

THE RURAL MUNICIPALITY OF WHITEMOUTH

BY-LAW NO. 662/16

BEING A BY-LAW OF THE RURAL MUNICIPALITY OF WHITEMOUTH TO AUTHORIZE THE ENTERING INTO AND EXECUTION OF AGREEMENTS WITH MARTHA HENNY SIKKENGA.

WHEREAS Section 250(2) of Part 8, Division 1 of The Municipal Act provides in part as follows:

250(2) Without limiting the generality of subsection (1), a municipality may for municipal purposes do the following:

- (d) enter into agreements with a person, with an agency of the Government of Manitoba or the Government of Canada, or with another municipality, including a municipality in another province, to do with or on behalf of the municipality anything the municipality has the power to do within the municipality;

AND WHEREAS it is deemed expedient and in the best interests of the residents of The Rural Municipality of Whitemouth that The Rural Municipality of Whitemouth enter into agreements with Martha Henny Sikkenga;

AND WHEREAS the terms of the agreement have been settled and are contained in the agreements attached hereto as Schedule "A";

NOW THEREFORE BE IT AND IT IS HEREBY ENACTED that the Council of The Rural Municipality of Whitemouth, duly assembled, enact as follows:

1. THAT the entering into the proposed Agreement attached hereto as Schedule "A" is hereby approved and authorized.
2. THAT the Reeve and the Chief Administrative Officer of The Rural Municipality of Whitemouth are hereby authorized and instructed to execute the agreement, as set out in Schedule "A" attached hereto, for and on behalf of the Municipality.

DONE AND PASSED by the Council of The Rural Municipality of Whitemouth in regular session assembled, this 2<sup>nd</sup> day of November, AD., 2016.

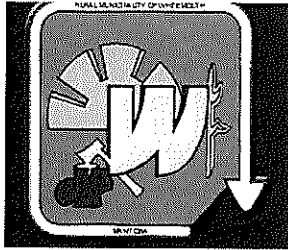
  
Reeve

  
Chief Administrative Officer

Read a first time this 26<sup>th</sup> day of October, AD. 2016

Read a second time this 26<sup>th</sup> day of October, AD. 2016

Read a third time this 2<sup>nd</sup> day of November, AD. 2016



**The Rural Municipality of Whitemouth**  
**Box 248**  
**Whitemouth, Manitoba**  
**R0E 2G0**

Telephone: 204-348-2221  
Fax: 204-348-2576

email address: cao@rmwhitemouth.com  
website address: www.rmwhitemouth.com

Reeve Bill Dowbyhuz \* Deputy Reeve Martin Saxler \* Councillor Roy Nichol \* Councillor Manny Sikkenga \* Councillor Lori Bachman

## **DEVELOPMENT AGREEMENT**

THIS AGREEMENT made in duplicate this 2<sup>nd</sup> day of November, 2016

BETWEEN:

**THE RURAL MUNICIPALITY OF WHITEMOUTH**  
("Municipality")

OF THE FIRST PART,

-and-

**MARTHA HENNY SIKKENG**  
("Developer")

OF THE FIRST PART,

WHEREAS The Developer represents a property owner located within the boundaries of the Municipality as shown outlined on a plan attached as Schedule "A" ("Planned Area") and the Developer, subject to the approval of the Municipality, propose to construct a water main ("Services") to serve the Planned Area;

AND WHEREAS this water main is intended to fall under the jurisdiction and responsibility of the Municipality, the Developer and the Municipality wish to establish development conditions in respect of works to be carried out by the Developer;

NOW THEREFORE, in consideration of those approvals and the sum of ONE DOLLAR (\$1.00) paid by each party to the other, the receipt and sufficiency of which is hereby acknowledged, the Municipality and the Developer covenant and agree as follows:

## **1. CONTRACT DOCUMENTS**

This Agreement shall consist of the following:

- a) Schedule "A" – the Planned Area;
- b) Schedule "B" – Installation of Services

## **2. DEVELOPMENT CONTROL**

- a) The Developer shall not proceed with the installation of the Services until:
  - i. detailed engineering plans and specifications for the Services have been approved by the Municipality ("Standards");
  - ii. the Developer has provided to the Municipality the required letter of credit;
  - iii. the Developer has provided a certificate of comprehensive general liability insurance for bodily injury (including death) and property damage in an amount of not less than \$2,000,000 inclusive limit for any one occurrence. The Developer shall maintain such insurance at their own expense throughout the term of this Agreement and such policy shall include:
    - a. the Municipality as an additional insured;
    - b. provision for the Municipality to be given 30 days written notice prior to cancellation of the policy.
- b) Upon the Developer meeting these requirements, the Municipality shall issue a Commencement Certificate permitting the Developer to start construction or installation of the Services.
- c) All work to be done by or on behalf of the Developer shall conform to the Standards, all procedures, requirements and specifications of this Agreement, and any additional standards, procedures, requirements or specifications agreed to by the parties.
- d) In addition to, and without providing notice in accordance with the default provisions in Clause 9, the Municipality may order work to stop and require the Developer to rectify and deficiencies, if:
  - i. the Developer starts construction or installation of the services before the requirements outlined in sub-clauses 2.a) have been met and a Commencement Certificate has been issued: or
  - ii. it is apparent to the Municipality that construction or installation of the Services do not conform to the Standards, or any procedures, requirements or specifications of this Agreement.

**3. CONSTRUCTION OF THE SERVICES**

- a) The Developer shall construct, install, and complete the Services in a good and workmanlike manner in accordance with the Standards and this Agreement.
- b) The Developer shall provide as-built drawings for the Services at the conclusion of construction and in advance of receiving an Acceptance Certificate.
- c) The Developer shall provide a statutory declaration that all claims for the costs of the Services made by any person who in the performance of this Agreement performs any work or provides any services, or places or furnishes material in respect of the Services have been satisfied.
- d) The Developer shall keep complete records of anyone who performs such work or provides such services and as to who provides material in respect of the Services. The Developer shall upon request provide copies of the records to the Municipality confirming payment for this work, services, or material.

**4. CONSTRUCTION TIMING AND SCHEDULE**

- a) The Developer require and agree to proceed with the installation of the Services under the terms hereof as follows:
  - i. The construction of Services must be complete by November 30, 2016.
  - ii. Notification will be provided to the Municipality when construction of the services has been completed. The Municipal Engineer shall then do an inspection. If the Services do not meet the Standards to the satisfaction of the Municipal Engineer, the Developer shall forthwith bring the Services up to the Standards. Upon the Services meeting the Standards to the satisfaction of the Municipal Engineer, the Municipal Engineer shall issue an Acceptance Certificate for the installation of the Services.
  - iii. All Public Roads shall remain open for public access during the construction of the Services.

**5. APPROVAL OF CONTRACTORS**

- a) The Developer shall employ contractors that are approved by the Municipality which approval is not to be unreasonably withheld, for construction of the Services.

**6. MAINTENANCE AND GUARANTEE**

- a) Upon the issuance of the Acceptance Certificate for the Services, the Developer shall guarantee the Services against faulty workmanship, design or defective materials for a period of 1 year. The Developer shall assign the benefit of any and all guarantees it obtains to the Municipality, to the extent such guarantees are assignable.

- b) The time periods and responsibilities in this Clause are subject to extension until the Acceptance Certificate is issued under Clause 4.
- c) The Developers' obligations set out in Clause 3(c-d) apply with the necessary modifications to the work under this Clause.

## 7. **SECURITY**

- a) To guarantee the Developers' performance of all its obligations in accordance with this Agreement, the Developer shall provide the Municipality with an irrevocable letter of credit in the amount of 100% of the mutually agreed upon estimated cost of the Services.
- b) The letter of credit, by its terms, will be automatically renewed form year to year unless the issuer of the letter gives the Municipality at least 60 days' notice of its expiry. In the event that the issuer of the letter gives the Municipality notice that the letter will expire, the Municipality may without giving notice set out in Clause 9, call in the letter of credit and hold the funds until it is extended or replaced. The letter of credit shall allow for partial drawings.
- c) The Municipality shall estimate the amount of the letter of credit required to be provided by the Developer which shall include all installation, construction, and completion costs of the Services, and may include a sum sufficient to cover the holdback and interest required under The Builder's Liens Act.
- d) If the Developer fails to provide a letter of credit the Municipality may, 30 days after giving notice to the Developer to remedy such default, terminate this Agreement and from that time all right and interest then existing in favour of the Developer shall cease without any compensation for moneys paid or work done or for damages, and the Developer hereby releases the Municipality from any claims, suits, or demands in respect of or in connection with such termination under this Clause. The indemnity obligations shall remain in force and survive the termination of this Agreement.
- e) In the event of termination of this Agreement for any cause or in the event of non-compliance by the Developer with any of its obligations relating to the installation, construction, or completion of the Services, and the non-performance by the Developer of any of its obligations in accordance with this Agreement, the Municipality shall have the right to call in the letter of credit, in whole or in part, in such manner as the Municipality may in its absolute discretion deem most advisable for the orderly completion, reconstruction, repair, or maintenance of works or for the payment of any charges, fees, costs or expenses payable hereunder including Builder's Liens Claims.
- f) The extent of the work to be done or the actions to be taken by the Municipality, and the time within such work shall be done or actions taken, shall be at the absolute discretion of the Municipality.
- g) Upon issuance of the respective Acceptance Certificate the amount of the letter of credit may be reduced if the Developer is not in breach of any of their obligations under this Agreement.

**8. DEFAULT**

- a) If the Developer fails to comply with any provisions of this Agreement, the Municipality may give the Developer notice of the particulars of default in accordance with Clause 15.
- b) If, within 30 days after notice, the Developer fails to rectify the default to the satisfaction of the Municipality, the Municipality will be entitled to:
  - i. seek specific performance to rectify the default,
  - ii. seek an injunction to restrain a breach or to enforce compliance with any term of this Agreement
  - iii. terminate this Agreement for default,
  - iv. call in the letter of credit; or
  - v. any or all of these remedies.
- c) If the Agreement is so terminated, the Municipality will not be liable for any loss or damage suffered by the Developer or any other person as a result. The indemnity obligations of the Developer will remain in force and survive any termination.

**9. GENERAL INDEMNITY**

- a) The Developer must indemnify and save harmless the Municipality from and against all claims of any kind, including Builder's Liens Act claims, arising out of anything provided, permitted or required to be done by the Developer under this Agreement, together with all costs and expenses arising by reason of any such claim, including legal costs on a solicitor and own client basis. This indemnity does not cover any act or thing negligently done or negligently omitted to be done by the Municipality.

**10. DELAY**

- a) If the Developer is obstructed or delayed in the execution or completion of any of the works by reason of the act, neglect, delay, or default of the Municipality, or by reason of delays in obtaining materials due to strikes, lockouts, or work stoppages, or delays in transit or for any default by reason of acts of God, war revolution, political disturbance, fire, flood or any other cause beyond the Developer's control, then the time fixed in the Agreement for the completion of the work of performance of the duty will be extended for a period equal to the time lost to the Developer by reason thereof, provided that the Developer informs the Municipality no later than the 31<sup>st</sup> day of December in each year of any extension or extensions of time claimed for that year.

**11. INABILITY OF THE MUNICIPALITY TO PERFORM**

- a) The Municipality will perform its obligations within the limits of its powers from time to time and will be under no obligation or duty other than to exercise its best efforts to perform such obligations.

The Municipality will not be liable to the Developer or any other person for its failure to perform any obligation if such failure is beyond its control or caused by operation of law.

**12. SERVICE EASEMENTS**

- a) Where any Service must be installed on or in lands within or outside the Planned Area, the Developer shall at the Municipality's requires and at the Developer's sole cost provide easements to the Municipality, in a form satisfactory to the Municipality's solicitor, to enable the Municipality as and when necessary to enter upon such lands and to maintain, repair, reconstruct, and otherwise deal with such Services. Where required, the Developer shall register all necessary easement agreements within 10 days of the signing of this Agreement.

**13. GENERAL PROVISIONS**

- a) This Agreement shall not be assigned by the Developer without the consent of the Municipality first being had and obtained in writing; which consent is not to be unreasonably withheld.
- b) The term of this Agreement will be from the date of this execution until all of the Developer's obligations have been performed to the satisfaction of the Municipality.
- c) If any provision of the Agreement is at variance with any rule of law or equity, this Agreement will supersede and prevail.
- d) A party may waive the performance of any provision to be performed for its benefit by the other party, provided that such waiver is in writing.
- e) Where the Developer is a corporation, the Developer must maintain themselves in good corporate standing for the term of this Agreement.
- f) Any notice required to be given by either of the parties hereto, except where otherwise specifically provided, shall be deemed to have been legally delivered if:

Delivered to the Developers at:

**Martha Henny Sikkenga  
Box 161  
Whitemouth, Manitoba R0E 2G0**

Delivered to the Municipality at:

**The Rural Municipality of Whitemouth  
49 Railway Avenue  
Whitemouth, Manitoba R0E 2G0  
Attention: Chief Administrative Officer**

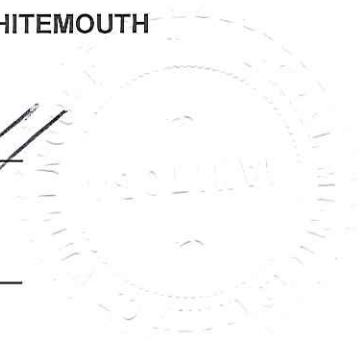
- g) The Developer's covenants shall be deemed to be several as well as joint.
- h) This Agreement binds the parties' successors and assigns.
- i) Time is of the essence.

SIGNED, SEALED AND DELIVERED this 2<sup>nd</sup> day of November A.D.2016 by:

**THE RURAL MUNICIPALITY OF WHITEMOUTH**

  
\_\_\_\_\_  
Reeve

  
\_\_\_\_\_  
CAO



AND this 2<sup>nd</sup> day of November A.D.2016 by:

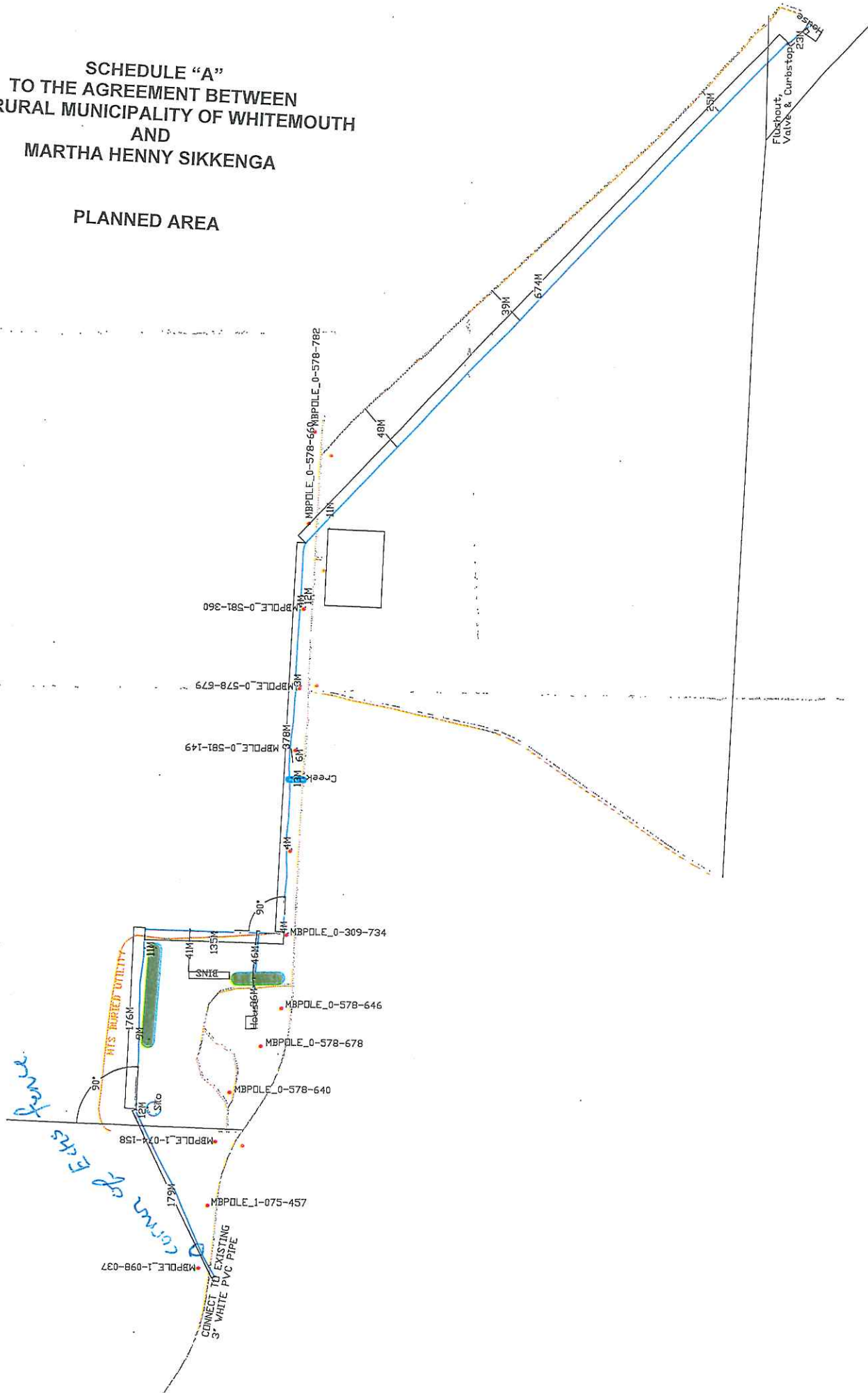
**MARTHA HENNY SIKKENGA**

  
\_\_\_\_\_



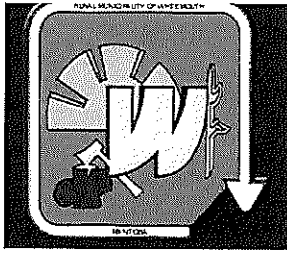
SCHEDULE "A"  
 TO THE AGREEMENT BETWEEN  
 THE RURAL MUNICIPALITY OF WHITEMOUTH  
 AND  
 MARTHA HENNY SIKKENGA

PLANNED AREA



*Corner of Estes*

Flushout,  
 Valve & Curbstop  
 Horse



**The Rural Municipality of Whitemouth**  
**Box 248**  
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**R0E 2G0**

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Reeve Bill Dowbyhuz \* Deputy Reeve Martin Saxler \* Councillor Roy Nichol \* Councillor Manny Sikkenga \* Councillor Lori Bachman

**GRANT OF EASEMENT**

THIS AGREEMENT made in duplicate this 2<sup>nd</sup> day of November, 2016

BETWEEN:

**THE RURAL MUNICIPALITY OF WHITEMOUTH**  
("The Grantee")

OF THE FIRST PART,

-and-

**MARTHA HENNY SIKKENGA**  
("The Grantor")

OF THE FIRST PART,

WHEREAS the Grantor is registered owner of an estate in fee simple of those certain pieces or parcels of land situated in the Province of Manitoba and being described as follows:

*Description North East Section Eleven, Township Twelve, Range Eleven East of the principal meridian in Manitoba registered on Certificate of Title 2445397 and Description North West Section Eleven, Township Twelve, Range Eleven East of the principal meridian in Manitoba also registered on Certificate of Title 2445397.*

NOW THEREFORE THIS AGREEMENT WITNESSES THAT:

In consideration of the sum of One (1) Dollar paid to the Grantor by the Grantee, the receipt of which sum is hereby acknowledged, and in consideration of the sum of ONE (\$1.00) Dollars, the Grantor does hereby grant unto the Grantee the right, license, liberty, privilege and easement to

use as a right-of-way on, over, under and/or through that portion of the said lands being 100 acres, more or less, hereinafter called the "right-of-way" as described above, for the purposes of constructing, operating, maintaining, inspecting, altering, removing, replacing, reconstructing and/or repairing all works, apparatus and equipment of the Grantee necessary for its water main line (here-in-after called "works"), including but without limiting the generality of the foregoing, all such structures, equipment and appurtenances as may be necessary or convenient in connection therewith for the drainage, conveyance, transportation, storage and/or handling of water, together with the right of ingress and egress to and from the same for its servants, agents, vehicles, machinery, supplies and equipment for all purposes necessary or incidental to the exercise and enjoyment of the rights and privileges herein granted, until the Grantee surrenders or terminates the rights and privileges hereby granted.

IT IS MUTUALLY covenanted and agreed by and between the Grantor and Grantee as follows:

1. THAT THE Grantee shall have the right to immediate use of the required portion of the said land.
2. THAT THE Grantee shall pay the consideration set out above to the Grantor, or such other person or persons entitled to it under the provisions of The Real Property Act, within 60 days after the date of registration of this easement in the appropriate Land Titles Office.
3. THAT THE Grantor shall not plant any trees or shrubs on the said right-of-way without prior written consent of the Grantee and the Grantee shall have the right to trim, cut back or remove any trees or shrubs which, because of overhanging branches or extensive root growth on, over or into that portion of the said right-of-way, cause or are likely to cause interference with the aforementioned facilities or with their installation, maintenance and removal. All possible care shall be taken by the Grantee to avoid unnecessary damage to trees, shrubs, plants, flower beds or lawns located within the said right-of-way.
4. THAT THE Grantor shall not, without the prior written consent of the Grantee, excavate, drill, install, erect or permit to be excavated, drilled, installed or erected on or under the said right-of-way any dugout, dam, pit, well, foundation, pavement, obstruction or other structure or installation, but otherwise the Grantor shall have the right fully to use and enjoy the said right-of-way provided that no appreciable damage is done to the works, except as the same may be necessary for the purposes herein granted to the Grantee.
5. THAT THE Grantor shall be solely responsible for any and all costs of repair or replacement of works installed under a foundation, pavement, obstruction or other structure or installation as permitted pursuant to Subsection 4 where said works are not reasonably accessible by the Grantee because of said obstruction.

6. THAT THE Grantee shall be solely responsible for the operation and maintenance of the works.
7. THAT THE Grantee shall compensate the Grantor or any person claiming through or under the Grantor for damage done to any buildings, crops, fences or other goods and chattels of the Grantor or any person claiming through or under the said Grantor when such damage is caused by the Grantee while constructing, operating, maintaining, or altering the said works; subject to the provisions of those Statutes of Manitoba governing the affairs and operation of the Grantee as to claims and settlements for damages in that behalf.
8. THAT THE Grantee shall restore the ground broken and opened as near as possible to its former condition forthwith.
9. THAT THE Grantee, performing and observing the covenants and conditions on its part to be performed and observed, shall and may peaceably hold and enjoy the rights, liberties, privileges and easements hereby granted without hindrance, molestation or interruption on the part of the Grantor or of any person claiming by, through, under or in trust for the Grantor.
10. THAT EACH of the parties herein may assign this agreement and all rights, privileges and benefits accruing to him thereunder and he shall thereupon give notice thereof to the other party by registered mail.
11. NOTWITHSTANDING that in constructing, maintaining and operating its works the Grantee may install works, structures, and other equipment and appurtenances in, on or under the said lands in such manner that it or they become affixed to the realty, the title to such works, structures, and other equipment and appurtenances together with the right to remove the same shall nevertheless remain in the Grantee.
12. THAT nothing herein contained shall be deemed to vest in the Grantee any title to mines, ores, metals, coal, slate, oil, gas or other minerals in or under the land comprising the said right-of-way.
13. THAT THIS easement or an interest based on this easement may be registered in the Manitoba Land Registry, under provisions of The Real Property Act, and shall be of the same force and effect, to all intents and purposes, as a covenant running with the land, and shall be binding upon the heirs, executors, administrators, successors and assigns of the Grantor and the heirs, successors and assigns of the Grantee.

IN WITNESS WHEREOF the Parties hereto have executed this agreement as follows on the  
2 day of November, A.D. 2016.

AS GRANTOR, Martha Henny Sikkenga :  
*Print name of landowner*

  
\_\_\_\_\_  
Grantor (*Signature of Land Owner*)

  
\_\_\_\_\_  
Witness (*Complete Affidavit*)

AS GRANTEE, the Rural Municipality of Whitemouth:

  
\_\_\_\_\_  
Reeve (*Signature*)

  
\_\_\_\_\_  
CAO (*Signature*)

SEAL

**Witness Affidavit of Execution**

I, (Print Witness Name) Fay Myall of (Print Witness Community of Residence) R.M. of Lac du Bonnet in the Province Manitoba, make oath and say:

1. That I was personally present and did see (Print Grantor Name) Martha Henny Sikkenga named herein who is personally known to me to be the person named herein, duly sign and execute the same for the purposes named therein;
2. That the same was executed in the (print location of signing) R.M. of Whitemouth in the Province of Manitoba and that I am the subscribing witness thereto; and
3. That I know the said (Print Grantor Name) Martha Henny Sikkenga who is, in my belief, at least eighteen years of age or more.

Sworn before me in the  
R.M. of Whitemouth  
in the Province of Manitoba,  
this 2 day of November, 2016.

Margaret Arndt  
A Commissioner for Oaths in and  
for the Province of Manitoba.  
My commission expires 08 21 2017



Witness (Signature)