

M A N I T O B A
THE PUBLIC UTILITIES BOARD ACT

Order No. 159/11

November 16, 2011

Before: Graham Lane, C.A., Chairman
Len Evans, LLD, Member
Monica Girouard, C.G.A., Member

CENTRA GAS MANITOBA INC.
FRANCHISE AGREEMENT APPLICATION FOR:

- (i) AN AMENDMENT TO THE SCHEDULE OF *THE GREATER WINNIPEG GAS DISTRIBUTION ACT* (GWGDA);**
 - (ii) THE INCLUSION OF THE RURAL MUNICIPALITY OF HEADINGLEY AS A MUNICIPALITY TO WHICH THE GWGDA APPLIES; AND**
 - (iii) AN AMENDMENT TO THE PUBLIC UTILITIES BOARD'S GENERIC FRANCHISE AGREEMENT**
-

TABLE OF CONTENTS

1.0.0	Executive Summary	4
2.0.0	Introduction and Background	5
2.1.0	Centra's Application	5
2.2.0	Interveners	5
2.3.0	Procedural History of the Application	6
3.0.0	BOARD FINDINGS – PART 1 OF 3 OF CENTRA'S APPLICATION – REVISIONS TO THE SCHEDULE OF THE <i>GWGDA</i>	8
3.1.0	The Greater Winnipeg Gas Distribution Act	8
3.2.0	History of the Negotiating Process	10
3.3.0	The Legal Effect of Order 58/63	12
3.4.0	Lack of Municipal Representation on the Negotiating Committee and Municipal Approval Requirements.....	13
3.5.0	Sections from the Existing Schedule not Included in the Negotiated Schedule 15	
3.6.0	Requests by Municipalities to Extend Gas Service	16
3.7.0	Limited Deliverability and Allocation of Natural Gas.....	17
3.8.0	Municipal Approval of Construction Plans.....	17
3.9.0	Requests for "As-Built" Plans for the Distribution System	18
3.10.0	Process for Restoration Work after Construction	18
3.11.0	Responsibility for Infrastructure Removals or Relocation.....	19
3.11.1	Relocation of Gas Infrastructure - Treatment of Other Municipalities	19
3.11.2	Centra's Proposal for Ongoing Differential Treatment.....	19
3.11.3	The Board's Preferred Attribution Rules	22
3.12.0	Insurance Policy against Public Liability and Property Damage.....	25
3.13.0	Renewal Process	25
3.14.0	Force Majeure	26
4.0.0	BOARD FINDINGS – PART 2 OF 3 OF CENTRA'S APPLICATION – ADDING THE RM OF HEADINGLEY TO THE <i>GWGDA</i>	27
4.1.0	History	27
4.2.0	Inclusion in the Negotiating Committee.....	27
4.3.0	Headingley's Position	27
4.4.0	Disposition.....	27
5.0.0	BOARD FINDINGS – PART 3 OF 3 OF CENTRA'S APPLICATION – REVISIONS TO THE GENERIC FRANCHISE AGREEMENT	29
5.1.0	History	29
5.2.0	Lack of Interveners.....	29
5.3.0	Effect on Municipalities if Part 3 of Centra's Application is Granted	29
5.4.0	Requests by Municipalities to Extend Gas Service.	30
5.5.0	Limited Deliverability and Allocation of Natural Gas.....	31

5.6.0	Municipal Approval of Construction Plans.....	32
5.7.0	Requests for As-Built Plans for the Distribution System.....	32
5.8.0	Process for Restoration Work after Construction	32
5.9.0	Responsibility for Infrastructure Removals or Relocation.....	33
5.10.0	Levy of Taxes by Municipalities.....	34
5.11.0	Onus of Renewal.....	34
6.0.0	IT IS THEREFORE ORDERED THAT:	36

APPENDIX “A” – NEGOTIATED SCHEDULE TO THE GREATER WINNIPEG GAS
DISTRIBUTION ACT AS APPROVED BY THE BOARD

APPENDIX “B” – GENERIC FRANCHISE AGREEMENT AS APPROVED BY THE
BOARD

1.0.0 EXECUTIVE SUMMARY

By this Order, The Public Utilities Board (Board):

- (a) grants Centra Gas Manitoba Inc.'s (Centra) Application for an Order pursuant to subsection 9(4) of *The Greater Winnipeg Gas Distribution Act (GWGDA)* to approve alterations and additions to the Schedule of the *GWGDA* as negotiated between Centra and the Greater Winnipeg Gas Distribution Negotiating Committee (Negotiating Committee), subject to certain required amendments;
- (b) conditionally grants Centra's Application for an Order pursuant to subsection 4(3) of the *GWGDA* to include the RM of Headingley as a municipality deemed to be part of Greater Winnipeg for purposes of the *GWGDA*; and
- (c) grants Centra's Application for an Order pursuant to sections 44, 89 and 129 of *The Public Utilities Board Act ("PUB Act")* to vary the generic form of gas franchise agreement (Generic Franchise Agreement) approved by the Board in Order 109/94, subject to certain required amendments.

2.0.0 INTRODUCTION AND BACKGROUND

2.1.0 Centra's Application

On August 26, 2011, Centra applied to the Board for the following:

- (a) an Order pursuant to subsection 9(4) of the *GWGDA* for approval of alterations and additions to the Schedule of the *GWGDA* as negotiated by the Negotiating Committee;
- (b) an Order pursuant to subsection 4(3) of the *GWGDA* to include the RM of Headingley as a municipality deemed to be part of Greater Winnipeg for purposes of the *GWGDA*; and
- (c) an Order pursuant to sections 89 and 129 of the *PUB Act* for approval to vary the Generic Franchise Agreement the Board approved in Order 109/94.

Centra's Application is somewhat unique compared to rate applications and involves the technical and administrative matters related to the franchise agreement for the distribution of natural gas to the City of Winnipeg and surrounding municipalities that are addressed in the Schedule to the *GWGDA*. Those municipalities are the City of Winnipeg, East St. Paul, West St. Paul, Selkirk, Beausejour, Gimli, Stonewall, Garson, Winnipeg Beach, Dunnottar, Brokenhead, MacDonald, Rockwood, Rosser, St. Andrews, St. Clements, Springfield, and Taché.

2.2.0 Interveners

The only party that applied for intervener status was the City of Winnipeg. Centra did not object and the Board granted the City of Winnipeg intervener status on October 3, 2011 (by way of Board Order 131/11).

2.3.0 Procedural History of the Application

Centra's Application was filed with the Board on August 26, 2011.

In a public notice (published in daily and weekly newspapers beginning September 10, 2011), the Board provided public notice of Centra's Application. Additionally, Centra was required to directly serve (notify) all franchise-granting municipalities and registered brokers of natural gas, all parties of record at the last General Rate Application, Special Contract Customers, and all Interruptible, Main Line and High Volume customers and invited applications for Intervener status.

On September 23, 2011, the Board held a pre-hearing conference at the Board's offices in Winnipeg. At this pre-hearing conference, the Board heard submissions in favour of a written hearing process (with no oral hearing component), the process based on one round of written information requests with no evidence to be filed by the interveners. The Board also considered a timetable for the exchange of information requests, evidence, written submissions, and the issuance of a Board Order in this matter.

On October 3, 2011, the Board issued a procedural order by way of Order 131/11, which held that:

- (a) the City of Winnipeg would receive intervener status;
- (b) the hearing would proceed by way of a written hearing only, but the Board would reserve its ability to call for an oral hearing component if necessary;
- (c) the Board saw no need for final written submissions by Centra, with its Application and responses to Information Requests to stand as its final submission, with either Centra or the City of Winnipeg being at liberty to make a request to the Board to be able to make final submissions; and
- (d) a timetable would be issued pursuant to which Information Requests to Centra were due on October 12, 2011, responses to Information requests

due on October 28, 2011, and the Board was requested to issue an Order by November 14, 2011.

On October 12, 2011, the Board filed and served Information Requests to Centra. No Information Requests were filed by the City of Winnipeg,

On October 28, 2011, Centra filed responses to Board's Information Requests.

On November 3, 2011, Centra filed written submissions, but limited those submissions to Part 1 of its Application, being the request to revise the Schedule in the GWGDA. The City of Winnipeg did not make submissions.

3.0.0 BOARD FINDINGS – PART 1 OF 3 OF CENTRA’S APPLICATION –
REVISIONS TO THE SCHEDULE OF THE *GWGDA*

3.1.0 The Greater Winnipeg Gas Distribution Act

Prior to the extensive consolidation of gas utilities in Manitoba, a number of regional utilities operated in different parts of the province. To lay the requisite distribution infrastructure in Manitoba’s municipalities, the legal relationship between the gas utilities and the municipalities had to be, and still must be, governed. Although the Board has attempted to streamline these relationships over the past 20 years, and provide some consistency, historical relationships still govern to a significant extent. For purposes of Part 1 of Centra’s Application, the historical relationship dates back to 1959.

In 1959, the Province of Manitoba passed the *GWGDA* which, subject to only minor amendments, is still in force today. The *GWGDA* provided the Greater Winnipeg Gas Company with an exclusive right to distribute gas in Greater Winnipeg. This right is what today would be referred to as a municipal franchise. The right was governed by a Schedule to the *GWGDA* that set out the legal obligations of both the Greater Winnipeg Gas Distribution Company and Greater Winnipeg. The Greater Winnipeg Gas Distribution Company is long gone, and Greater Winnipeg now receives gas from that company’s ultimate successor, Centra.

“Greater Winnipeg” in the *GWGDA* was defined as *“the area comprising the City of Winnipeg, the Rural Municipality of East St. Paul, and the Rural Municipality of West St. Paul.”* However, in 1963, an amendment to the *GWGDA* provided the Board with authority to issue orders deeming any city, town, village or rural municipality to be part of Greater Winnipeg for purposes of the *GWGDA*. Centra advised that historically, to be deemed part of Greater Winnipeg, a municipality would have had to enter into a franchise agreement with the Greater Winnipeg Gas Company. Franchises to other companies were not dealt with under the *GWGDA*. In that respect, the Board made use of the deeming provision set out in the current section 4(3) of the *GWGDA* on several

occasions and added the following municipalities by virtue of the following Board Orders:

<i>Order 131/62</i>	<i>RM of St. Clements</i>
<i>Order 132/62</i>	<i>RM of Springfield</i>
<i>Order 133/62</i>	<i>RM of St. Andrews</i>
<i>Order 89/63</i>	<i>Town of Selkirk</i>
<i>Order 123/63</i>	<i>Town of Selkirk</i>
<i>Order 98/65</i>	<i>RM of MacDonald</i>
<i>Order 99/65</i>	<i>RM of Springfield</i>
<i>Order 100/65</i>	<i>RM of St. Clements</i>
<i>Order 101/65</i>	<i>RM of St. Andrews</i>
<i>Order 128/65</i>	<i>RM of Rosser</i>
<i>Order 107/67</i>	<i>Village of Dunnottar, RM of St. Andrews, RM of Gimli, Town of Gimli, Town of Winnipeg Beach</i>
<i>Order 85/69</i>	<i>RM of Rockwood, RM of St. Andrews, Town of Stonewall</i>
<i>Order 38/71</i>	<i>Town of Beausejour, RM of St. Clements, RM of Brokenhead, Village of Garson</i>
<i>Order 69/79</i>	<i>RM of Taché, RM of Springfield</i>
<i>Order 127/88</i>	<i>RM of MacDonald</i>

At the time the Board issued Orders 131/62, 132/62 and 133/62, there was no legal mechanism to deem new municipalities to be part of “Greater Winnipeg”, and those three Orders only approved municipal by-laws granting a franchise. The power to deem municipalities to be part of Greater Winnipeg was only provided to the Board in 1963 (that in the context of the then-pending application for a franchise for the Town of

Selkirk). However, each of St. Clements, Springfield and St. Andrews subsequently granted franchises for other parts of their respective municipalities. In the context of the Board Orders approving those additional franchises, the three municipalities were ultimately deemed to be part of Greater Winnipeg and the Board accepts that they are currently subject to the *GWGDA*.

3.2.0 History of the Negotiating Process

The *GWGDA* stipulates that all franchises subject to that statute expire on December 31, 2008. However, the *GWGDA* provides for a renewal mechanism by which a Negotiating Committee consisting of the following five individuals can agree to renew the franchises subject to any agreed-upon and approved changes:

- (a) two nominees to be appointed by City of Winnipeg Council, without input by the Lieutenant Governor in Council;
- (b) two nominees put forward by the municipalities, other than the City of Winnipeg and to be appointed by the Lieutenant Governor in Council; and
- (c) one other member to be appointed by the Lieutenant Governor in Council who need not be a member of any Greater Winnipeg municipality.

On December 29, 2006, Centra sent a memorandum to the Honourable Minister Rondeau advising of the need to renew the franchises by December 31, 2008. On December 5, 2007, the Province issued an Order in Council appointing the Chairperson of the Negotiating Committee (Joe Ahrens), as well as the two non-Winnipeg representatives (Duane Nicol – City of Selkirk, Glen Brooks – RM of Gimli). Two additional members (Scott Payne and Bob Weselowski) were appointed by Council for the City of Winnipeg. The Board was provided with notice letters to the other non-Winnipeg municipalities, but was not provided with information as to whether any of these municipalities exercised the right to nominate representatives to the Negotiating Committee.

The first round of negotiations ended at an impasse. On December 19, 2008, the Negotiating Committee issued a report to the Province that stated that the issue in dispute was the cost apportionment of municipally requested infrastructure relocations. Centra, in its first round of negotiations, proposed that municipalities bear the full cost of such relocations. The City of Winnipeg, on the other hand, wanted to retain the cost apportionment model set out in Order 58/63. The Negotiating Committee maintained that the apportionment model contained in Order 58/63 should apply in all Greater Winnipeg Municipalities. With respect to Order 58/63, the report of the Negotiating Committee notes as follows:

At the current annual depreciation of pipe, the cost of relocation to the City of Winnipeg is negligible.

Centra Gas Inc. has advised of its intention to apply to the PUB to rescind this Order following renewal of this franchise.

Following this impasse, the franchises initially were extended on November 24, 2008 by ministerial order for a period of one year. On November 23, 2009 and November 22, 2010, they were extended for two further one-year periods.

In the meantime, the Negotiating Committee was sent “back to the table”, albeit with one fewer member. Mr. Weselowski did not participate in the second round of negotiations, and the City of Winnipeg had only one member during the second session. As indicated in the Negotiating Committee’s second report, dated July 4, 2011, the contentious issue was dealt with as follows:

- (a) The City of Winnipeg would retain the cost apportionment model set out in Order 58/63; and
- (b) In all other Greater Winnipeg municipalities, the costs of municipally requested infrastructure relocations would be apportioned by mutual agreement between the municipality and Centra, and failing to reach an agreement, the costs would be shared on a 50/50 basis.

Centra's Application seeking Board approval, as submitted, reflects this resolution.

3.3.0 The Legal Effect of Order 58/63

The existing Schedule to the *GWGDA* passed in 1959 is silent as to how the cost of municipally requested removals and relocations of gas infrastructure is to be apportioned between the gas utility and the municipalities to whom the Schedule applies. To resolve this issue, the City of Winnipeg applied to the Board on September 11, 1962 for an Order to determine this cost apportionment. On March 26, 1963, the Board issued Order 58/63 which held as follows:

That as its portion of the cost of relocating gas pipe lines at the location in question The Metropolitan Corporation of Greater Winnipeg shall pay to the Greater Winnipeg Gas Company an amount equal to the cost of labour and material required in the original construction of those mains, less depreciation and the value of any material salvaged.

That Greater Winnipeg Gas Company shall bear the entire cost of construction of gas mains in the new location.

It appears that for 48 years Centra, Centra's predecessors, and the City of Winnipeg have applied this cost apportionment rule to all infrastructure relocations in Winnipeg, but not to other municipalities deemed to be part of Greater Winnipeg or, in fact, any other Manitoba municipalities at all.

The Board concludes that Centra was not legally required to grant the City of Winnipeg special treatment for anything other than the initially applied-for infrastructure.

In 1963, the Board issued Order 58/63 in response to an application by the Greater Winnipeg Gas Company for a determination of the apportionment of the:

*cost of relocating **certain gas pipe lines** of [sic] Greater Winnipeg Gas Company **as set out in the application** to the Board dated September 11th, 1962, and as described at a hearing of the*

application held at 10:00 a.m., Friday, October 5th, 1962, in Winnipeg Manitoba (emphasis added).

Consistent with that application, the Board ordered the above-noted apportionment for “relocating gas pipe lines **at the location in question.**” Order 58/63 therefore had no legal force and effect with respect to any subsequent relocations of infrastructure within the City of Winnipeg. The 48-year practice of following the cost apportionment model stipulated therein merely had the nature of a negotiated practice with respect to an issue on which the Schedule to the *GWGDA* was silent.

This Application provides an opportunity for the Board to consider what the cost apportionment for municipally requested infrastructure relocations should be and whether there is any policy rationale that would justify differential treatment of municipalities. The matter is further discussed under the sub-heading “Responsibility for Infrastructure Removals or Relocation” below.

3.4.0 Lack of Municipal Representation on the Negotiating Committee and Municipal Approval Requirements

When the *GWGDA* was passed, “Greater Winnipeg” consisted of three municipalities, namely the City of Winnipeg, the RM of East St. Paul and the RM of West St. Paul. The renewal requirements of the *GWGDA*, which required the Negotiating Committee to consist of two City of Winnipeg representatives and two representatives of non-Winnipeg municipalities, therefore made it possible to have at least one representative from each municipality on the committee.

Now, 52 years after the *GWGDA* was passed, Greater Winnipeg consists of 18 municipalities, not the original three. Accordingly, most municipalities affected by Centra’s Application to vary the Schedule of the *GWGDA* were not represented during the negotiations.

While Centra submitted that “*the Negotiating Committee represented all 18 municipalities affected by the Greater Winnipeg Gas Distribution Act*”, the Board is

concerned about the inability of 15 of the affected municipalities to participate in the negotiations. However, the Board accepts that the *GWGDA* sets out a statutory process for constituting the Negotiating Committee, and that this process was followed.

Nonetheless, the Board finds that the Negotiating Committee does not have the power to bind the municipalities of Greater Winnipeg if they do not wish to be bound. Section 115(1) of the *PUB Act* makes it clear that:

115(1) Notwithstanding any other Act, the authority to grant or refuse a franchise to sell gas or to directly purchase gas or revoke an existing franchise to sell gas or to directly purchase gas within the Province is within the powers of the Board and, subject to The Municipal Act and The Gas Pipeline Act, the authority to grant or refuse or revoke a franchise to distribute, transmit, store or deliver gas within the Province is within the power of a municipality or local government district in which the gas is distributed, transmitted, stored or delivered.

Consistent with the above-noted provision, section 17(2) of the *GWGDA* states as follows:

17 (2) the Public Utilities Board Act and, subject as herein otherwise provided,

(a) each of the following Acts and parts of Acts, that is to say,

(i) The Municipal Act;

(ii) The City of Winnipeg Act;

(iii) The Gas Pipe Line Act;

(iv) The Gas and Oil Burner Act;

(v) The Arbitration Act;

(vi) The Expropriation Act;

(vii) Subsection 90(1) of The Highway Traffic Act; and

(b) each relevant order, regulation, or by-law, duly and lawfully made or enacted under any of those Acts; applies, in accordance with the terms of the Act, order, regulation, or by-law, to the company and to its distribution system and to the municipalities and the committee and the authority, and to the franchises.

Since the municipal power to grant or refuse a franchise applies “notwithstanding any other Act”, any municipalities of Greater Winnipeg that do not wish to renew the Schedule to the Act on the terms proposed by the Negotiating Committee are not required to do so. Any such municipalities would be at liberty to either:

- (a) let their franchise expire on December 31, 2011 (the current expiration date as per Regulation 156/2010); or
- (b) apply to the Board for an Order approving a new franchise based on the Generic Franchise Agreement.

In Part 3 of Centra’s Application, Centra indicates that “all municipalities will be provided with equal opportunity to move to the Modified Generic Franchise Agreement”. The Board is of the view that this opportunity should also be provided to municipalities of Greater Winnipeg who choose not to renew their franchise pursuant to the Negotiated Schedule, and the Board is also of the view that this matter would not be contentious.

3.5.0 Sections from the Existing Schedule not Included in the Negotiated Schedule

Sections 3 and 9(1) to 9(4) of the existing Schedule are not included in the Negotiated Schedule. These provisions are currently addressed in Sections IV.D.12(c) and IV.B.2. of the General Terms and Conditions of Centra’s Schedule of Sales and Transportation Services and Rates. The process for updating the Schedule of Sales and Transportation Services and Rates, which still requires Board approval, is inherently more flexible than the process of updating the Schedule to the GWGDA, which comes up for renewal only once every 25 years. The Board therefore approves this amendment.

3.6.0 Requests by Municipalities to Extend Gas Service

Section 2(2) of the Negotiated Schedule contains a new condition that, in essence, states that whenever Centra receives a request from a municipality to extend gas service to a new location, Centra will work with the municipality to develop a viable business model. Centra has confirmed that this process will still be subject to the feasibility test set out by the Board in Order 109/94 and modified in Orders 124/96 and 89/97. The Board is of the view that for reasons of clarity, the Negotiated Schedule should stipulate that all service extensions are subject to the Board-approved feasibility test.

The Board therefore approves section 2(2) of the Negotiated Schedule subject to the addition of the following sentence at the end of section 2(2):

All such extensions for service shall be subject to the Company's feasibility test as approved by The Public Utilities Board from time to time.

The existing Generic Franchise Agreement further requires Centra to relinquish its exclusive franchise to any area to which Centra is unwilling or unable to provide natural gas service. This language is not replicated in the Negotiated Schedule. Centra submits that the Negotiating Committee was of the view that if gas service was not feasible for Centra, it likely would not be feasible for a third party either. While this may be true in most cases, the Negotiated Schedule will be in place for a period of 25 years and the situation may change. In the past, small-scale gas co-operatives sometimes provided service where existing gas utilities did not.

The Board therefore requires the further addition of the following to section 2(2):

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 Municipality from the franchise previously granted if asked to do so by the Municipality.

3.7.0 Limited Deliverability and Allocation of Natural Gas

Subsection 2(4) of the Negotiated Schedule incorporates the language of subsections 2(b) and 2(c) of the existing Generic Franchise Agreement approved by the Board in Order 109/94. The effect of these provisions is as follows:

- Centra is not required to extend gas service to currently un-served areas if Centra is unable to obtain any or sufficient gas at the limits of the franchise area or if the extension does not meet the Board-approved feasibility test.
- If Centra cannot obtain sufficient gas at the limits of a franchise area to service the existing customers, Centra has a right to prescribe reasonable rules and regulations as to how it should allocate gas, subject to the provisions of *The Gas Allocation Act*.

Centra advises that, to date, there have been no such instances.

The Board accepts that these provisions serve to harmonize the Negotiated Schedule with the previously approved Generic Franchise Agreement and approves this amendment.

3.8.0 Municipal Approval of Construction Plans

Section 3(1) of the Negotiated Schedule requires construction plans for the installation of any gas infrastructure or changes thereto to be approved by the Municipal Engineer of the municipality. Included in the change is a definition of “Municipal Engineer” as a “professional engineer employed directly or indirectly by the Municipality or other such person as may be designated by the council of the Municipality to carry out the functions and duties of the Municipal Engineer as described in the Agreement.” Section 3(1) also articulates the preferred installation location to be unpaved surfaces instead of lanes whenever practicable, reasoning that installation and maintenance is generally easier when no concrete or asphalt has to be removed.

The Board finds both of these changes reasonable and approves the two amendments.

3.9.0 Requests for “As-Built” Plans for the Distribution System

Centra proposes to change the requirement of the existing GWGDA Schedule to provide municipalities with “as-built” drawings of the existing gas infrastructure at Centra’s cost, to a requirement to provide drawings only twice, on demand, in any twelve-month period. Centra advises that it is prepared to continue to respond to site-specific inquiries at no charge. A municipality seeking to order more than two complete as-built plans in any 12-month period would be allowed to do so, but would have to pay Centra’s fully loaded labour and material costs for preparing the updated plans.

The Board finds that this is a reasonable compromise that will not unduly prejudice municipalities, but that municipalities should have to pay Centra’s Board-approved charge-out rates as opposed to Centra’s fully loaded labour costs if they order complete “as-builts” more than twice in any 12-month period. To that extent, Centra is to apply for Board approval of its charge-out rates as part of its next General Rate Application.

3.10.0 Process for Restoration Work after Construction

Subsection 5(c) of the Negotiated Schedule provides for a new restoration notification process by which Centra agrees to provide notice to the affected municipality within 30 days after Centra has restored highways or other areas following work on Centra’s gas infrastructure. The municipality must then advise Centra of any deficiencies in the restoration within six months of Centra’s notice, unless an extension of time has been mutually agreed. Otherwise, the restoration work will be deemed accepted by the municipality. The Board approves this amendment.

3.11.0 Responsibility for Infrastructure Removals or Relocation

3.11.1 Relocation of Gas Infrastructure - Treatment of Other Municipalities

There are currently only two cost apportionment models used by Centra, for municipally requested relocations of Centra's infrastructure: namely the model used for the City of Winnipeg and the model used for everyone else.

The model used for all non-Winnipeg municipalities is that described in the Generic Franchise Agreement approved by the Board and the franchise agreements with the RM of Cornwallis, the RM of Cartier, the Village of Gretna and the City of Portage la Prairie:

Where the Municipality requests the removal or relocation of any part of the natural gas distribution system and, in the opinion of the Company it is practicable and convenient to do so, the Company shall effect such removal or relocation as soon as is reasonably possible after such request is made, provided that all costs in connection with such removal or relocation shall be paid by the Municipality including, without limiting the generality of the foregoing;

(i) The cost of repairs to any highway; and

(ii) The net book value plus the cost of replacement, less salvage value, of any part of the removed or relocated natural gas distribution system that is rendered unusable by virtue of such removal or relocation.

Although the remaining existing franchise agreements are silent on the issue, in the same manner as the existing Schedule to the GWGDA is, Centra is following the Generic Franchise Agreement model, and not Order 58/63, for all non-GWGDA franchises.

3.11.2 Centra's Proposal for Ongoing Differential Treatment

Centra advises that its initial proposal to the Negotiating Committee was to apply the Generic Franchise Agreement model to all municipalities of Greater Winnipeg, including

the City of Winnipeg. In the second round of negotiations, the Negotiating Committee agreed that *“costs and expenses incurred in the removal and replacement or the relocation shall be apportioned between [Centra] and the Municipality in such a manner as they agree upon, or in the absence of an agreement, shall be apportioned equally,”* but that the City of Winnipeg would retain its different treatment as per Order 58/63.

Based on the proposed language of the Schedule, the Board has difficulty envisioning many situations in which either a municipality or Centra would be prepared to pay more than 50 percent of the relocation cost, knowing that a 50/50 split is the default fallback position. The Board accordingly believes that the net result would be a differential treatment by which:

- the City of Winnipeg would continue to benefit from Order 58/63; and
- all other municipalities subject to the Schedule of the *GWGDA* would pay 50 percent of the total relocation cost most, if not all, of the time.

The Board does not believe that differential treatment like this is in the public interest. The policy considerations with respect to who should pay for infrastructure relocations are the same for all municipalities. While Winnipeg is the largest city in the Province, and thus would be expected to incur more infrastructure relocation requests than other municipalities, this alone is not enough to sway the Board to the position that the City of Winnipeg should have a financial advantage not afforded to other municipalities.

The rules should be the same for all players.

The Board reiterates that while Centra and the City of Winnipeg continue to apply the cost attribution rules of Board Order 58/63, the Board is of the opinion that Board Order 58/63 is not legally binding with respect to any relocations other than those applied for in the underlying Application filed on September 11, 1962. The Board thus has the

opportunity now to consider which cost attribution model should be applied to all municipalities.

The implications of following Order 58/63 for all relocations requested by the City of Winnipeg have been significant to date, as by far the largest number of infrastructure relocations occur within City limits. All in all, over the past decade, the total cost of infrastructure relocations in Winnipeg has been 13 times the total cost for all other municipalities which have Centra franchises. Since 2002, costs have been as indicated in Table 1 below.

Table 1 illustrates that Centra has paid 74% of the total cost of relocations in the City of Winnipeg since 2002, but nothing with respect to other municipalities. The Province to date has come fairly close to the equal cost-sharing model as proposed by Centra as part of this Application for all franchisors other than the City of Winnipeg. These data are provided for information only, as provincial infrastructure relocations are outside the ambit of this Application.

Table 1 – Cost Apportionment of Infrastructure Moves Since 2002

Jurisdiction	Cost paid by Requesting Party	Cost Paid by Centra	Total Costs	Percent Paid by Centra
City of Winnipeg	\$617,000	\$1,720,000	\$2,337,000	74%
Municipalities, other than the City of Winnipeg	\$181,000	\$0	\$181,000	0%
Provincial Right-of-Ways	\$240,000	\$208,000	\$448,000	46%

Sources: PUB/Centra 4(e), 20(c), 21(c)

3.11.3 *The Board's Preferred Attribution Rules*

As set out in section 3.11.2 above, the Board is of the view that the same cost attribution rule should apply to all municipalities. To that extent, the Board is faced with three options:

1. Apply Order 58/63 to all municipalities;
2. Apply a 50/50 cost attribution rule for all municipalities, including the City of Winnipeg; or
3. Apply the cost attribution rule set out in the existing Generic Franchise Agreement by which municipalities are solely responsible for the cost of infrastructure relocations they request.

After carefully weighing these three options, the Board is of the view that the public interest is best served by applying the rule set out in Order 58/63 to all municipalities.

As articulated in Order 58/63:

"[I]t might be fair to assume that having obtained the consent of the municipal authority having jurisdiction to place its mains in the streets at a location specified by that authority the utility is entitled to believe that its mains will remain there until the cost of construction has been recovered in the ordinary way by charging to the consumers a rate of depreciation calculated to return that cost over the estimated life of the mains."

The Board is of the view that Centra is entitled to recover the cost of its infrastructure over the life of the mains through depreciation charges. If the municipality requests the relocation of Centra's infrastructure, Centra is not afforded that opportunity unless the existing infrastructure has already been fully depreciated. For that reason, the Board is not willing to entertain any cost attribution rule that would see Centra solely responsible for the cost of municipally requested infrastructure relocations.

Nonetheless, for the same reason of needing to take depreciation into account, it is ultimately no longer in the public interest to continue to require municipalities to pay the full cost of infrastructure relocations either. As currently set out in the Generic Franchise Agreement, municipalities are liable for the totality of costs in relocating the infrastructure, including the undepreciated value of the original cost of construction and the full cost of constructing the infrastructure in a new location. Practically, this means that the undepreciated value of the original cost is retired from Centra's Rate Base without any ability to add the cost of the new infrastructure to Centra's Rate Base, because the cost of that new infrastructure has been fully paid for by the requesting municipality.

Accordingly, after a municipally-requested infrastructure relocation, Centra's ratepayers would no longer incur any depreciation charges with respect to the infrastructure despite continuing to benefit from its use. In such a scenario, the municipality would ultimately be subsidizing ratepayers.

Discounting any scenario that would leave either Centra or the requesting municipality with the full cost responsibility for relocating infrastructure, the Board must decide between two remaining approaches, namely that set out in Order 58/63 and the simple 50/50 rule proposed by Centra. Neither of those is perfect, insofar as neither can guarantee that Centra and its ratepayers will be put in the exact same position they would have been in without the infrastructure relocation. However, both serve as feasible proxies.

The Board is of the view that the public interest is best served by applying the cost apportionment rule specified in Order 58/63 and reproduced in section 3.3.0 above to all municipalities, as it is the rule that best balances the interests of municipalities on the one hand and Centra's ratepayers on the other hand.

Pursuant to this rule, if a municipality requests fairly new, virtually undepreciated infrastructure to be relocated, the municipality will pay close to the full original cost of

the plant less salvage. The amount paid by the municipality to retire the existing infrastructure will be similar (though not identical) to the new infrastructure to be paid for by Centra. If, on the other hand, a municipality requests older, virtually fully depreciated infrastructure to be relocated, the municipality pays only a small percentage of the total relocation cost. This reflects that such infrastructure would likely be close to the end of its useful life and require replacement, by Centra in the near future. Absent the municipal request for relocation, Centra's ratepayers would likely have had to incur the expense in any case.

Regardless of the age of the infrastructure being relocated, Centra's costs to install the new infrastructure in the new location are the same. However, for relocations of fairly new infrastructure, Centra's net costs under Order 58/63 would be small because the money paid by the requesting municipality to retire the existing infrastructure would mostly offset Centra's own costs for installing the new infrastructure.

While Centra's 50/50 proposal for all municipalities other than the City of Winnipeg is tempting in its simplicity and regulatory efficiency, the Board is of the view that it does not adequately take into account the difference between requesting a relocation of almost-new infrastructure and requesting the relocation of fully depreciated old infrastructure in respect of how much of the original cost of construction Centra has recovered from its ratepayers.

In light of the Board's view, the Board denies paragraph 5(g) of the Negotiated Schedule as applied for by Centra and requires it to be replaced with the following:

(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.

3.12.0 Insurance Policy against Public Liability and Property Damage

Section 12 of the Negotiated Schedule incorporates the insurance requirement currently imposed on Centra under the existing Generic Franchise Agreement. The Board imposed this requirement in Order 109/94, reasoning that Centra was in the best position to efficiently insure against such risk and that it could be difficult for each individual municipality to obtain suitable insurance.

The Board's view on this matter remains the same and the addition of Section 12 to the Negotiated Schedule is a positive step. The Board grants this amendment.

3.13.0 Renewal Process

Section 9 of the *GWGDA* defines the renewal process at the present time, but does not address in detail the process to be followed for any subsequent renewal of these franchises, and the Negotiated Schedule likewise does not address this process. In case the *GWGDA* is not amended before the next renewal period, the Board gives the following direction for renewal of the Greater Winnipeg franchises:

1. If Centra or its successor in interest wishes to renew the franchises for a further period, it shall, before January 1, 2035, give written notice to that effect to the minister.
2. The responsibilities of Centra or its successor in interest in respect of the renewal process shall be as articulated in Section 9 of the *GWGDA*, with the exception of Section 9(6), where the effective renewal date shall be changed to January 1, 2037.

3. Where, after entering into negotiations as required under subsection 9(1) of the *GWGDA*, either after receipt of a notice in respect of the franchises expiring on December 31, 2036, or in respect of any period of renewal thereof, the Negotiating Committee decides that the franchises should not be renewed, the committee shall, not later than December 1, 2035, or not less than 12 months before the expiration of any subsequent period of renewal, notify Centra or its successor in interest that, subject to objections by the municipalities, the franchises will not be renewed.

If the *GWGDA* is amended by act of the Legislature to stipulate renewal provisions other than the ones set out above, the renewal provisions contained in the *GWGDA* will supersede the Board directions provided above.

3.14.0 Force Majeure

Centra proposes to include a force majeure provision as section 13 of the Negotiated Schedule that is a verbatim copy of section 12 of the existing Generic Franchise Agreement. Pursuant to that provision, neither Centra nor the respective municipality would be responsible for the failure to carry out its obligations by reason of force majeure. The Board accepts this provision as reasonable and consistent with the Generic Franchise Agreement and approves this amendment.

4.0.0 BOARD FINDINGS – PART 2 OF 3 OF CENTRA’S APPLICATION –
 ADDING THE RM OF HEADINGLEY TO THE *GWGDA*

4.1.0 History

From 1972 to 1992, the RM of Headingley was part of the City of Winnipeg. Accordingly, when the Schedule the *GWGDA* was last renewed in 1982, Headingley was included in the franchise area to which the *GWGDA* applies. After Headingley seceded from the City of Winnipeg and became a rural municipality in 1992, Headingley never signed a franchise agreement with Centra. However, Centra continued to deliver gas to Headingley under the terms of the Schedule to the *GWGDA*.

In Part 2 of its Application, Centra is seeking an Order from the Board pursuant to section 4(3) of the *GWGDA* deeming Headingley to be part of Greater Winnipeg.

4.2.0 Inclusion in the Negotiating Committee

The RM of Headingley did not have a representative on the Negotiating Committee. The PUB asked Centra whether Headingley nominated anybody to serve as a representative, but Centra advised that since the Province of Manitoba constituted the Negotiating Committee, this information was not shared with Centra.

4.3.0 Headingley’s Position

Centra advises that the RM of Headingley supports Centra’s application to deem it to be part of Greater Winnipeg pursuant to the *GWGDA* and has given first reading to a by-law to that extent. The Board accepts this as evidence of Headingley’s support of Part 2 of Centra’s Application.

4.4.0 Disposition

The Board reiterates its comments with respect to municipalities having a right to approve or refuse gas franchises pursuant to section 115 of *The PUB Act* (see section 3.4.0, above). To that extent, the Board conditionally approves Part 2 of Centra’s

Application provided the RM of Headingley passes a by-law stating that Headingley wishes to (1) be deemed part of Greater Winnipeg pursuant to section 4(3) of the *GWGDA*, and wishes to (2) grant a franchise to Centra in the form of the Negotiated Schedule as approved by the Board.

The Board notes that the RM of Headingley is not obliged to pass such a by-law and it is open to the municipality to instead enter into a Generic Franchise Agreement as approved by the Board.

5.0.0 BOARD FINDINGS – PART 3 OF 3 OF CENTRA’S APPLICATION –
REVISIONS TO THE GENERIC FRANCHISE AGREEMENT

5.1.0 History

The Board approved the existing form of Generic Franchise Agreement in Board Order 109/94. Order 109/94 and the application that gave rise to it were issued as a result of the Province of Manitoba’s Rural Expansion Policy announced with the Province’s 1992 Throne speech. At the time, Centra was planning to expand natural gas service to 23 communities. Since franchise agreements must be approved by the Board, the Board heard an application with respect to a generic form of a franchise agreement that could be used for all municipalities. After hearing submissions from several interveners and 15 municipalities, the Board approved the Generic Franchise Agreement as it still exists today.

As of November 2011, a total of 42 municipalities have entered into franchises corresponding to the Generic Franchise Agreement.

5.2.0 Lack of Intervenors

The hearing that gave rise to Board Order 109/94 was lengthy, held in three different locations, and involved eight intervenors and 15 presenters. In contrast, not a single party applied for intervener status with respect to Part 3 of Centra’s current Application. However, the Board accepts that potentially interested parties were provided with due notice.

5.3.0 Effect on Municipalities if Part 3 of Centra’s Application is Granted

If the Board were to grant Part 3 of Centra’s Application, all future expansions of natural gas service to rural municipalities currently not served by Centra will be subject to the new form of Generic Franchise Agreement, unless the parties to a potential franchise apply to the Board for special conditions.

Centra has also indicated that it will permit those municipalities who are subject to the existing Generic Franchise Agreement to switch over to the new form of agreement without any time limit or other restrictions on this ability. Municipalities that have existing Generic Franchise Agreements are therefore not prejudiced by any Order of the Board with respect to Part 3 of Centra's Application, as the Generic Franchise Agreement in its current form is renewable in ten-year increments and municipalities, with existing Generic Franchise Agreements, can elect to renew them indefinitely.

Centra has also advised that it is prepared to allow all municipalities that have signed franchise agreements not corresponding to the existing Generic Franchise Agreements to switch over to the Proposed Generic Franchise Agreement, if approved. This is significant as there are currently 14 different types of franchise agreements with Centra in place across Manitoba.

Consolidation towards fewer different types of agreements would be a positive step.

5.4.0 Requests by Municipalities to Extend Gas Service.

Section 2(2) of the Proposed Generic Franchise Agreement contains a new condition that, in essence, states that whenever Centra receives a request from a municipality to extend gas service to a new location, Centra will work with the municipality to develop a viable business model. This language mirrors what Centra proposes for the Negotiated Schedule to the *GWGDA*. Accordingly, for the reasons as further discussed in section 3.6.0 above, the Board approves this amendment subject to the addition of the following at the end of Section 2(2):

All such extensions for service shall be subject to the Company's feasibility test as approved by The Public Utilities 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 Municipality from the franchise previously granted if asked to do so by the Municipality.

The Board's requirement would create an inconsistency in section 12 of the Proposed Generic Franchise Agreement, which stipulates as follows:

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 Municipality or to erect or maintain a Gas Distribution System in, upon, over, across, under or along its Highways for the purpose of supplying and distributing natural gas.

To make section 12 consistent with the Board's requirement for Centra to relinquish an area of its franchise under certain circumstances, the Board requires section 12 of the Proposed Generic Franchise Agreement to be amended as follows (addition shown in underlined text):

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.

5.5.0 Limited Deliverability and Allocation of Natural Gas

Centra proposes to add a clause to section 2(5) of the Proposed Generic Franchise Agreement that would stipulate that if Centra cannot obtain sufficient gas at the limits of a franchise area to service the existing customers, Centra has a right to prescribe reasonable rules and regulations as to how it should allocate gas, subject to the provisions of *The Gas Allocation Act*. For the reasons as further discussed in section 3.7.0, the Board approves this amendment.

5.6.0 Municipal Approval of Construction Plans

Section 3(1) of the Proposed Generic Franchise Agreement requires construction plans for the installation of any gas infrastructure or changes thereto to be approved by the Municipal Engineer of the municipality. Section 3(1) also specifies the preferred installation location to be unpaved surfaces instead of lanes whenever practicable, reasoning that installation and maintenance is generally easier when no concrete or asphalt has to be removed. For the reasons as further discussed in Section 3.8.0, the Board approves this amendment.

5.7.0 Requests for As-Built Plans for the Distribution System

Centra proposes to change the requirement of the existing Generic Franchise Agreement to provide municipalities with as-built drawings of the existing gas infrastructure at Centra's costs to a requirement to provide drawings only twice, on demand, in any twelve-month period. For the reasons as further discussed in Section 3.9.0 above, the Board approves this amendment, with the same caveat as set out in that section, namely that Centra invoice Board-approved charge-out rates for more frequent requests and apply for approval of such rates as part of the next General Rate Application.

5.8.0 Process for Restoration Work after Construction

Subsection 5(c) of the Proposed Generic Franchise Agreement provides for a new restoration notification process by which Centra agrees to provide notice to the affected municipality within 30 days after Centra has restored highways or other areas following work on Centra's gas infrastructure. For the reasons as further discussed in Section 3.10.0 above, the Board approves this amendment.

5.9.0 Responsibility for Infrastructure Removals or Relocation

Pursuant to section 7(d) of the existing Generic Franchise agreement, municipalities are solely responsible for the cost of municipally requested infrastructure relocations. The text of section 7(d) is as follows:

7(d) Where the Municipality requests the removal or relocation of any part of the natural gas distribution system and, in the opinion of the Company it is practicable and convenient to do so, the Company shall effect such removal or relocation as soon as is reasonably possible after such request is made, provided that all costs in connection with such removal or relocation shall be paid by the Municipality including, without limiting the generality of the foregoing;

- (i) The cost of repairs to any highway; and*
- (ii) The net book value plus the cost of replacement, less salvage value, of any part of the removed or relocated natural gas distribution system that is rendered unusable by virtue of such removal or relocation.*

Centra proposes to delete this section and, instead, add a new section 5(g) that would state as follows:

(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 apportioned between the Company and the Municipality in such a manner as they may agree upon, or in the absence of an agreement, shall be apportioned equally.

For the reasons elaborated on in section 3.11.3, the Board denies this amendment and requires the cost attribution rule set out in Order 58/63 to be applied to all municipalities.

5.10.0 Levy of Taxes by Municipalities

Section 10 of the Proposed Generic Franchise Agreement would add a provision stipulating that Centra shall pay all legally and properly levied municipal taxes. The existing Generic Franchise Agreement is silent on this issue.

Centra already is responsible for municipal taxes, as pipelines and gas distribution systems are assessable property under the *Municipal Assessment Act*. Centra advises that all municipalities in which Centra has pipelines or gas distribution infrastructure levy municipal taxes, although the Town of Gladstone, RM of North Norfolk and RM of Westbourne refund taxes pursuant to the franchise agreements entered into with the former Gladstone Austin Natural Gas Co-Op.

The Board accepts that the proposed Section 10 provides clarification and approves the amendment.

5.11.0 Onus of Renewal

Sections 13.(1) and 13.(2) of the Proposed Generic Franchise Agreement specify the rights and responsibilities of the municipalities and Centra for renewal of the franchises. These remain unchanged from the existing Generic Franchise Agreement and require Centra to provide notice to the respective municipality two years before the expiry of the franchise. One year prior to the expiry of the franchise, the municipality can elect to purchase the gas infrastructure and terminate the franchise; otherwise, the franchise is renewed automatically.

The Board approves this amendment but requires that the reference to "*paragraph 11(a) hereof*" in Section 13.(2) to be changed to "*paragraph 13(1) hereof*" to correct an apparent cross-referencing error.

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 (Rules). The Board's Rules may be viewed on the Board's website at www.pub.gov.mb.ca.

6.0.0 IT IS THEREFORE ORDERED THAT:

1. Centra's request for an Order approving the Negotiated Schedule to the GWGDA **BE AND HEREBY IS APPROVED**, with the following required amendments:

(a) the addition of the following paragraph at the end of Section 2(2) of the Negotiated Schedule:

All such extensions for service shall be subject to the Company's feasibility test as approved by The Public Utilities 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 Municipality from the franchise previously granted if asked to do so by the Municipality.;

(b) The deletion of the following paragraph 5(g) from the Negotiated Schedule:

(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 apportioned between the Company and the Municipality in such a manner as they may agree upon, or in the absence of an agreement, shall be apportioned equally.; and

(c) The addition of the following paragraph 5(g) to the Negotiated Schedule:

(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.*

The Board-approved version of the Negotiated Schedule (including visible revisions to what was initially requested as well as a clean version) is attached as **Appendix “A”** to this Order.

2. Centra’s request for an Order designating the Rural Municipality of Headingley as a municipality forming part of Greater Winnipeg pursuant to subsection 4(3) of the *GWGDA* **BE AND HEREBY IS APPROVED** on the condition that the Rural Municipality of Headingley passes a by-law stating that Headingley wishes to (1) be deemed part of Greater Winnipeg pursuant to Section 4(3) of the *GWGDA* and (2) grants a franchise to Centra in the form of the Negotiated Schedule as set out as **Appendix “A”** to this Order. Centra is to also advise the RM of Headingley that rather than it becoming expressly included as a municipality forming part of Greater Winnipeg pursuant to the *GWGDA*, the RM of Headingley has the option to enter into a Revised Generic Franchise Agreement as approved in this Order as Appendix B.

3. Centra’s request for an Order approving proposed revisions to the Generic Franchise Agreement **BE AND HEREBY IS APPROVED**, with the following required amendments:

- (a) the addition of the following paragraph at the end of Section 2(2) of the Proposed Generic Franchise Agreement:

All such extensions for service shall be subject to the Company's feasibility test as approved by The Public Utilities 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 Municipality from the franchise previously granted if asked to do so by the Municipality.;

- (b) The deletion of the following paragraph 5(g) from the Proposed Generic Franchise Agreement:

(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 apportioned between the Company and the Municipality in such a manner as they may agree upon, or in the absence of an agreement, shall be apportioned equally.; and

- (c) The addition of the following paragraph 5(g) to the Proposed Generic Franchise Agreement:

(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.

(d) The removal of the following paragraph 12 from the Proposed Generic Franchise Agreement:

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 Municipality or to erect or maintain a Gas Distribution System in, upon, over, across, under, or along its Highways for the purpose of supplying and distributing natural gas.

(e) The addition of the following paragraph 12 to the Proposed Generic Franchise Agreement:

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.

(f) The substitution of “*paragraph 13.(1) hereof*” for “*paragraph 11(a) hereof*” in Section 13.(2) of the Proposed Generic Franchise Agreement.

**APPENDIX “A” – NEGOTIATED SCHEDULE TO THE GREATER WINNIPEG GAS
DISTRIBUTION ACT AS APPROVED BY THE BOARD**

Note: Plain text signifies provisions approved as per Centra’s Application. Strikethrough text signifies provisions denied by the Board. Underlined text signifies additional provisions required the Board.

THE GREATER WINNIPEG GAS DISTRIBUTION ACT SCHEDULE

Provisions of Franchise granted to Centra Gas Manitoba Inc., the successor company to ICG Utilities (Manitoba) Ltd. and Greater Winnipeg Gas Company (the Company) under The Greater Winnipeg Gas Distribution Act (the Act) for the Construction, Operation and Maintenance of a Distribution System for Natural Gas in each of the Municipalities (the Municipality) as defined in the Act or included in Greater Winnipeg pursuant to the Act.

- 1 Subject to the terms and conditions contained in this franchise and in the Act, the Company and its successors and assigns have the full power, right, licence and liberty to enter upon property of the Municipality and to break the surface and make the 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 for a period ending on December 31, 2036, and during any extension thereof as provided in the Act, 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 the franchise, it will install and maintain an adequate natural gas distribution system

within the Municipality and will provide such quantities of natural gas as will meet the requirements of the inhabitants, businesses and industries located in the Municipality. Centra Gas Manitoba Inc.

- 2(2) The Company agrees that with respect to any portion of the Municipality 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 franchise, the Company will work together with the Municipality with a view to developing a viable business model in relation to that portion of the Municipality. All such extensions for service shall be subject to the Company's feasibility test as approved by The Public Utilities 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 Municipality 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 Public Utilities Board of Manitoba (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 Municipality, 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 Municipality 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* and Regulations thereto and any orders made pursuant to *The Emergency Measures Act*.
- 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 showing the location, depth and size of all mains, pipes or conduits and any other equipment or structures 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 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 Chief Administrative Officer (CAO) or designate of the Municipality, of its intention to open or break up any of the Highways in the Municipality, not less than seven days before the beginning of the 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 franchise, 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 completion of 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 and under the Act, shall construct and locate its gas pipe lines in such a manner as will not endanger the public health or safety;
- (e) any pipe line found to be not in accordance with the depth of cover requirements established by the Public Utilities 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;
- ~~(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 apportioned between the Company and the Municipality in such a manner as they may agree upon, or in the absence of an agreement, shall be apportioned equally.~~
- (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 Act and 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 distributed to customers in the Municipality 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 franchise shall not prevent the sale or delivery within the Municipality 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 within the Municipality.

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

11 All the provisions of this franchise are subject as provided in section 17 of the Act.

12 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 Municipality.

13 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 of 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.

14(1) Unless the context otherwise requires or as otherwise defined below, words and expressions used in this franchise have the meanings given to them in the Act.

14(2) "Municipal Engineer" 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.

**APPENDIX "A" (CLEAN VERSION) – NEGOTIATED SCHEDULE TO THE GREATER
WINNIPEG GAS DISTRIBUTION ACT AS APPROVED BY THE BOARD**

THE GREATER WINNIPEG GAS DISTRIBUTION ACT SCHEDULE

Provisions of Franchise granted to Centra Gas Manitoba Inc., the successor company to ICG Utilities (Manitoba) Ltd. and Greater Winnipeg Gas Company (the Company) under The Greater Winnipeg Gas Distribution Act (the Act) for the Construction, Operation and Maintenance of a Distribution System for Natural Gas in each of the Municipalities (the Municipality) as defined in the Act or included in Greater Winnipeg pursuant to the Act.

- 1 Subject to the terms and conditions contained in this franchise and in the Act, the Company and its successors and assigns have the full power, right, licence and liberty to enter upon property of the Municipality and to break the surface and make the 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 for a period ending on December 31, 2036, and during any extension thereof as provided in the Act, 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 the franchise, it will install and maintain an adequate natural gas distribution system within the Municipality and will provide such quantities of natural gas as will meet the requirements of the inhabitants, businesses and industries located in the Municipality. Centra Gas Manitoba Inc.

- 2(2) The Company agrees that with respect to any portion of the Municipality 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 franchise, the Company will work together with the Municipality with a view to developing a viable business model in relation to that portion of the Municipality. All such extensions for service shall be subject to the Company's feasibility test as approved by The Public Utilities 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 Municipality 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 Public Utilities Board of Manitoba (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 Municipality, 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 Municipality 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* and Regulations thereto and any orders made pursuant to *The Emergency Measures Act*.
- 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 showing the location, depth and size of all mains, pipes or conduits and any other equipment or structures 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 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 Chief Administrative Officer (CAO) or designate of the Municipality, of its intention to open or break up any of the Highways in the Municipality, not less than seven days before the beginning of the 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 franchise, 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 completion of 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 and under the Act, shall construct and locate its gas pipe lines in such a manner as will not endanger the public health or safety;
- (e) any pipe line found to be not in accordance with the depth of cover requirements established by the Public Utilities 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;

(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 Act and 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 distributed to customers in the Municipality 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 franchise shall not prevent the sale or delivery within the Municipality 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 within the Municipality.

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

11 All the provisions of this franchise are subject as provided in section 17 of the Act.

12 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 Municipality.

13 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 of 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.

14(1) Unless the context otherwise requires or as otherwise defined below, words and expressions used in this franchise have the meanings given to them in the Act.

14(2) "Municipal Engineer" 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.

APPENDIX "B" – GENERIC FRANCHISE AGREEMENT AS APPROVED BY THE BOARD

Note: Plain text signifies provisions approved as per Centra's Application. Strikethrough text signifies provisions denied by the Board. Underlined text signifies additional provisions required the Board.

MEMORANDUM OF AGREEMENT made this ____ day of _____,
20__.

BETWEEN:

THE _____ OF _____,

(hereinafter called the "Municipality"),

- and -

CENTRA GAS MANITOBA INC.,

(hereinafter called the "Company").

WHEREAS the Municipality is desirous of obtaining a supply of natural gas for the Municipality and the inhabitants thereof not currently receiving natural gas;

AND WHEREAS it is agreed between the Municipality and the Company that the Company supply and distribute natural gas to the Municipality and its inhabitants in (NAME OF MUNICIPALITY), in Manitoba and as set out in the map attached as Appendix 1 hereto (the "Territory"), upon the terms and conditions set out herein;

AND WHEREAS by by-law duly passed by the Council of the Municipality (the "Bylaw"), the (REEVE OR MAYOR) 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 the Municipality and its inhabitants in the Territory, 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 the 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 Municipality 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 Municipality. All such extensions for service shall be subject to the Company's feasibility test as approved by The Public Utilities 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 Municipality 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 Public Utilities Board of Manitoba (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 and Regulations thereto and any orders made pursuant to The Emergency Measures Act;

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 in 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 Public Utilities 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 apportioned between the Company and the Municipality in such a manner as they may agree upon, or in the absence of an agreement, shall be apportioned equally.~~

(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 distributed 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 Municipality or to erect or maintain a Gas Distribution System in, upon, over, across, under, or along its Highways for the purpose of supplying and distributing natural gas.~~

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 11(a) hereof~~ 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.

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

**RURAL MUNICIPALITY OR
TOWN**

Per:

Reeve or Mayor

Per:

Chief Administrative Officer

CENTRA GAS MANITOBA INC.

Per:

Authorized Signing Officer

Per:

Authorized Signing Officer

**APPENDIX "B" (CLEAN VERSION) – GENERIC FRANCHISE AGREEMENT AS APPROVED
BY THE BOARD**

MEMORANDUM OF AGREEMENT made this ____ day of _____,
20__.

BETWEEN:

THE _____ OF _____,

(hereinafter called the "Municipality"),

- and -

CENTRA GAS MANITOBA INC.,

(hereinafter called the "Company").

WHEREAS the Municipality is desirous of obtaining a supply of natural gas for the Municipality and the inhabitants thereof not currently receiving natural gas;

AND WHEREAS it is agreed between the Municipality and the Company that the Company supply and distribute natural gas to the Municipality and its inhabitants in (NAME OF MUNICIPALITY), in Manitoba and as set out in the map attached as Appendix 1 hereto (the "Territory"), upon the terms and conditions set out herein;

AND WHEREAS by by-law duly passed by the Council of the Municipality (the "Bylaw"), the (REEVE OR MAYOR) 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 the Municipality and its inhabitants in the Territory, 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 the 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 Municipality 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 Municipality. All such extensions for service shall be subject to the Company's feasibility test as approved by The Public Utilities 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 Municipality 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 Public Utilities Board of Manitoba (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 and Regulations thereto and any orders made pursuant to The Emergency Measures Act;

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 in 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 Public Utilities 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 distributed 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.

IN WITNESS WHEREOF the parties have duly executed this Agreement as of the

day and year first above written.

**RURAL MUNICIPALITY OR
TOWN**

Per:

Reeve or Mayor

Per:

Chief Administrative Officer

CENTRA GAS MANITOBA INC.

Per:

Authorized Signing Officer

Per:

Authorized Signing Officer