essential resources and the*
7 *provision of essential services;*

8 *(i.1) regulate the distribution and availability of essential goods, services and*
9 *resources.*

10

11 Subsection 2(b) of the existing Generic Agreement requires the Company to advise the
12 Municipality if the conditions contained in the Subsections noted above are likely to
13 occur. This provision has been incorporated into Subsection 2(6) of the Negotiated
14 Schedule.

15

16 **3.3.4 Municipal Approval of Construction Plans**

17 Subsections 4(1) and 4(2) of the existing Schedule, which sets out the Company's
18 obligation to submit construction plans with the Municipal Engineer or other person
19 designated by the Municipality for approval, have been updated to more accurately
20 reflect Centra's current practices. These provisions are now contained in Subsection
21 3(1) of the Negotiated Schedule.

22

23 In Subsection 3(1) of the Negotiated Schedule, Centra agrees to file for the approval of

1 the Municipal Engineer plans for the construction of the Gas Distribution System within
2 the Municipality. In Subsection 14(2) of the Negotiated Schedule, “Municipal Engineer” is
3 defined as a “professional engineer employed directly or indirectly by the Municipality or
4 other such person as may be designated by the council of the Municipality to carry out
5 the functions and duties of the Municipal Engineer as described in the Agreement.”
6 Centra and the Negotiating Committee agreed that the Municipal Engineer should also
7 approve any changes to plans that may occur during construction, with the provision that
8 any such approvals should be provided in a timely manner.

9

10 Subsection 3(1) of the Negotiated Schedule requires that the Gas Distribution System be
11 placed in such locations as agreed between Centra and the Municipal Engineer in
12 boulevards and under other unpaved surfaces rather than in streets when reasonably
13 practicable and where the cost of installation and maintenance will not be unreasonably
14 high.

15

16 **3.3.5 Requests for As-Built Plans for the Distribution System**

17 Subsection 4(3) of the existing Schedule requires Centra to supply plans of the
18 distribution system as constructed to the Municipality. Centra and the Negotiating
19 Committee agreed to modify this provision to establish conditions pertaining to the
20 supply of “as-built” plans by the Company to the Municipality.

21

22 In Subsection 3(2) of the Negotiated Schedule, Centra agrees to supply, upon request of
23 the Municipality, plans showing the location of the Gas Distribution System within the
24 Municipality on an as-built basis; however, in no event shall the plans be provided more
25 than twice in any 12 month period. Centra and the Negotiating Committee agreed to limit

1 the number of times the Company will provide as-built plans to the Municipality because
2 it is not administratively feasible to provide complete updated as-built plans after each
3 main extension within a municipality. Centra agrees to provide as-built plans twice
4 within any 12 month period to provide a reasonable response to the needs of the
5 Municipality.

6

7 Subsection 3(2) also stipulates that the plans will be provided on conditions and in a
8 format mutually agreed upon between the Company and the Municipality.

9

10 **3.3.6 Process for Restoration Work after Construction**

11 In Subsection 5(c) of the Negotiated Schedule, a process has been established by which
12 the Company and the Municipality can be assured that restoration work has been
13 completed to the Municipality's satisfaction following construction work undertaken by
14 the Company. This process addresses concerns raised by the Negotiating Committee
15 that it is not always evident to a municipality that restoration work has been completed.
16 The Company explained that there may be times when construction work has occurred
17 in late fall and restoration work has to be delayed until the following spring. The parties
18 agreed that formalizing a reasonable communication process would prevent future
19 misunderstandings in this regard.

20

21 Centra agrees that it will, within a reasonable time after completion of any construction
22 work, restore the Highways and other areas where construction has occurred to a state
23 of repair, as nearly as possible, equal to their former state, unless another process is
24 established by municipal bylaw. Centra also agrees that within 30 days of the completion
25 of restoration work, the Company will give notice in writing to the Municipal Engineer that

1 the work and restoration have been completed and inspected. The Municipal Engineer
2 acting reasonably shall advise Centra in writing of any deficiencies in connection with the
3 construction work or the restoration. If the Municipality fails to provide such advice within
4 six months of the Company's notice to the Municipality and unless an extension of time
5 has been mutually agreed, the Municipality will be deemed to have accepted the
6 restoration work. This process will improve relations between the Company and the
7 Municipality by establishing clear communication obligations and timelines for both
8 parties.

9

10 **3.3.7 Depth of Cover Requirements**

11 A provision has been added under Subsection 5(e) of the Negotiated Schedule
12 obligating the Company to remedy at its cost any pipe line found without the required
13 depth of cover as established by the PUB pursuant to *The Gas Pipe Line Act (Manitoba)*
14 that is the result of improper installation. Centra notes that although pipe lines are
15 installed to meet or exceed the depth of cover specified by the Canadian Standards
16 Association and as made applicable by the PUB, the actual depth of cover can change
17 over time either naturally or due to excavation work completed, unbeknownst to Centra,
18 by other parties. The intent of this Subsection is to formalize Centra's practice of
19 responding and remedying situations where pipeline depth of cover is found to be
20 insufficient to meet current standards. If the situation is the direct result of excavation
21 work undertaken by a municipality at the time that the insufficient cover is identified,
22 Centra will bill the Municipality or, if applicable, the third party responsible. Otherwise,
23 Centra will bear the cost of remedying the situation.

24

25

1 **3.3.8 Responsibility for Infrastructure Removals or Relocations**

2 The terms contained in Subsection 7(a) of the existing Generic Agreement, which
3 stipulate that the Company is responsible for all costs in connection with the removal or
4 relocation of gas infrastructure, except where such construction has been requested by
5 the Municipality, has been added in Subsection 5(f) of the Negotiated Schedule.

6

7 A new provision has been added to Subsection 5(g) of the Negotiated Schedule,
8 establishing the responsibility for costs of removing or relocating gas infrastructure,
9 where such construction is initiated by the Municipality. While Order 58/63 governs the
10 apportionment of these types of costs within the City of Winnipeg, the existing Schedule
11 is silent on the matter for all other municipalities subject to the Act. Centra's current
12 practice, consistent with terms approved in the existing Generic Agreement and applied
13 province-wide, is to charge the Municipality the relocation or removal costs. The
14 exception to this practice is infrastructure removals or relocations requested by the City
15 of Winnipeg, where Order 58/63 prescribes that the City of Winnipeg pay the cost of
16 labour and material required in the original construction, less depreciation and any the
17 value of material salvaged, and the Company bear the entire cost of constructing the gas
18 mains in the new location.

19

20 Centra and the Negotiating Committee agreed that the costs incurred in the removal and
21 replacement or relocation of any part of the distribution system that is required by the
22 Municipality will be apportioned between the Company and the Municipality in such a
23 manner as they may agree upon, or in the absence of an agreement, be apportioned
24 equally. This change is consistent with Manitoba Hydro's practice for the electricity
25 distribution system, where the costs to remove or relocate infrastructure when requested

1 by the Municipality are apportioned between the Company and the Municipality, in
2 accordance with Subsection 23(2) of *The Manitoba Hydro Act*. This policy is also
3 consistent with the treatment of the provincial government and its agencies when
4 requesting infrastructure removals or relocations, as outlined in Treasury Board Directive
5 PA-25-05.

6

7 To provide some context to this matter, since 2002 Centra has completed two
8 infrastructure moves for rural municipalities subject to the Act for a total cost to those
9 rural municipalities of approximately \$33,200. During the same time period, Centra
10 completed seven municipally requested infrastructure moves totaling approximately
11 \$181,000. This includes the two requests noted above, but excludes requests made by
12 the City of Winnipeg. If these costs had been apportioned equally, Centra would have
13 been responsible for an additional \$90,500 in costs over the seven year period.

14

15 The proposed cost sharing provision preserves the arrangement with the City of
16 Winnipeg and creates consistency between how Manitoba Hydro and Centra will treat
17 municipalities for infrastructure removals and relocations requested by the Municipality.

18

19 **3.3.9 Insurance Policy against Public Liability and Property Damage**

20 The terms contained in Section 9 of the existing Generic Agreement, which require the
21 Company to maintain an insurance policy against public liability and property damage in
22 connection with the operation of the gas distribution system, have been incorporated in
23 Section 12 of the Negotiated Schedule.

24

25

1 **3.3.10 Failure to Carry Out Obligations due to Force Majeure**

2 The terms contained in Section 12 of the existing Generic Agreement, which states that
3 neither party shall be liable for failure to carry out its obligations under the Schedule if
4 such failure is caused by force majeure, have been added in Section 13 of the
5 Negotiated Schedule.

6

7 **3.4 Conclusion**

8 The proposed amendments to the Schedule represent careful deliberation of Centra and
9 the Negotiating Committee and do not alter or impair the PUB's approval or oversight
10 role with respect to gas operations. The negotiating process allowed Centra to hear and
11 respond to concerns raised on behalf of all municipalities affected by the Act, as well as
12 for an opportunity for Centra to explain the rationale behind some of its operations. Most
13 of the proposed amendments are minor in nature and serve to add clarity or incorporate
14 updated language. The two proposed amendments discussed under Sections 3.3.6 and
15 3.3.8 may result in some additional costs to the Company; however, Centra views the
16 ensuing benefits to outweigh the possible minor cost impacts.