

**MANITOBA** ) **Order No. 70/12**  
)  
**THE PUBLIC UTILITIES BOARD ACT** ) **June 5, 2012**

**BEFORE:** Régis Gosselin, CGA, MBA, Chair  
Leonard Evans LLD, Member  
Raymond Lafond, CA, Member

**CENTRA GAS MANITOBA INC.: FRANCHISE APPLICATION**  
**(RURAL MUNICIPALITIES OF SOUTH NORFOLK AND GREY)**

## **1.0 Summary**

By this Order, the Public Utilities Board (Board) approves, on an interim ex parte basis, Centra Gas Manitoba Inc.'s (Centra) Application for a new franchise agreement in the Rural Municipality (RM) of South Norfolk. The new agreement extends Centra's franchise area to serve an agricultural customer. The Board also approves the financial feasibility test for the extension into the RM of South Norfolk.

The Board also approves, on an interim ex parte basis, Centra's Application for a new franchise agreement in the RM of Grey. This new agreement extends Centra's franchise area to one additional commercial customer. The Board also approves Centra's proposal to increase the pipe size from NPS 2 to NPS 4 to accommodate potential additional customers within the franchise expansion area. The Board also approves the corresponding feasibility test that excludes the incremental cost of \$125,054 to go from NPS 2 to NPS 4 pipe. The Board however will require Centra to notify potential customers in the expanded franchise area of their opportunity to access natural gas service. Should additional customers be identified, Centra is to recalculate the financial feasibility test and submit to the Board for approval.

## **2.0 Application**

On April 10, 2012, Centra applied to the Board, requesting:

1. Approval and authorization of new franchise agreements required to serve one new agricultural customer in the RM of South Norfolk;
2. Approval of the financial feasibility test related to the planned expansion of natural gas service to one agricultural customer within the proposed franchise area in the RM of South Norfolk;
3. Approval and authorization of new franchise agreements required to serve one new commercial customer in the RM of Grey; and

4. Approval of the financial feasibility test related to the planned expansion of natural gas service to one commercial customer within the proposed franchise area in the RM of Grey.

### **RM of South Norfolk**

The franchise area proposed in the RM of South Norfolk extends west from the RM of Grey where Centra currently has a crossing agreement. The proposed new agreement includes expansion of Centra's franchise into the following sections of the RM of South Norfolk: Sections 22 through 27 inclusive and 34 through 36 inclusive, all in Township 9, Range 8 WPM.

The franchise extension into the RM of South Norfolk will involve the construction of approximately 8,600 metres of 114.3 mm (NPS 4) polyethylene medium pressure main from an existing 88.9 mm (NPS 3) transmission pipeline in the RM of Grey. The proposed pipeline will follow existing government road allowances and Manitoba Hydro easements. Centra estimates the agricultural customer will consume 450,186 m<sup>3</sup> of gas annually, beginning with the first year of service. As such, the customer will be in the Large General Service class. The estimated capital cost of the main extension and service facilities is \$355,971. The customer has agreed to contribute \$209,730 towards these construction costs, with the balance of \$146,241 to be contributed by Centra. The 30 year net present value (NPV) of the revenues in excess costs of this extension is \$26,412, and the revenues exceed the costs after five years.

The RM of South Norfolk gave first reading to the By-law on February 6, 2012 authorizing a new franchise agreement between the RM of South Norfolk and Centra Gas Manitoba Inc. (and allowing for the proposed extension).

### **RM of Grey**

The new agreement with the RM of Grey replaces an existing crossing agreement and franchise agreement, and expands Centra's franchise to the following areas: Sections 1 through 8 inclusive, S ½ 9, NW ¼ 9, S ½ 10, NE ¼ 10, 11 through 13 inclusive, S ½ 14, S ½ 15, NW ¼ 15, 16 through 36 inclusive, all in Township 9, Range 7 WPM; Sections 1 through 26 inclusive, 28 through 33 inclusive, 35 and 36, all in Township 9, Range 7 WPM; and Sections 13 through 24 inclusive, all in Township 8, Range 6 WPM.

The franchise extension proposed in the RM of Grey will involve the construction of approximately 9,100 metres of 114.3 mm (NPS 4) polyethylene medium pressure main from the existing 60.3 mm (NPS 2) distribution pipeline in the Village of St. Claude to the community of Haywood. The customer load is such that a NPS 2 pipeline is sufficient, however to accommodate potential future growth Centra proposes to install a NPS 4 pipeline. Centra stated that a NPS 2 line would have sufficient capacity to serve only two more residential customers.

The proposed pipeline will follow existing government road allowances and Manitoba Hydro easements. Centra estimates the commercial customer will consume 63,568 m<sup>3</sup> of gas annually, beginning with the first year of service. As such, the customer will be in the Large General Service class. The estimated capital cost of the main extension and service facilities is \$301,505, of which \$125,054 is the incremental cost of increasing the pipe size from NPS 2 to NPS 4. Centra proposes to consider the incremental cost of \$125,054 as “system betterment”, to be paid by all of Centra’s customers and excluded from the feasibility test.

With the incremental cost of \$125,054 excluded from the feasibility test, the capital cost used in the feasibility test is \$176,451. The customer has agreed to contribute \$185,665 towards these construction costs. The customer contribution exceeds the original capital cost because of the net present value of the operating and financing costs through the life of the installation. Centra’s investment in this main extension for the purposes of the feasibility test is negative \$9,204. Centra’s total proposed investment in this main extension is \$115,840.

The RM of Grey gave first reading to the By-law on March 7, 2012 authorizing a new franchise agreement between the RM of Grey and Centra Gas Manitoba Inc. (and allowing for the proposed extension).

Projects with main extensions longer than 10 km that are classified as Class II developments under Section III of the Manitoba Environment Act (Regulation 164/88) generally require a licence from Manitoba Conservation and approval from the Director. Although both extensions are less than 10 km in length, Centra has informed Manitoba Conservation of these projects and will abide by all required regulations.

### **3.0 Board Findings**

The Application was filed consistent in form with the Board's requirements (as established in Board Order 109/94). As well, the form of the feasibility test is in accordance with Board-approved methodology as approved in Orders 109/94, 124/96, and 89/97.

#### **RM of South Norfolk**

The feasibility test for the agricultural customer in the RM of South Norfolk is met with the contribution from the customer of \$209,730. As the feasibility test meets the Board's requirements for positive 30 year NPV of revenues in excess of costs, and since the revenues exceed the costs in year 5 and beyond, the Board approves this feasibility test as well as the franchise expansion.

#### **RM of Grey**

The proposed extension into the RM of Grey raises a question of whether and to what amount of cross-subsidization a system expansion should be supported by all of Centra's customers. In the Board's view, system expansions should be financially self-supporting through proposed customer revenues and contributions.

The proposed extension to the commercial customer in the RM of Grey using a NPS 2 pipe and with a customer contribution of \$185,665 meets the Board's requirements for the feasibility test, however if the pipeline size is increased to NPS 4, the Board's requirements are not met.

In the past, Centra specifically identified the number of potential customers to be served by a pipeline extension, estimated the probable number of customers that will elect gas service, and calculated the estimated revenue from these customers. Centra then designed the system extension to accommodate the resulting load from the probable customers. Centra did not do this for this proposed extension because Centra reportedly no longer actively markets gas to unserved rural areas. Centra stated that a project, such as the proposed extension to the RM of Grey, would require senior level government financing that has not been available for several years.

With limited numbers of potential additional customers and the corresponding revenues, Centra will not generate sufficient revenues to ever recover the incremental costs of the NPS 4 pipeline over a NPS 2 pipeline. Consequently, and according to Centra's application, Centra's existing customers will be required to subsidize this extension to the community of Haywood if a NPS 4 pipe is used in the amount of \$125,054.

Centra indicated that it does not use an intermediate pipe size between NPS 2 and NPS 4. Centra standardized its pipe sizes to NPS 2, NPS 4, and NPS 6 pipes in order to minimize the inventory of spare fittings and limit the equipment such as fusion and squeeze tools necessary to construct and maintain the system.

Increasing the pressure of this pipeline in order to use a smaller diameter pipe is not an economical option either, as the proposed main extension is served from an existing medium pressure pipeline in the Village of St. Claude. Tapping into the high pressure transmission line adjacent to the Village of St. Claude requires the construction of pressure reduction facilities at both ends of the main extension, further increasing the costs.

In the case of the proposed main extension in the RM of Grey, the NPS 2 line is sufficient for growth of 6% to 8%. Increasing the pipe size to NPS 4 accommodates load growth of 113%. If Centra was to install a NPS 2 pipe now, the residents and other businesses in Haywood and vicinity will likely never have access to natural gas, unless and until the additional potential customers financially contribute a high percentage of the costs of constructing a parallel pipeline to Haywood. The Board is not prepared to exclude the other residents of Haywood from the benefits of natural gas service. Therefore, the Board will direct Centra to enquire and report back to the Board as to the intentions and commitments of other potential customers in the expanded franchise area as to whether they are prepared to commit to obtaining gas service. Since Centra has not yet enquired of the residents and businesses in Haywood as to their interest in receiving gas service, the Board has no information on the record about the intentions of other potential customers.

Consequently, the Board will approve Centra's application to extend gas service to the commercial customer in the RM of Grey and will require that Centra notify all other potential customers in the area of their opportunity to access natural gas service. If the results of Centra's

enquires determine that there is interest from other customers, then Centra is to provide a revised feasibility test that includes the probable revenues of the additional customers. The Board is of the view that new customers over and above the initial commercial customer should bear some of the capital cost for the service. The Board also approves the corresponding feasibility test for the initial commercial customer that excludes the incremental cost of the NPS 4 pipe and associated fittings of \$125,054 to increase the size of the pipe.

Board decisions may be appealed either 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](http://www.pub.gov.mb.ca).

#### **4.0 It Is Therefore Ordered That:**

1. The new Franchise Agreements between Centra Gas Manitoba Inc. and the Rural Municipality of South Norfolk, attached hereto as Schedule A to this Order, BE AND ARE HEREBY APPROVED on an interim ex parte basis.
2. The financial feasibility test for the extension of natural gas service to one Large General Service class customer within the Rural Municipality of South Norfolk BE AND IS HEREBY APPROVED, on an interim ex parte basis.
3. The new Franchise Agreements between Centra Gas Manitoba Inc. and the Rural Municipality of Grey, attached hereto as Schedule B to this Order, BE AND ARE HEREBY APPROVED on an interim ex parte basis.
4. The financial feasibility test for the extension of natural gas service to one Large General Service class customer within the Rural Municipality of Grey BE AND IS HEREBY APPROVED, on an interim ex parte basis, including the exclusion of the incremental cost of servicing the franchise area with NPS 4 pipe over NPS 2 pipe.

5. Centra is to canvas potential customers in the franchise expansion area and provide the Board with a report on findings by December 31, 2012, including a revised feasibility test that accounts for potential revenues from additional customers accommodated with a NPS 4 pipe.
6. This interim Order will remain in full effect until confirmed or otherwise by a subsequent Order of the Board.

THE PUBLIC UTILITIES BOARD

“RÉGIS GOSSELIN, CGA, MBA”  
Chair

“KURT SIMONSEN, P.Eng.”  
Acting Secretary

Certified a true copy of Order No. 70/12  
issued by The Public Utilities Board

\_\_\_\_\_  
Acting Secretary



## Schedule A

**MEMORANDUM OF AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, 2012.

BETWEEN:

**THE RURAL MUNICIPALITY OF SOUTH NORFOLK,**

(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 certain portions of 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 those portions of the Municipality and its inhabitants in the Rural Municipality of South Norfolk, 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 "By-law"), the Reeve and the Chief Administrative Officer (CAO) have been authorized and directed to execute this Agreement on behalf of the Municipality;

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

1. Subject to compliance with the provisions of *The Municipal Act* (Manitoba), *The Public Utilities Board Act* (Manitoba) and *The Gas Pipe Line Act* (Manitoba), the

Municipality hereby grants to the Company, its successors and assigns, subject to the terms, conditions and provisions herein contained, the sole and exclusive franchise to distribute natural gas to Sections 22 – 27 and Sections 34 – 36, Township 9, Range 8 WPM 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 Territory which the Company does not supply natural gas to, in the event the Municipality, acting reasonably, requests the Company to supply natural gas upon the same terms and conditions as provided in this Agreement, the Company will work together with the Municipality with a view of developing a viable business model in relation to that portion of the Territory. All such extensions for service shall be subject to the Company's feasibility test as approved by The Public Utilities Board of Manitoba (the Board) from time to time. The Company further agrees that if the Company is unable to develop a viable business model with the

Municipality, the Company shall relinquish that portion of the Territory from the franchise previously granted if asked to do so by the Municipality.

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

2.(4) The Company shall not be bound to construct or extend its mains or provide natural gas or gas service if the Company is, for any reason, unable to obtain delivery of natural gas at or near the limits of the Territory, or an adequate supply thereof to warrant the construction or extension of its mains for the provision of natural gas.

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

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

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

3.(2) The Company shall supply to the Municipality plans showing the location of its Gas Distribution System within the Municipality on an as-built basis, as requested by the Municipality, but in no event shall such plans be provided more than twice in any 12-month period. Such plans shall be provided either on paper or in a mutually agreeable format. All of the conditions for the supply of as-builts are to be mutually agreed upon.

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

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

5. The Company agrees:

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

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

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

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

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

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

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

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

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

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

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

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

13.(1) It is further agreed that at the expiration of the term hereof and at the expiration of each renewal hereof, the Municipality may, after giving one (1) year's written notice prior to the date of the termination of this Agreement or of any renewal hereof, at its option (to be expressed by by-law of the Municipality), elect to purchase that portion of the Gas Distribution System with respect to its operations within the Municipality that is used exclusively for the distribution of natural gas in the Territory, pursuant to this Agreement, but not any portion of the Gas Distribution System that is used for transmission of natural gas through the Municipality, for such price and on such terms as may be agreed upon between the parties hereto, or failing such agreement then at such price and on such terms including that portion of the Gas Distribution System the Municipality is entitled to purchase as may be fixed and settled by the Board, or if the Board shall refuse to so fix and settle the price then the said price and terms shall be such as may be fixed and determined by arbitration under the provisions of *The Arbitration Act* (Manitoba) and each of the parties shall appoint an arbitrator and the arbitrators so appointed shall appoint a



third arbitrator to act as chairman who shall be versed in this special branch of engineering economics, and in the event the arbitrators appointed by each party are unable to appoint a third arbitrator, the third arbitrator shall be appointed by the Chief Justice of the Court of Queen's Bench of the Province of Manitoba. The decision of the Board or of a majority of the said arbitrators shall be binding upon the parties in arriving at the price. The Board or the said arbitrators shall make allowance for severance of the property and operation from other properties and operations of the Company in Manitoba.

In the event of such purchase, the Company and the Municipality will enter into an agreement respecting the use of and payment for such use by the Municipality of Company-owned facilities which are not being purchased hereunder and for the sale of natural gas to the Municipality for resale by the Municipality to the inhabitants of the Municipality, at such rates as may be agreed upon between the Company and the Municipality and approved by the Board. If the Municipality does not notify the Company in writing of its intention to purchase the property of the Company as aforesaid at least one (1) year before the expiration of this Agreement or any renewal thereof, this Agreement will be deemed to be automatically renewed for an additional term of ten (10) years, and at the end of the said ten (10) year renewal term, the said Agreement will be further automatically extended in absence of notice aforesaid for additional terms of ten (10) years from time to time. Provided further that at the time of any such renewal, changes in the terms of this Agreement may be made at the request of either party with the approval of the other, and in the absence of such approval such changes may be made by reference to, under the authority of, and with the approval of the Board. Notwithstanding anything contained elsewhere in this Agreement, it is understood and agreed that if the Municipality exercises its option to purchase the property of the Company with respect to its distribution operations within the area designated in this Agreement, such exercise shall not affect the right of the Company to continue to operate its transmission facilities in such area for so long as the same may be required by the Company.

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

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

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

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

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

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

**RURAL MUNICIPALITY OF SOUTH NORFOLK**

Per:

\_\_\_\_\_  
Reeve

Per:

\_\_\_\_\_  
Chief Administrative Officer

**CENTRA GAS MANITOBA INC.**

Per:

\_\_\_\_\_  
Authorized Signing Officer

Per:

\_\_\_\_\_  
Authorized Signing Officer

## Schedule A

**MEMORANDUM OF AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, 2012.

BETWEEN:

**THE RURAL MUNICIPALITY OF GREY,**  
(hereinafter called the "Municipality"),

- and -

**CENTRA GAS MANITOBA INC.,**  
(hereinafter called the "Company").

**WHEREAS** the Municipality entered into a franchise agreement with Plains Western Gas (Manitoba) Ltd. dated May 27, 1964 (the "Agreement") pursuant to By-law No. 1078 for the supply of natural gas to:

Sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, 31, 32, Township 8, Range 4 WPM;

Sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, 31, 32, Township 9, Range 4 WPM;

Sections 1, 2, 11, 12, 13, 14, 23, 24, 25, 26, 35, 36, Township 8, Range 5 WPM;

Sections 1, 2, 11, 12, 13, 14, 23, 24, 25, 26, 35, 36, Township 9, Range 5 WPM.

**AND WHEREAS** By-law No. 1078 of the Municipality authorizing the Agreement was approved by the Public Utilities Board (the "PUB") by Order No. 117/64;

**AND WHEREAS** Centra Gas Manitoba Inc. (Centra) is the successor company Plains Western Gas (Manitoba) Ltd.;

**AND WHEREAS** the Municipality entered into an amending agreement with Centra to add Section 10, Township 8, Range 5 WPM dated November 18, 1992 pursuant to By-law No. 24/92;

**AND WHEREAS** By-law No. 24/92 was approved by the PUB by Order No. 173/92;

**AND WHEREAS** the Municipality entered into an amending agreement with Centra to add NW ¼ Section 10 and NE ¼ Section 9, Township 8, Range 7 WPM dated November 17, 1999 pursuant to By-law No. 8/99;

**AND WHEREAS** By-law No. 8/99 was approved by the PUB by Order No. 181/99;

**AND WHEREAS** the Municipality entered into an amending agreement with Centra to add Sections NE ¼ 15, NW ¼ 14, NE ¼ 14, SE ¼ 22, SW ¼ 23, SE ¼ 23, Township 8, Range 7 WPM. dated August 2, 2000 pursuant to By-law No. 6/2000;

**AND WHEREAS** By-law No. 6/2000 was approved by the PUB by Order No. 109/00;

**AND WHEREAS** the Municipality entered into an amending agreement with Centra to add Sections 27 and 34, Township 9, Range 7 WPM dated October 17, 2001 pursuant to By-law No. 7/01;

**AND WHEREAS** By-law No. 7/01 was approved by the PUB by Order No. 154/01;

**AND WHEREAS** the Municipality is desirous of obtaining a supply of natural gas for Sections 13 – 24, Township 8, Range 6 WPM and the inhabitants thereof not currently receiving natural gas;

**AND WHEREAS** the Municipality entered into a Crossing Agreement dated February 6, 2008 which was approved by PUB Order No. 176/07 for the conveying of natural gas across all those portions of the highways in Townships 8, and 9, in Range 7 WPM with the exception of Section 27 and 34, Township 9, Range 7, WPM, Sections NE ¼ 9, NW ¼ 10, NE ¼ 14, NW ¼ 14, NE ¼ 15, SE ¼ 22, SW ¼ 23 and SE ¼ 23, Township 8, Range 7 WPM;

**AND WHEREAS** it is agreed between the Municipality and the Company that the Company supply and distribute natural gas to those portions of the Municipality and its inhabitants in the Rural Municipality of Grey, 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 "By-law"), the Reeve and the Chief Administrative Officer (CAO) have been authorized and directed to execute this Agreement on behalf of the Municipality;

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

1. Subject to compliance with the provisions of *The Municipal Act* (Manitoba), *The Public Utilities Board Act* (Manitoba) and *The Gas Pipe Line Act* (Manitoba), the Municipality hereby grants to the Company, its successors and assigns, subject to the terms, conditions and provisions herein contained, the sole and exclusive franchise to distribute natural gas to all of Township 8, Range 7 WPM, all of Township 9, Range 7 WPM, Sections 13 - 24, Township 8, Range 6 WPM, Sections 1, 2, 10, 11, 12, 13, 14, 23, 24, 25, 26, 35 and 36, Township 8, Range 5 WPM, Sections 1, 2, 11, 12, 13, 14, 23, 24, 25, 26, 35 and 36, Township 9, Range 5 WPM, Sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, 31, 32, Township 8, Range 4 WPM, Sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, 31, 32, Township 9, Range 4 WPM 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 Territory which the Company does not supply natural gas to, in the event the Municipality, acting reasonably, requests the Company to supply natural gas upon the same terms and conditions as provided in this Agreement, the Company will work together with the Municipality with a view of developing a viable business model in relation to that portion of the Territory. All such extensions for service shall be subject to the Company's feasibility test as approved by The Public Utilities Board of Manitoba (the Board) from time to time. The Company further agrees that if the Company is unable to develop a viable business model with the Municipality, the Company shall relinquish that portion of the Territory from the franchise previously granted if asked to do so by the Municipality.

2.(3) For the purpose of implementing a distribution system expansion for the attachment of new customers pursuant to clause 2(1), the Company shall, whenever a request is made for gas service by any inhabitant or industry of the Municipality in a location not served by the existing system of the Company, comply with the request provided the request meets criteria filed with and approved by the Board for expansion of

the distribution system and does not unduly affect customers on the existing system. Such criteria may include but not be limited to estimates of customers, sales, volumes, revenues, costs, and return on investment, the effect upon existing customers and any customer contribution in aid of construction. The criteria shall be reviewed by the Board from time to time as the Board deems necessary or as may be requested by the Company.

2.(4) The Company shall not be bound to construct or extend its mains or provide natural gas or gas service if the Company is, for any reason, unable to obtain delivery of natural gas at or near the limits of the Territory, or an adequate supply thereof to warrant the construction or extension of its mains for the provision of natural gas.

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

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

3.(1). Prior to the installation of any part of the Gas Distribution System, the Company shall file plans with the municipal engineer, which shall mean a professional engineer employed directly or indirectly by the Municipality or such other person as may be designated by the council of the Municipality to carry out the functions and duties of the Municipal Engineer as herein described ("Municipal Engineer"), showing the location, depth and size of all mains, pipes or conduits and any other equipment or structures (but



not including geodetic information) intended to be installed or constructed and shall comply with all by-laws of the Municipality relating to the construction of such works. The Municipality, by its Municipal Engineer, shall approve the plans as to the location of the Gas Distribution System and any changes thereto arising in course of construction within the Municipality, which approval shall not be unreasonably withheld or unduly delayed. The Gas Distribution System shall be placed in such locations as agreed by the Municipal Engineer and the Company in boulevards and under other unpaved surfaces rather than in streets when reasonably practicable and where the cost of installation and maintenance will not be unreasonably high.

3.(2) The Company shall supply to the Municipality plans showing the location of its Gas Distribution System within the Municipality on an as-built basis, as requested by the Municipality, but in no event shall such plans be provided more than twice in any 12-month period. Such plans shall be provided either on paper or in a mutually agreeable format. All of the conditions for the supply of as-builts are to be mutually agreed upon.

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

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

5. The Company agrees:

- (a) in the execution of the rights and powers granted hereby and in the performance of the work in connection therewith, it shall do as little damage as possible and shall keep passage of the Highways as far as may be practicable free and uninterrupted;
- (b) it shall not interfere with, disturb or damage any existing pipes or lines of other utilities, unless the express consent of such other utilities is first had and received;
- (c) it shall, within a reasonable time after any construction work, restore the Highways and other areas where construction has occurred to a state of repair as nearly as possible equal to their former state, unless another process is established by municipal bylaw. Within thirty (30) days of completion of the restoration work the Company shall give notice in writing to the Municipal Engineer that the work and restoration have been completed and inspected. The Municipal Engineer acting reasonably shall advise the Company in writing of any deficiencies in connection with the construction work or restoration. If the Municipality fails to provide such advice within six (6) months of the Company's notice to the Municipality and unless an extension of time has been mutually agreed, the Municipality will be deemed to have accepted the restoration work;
- (d) in the execution of the power granted hereby, it shall construct, locate and operate its Gas Distribution System in such manner as will not endanger the public health or safety;
- (e) any pipe line found not in accordance with the depth of cover requirements established by the Board pursuant to *The Gas Pipe Line Act* (Manitoba) as a result of improper installation shall be lowered, relocated or suitably protected by, and at the expense of the Company;

- (f) all costs in connection with the removal or relocation of any part of the Gas Distribution System, including the cost of repairs to any Highways, shall be the Company's responsibility except where such removal or relocation is required by the Municipality; and,
- (g) notwithstanding paragraph (f) above, where the removal or relocation of any part of the Gas Distribution System is required by the Municipality, the costs and expenses incurred in the removal and replacement or the relocation shall be as follows:
  - (i) the Municipality shall pay to the Company an amount equal to the cost of labour and material required in the original construction of that part of the Gas Distribution System that the Municipality requests to be relocated, less depreciation and the value of any material salvaged; and
  - (ii) the Company shall bear the entire cost of constructing the required Gas Distribution System infrastructure in the new location.

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

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

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

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

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

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

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

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

12. The Municipality agrees that it will not, for a period of thirty (30) years or longer, if this Agreement is renewed in accordance with the provision of paragraph 13 hereof, grant to any other person, firm or corporation the right to deliver natural gas within the franchise

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

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

In the event of such purchase, the Company and the Municipality will enter into an agreement respecting the use of and payment for such use by the Municipality of Company-owned facilities which are not being purchased hereunder and for the sale of natural gas to the Municipality for resale by the Municipality to the inhabitants of the Municipality, at such rates as may be agreed upon between the Company and the

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

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

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

or permanent failure of gas supply, an act or omission (including failure to deliver gas) reducing supply of gas to the Company's supplier, or any other causes or circumstances to the extent such cause or circumstances was beyond the control of the party prevented from carrying out its obligations by the act of force majeure.

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

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

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

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

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

**RURAL MUNICIPALITY OF GREY**

Per:

\_\_\_\_\_  
Reeve

Per:

\_\_\_\_\_  
Chief Administrative Officer

**CENTRA GAS MANITOBA INC.**

Per:

\_\_\_\_\_  
Authorized Signing Officer

Per:

\_\_\_\_\_  
Authorized Signing Officer