

Order No. 53/16

**ORDER IN RESPECT OF AN INTERIM EX PARTE APPLICATION
BY CENTRA GAS MANITOBA INC. FOR APPROVAL OF A
FRANCHISE AGREEMENT FOR THE
RURAL MUNICIPALITY OF MINTO-ODANAH**

April 25, 2016

BEFORE: Régis Gosselin, B ès Arts, MBA, CPA, CGA, Chair
Neil Duboff, BA (Hons), LLB, TEP, Member
Marilyn Kapitany, B.Sc. (Hon), M.Sc., Member

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1.0 Executive Summary

By this Order, the Public Utilities Board (Board) conditionally approves, on an interim *ex parte* basis, Centra Gas Manitoba Inc.'s (Centra) Application for a new franchise agreement with the Rural Municipality of Minto-Odanah (RM of Minto-Odanah). The new agreement with the RM of Minto-Odanah replaces existing franchise and crossing agreements with the former Rural Municipalities of Minto and Odanah, which amalgamated on January 1, 2015. The new franchise agreement also allows Centra to serve a new agricultural customer and extend its franchise area over the southern portion of the Municipality to accommodate anticipated future customer growth.

The franchise agreement is approved on the condition that Centra amends the financial feasibility test for the extension of service to the new customer. Centra's proposed feasibility test was prepared based on depreciation costs calculated using the Equal Life Group methodology. The feasibility test is to be amended to use the existing Average Service Life methodology for calculating depreciation rates (which include asset retirement costs) that the Board, in Order 85/13, directed Centra to continue to use until a further Order of the Board. This may require a different level of customer contribution than originally calculated by Centra.

The Board approves the franchise agreement on an interim, conditional basis to avoid undue delay in Centra finalizing the franchise agreement with the RM of Minto-Odanah while the Board considers the forthcoming revisions to the feasibility test.

2.0 Application

On March 10, 2016, Centra applied to the Board, requesting:

1. Approval and authorization of new franchise agreements between Centra and the RM of Minto-Odanah; and
2. Approval of the financial feasibility test for the expansion of natural gas to serve one commercial customer in the proposed expansion area located in the RM of Minto-Odanah.

On March 23, 2016, Centra amended the map included as Attachment 1.0 of its Application to update incorrect references to the legal subdivisions in the RM of Minto-Odanah that are covered in existing crossing and franchise agreements. In its letter to the Board on March 23, 2016, Centra stated that it will present the RM of Minto-Odanah with an updated franchise agreement that includes the correct references to the legal subdivisions, consistent with the revised Attachment 1, prior to the final reading of the proposed By-law.

The Rural Municipality of Minto ("RM of Minto") and the Rural Municipality of Odanah ("RM of Odanah") amalgamated on January 1, 2015 to establish the RM of Minto-Odanah. In addition to including the existing crossing and franchise areas established in the former RM of Minto and the former RM of Odanah, Centra and the RM of Minto-Odanah have agreed that Centra would also seek the franchise for the entire southern portion of municipality to accommodate anticipated future customer requests for natural gas service attachments in this area.

The proposed new franchise area in the RM of Minto-Odanah will allow for the provision of natural gas service to a new agricultural customer located in the municipality. The proposed new franchise area is extended to the following areas:

- Sections 1 through 36, Township 13, Range 17 WPM;

- Sections 1-5, 8-36, Township 13, Range 18 WPM;
- Sections 1 through 36, Township 14, Range 17 WPM;
- Sections 1-18, Township 15, Range 17 WPM; and
- Sections 4-9, N ½ 10 and 11, NE ¼ 12, 13-18, Township 15, Range 18 WPM within the limits of the Municipality.

The franchise extension will involve the construction of a farm tap and approximately 155 metres of 60.3 mm (NPS 2) polyethylene main, a service line, and a meterset.

The proposed main and service line will be installed within existing government road allowances and private easements. Centra estimates the commercial customer will consume 14,957 m³ of gas annually beginning with the initial in-service year. As such, the customer will be in the Large General Service class. The estimated capital cost of the main, service line, and meterset is \$53,846. Based on the feasibility test filed by Centra, a contribution of \$41,186 from the customer towards the construction costs is required, based on the inputs Centra used in the feasibility test. The 30 year net present value of the revenues in excess of costs of this extension is \$2,285, and the revenues exceed the revenue requirements after five years. Centra's investment is \$12,660.

The RM of Minto-Odanah gave first reading to the By-law on February 11, 2016 authorizing the replacement of the existing franchise and crossing agreements between the former RM of Minto, the former RM of Odanah, and Centra as well as allowing for the new agreement to cover an expanded area.

This proposed natural gas expansion project is less than 10 km in length and therefore does not require an environmental license.

3.0 Board Findings

The Application was filed consistent in form with the Board's requirements as established in Orders 109/94 and 159/11. The Board finds that the form of the feasibility test is in accordance with the Board-approved methodology as approved in Orders 109/94, 124/96, 89/97, and 123/98, except for using an unapproved depreciation methodology. The feasibility test should be prepared, and the customer contribution calculated, based on the existing Average Service Life methodology (which includes asset retirement costs) that Centra was directed to continue to utilize in Order 85/13 until further Order of the Board.

Franchise Area

Centra's original Franchise Application and map contained inconsistencies with respect to the description of the areas currently covered by the existing franchise and crossing agreements with the former RM of Minto and RM of Odanah and the proposed areas to be included in the new franchise. The amended map filed by Centra correctly identifies the areas covered by existing franchise and crossing agreements.

The Board notes that By-law No. 20/15 does not reference Section 32, Township 13, Range 18 WPM as part of the 2006 crossing agreement, which the Board understands was part of that agreement.

The Board identified discrepancies between the By-law No. 20/15, Schedule A attached to the By-law, and the amended map provided by Centra, specifically with respect to Sections 18 and 32 of Township 13 Range 18 WPM. The Board also notes that the By-law incorrectly identifies the areas of the new franchise in item 1 in both the By-law body and associated Schedule A. Item 1 should identify that the new franchise includes Section N ½ 12, Township 15, Range 18 WPM. Accordingly, the Board approves a revised version of the franchise agreement between Centra and the RM of Minto-Odanah. The approved franchise agreement is attached to this Order as Schedule A.

The Board expects Centra to work with the RM of Minto-Odanah to amend the By-law to reflect the approved franchise agreement.

The new franchise agreement will cover the following areas:

- All of Township 13, Ranges 17 and 18 WPM;
- All of Township 14, Ranges 17 and 18 WPM;
- Sections 1-18 of Township 15, Range 17 WPM;
- Sections 4-9, N ½ 10, N ½ 11, N ½ 12, and 13-18, Township 15, Range 18 WPM within the limits of the Municipality.

Centra is to provide the RM of Minto-Odanah with the approved franchise agreement attached as Schedule A to this Order, along with the revised map which Centra included in its March 23, 2016 filing, for incorporation into By-law No. 20/15. The Board expects the Council of the RM of Minto-Odanah to make these amendments to By-law No. 20/15 in advance of the final reading.

Typically, Centra only applies for franchise areas where Centra has identified potential customers that will take gas service as opposed to applying for a franchise area to encompass an entire rural municipality. As the RM of Minto-Odanah anticipates the need for Centra to provide gas service to additional new customers and since the Municipality supports granting Centra the additional franchise areas, the Board approves and authorizes the new franchise agreement between Centra and the RM of Minto-Odanah to cover the entire southern portion of the RM of Minto-Odanah. The approved franchise agreement is attached as Schedule A to this Order.

It appears to the Board that the two franchise agreements with the former RM of Odanah, approved in 1967 and 1970 by the Board, may both have expired, since franchise agreements were typically approved for a duration not longer than 30 years. Centra is to identify which, if any, of its existing franchise agreements throughout its service territory have expired, and inform the Board by July 31, 2016. If Centra is

servicing customers in any of the territories with expired franchise agreements, Centra is to execute new franchise agreements with those rural municipalities and to bring those agreements to the Board for approval.

Feasibility Test

In the feasibility test, the Board notes that the 2.04% composite plant depreciation rate used by Centra is based on the use of the Equal Life Group (ELG) depreciation methodology. Per Directive 6 of Order 85/13, the current Centra asset depreciation rates approved by the Board are based on the Average Service Life (ASL) depreciation methodology and include the recovery of asset retirement costs, also known as net salvage. Additionally, the Board stated in Order 85/13 that “Centra is not to make any accounting changes related to depreciation for rate setting until it has received Board approval”.

Based on the December 13, 2011 Gannett Fleming Depreciation Study filed as Appendix 5.8 of the Centra 2013/14 General Rate Application, the Centra ASL-based depreciation rate should be 2.46% and not the ELG-based depreciation rate of 2.04%. In this feasibility test, the change in plant depreciation rate to the ASL methodology (with recovery of asset retirement costs) results in an increase in the required customer contribution of approximately \$500 from the \$41,186 calculated by Centra.

Since the Board has not approved the ELG depreciation rate methodology, and since the feasibility test does not utilize inputs that are approved by the Board, the Board does not approve it in its current form. The Board approves the franchise agreement attached to this Order as Schedule A on an interim ex parte basis, on the condition that Centra amends the feasibility test and resubmits it for approval. Centra is to recalculate the feasibility test using the depreciation rates approved by the Board in Order 85/13, which are based on the Average Service Life methodology and include asset retirement costs. Any change to the customer contribution indicated by the revised feasibility test is to be collected from or refunded to the customer.

The Board approves the franchise agreement on an interim, conditional basis, instead of rejecting the franchise application outright, to avoid undue delay in Centra finalizing the franchise agreement with the RM of Minto-Odanah. With the conditional approval, Centra may approach the RM of Minto-Odanah to amend the By-law in advance of receiving approval for the revised feasibility test from the Board. The Board will review this interim approval at the next General Rate Application.

4.0 It Is Therefore Ordered That:

1. The Franchise Agreement between Centra Gas Manitoba Inc. and the RM of Minto-Odanah, attached hereto as Appendix "A" to this Order, BE AND IS HEREBY APPROVED on an interim *ex parte* basis, subject to Centra and the RM of Minto-Odanah, prior to final reading of By-law No. 20/15:
 - (a) amending the By-law and Schedule A to correct the area descriptions associated with both the existing agreements as well as the new franchise agreement; and
 - (b) filing a revised feasibility test based on the Board-directed depreciation methodology set out in Order 85/13.
2. The financial feasibility test for the extension of natural gas service to one commercial customer within the RM of Minto-Odanah BE AND IS HEREBY DENIED. Centra is to recalculate the feasibility test using the depreciation rates approved in Order 85/13 that are based on Average Service Life including asset retirement costs and to re-file the feasibility test for approval.
3. Centra is to identify which, if any, of its existing franchise agreements throughout its service territory have expired and report to the Board by July 31, 2016. If Centra is serving customers in any of the territories with expired franchise agreements, Centra is to execute new franchise agreements with those rural municipalities and to bring those agreements to the Board for approval.
4. This interim Order will remain in full effect until confirmed or otherwise by a subsequent Order of the Board.

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

THE PUBLIC UTILITIES BOARD

"RÉGIS GOSSELIN, B ès Arts, MBA, CPA, CGA"
Chairman

"KURT SIMONSEN"
Acting Secretary

Certified a true copy of Order No. 53/16 issued
by The Public Utilities Board

Acting Secretary

MEMORANDUM OF AGREEMENT made this ____ day of _____, 2016.

BETWEEN:

THE RURAL MUNICIPALITY OF MINTO-ODANAH,

(hereinafter called the "Municipality"),

- and -

CENTRA GAS MANITOBA INC.,

(hereinafter called the "Company").

WHEREAS the Rural Municipality of Odanah entered into a franchise agreement with Plains-Western Gas (Manitoba) Ltd. dated February 21, 1967, pursuant to By-law No. 9/66 for the supply of natural gas to Sections 6 and 7, Township 13, Range 18 WPM;

AND WHEREAS By-law 9/66 of the Rural Municipality of Odanah was approved by the Public Utilities Board of Manitoba by Order 53/67;

AND WHEREAS the Rural Municipality of Odanah entered into a franchise agreement with Inter-City Gas Utilities Ltd. dated November 17, 1970, pursuant to By-law No. 11/70 to supply natural gas to Ward Three of the Municipality (Township 14, Range 18 WPM);

AND WHEREAS By-law 11/70 of the Rural Municipality of Odanah was approved by the Public Utilities Board of Manitoba by Order 40/71;

AND WHEREAS the Rural Municipality of Odanah entered into a Crossing Agreement with Centra Gas Manitoba Inc. dated April 13, 2006, pursuant to By-law No. 8/06 which granted the right to lay pipeline across the highways and lands of the Municipality for the purpose of constructing, laying and maintaining a pipeline for the conveyance of natural gas to the Town of Minnedosa through:

Sections 8, 17–20, 29-32, Township 13, Range 18 WPM;

Sections 5–8, 17–20, 29–32, Township 13, Range 17 WPM; and in
Sections 5–8, 17–20, Township 14, Range 17 WPM;

AND WHEREAS the Rural Municipality of Minto entered into a franchise agreement with Centra Gas Manitoba Inc. dated September 12, 2000, pursuant to By-Law No. 8/00 to supply natural gas to NW ¼ Section 12, Township 15, Range 18 WPM;

AND WHEREAS By-law 8/00 of the Rural Municipality of Minto was approved by the Public Utilities Board of Manitoba by Order 123/00;

AND WHEREAS Centra Gas Manitoba Inc. is the successor company to both Plains-Western Gas (Manitoba) Ltd. and Inter-City Gas Utilities Ltd.;

AND WHEREAS the Rural Municipality of Odanah and the Rural Municipality of Minto amalgamated on January 1, 2015, to establish the Rural Municipality of Minto-Odanah;

AND WHEREAS the Municipality has agreed that it is in its interest to grant Centra a further franchise for the supply and distribution of natural gas to all of Township 13, Range 17 WPM; Sections 1-5, 8-36, Township 13, Range 18 WPM; all of Township 14, Range 17 WPM; Sections 1-18, Township 15, Range 17 WPM, Sections 4-9, N ½ 10 and 11, NE ¼ 12, 13-18, Township 15, Range 18 WPM within the limits of the Municipality;

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

AND WHEREAS it is agreed between the Municipality and the Company to enter into a new franchise agreement in the form approved by PUB Order 159/11 with Centra to supply and distribute natural gas to those portions of the Municipality and its inhabitants in the Rural Municipality of Minto-Odanah, and as set out in the map attached as Appendix 1, hereto (the “Territory”) to replace all existing franchise agreements;

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 That the Rural Municipality of Minto-Odanah enter into a new franchise agreement ("Franchise Agreement") with Centra in the form attached hereto as Schedule "A" to this By-Law, for the purpose of granting a franchise for the supply and distribution of natural gas to all of Township 13, Ranges 17 and 18 WPM; all of Township 14, Ranges 17 and 18 WPM; Sections 1 through 18, Township 15, Range 17 WPM; Sections 4 through 9, N ½ 10, N ½ 11, N ½ 12, and 13 through 18, Township 15, Range 18 WPM 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 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 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 MINTO-ODANAH

Per:

Reeve

Per:

Chief Administrative Officer

CENTRA GAS MANITOBA INC.

Per:

Authorized Signing Officer

Per:

Authorized Signing Officer