

THE RURAL MUNICIPALITY OF MORRIS

BY-LAW NO. 1477/95

BEING a By-law of the Rural Municipality of Morris to enter into an agreement with Centra Gas Manitoba Inc. for a project of the installation of a natural gas line.

WHEREAS the Rural Municipality of Morris has an approved project for Centra Gas installing natural gas in Rosenort, Manitoba under the Canada-Manitoba Infrastructure Works;


AND WHEREAS Council wishes to enter into an agreement with Centra Gas Manitoba Inc. for this natural gas line installation project for the Unincorporated Village District of Rosenort, Manitoba;

THEREFORE BE IT RESOLVED that the Council of the Rural Municipality of Morris now enacts as follows:

1. That the Rural Municipality of Morris is now authorized to enter into an agreement with Centra Gas Manitoba Inc. for the purpose of installing natural gas into the Unincorporated Village District of Rosenort, Manitoba.
2. That the agreement stated above shall be included as Schedule "A" and be considered as part of this By-law.
3. That the Reeve and Secretary-Treasurer of the Rural Municipality of Morris be hereby authorized to execute the said agreement and affix the corporate seal of the Municipality.

DONE AND PASSED by the Council of the Rural Municipality of Morris, in Manitoba, in regular session assembled this 11th day of May, 1995.


Reeve


Secretary-Treasurer.

THIS AGREEMENT made this 16th day of June, 1995.

BETWEEN:

CENTRA GAS MANITOBA INC.
with offices at 5th Floor - 444 St. Mary Avenue
Winnipeg, Manitoba, R3C 3T7

("Centra")

- and -

RURAL MUNICIPALITY OF MORRIS
with offices at Box 518
Morris, Manitoba, R0G 1K0

(the "Municipality")

WHEREAS the Government of Canada ("Canada") and the Government of the Province of Manitoba (the "Province") have agreed to fund a program for the renewal, enhancement and creation of infrastructure in local communities in Manitoba;

AND WHEREAS the said agreement contemplates that government funding for any project under the said program will be shared equally by Canada, the Province and the community or municipality benefiting from the project;

AND WHEREAS Centra has entered into an agreement with the Province (the "Infrastructure Cost-Sharing Agreement") setting out the terms and conditions under which Centra shall implement a project to extend gas distribution services to certain rural Manitoba communities (the "Project");

AND WHEREAS the Infrastructure Cost-Sharing Agreement contemplates that expansion will proceed on a community group basis, provided that certain conditions have been fulfilled, one of those conditions being the commitment by each community or municipality within that group to pay to Centra its proportionate contribution to the Project Costs for expansion to that community group as defined in the Infrastructure Cost-Sharing Agreement;

AND WHEREAS the Municipality is desirous of obtaining an economic and environmentally friendly energy source for its inhabitants;

AND WHEREAS the parties wish to confirm the terms and conditions under which the Municipality will contribute to the Project Costs of expansion of natural gas service to the Unincorporated-Village District (U.V.D.) of Rosenort (the "Community");

AND WHEREAS the Municipality and Centra have entered into a Franchise Agreement dated February 11, 1966, which was renewed for a period of 10 years commencing February 11, 1986 and amended to include the entire R.M. of Morris with By-law No. 1455/94 which was approved by PUB Order No. 43/95 on April 10, 1995.

NOW THEREFORE the parties agree as follows:

1. Pursuant to a Financial Feasibility Test applied by Centra as contemplated in the Infrastructure Cost-Sharing Agreement, the methodology of which test has been approved by the Public Utilities Board of Manitoba, the Contribution required of the Municipality to the Project Costs is estimated at \$286,657 (the "Estimated Contribution"). Such estimate is subject to recalculation as the Project proceeds, as provided at clause 5 and 6.
2. For the purposes of this agreement, "Designated Area" shall mean that area known as the U.V.D. of Rosenort delineated in green on the map of the Municipality attached hereto as Schedule A. Any extension of service beyond the Designated Area shall be considered for service by Centra pursuant to its standard terms and conditions of service, and subject to Centra's determination otherwise, shall not form part of the extension of services hereunder.
3. Centra shall extend its gas distribution services to potential customers within the Designated Area and the Municipality shall pay to Centra its Contribution to Project Costs on the following basis:
 - (a) a deposit on execution of this agreement of not less than \$14,333.00;
 - (b) the remainder by quarterly payments to be made in accordance with construction progress invoices made by Centra to the Municipality; and
 - (c) payment of the final adjustment, if any, within 30 days of the final recalculation of the contribution contemplated in subclause 6(b).

Notwithstanding the above payment schedule, actual billings for payments shall be made based on construction progress and billed quarterly to the municipality. Invoices unpaid after 30 days shall be carried at Centra's bank prime rate plus 1%.

In addition to the foregoing, the Municipality agrees that the primary energy requirements for the existing buildings, offices, warehouses, recreational centres, arenas and other premises owned, used or operated by the Municipality within the designated area shall be converted for the use of natural gas provided they have signed an application for service (such applications are not subject to cancellation) and paid the sign-up fee for these buildings upon execution of this agreement. The Municipality further agrees that for all buildings, offices, warehouses, recreational centres, arenas which are constructed in the designated area within 5 years from the date of this agreement for the ownership, use or operation by the Municipality shall utilize natural gas as their primary energy source.

4. The negotiation by Centra with the Municipality of this agreement is not and shall not be deemed to be a commitment by Centra to extend gas distribution services to the Municipality or the designated area. Under the terms of the Infrastructure Cost-Sharing

Agreement, a Community/Municipality must first be determined to be eligible for the expansion and, that eligibility notwithstanding, Centra and the Province shall make a final determination as to whether or not expansion to a particular community or Community Group will proceed. For purposes of this agreement, Centra shall not be considered to have committed to expansion of gas distribution services to the Municipality until such time as Centra has actually proceeded with construction of such expansion.

5. The Contribution of the Municipality to Project Costs may be adjusted in the event that one or more communities and/or municipalities within the Community Group originally contemplated do not agree, or are not eligible, to participate in the Project. In that event, Centra shall notify the Municipality in writing at the office described herein as to its adjusted Estimated Contribution, if any, and the Municipality shall, within five (5) days confirm to Centra in writing at its office described herein, its participation in the Project on that basis. In the event that the Municipality does not respond as to its participation, Centra may, at its sole discretion, not proceed with the expansion until such time as confirmation is received from the Municipality.
6.
 - (a) The parties acknowledge that because the level of Contribution by the parties has been calculated on the basis of projected data contained in the Financial Feasibility Test, the Municipality requires certain undertakings as to recalculation and repayment once actual data respecting costs and revenues is available. The parties also acknowledge and agree that the revenue which Centra will earn in respect of the Project will be subject to continuing scrutiny and adjustment by the Public Utilities Board.
 - (b) Within 60 days immediately following the completion of the expansion, Centra shall recalculate the level of Contribution to Project Costs required from the Municipality, using the Financial Feasibility Test for the expansion, updated with actual data current as of that date. All calculations shall be reasonable and shall be made in accordance with generally accepted utility accounting principles. If such recalculation indicates that the level of Contribution paid by the Municipality hereunder has exceeded the actual level of contribution required, Centra shall refund its proportionate share of the excess contribution to the Municipality within 90 days immediately following the completion of that expansion. The amount repayable by Centra under this provision shall not exceed the amount of the Contribution paid by the Municipality to the Project. The Municipality shall provide to Centra full and final release respecting the obligations contained in this subsection 6(b).
 - (c) As of December 31, 2002, Centra shall recalculate the required level of Contribution by the Municipality for the expansion for the Project as a whole, using the Financial Feasibility Test, updated with actual data current as of that date. If the level of Contributions paid by the Municipality on an aggregate basis hereunder has exceeded the actual level of contributions required on the basis of such recalculation, Centra shall refund the proportionate share of the amount of

such excess contribution to those Municipalities whose contributions have exceeded their required contribution and the said refund, if any, shall be payable by June 30, 2003. All calculations shall be reasonable and shall be made in accordance with generally accepted utility accounting principles. The amount repayable by Centra under this provision shall not exceed the amount of the Contribution paid by the Municipality in the aggregate. The Municipality shall provide a full and final release in favour of Centra respecting the obligations contained in this subsection 6(c).

7. Pursuant to the provisions of the Infrastructure Cost-Sharing Agreement, the Municipality shall:
 - (i) establish and maintain until at least March 31, 1999 such accounting and other records as are necessary for the proper financial management of the Project (including supporting documents), in accordance with generally accepted accounting principles,
 - (ii) permit until at least March 31, 1999, Centra, the Province, Canada and their authorized representatives to monitor the Project and to inspect and audit accounting and other records respecting the Project at any reasonable time, and
 - (iii) comply with all applicable legislation and standards, whether federal, provincial or municipal, including (without limitation) labour, environmental and human rights legislation.

8. Pursuant to the provisions of the Infrastructure Cost-Sharing Agreement, the Municipality shall save harmless and indemnify Canada, the Province and their respective Ministers, officers, employees and agents from and against all claims, liabilities and demands of any kind with respect to any injury to persons (including without limitation death), damage or loss to or destruction of property, economic loss or infringement of rights caused by or arising directly or indirectly from
 - (i) any portion of the Project with respect to which the Community/Municipality is involved or with respect to which the Community/Municipality provided goods or services;
 - (ii) the performance of the contract or the breach of any term or condition of the contract by the Community/Municipality or its officers, employees or agents;
 - (iii) the on-going operation, maintenance and repair of any portion of the Project with respect to which the Community/Municipality is involved or with respect to which the Community/Municipality provided goods or services; and
 - (iv) any omission or any wilful or negligent act of the Community/Municipality or its officers, employees or agents.

9. The Municipality acknowledges and agrees that the Canada-Manitoba Infrastructure Agreement and the Infrastructure Cost Sharing Agreement are incorporated by reference in and form part of this Agreement and where any provision of this Agreement is in conflict with the provisions of the aforesaid agreements, the Infrastructure Cost Sharing Agreement shall prevail. The Municipality acknowledges having received a copy of that agreement.
10. No amendment or change to, or modification of, this Agreement shall be valid unless it is in writing and signed by the parties.
11. Any waiver by the Community/Municipality or Centra of any failure, default or breach under this Agreement shall not be effective unless given in writing by an authorized person and shall not constitute a subsequent waiver of a similar or of any other failure, default or breach.
12. If any provision of this Agreement is for any reason invalid, that provision shall be considered separate and severable from this Agreement, and the other provisions of this Agreement shall remain in force and continue to be binding upon the parties as though the invalid provision had never been included in this Agreement.
13. Any notice or other communication under this Agreement shall be in writing and shall be delivered personally or sent by registered mail, postage prepaid, or by way of facsimile transmission as follows:

(a) If to Centra:

Centra Gas Manitoba Inc.
5th Floor, 444 St. Mary Avenue
Winnipeg, Manitoba
R3C 3T7
Attention: Corporate Secretary
Facsimile: 1-(204) 925-0765

(b) If to Municipality:

R.M. of Morris
Box 518
Morris, Manitoba
R0G 1K0
Attention: Grant G. MacAulay
Secretary-Treasurer
Facsimile: 1-(204) 746-8801

Any notice or communication sent by registered mail shall be deemed to have been received on the third business day following the date of mailing. If mail service is disrupted by labour controversy, the notice or communication shall be delivered personally or by way of facsimile transmission.

Municipality or Centra may change the address and other information set out herein by giving notice in writing to the other party.

- 14. Nothing in this Agreement is to be construed as authorizing one party to contract for or to incur any obligation on behalf of the other or to act as agent for the other. Nothing in this agreement is to be construed as authorizing the Community/Municipality or any third party to contract for or to incur any obligation on behalf of Canada, the Province or Centra or to act as agent for Canada, the Province or Centra.
- 15. This Agreement and attached Schedule A constitute the entire agreement between the parties hereto.
- 16. This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Manitoba.
- 17. This Agreement is conditional upon and subject to the enactment of a by-law authorizing the Municipality to enter into this Agreement.

IN WITNESS WHEREOF this Agreement has been executed on behalf of each of Centra and the Rural Municipality of Morris by its respective duly authorized officers this 16th day of JUNE, 1995.

CENTRA GAS MANITOBA INC.		
YCLN	CORP. NO.	DOC. NO.
95	34	202

Approved
<i>WJW</i>
For Content
<i>[Signature]</i>
For Legal

CENTRA GAS MANITOBA INC.

Per: *[Signature]*
President and Chief Executive Officer

Per: *[Signature]*
Vice-President

RURAL MUNICIPALITY OF MORRIS

Per: *[Signature]*

Per: *[Signature]*

