

Order No. 134/19

**CENTRA GAS MANITOBA INC.:
INTERIM APPROVAL OF A FRANCHISE APPLICATION FOR THE RURAL
MUNICIPALITY OF ST. FRANÇOIS XAVIER**

September 6, 2019

BEFORE: Larry Ring, Q.C., Panel Chair
Marilyn Kapitany, B.Sc.(Hon), M.Sc., Member
Carol Hainsworth, C.B.A., Member
Susan Nemec, FCA, FCPA, Member
Michael Watson, Member

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Franchise Agreement between Centra and the RM of St. François Xavier – Appendix “A”

1.0 Summary

By this Order, the Public Utilities Board (Board) approves, on an interim ex parte basis, Centra Gas Manitoba Inc.'s (Centra) Application for a new franchise agreement with the Rural Municipality of St. François Xavier, subject to Centra and the RM of St. François Xavier amending Section 18 of the By-law Schedule A prior to final reading of By-law 7-2019.

The new franchise agreement replaces existing crossing agreements previously approved in Orders 32/13 and 56/18, and allows Centra to serve a new residential subdivision located in the rural municipality. Furthermore, the new franchise agreement creates a new franchise area over the entire portion of the municipality to facilitate a timely response to anticipated future customer requests for natural gas attachments. The Board also approves the financial feasibility test for the extension of service to the new customers.

2.0 Application

On July 19, 2019, Centra applied to the Board requesting an interim ex parte Order for:

1. Approval and authorization of a new franchise agreement between Centra and the Rural Municipality of St. François Xavier (RM of St. François Xavier); and
2. Approval of the financial feasibility test for the expansion of natural gas service to a residential subdivision in the proposed expansion area located in the RM of St. François Xavier.

As outlined in the Application, Centra and the RM of St. François Xavier have agreed that Centra would seek a new franchise for the entire portion of the municipality to facilitate a timely response to anticipated future customer requests for natural gas service attachments. Historically, Centra only applied for franchise areas where Centra had identified potential customers that will take gas service as opposed to applying for a franchise area to encompass an entire municipality.

The proposed new franchise area in the RM of St. François Xavier will allow for the provision of natural gas service to a new residential subdivision located in the municipality. The proposed new franchise area includes:

- All of fractional sections 25-27, all of fractional sections 33-34, and sections 35-36 Township 12 Range 3 WPM;
- Parish of Baie St. Paul
 - River Lots BPRL 103-246;
- Parish of St. François Xavier
 - River Lots FXRL 113-227
 - Outer Two Mile Lots FXOT 113–227
 - All that portion of Lot FXRL52 which lies north of the Assiniboine River diversion channel constructed through said Lot 52, within the limits of the Municipality.

The proposed new franchise agreement would replace existing crossing agreements approved in Orders 32/13 and 56/18.

The minimum requirement to service the new residential subdivision in the RM of St. François Xavier would involve the construction of approximately 1.7 km of 60.3 mm (NPS 2) polyethylene distribution main that would connect to an existing steel transmission pipeline via a new farm tap facility. However, to utilize existing station infrastructure and avoid additional maintenance requirements and operational limitations associated with a farm tap installation, Centra proposes an alternate project routing and upsizing to serve the proposed franchise extension. Instead of the minimum project requirement, Centra proposes to connect to an existing gate station and construct a new 2.8 km distribution main to supply the new customers. The first segment of the proposed 2.8 km distribution main will be constructed using 640 metres of 219.1 mm (NPS 8) polyethylene pipe, with the remaining portion of the proposed main constructed using 60.3 mm (NPS 2) polyethylene pipe.

Centra stated that the first 640 metres of pipeline will be upsized to NPS 8 to accommodate anticipated area growth and avoid future looping and congestion. The proposed pipeline routing and upsizing results in an incremental cost of \$64,818.27 relative to the minimum project requirement. Centra proposes to consider this incremental project cost as system betterment, to be paid by all of Centra's ratepayers and excluded from the feasibility test.

The proposed main will be installed within existing right-of-way and government road allowances. Centra estimates that half of the residential subdivision's 38 lots will take up natural gas service by the fifth year after project in-service. Based on a total annual consumption of 2,833 m³ per new residential customer, Centra estimates the customer volumes to increase from 8,498 m³ in year 1 of the feasibility test (2020) to 53,823 m³ in year 5 of the feasibility test (2024). The estimated capital cost of the natural gas expansion project is \$111,590, excluding \$64,818.27 of system betterment cost. Per the feasibility test filed by Centra, a contribution of \$36,957 is required. The 30-year net present value of the revenues and costs of this extension is \$0, and the revenues exceed the revenue

requirement after five years. Centra's investment in this expansion project is \$74,633, in addition to the \$64,818 of system betterment cost.

On June 4, 2019, the RM of St. François Xavier gave first reading to the allowing for the new agreement between the RM of St. François Xavier and Centra to cover a new franchise area.

Centra advises that an environmental licence is not required as the proposed natural gas expansion project is less than 10 km in length.

On August 19, 2019, Centra filed its response to Board enquiries regarding the proposed franchise agreement with the RM of St. François Xavier and the proposed use of 2,833 m³/yr as the estimated annual consumption of new residential customers (as opposed to the 2,218 m³/yr forecast for a typical residential customer proposed in Centra's 2019/20 General Rate Application). As part of its August 19, 2019 submission, Centra expressed its preference for not updating its Application at this time as doing so would represent a change in approach from how applications were determined in the past and would result in an additional \$13,500 customer contribution (or an approximate 36% increase to the \$36,957 already contributed). Going forward, Centra stated that it would change its approach in preparing feasibility tests by adopting the most recent residential customer average usage from its natural gas load forecasts.

3.0 Board Findings

The Board considers the information filed by Centra on July 19, 2019 and August 19, 2019, and certified by Centra as accurate and correct, to be Centra's evidence in support of its interim ex parte Application.

Feasibility Test

The Board finds that the form of the feasibility test is in accordance with the Board-approved methodology approved in Orders 109/94, 124/96, 89/97, and 123/98.

As in prior Order 70/12, the proposed extension for the RM of St. François Xavier raises a question of whether and what amount of cross-subsidization a system expansion should be supported by all of Centra's customers. In the Board's view, system expansions should be financially self-supporting through proposed customer revenues and contributions.

In this case, Centra's proposal for an alternate distribution main routing and upsizing to accommodate potential future load growth and also make use of existing station infrastructure results in incremental capital costs of \$64,818.27 when compared to the minimum project capital investment required to serve the residential subdivision in the RM of St. François Xavier. Centra's proposal to treat this incremental project cost as system betterment, as opposed to including it in the feasibility test, results in existing ratepayers cross-subsidizing the new customers that are expected to attach to Centra's service expansion. The trade-off, however, is that should future load growth in the area materialize, Centra will already have some of the required facilities in place to allow other residents and, potentially other businesses, to connect to Centra's system at a lower cost than otherwise would have been required. Centra states that their proposal results in an investment that can reasonably be expected to serve future customers more economically. The Board accepts Centra's request to treat the incremental project capital cost of \$64,818.27 as system betterment and exclude it from the calculation of the customer contribution in the feasibility test.

Regarding Centra's estimated customer volumes for this project, the Board notes that Centra's assumed residential customer volume estimate of 2,833 m³/yr appears to have been used in the feasibility test since approximately 1995. Since that time, however, a number of factors, including improved home energy efficiencies and the trend toward electric water heating for newly constructed residential homes, have caused the average residential annual consumption to continually decline. While Centra's most recent natural gas load forecast suggests a lower annual residential customer consumption, the Board acknowledges that Centra's estimate of 2,833 m³/yr for each new residential customer has been used in Centra's prior feasibility tests. Consistent with a prior Board communication to Centra and other parties on July 17, 2018, the Board expects to review the inputs and methodology related to Centra's natural gas expansion feasibility test as part of a future proceeding. As a result, the Board accepts Centra's estimated customer volumes for the proposed service expansion.

Franchise Agreement

While the Application was filed consistent in form with the Board's requirements as established in Orders 109/94 and 159/11, the Board notes that Section 18 of the proposed franchise agreement incorrectly references prior franchise agreements between Centra and the RM of St. François Xavier. As Centra's proposed franchise agreement is to replace existing crossing agreements approved in Orders 32/13 and 56/18, the Board finds that Section 18 of the franchise agreement between Centra and the RM of St. François Xavier should read as follows:

18. Upon execution of this agreement following receipt of approval from the Public Utilities Board and the By-law being passed all of the Crossing Agreements referred to herein shall cease to be of any force or effect.

As the RM of St. François Xavier anticipates the need for Centra to provide gas service to new customers and since the municipality supports granting Centra the new franchise area, the Board approves and authorizes the new franchise agreement between Centra and the RM of St. François Xavier to cover the entire municipality. The approved franchise

agreement, including the revised Section 18 wording, is attached as Appendix A to this Order. The Board expects that Centra and the RM of St. François Xavier will amend Section 18 of the By-law Schedule A prior to final reading of By-law 7-2019.

4.0 IT IS THEREFORE ORDERED THAT:

1. The Franchise Agreement between Centra Gas Manitoba Inc. and the RM of St. François Xavier, attached hereto as Appendix "A" to this Order, BE AND IS HEREBY APPROVED on an interim ex parte basis, subject to Centra and the RM of St. François Xavier amending Section 18 of the By-law Schedule A prior to final reading of By-law 7-2019;
2. The financial feasibility test for the extension of natural gas service to a residential subdivision within the RM of St. François Xavier BE AND IS HEREBY APPROVED on an interim ex parte basis, including the exclusion of incremental cost of partially servicing the franchise expansion with NPS 8 pipe instead of NPS 2 pipe and interconnecting to an existing gate station instead of the addition of a new farm tap installation.
3. This Interim Order shall be in effect until confirmed or otherwise dealt with by a further Order of the Board.

Board decisions may be appealed in accordance with the provisions of Section 58 of *The Public Utilities Board Act*, or reviewed in accordance with Section 36 of the Board's Rules of Practice and Procedure. The Board's Rules may be viewed on the Board's website at www.pubmanitoba.ca.

THE PUBLIC UTILITIES BOARD

"Larry Ring, Q.C."
Panel Chair

"Rachel McMillin, B.Sc."
Assistant Associate Secretary

Certified a true copy of Order No. 134/19
issued by The Public Utilities Board



Assistant Associate Secretary

MEMORANDUM OF AGREEMENT made this ____ day of _____, 2019.

BETWEEN:

THE RURAL MUNICIPALITY OF ST. FRANÇOIS XAVIER,

(hereinafter called the "Municipality"),

- and -

CENTRA GAS MANITOBA INC.,

(hereinafter called the "Company").

WHEREAS the Municipality entered into a Crossing Agreement dated May 14, 2013 with Centra, permitting Centra to construct, lay and maintain a pipeline for the conveying of natural gas across all those portions of River Lots 200 through 227 in the Parish of St. François Xavier; and

WHEREAS By-Law No. 16-2012 of the Municipality authorizing the Municipality to enter into the Agreement was approved by the PUB by Order No. 32/13; and

WHEREAS the Municipality entered into a Crossing Agreement dated July 17, 2018 with Centra, permitting Centra to construct, lay and maintain a pipeline for the conveying of natural gas across all those portions of River Lots 182 through 199 in the Parish of St. François Xavier; and

WHEREAS By-Law No. 27-2018 of the Municipality authorizing the Municipality to enter into the Agreement was approved by the PUB by Order No. 56/18; and

WHEREAS the PUB approved a new form of generic franchise agreement by Order 159/11 dated November 16, 2011; and

WHEREAS the Municipality has agreed that it is in its interest to grant Centra a franchise for the supply of natural gas to all of the Municipality:

- All of Fractional Sections 25-27, all of Fractional Sections 33-34, Sections 35-36 Township 12, Range 3 WPM
- Parish of Baie St. Paul
 - River Lots BPRL 103–246

- Parish of St. François Xavier
 - River Lots FXRL 113–227
 - Outer Two Mile Lots FXOT 113–227
 - All that portion of Lot FXRL52 which lies North of the Assiniboine River diversion channel constructed through said Lot 52; and

WHEREAS the franchise to all of the Municipality will replace:

- The existing Crossing Agreement with the Municipality dated May 14, 2013; and
- The existing Crossing Agreement with the Municipality dated July 17, 2018; and

WHEREAS by by-law duly passed by the Council of the Municipality (the "By-law"), the Reeve and the Chief Administrative Officer (CAO) have been authorized and directed to execute this Agreement on behalf of the Municipality.

NOW THEREFORE pursuant to the premises and in consideration of the sum of TEN DOLLARS (\$10.00) now paid by the Company to the Municipality (the receipt of which is hereby acknowledged), and in further consideration of the mutual covenants hereinafter set forth it is mutually covenanted and agreed by the parties as follows:

1. Subject to compliance with the provisions of *The Municipal Act* (Manitoba), *The Public Utilities Board Act* (Manitoba) and *The Gas Pipe Line Act* (Manitoba), the Municipality hereby grants to the Company, its successors and assigns, subject to the terms, conditions and provisions herein contained, the sole and exclusive franchise to distribute natural gas to all of the Rural Municipality of St. François Xavier, for a term of thirty (30) years from the date hereof. The Municipality further grants to the Company the full power, right, licence and liberty to enter upon property of the Municipality and to break the surface and make necessary excavations to lay down, take up, relay, connect, disconnect, repair, remove, maintain, replace and operate a gas distribution system and any and all necessary or convenient mains, pipes, services, and all other equipment and appliances as the Company may deem desirable for the supply, transmission and distribution of gas (collectively the "Gas Distribution System") in, upon, over, across, under and along the public highways, streets, roads, bridges, walkways, sidewalks, road allowances, squares, lanes, alleys, ditches, drainage systems and other public places (collectively the "Highways") within

the boundaries of the Municipality as the same may from time to time exist, as may be necessary for the purpose of transporting, supplying, and delivering natural gas to the consumers thereof.

2.(1) Subject to the provisions hereof, the Company agrees that during the term of this Agreement, it will install and maintain an adequate natural gas distribution system within the Territory and will provide such quantities of natural gas as will meet the requirements of the inhabitants, businesses and industries located in the Territory.

2.(2) The Company agrees that with respect to any portion of the Territory which the Company does not supply natural gas to, in the event the Municipality, acting reasonably, requests the Company to supply natural gas upon the same terms and conditions as provided in this Agreement, the Company will work together with the Municipality with a view of developing a viable business model in relation to that portion of the Territory. All such extensions for service shall be subject to the Company's feasibility test as approved by The Public Utilities Board of Manitoba (the Board) from time to time. The Company further agrees that if the Company is unable to develop a viable business model with the Municipality, the Company shall relinquish that portion of the Territory from the franchise previously granted if asked to do so by the Municipality.

2.(3) For the purpose of implementing a distribution system expansion for the attachment of new customers pursuant to clause 2(1), the Company shall, whenever a request is made for gas service by any inhabitant or industry of the Municipality in a location not served by the existing system of the Company, comply with the request provided the request meets criteria filed with and approved by the Board for expansion of the distribution system and does not unduly affect customers on the existing system. Such criteria may include but not be limited to estimates of customers, sales, volumes, revenues, costs, and return on investment, the effect upon existing customers and any customer contribution in aid of construction. The criteria shall be reviewed by the Board from time to time as the Board deems necessary or as may be requested by the Company.

2.(4) The Company shall not be bound to construct or extend its mains or provide natural gas or gas service if the Company is, for any reason, unable to obtain delivery of natural gas at or near

the limits of the Territory, or an adequate supply thereof to warrant the construction or extension of its mains for the provision of natural gas.

2.(5) In the event the amount of natural gas supplied to the Company at or near the limits of the Territory is insufficient to meet the requirements of connected customers, the Company shall have the right to prescribe reasonable rules and regulations for allocating the available supply of natural gas to domestic, commercial and industrial customers in that order of priority. The allocation of natural gas shall also be subject to the provisions of *The Gas Allocation Act* (Manitoba) and Regulations thereto and any orders made pursuant to *The Emergency Measures Act* (Manitoba).

2.(6) In the event that either of the conditions referred to in subsections (4) and (5) occur or are likely to occur, the Company will advise the Municipality thereof as soon as the conditions become apparent to the Company.

3.(1). Prior to the installation of any part of the Gas Distribution System, the Company shall file plans with the municipal engineer, which shall mean a professional engineer employed directly or indirectly by the Municipality or such other person as may be designated by the council of the Municipality to carry out the functions and duties of the Municipal Engineer as herein described ("Municipal Engineer"), showing the location, depth and size of all mains, pipes or conduits and any other equipment or structures (but not including geodetic information) intended to be installed or constructed and shall comply with all by-laws of the Municipality relating to the construction of such works. The Municipality, by its Municipal Engineer, shall approve the plans as to the location of the Gas Distribution System and any changes thereto arising in course of construction within the Municipality, which approval shall not be unreasonably withheld or unduly delayed. The Gas Distribution System shall be placed in such locations as agreed by the Municipal Engineer and the Company in boulevards and under other unpaved surfaces rather than in streets when reasonably practicable and where the cost of installation and maintenance will not be unreasonably high.

3.(2) The Company shall supply to the Municipality plans showing the location of its Gas Distribution System within the Municipality on an as-built basis, as requested by the Municipality, but in no event shall such plans be provided more than twice in any 12-month period. Such plans

shall be provided either on paper or in a mutually agreeable format. All of the conditions for the supply of as-builts are to be mutually agreed upon.

3.(3) The pipe, materials and other equipment to be used in the distribution system shall be of the kinds and qualities satisfactory to the Board, and shall be in compliance with *The Gas Pipe Line Act* (Manitoba) and the regulations thereunder.

4. Unless another process is established through municipal bylaw, the Company shall give notice to the CAO or designate of the Municipality, of its intention to open or break up any of the Highways of the Municipality not less than seven (7) days before the beginning of such work, except in cases of emergency arising from defects or breaking of the pipe or other works, when immediate notice shall suffice; and, subject to the same exception and as otherwise provided in this Agreement, the Company shall not begin any such work unless it has obtained approval therefore in writing from the Municipal Engineer.

5. The Company agrees:

- (a) in the execution of the rights and powers granted hereby and in the performance of the work in connection therewith, it shall do as little damage as possible and shall keep passage of the Highways as far as may be practicable free and uninterrupted;
- (b) it shall not interfere with, disturb or damage any existing pipes or lines of other utilities, unless the express consent of such other utilities is first had and received;
- (c) it shall, within a reasonable time after any construction work, restore the Highways and other areas where construction has occurred to a state of repair as nearly as possible equal to their former state, unless another process is established by municipal bylaw. Within thirty (30) days of completion of the restoration work the Company shall give notice in writing to the Municipal Engineer that the work and restoration have been completed and inspected. The Municipal Engineer acting reasonably shall advise the Company in writing of any deficiencies in connection with the construction work or restoration. If the Municipality fails to provide such advice within six (6) months of the Company's notice to the Municipality and unless

an extension of time has been mutually agreed, the Municipality will be deemed to have accepted the restoration work;

- (d) in the execution of the power granted hereby, it shall construct, locate and operate its Gas Distribution System in such manner as will not endanger the public health or safety;
- (e) any pipe line found not in accordance with the depth of cover requirements established by the Board pursuant to *The Gas Pipe Line Act* (Manitoba) as a result of improper installation shall be lowered, relocated or suitably protected by, and at the expense of the Company;
- (f) all costs in connection with the removal or relocation of any part of the Gas Distribution System, including the cost of repairs to any Highways, shall be the Company's responsibility except where such removal or relocation is required by the Municipality; and,
- (g) notwithstanding paragraph (f) above, where the removal or relocation of any part of the Gas Distribution System is required by the Municipality, the costs and expenses incurred in the removal and replacement or the relocation shall be as follows:
 - (i) the Municipality shall pay to the Company an amount equal to the cost of labour and material required in the original construction of that part of the Gas Distribution System that the Municipality requests to be relocated, less depreciation and the value of any material salvaged; and
 - (ii) the Company shall bear the entire cost of constructing the required Gas Distribution System infrastructure in the new location.

6.(1) The Company shall protect and indemnify the Municipality against any damages or expenses in connection with the execution of the powers granted hereby and under *The Gas Pipe Line Act* (Manitoba), and from and against all claims, demands, and actions by third persons in

respect of damages sustained by reason of any operations of the Company and in relation to its distribution system.

6.(2) The Company shall satisfy the Board that it has in place at all times liability insurance coverage sufficient to satisfy any potential claim, demand or action against the Company or the Municipality for such damages.

7.(1) Before the Municipality makes any repairs of, or alterations to, any of its public services which will involve excavations or which may in any way affect any of the Company's lines, plant or equipment, the Municipality shall give notice as set forth in the regulations in effect at that time and made pursuant to *The Gas Pipe Line Act* (Manitoba).

7.(2) Where practicable, the Municipality shall have regard to the reasonable directions of the Company concerning any such repairs and alterations, but, in any event, the Municipality is free of all liability in connection with any damage done by reason of any such repairs or alterations.

8. Natural gas shall be supplied to customers in the Territory at the rates and on the terms and conditions approved or fixed from time to time by the Board or other regulatory authority having jurisdiction.

9. This Agreement shall not prevent the sale or delivery within the Territory by any other person, firm or corporation of liquefied petroleum gas, propane or other product delivered in tanks or containers and not transmitted by pipeline.

10. Subject to any applicable legislation now or hereafter enacted in that regard, the Company shall pay to the Municipality any taxes that may be legally and properly levied by the Municipality against the Company.

11. The Company shall maintain in force during the currency hereof, a policy of insurance provided by an insurance company licensed to do business in the Province of Manitoba, insuring against public liability and property damage in connection with the operations of the Gas Distribution System within the Territory.

12. The Municipality agrees that it will not, for a period of thirty (30) years or longer, if this Agreement is renewed in accordance with the provision of paragraph 13 hereof, grant to any other person, firm or corporation the right to deliver natural gas within the franchise area of the Municipality or to erect or maintain a Gas Distribution System in, upon, over, across, under, or along its Highways within the franchise area for the purpose of supplying and distributing natural gas.

13.(1) It is further agreed that at the expiration of the term hereof and at the expiration of each renewal hereof, the Municipality may, after giving one (1) year's written notice prior to the date of the termination of this Agreement or of any renewal hereof, at its option (to be expressed by by-law of the Municipality), elect to purchase that portion of the Gas Distribution System with respect to its operations within the Municipality that is used exclusively for the distribution of natural gas in the Territory, pursuant to this Agreement, but not any portion of the Gas Distribution System that is used for transmission of natural gas through the Municipality, for such price and on such terms as may be agreed upon between the parties hereto, or failing such agreement then at such price and on such terms including that portion of the Gas Distribution System the Municipality is entitled to purchase as may be fixed and settled by the Board, or if the Board shall refuse to so fix and settle the price then the said price and terms shall be such as may be fixed and determined by arbitration under the provisions of *The Arbitration Act* (Manitoba) and each of the parties shall appoint an arbitrator and the arbitrators so appointed shall appoint a third arbitrator to act as chairman who shall be versed in this special branch of engineering economics, and in the event the arbitrators appointed by each party are unable to appoint a third arbitrator, the third arbitrator shall be appointed by the Chief Justice of the Court of Queen's Bench of the Province of Manitoba. The decision of the Board or of a majority of the said arbitrators shall be binding upon the parties in arriving at the price. The Board or the said arbitrators shall make allowance for severance of the property and operation from other properties and operations of the Company in Manitoba. In the event of such purchase, the Company and the Municipality will enter into an agreement respecting the use of and payment for such use by the Municipality of Company-owned facilities which are not being purchased hereunder and for the sale of natural gas to the Municipality for resale by the Municipality to the inhabitants of the Municipality, at such rates as may be agreed upon between the Company and the Municipality and approved by the Board. If the Municipality does not notify

the Company in writing of its intention to purchase the property of the Company as aforesaid at least one (1) year before the expiration of this Agreement or any renewal thereof, this Agreement will be deemed to be automatically renewed for an additional term of ten (10) years, and at the end of the said ten (10) year renewal term, the said Agreement will be further automatically extended in absence of notice aforesaid for additional terms of ten (10) years from time to time. Provided further that at the time of any such renewal, changes in the terms of this Agreement may be made at the request of either party with the approval of the other, and in the absence of such approval such changes may be made by reference to, under the authority of, and with the approval of the Board. Notwithstanding anything contained elsewhere in this Agreement, it is understood and agreed that if the Municipality exercises its option to purchase the property of the Company with respect to its distribution operations within the area designated in this Agreement, such exercise shall not affect the right of the Company to continue to operate its transmission facilities in such area for so long as the same may be required by the Company.

13.(2) The Company agrees that it shall provide written notice to the Municipality at least two (2) years prior to the expiration of the term hereof and of each renewal hereof, of the Municipality's election as set forth in paragraph 13.(1) hereof.

14. Notwithstanding any other term or condition contained herein, neither party shall be liable to the other for failure to carry out its obligations hereunder when such failure is caused by force majeure as hereinafter defined. The term force majeure means civil disturbances, industrial disturbances (including strikes and lock-outs), interruptions by government or Court orders, present or future valid orders of any regulatory body having proper jurisdiction, acts of the public enemy, wars, riots, blockades, insurrections, failure or inability to secure materials, permits or labourers by reason of priority regulations or orders of government, landslides, lightning, earthquakes, fires, storm, floods, wash-outs, explosions, breakage or accident to machinery or the Gas Distribution System, temporary or permanent failure of gas supply, an act or omission (including failure to deliver gas) reducing supply of gas to the Company's supplier, or any other causes or circumstances to the extent such cause or circumstances was beyond the control of the party prevented from carrying out its obligations by the act of force majeure.

15. Subject to the provisions of *The Public Utilities Board Act* (Manitoba), the Company shall not without the consent of the Municipality, such consent not to be unreasonably withheld, assign this Agreement or the rights, franchises, powers and privileges granted hereby or any of them; provided however the Company may assign this Agreement to any corporation with which the Company may then be associated or affiliated, as those terms are used in *The Corporations Act* (Manitoba) and the *Income Tax Act* (Canada).

16. This Agreement will be binding upon and enure to the benefit of the parties and their successors and assigns.

17. This Agreement is subject to the approval of the Manitoba Public Utilities Board.

18. Upon execution of this agreement following receipt of approval from the Public Utilities Board and the By-law being passed all of the Crossing Agreements referred to herein shall cease to be of any force or effect.

IN WITNESS WHEREOF the parties have duly executed this Agreement as of the day and year first above written.

RURAL MUNICIPALITY OF ST. FRANÇOIS XAVIER

Per:

Reeve

Per:

Chief Administrative Officer

CENTRA GAS MANITOBA INC.

Per:

Authorized Signing Officer

Per:

Authorized Signing Officer