

**This Agreement** dated the 4th day of May, 2000.

**Between:**

**Swan Valley Gas Corporation**  
(hereinafter called "SVGC")

***Of The First Part***

and

**Rural Municipality of Swan River  
Rural Municipality of Minitonas  
Town of Swan River  
Town of Minitonas  
Village of Benito**  
(hereinafter called "Municipalities")

***Of The Second Part***

## **Project Funding Agreement**

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## **Project Funding Agreement**

**This Agreement** dated the 4th day of May, 2000.

**Between:**

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(hereinafter called "SVGC")

***Of The First Part***

and

**Rural Municipality of Swan River**  
**Rural Municipality of Minitonas**  
**Town of Swan River**  
**Town of Minitonas**  
**Village of Benito**  
(hereinafter called "Municipalities")

***Of The Second Part***

**Whereas** SVGC and the Municipalities (collectively know as the "Parties"), agreed to undertake the establishment of a natural gas distribution system for certain geographical areas represented by the membership of the Municipalities;

**And Whereas** SVGC has submitted a proposed project for the construction of its natural gas transmission and distribution system to certain geographical areas represented by the Municipalities (the "Project");

**And Whereas** the Parties wish to set out the terms and conditions pursuant to which SVGC shall implement the Project;

**And Whereas** the Parties have made, subject to the provisions of this Agreement, the necessary arrangements to fund the aforesaid implementation of the Project;

**Now therefore** in consideration of the mutual premises herein contained and other good and valuable consideration, the Parties agree as follows:

### **Article 1- Project Description**

- 1.01 Subject to the provisions of this Agreement, SVGC shall establish its natural gas transmission and distribution system in accordance with SVGC's application to the Manitoba Public Utilities Board (the "MPUB") for the requisite regulatory approval of the Project, said application to be filed on or about March 13, 2000.
- 1.02 SVGC's undertaking as aforesaid in Section 1.01 hereof is conditional upon the occurrence of the following circumstances satisfactory to SVGC:

- (a) all applicable municipal governments have entered into a franchise agreement, approved by the MPUB, with SVGC respecting the establishment of natural gas services;
  - (b) the MPUB shall approve SVGC's application to establish its natural gas transmission and distribution system to certain geographical areas represented by the Municipalities;
  - (c) the Municipalities have entered into all necessary funding agreements for the purposes of fulfilling their obligations pursuant to this Agreement;
  - (d) the establishment of the natural gas transmission and distribution system contemplated herein is financially feasible as determined in accordance with the financial feasibility test approved by the MPUB and taking into account the funding contemplated under this Agreement;
  - (e) that all applicable federal and provincial environmental licenses, permits and approvals have been obtained; and
  - (f) SVGC has acquired or has the right to acquire all rights or interests in land and such other rights of access, crossing and other permits, licenses, approvals and orders as may be required for construction and completion of the Project.
- 1.03 SVGC shall, subsequent to execution of this Agreement, but in any event prior to commencing the establishment and construction of its natural gas transmission and distribution system, provide to the Municipalities the following:
- (a) a Schedule of activities (including the obtaining of approvals) required to be carried out in order to complete the Project;
  - (b) a copy of the application for the Project to the MPUB;
  - (c) a statement of cash-flow projections for the Project; and
  - (d) a copy of all applicable regulatory approvals respecting the Project.

## Article 2 - Representations and Warranties

2.01 SVGC represents and warrants that:

- (a) it is a valid and existing corporation, duly incorporated under the laws of the Province of Manitoba and shall continue to be a valid and existing corporation during the currency of this Agreement;
- (b) the execution, delivery and performance of this Agreement is within the proper corporate power and capacities of SVGC, and have been authorized by proper corporate proceedings;
- (c) it possesses, and shall continue to possess, all rights, interest, powers and expertise necessary to property carry out, arrange and complete the Project and perform all of its obligations pursuant to this Agreement; and

- (d) there are no actions, suits or legal proceedings pending or to the knowledge of SVGC, threatened against or adversely affecting SVGC which might materially affect the financial condition of SVGC.

2.02 The Municipalities represent and warrant that:

- (a) it is a valid and existing corporation, duly incorporated under the laws of the Province of Manitoba and shall continue to be a valid and existing corporation during the currency of this Agreement;
- (b) the execution, delivery and performance of this Agreement is within the proper corporate power and capacities of Municipalities, and have been authorized by proper corporate proceedings;
- (c) it possesses, and shall continue to possess, all rights, interest, powers and expertise necessary to perform all of its obligations pursuant to this Agreement; and
- (d) there are no actions, suits or legal proceedings pending or to the knowledge of Municipalities, threatened against or adversely affecting Municipalities which might materially affect the financial condition of Municipalities.

2.03 The Parties declare that all representations and warranties set forth in this Agreement are and shall remain true in substance and in fact and that the Parties acknowledge that they have entered into this Agreement in reliance thereupon.

### Article 3 - Funding Obligations

3.01 The Municipalities shall contribute funding to the Project calculated on the basis of all project costs contained in the Financial Feasibility Test, as approved by the MPUB. In addition, the Municipalities shall coordinate and administer all applicable funding agreements.

3.02 The sources and application for the financing and the cost sharing obligation of all parties in respect of the Project are estimated to be as follows:

<u>Source</u>	<u>Estimated Amount</u>
Municipalities (total)	\$1,814,133.00
Breakdown:	
R. M. of Swan River	\$558,909.20
R. M. of Minitonas	\$358,394.15
Town of Swan River	\$755,416.05
Town of Minitonas	\$ 72,648.00
Village of Benito	\$ 68,765.60
Provincial and Federal Government	\$ 3,628,266.00
Customers	\$ 1,427,000.00
SVGC:	\$ 3,488,000.00
MIPL(C)L	\$ 3,307,000.00
ESTIMATED TOTAL: PROJECT FUNDING	<u>\$13,665,000.00</u>

3.03 The Municipalities and SVGC agree that, notwithstanding the total project funds set out in 3.02 herein, the Municipalities are responsible only for project funds in the stipulated amount of \$1,814,133.00 ("Municipalities Share").

- 3.04 Subject to receipt of all required Project approvals, the Municipalities agree to make payment of the Municipalities Share to SVGC in accordance with the provisions of Schedule "A" attached hereto. Payment shall be made within thirty (30) days of request by SVGC. Without waiving any other right, late payments shall be subject to a late payment charge equal to the prime interest rate of Royal Bank of Canada then in effect on all outstanding balances.

## **Article 4 - Operation of the Completed Project**

- 4.01 Upon the completion of the Project in accordance with the terms of this Agreement, SVGC shall own and continuously operate and manage the newly constructed and expanded natural gas transmission and distribution system in accordance with the provisions of The Public Utilities Board Act of Manitoba and all other applicable legislative and regulatory requirements whether federal, provincial or municipal until the expiry of the term of the franchise agreements, unless earlier terminated in accordance with the provisions of the franchise agreement, and any applicable regulatory ruling.
- 4.02 SVGC shall be entitled to sell, transfer or otherwise dispose of all or any portion of the completed Project to a third party provided that:
- (a) the sale, transfer or other disposition is a bona fide sale, transfer or other disposition at arm's length to a third party; and
  - (b) the third party shall covenant and agree to assume each and every one of the obligations contained in this Agreement.

## **Article 5 - Confidentiality of Information**

- 5.01 While this Agreement is in effect and at all times thereafter, each of the Parties, and their respective officers, employees and agents, shall treat as confidential, and shall not disclose or permit to be disclosed to any person, corporation or entity any information provided by one Party to the other Party in confidence or any additional information which the Parties receive in confidence as a result of the performance of this Agreement, provided that such information may be disclosed if:
- (a) the Parties agreed to the disclosure;
  - (b) disclosure is required on the part of either of the Parties when dealing with other financial sources for the Project;
  - (c) disclosure is required by law or is required by any Board, tribunal or administrative authority having jurisdiction to require disclosure (provided that the disclosing Party shall give prompt notice to the non-disclosing Party of such law or requirements);
  - (d) the Party claiming the information to be confidential makes the information public.

## Article 6 - Assignment

- 6.01 Neither Party shall assign or transfer this Agreement or any of the rights or obligations under this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld.

## Article 7 - Notices

- 7.01 Any notice or other communication under this Agreement shall be in writing and shall be delivered personally or sent by registered mail, postage prepaid, or by way of facsimile transmission as follows:

- (a) if to SVGC                      Swan Valley Gas Corporation  
1100 - 1945 Hamilton Street  
Regina, Saskatchewan  
S4P 2C7  
Attention: Marilyn P. Wappel, Legal Counsel  
Facsimile: (306) 565-3332
- (b) if to Municipalities        Rural Municipality of Swan River  
Box 610, 216 Main Street West  
Swan River, Manitoba  
ROL 1Z0  
Attention: Betty Nemetchek, Chief Admin Officer  
Facsimile: (204) 734-3701

- 7.02 Any notice or communication:

- (a) delivered personally shall be deemed to have been received on the day of the personal delivery; or
- (b) sent by registered mail shall be deemed to have been received on the third business day following the date of mailing; or
- (c) by facsimile transmission shall be deemed to have been received on the next business day following the date of the transmittal notice.

## Article 8 - General

- 8.01 Those sections containing obligations that by their very nature are intended to survive the termination or expiration of this Agreement shall survive.
- 8.02 Nothing in this Agreement makes or shall be construed to make either Party an agent of, or partner with, the other Party.
- 8.03 Each Party is responsible for any deductions or remittances which may be required by law.
- 8.04 Time shall be of the essence of this Agreement.
- 8.05 No amendment or change to, or modification of, this Agreement shall be valid unless it is in writing and signed by the Parties.
- 8.06 Any waiver by either Party of any failure, default or breach under this Agreement shall not be effective unless given in writing by an authorized person and shall


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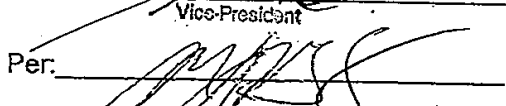
not constitute a subsequent waiver of a similar or of any other failure, default or breach.

- 8.07 If any provision of this Agreement is for any reason invalid, that provision shall be considered separate and severable from this Agreement, and the other provisions of this Agreement shall remain in force and continue to be binding upon the Parties as though the invalid provision had never been included in this Agreement.
- 8.08 This document contains the entire agreement between the Parties. There are no undertakings, representations or promises, express or implied, other than those contained in this Agreement.
- 8.09 This Agreement shall be interpreted, performed and enforced in accordance with the laws of Manitoba.

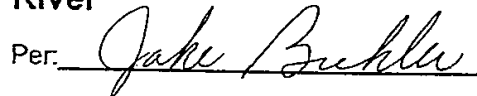
**In Witness Whereof** the Parties have executed this Agreement duly attested to by their proper signing officers in that behalf, on the day and year first above written.

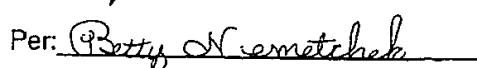
**Swan Valley Gas Corporation**

Per:   
Vice-President

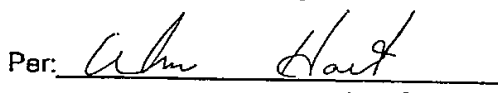
Per:   
General Counsel & Corporate Secretary

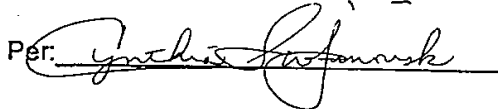
**Rural Municipality of Swan River**

Per: 

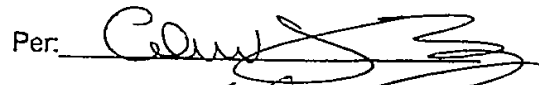
Per: 


**Rural Municipality of Minitonas**

Per: 

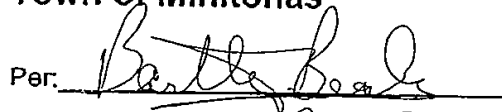
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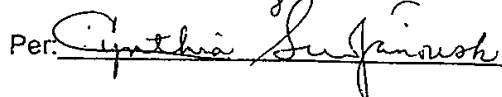
**Town of Swan River**

Per: 

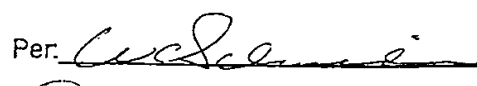
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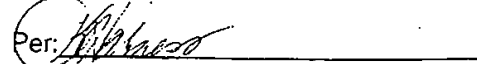
**Town of Minitonas**

Per: 

Per: 

**Village of Benito**

Per: 

Per: 



## Schedule A

### Funding Payment Schedule

<u>Portion</u>	<u>Amount</u>	<u>Payment Date</u>
50%	\$907,166.50	June 1, 2000
25%	\$453,583.25	August 1, 2000
25%	\$453,583.25	October 1, 2000