

THE RURAL MUNICIPALITY OF WHITEMOUTH

BY-LAW NO. 567/11

BEING A BY-LAW OF THE RURAL MUNICIPALITY OF WHITEMOUTH TO AUTHORIZE THE ENTERING INTO AND EXECUTION OF AN AGREEMENT WITH SEVEN SISTERS WATER CO-OP LTD.

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;

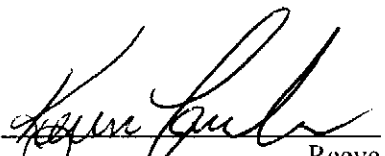

AND WHEREAS it is deemed expedient and in the best interests of the residents of The Rural Municipality of Whitemouth that The Rural Municipality of Whitemouth enter into an agreement with Ron Gross;

AND WHEREAS the terms of the agreement have been settled and are contained in the agreement 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 11 day of *May*, AD., 2011.


Reeve

Chief Administrative Officer

Read a first time this *27th* day of *April*, AD. 2011
Read a second time this *27th* day of *April*, AD. 2011
Read a third time this *1st* day of *May*, AD., 2011

No 567/11

THIS AGREEMENT MADE THIS 12 DAY OF APRIL, 2011

BETWEEN:

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

-and-

**SEVEN SISTERS FALLS WATER CO-OP LTD.
("Seven Sisters")**

WHEREAS:

- A. Seven Sisters owns and operates a private water distribution system servicing approximately 94 properties in the community of Seven Sisters;
- B. The Municipality is proposing to develop a comprehensive municipal water treatment and distribution system within the Municipality. As part of this project, the Municipality will construct a new water treatment plant, waterlines, and associated facilities ("Municipal Water Project");
- C. As part of the Municipal Water Project the Municipality is proposing to merge four currently independent water systems into one municipal water system. The four systems include the municipally operated rural water system, the Manitoba Hydro Townsite water system, the Seven Sisters Falls Water Co-op Ltd. water system, and the Whitemouth Water Co-op Inc. water system. Upon the merger of the four water systems, the Municipality will be responsible for the operation and maintenance of the four water systems;
- D. Section 250(2) of the Municipal Act provides that a municipality may construct, operate, maintain and acquire services, facilities, and utilities;
- E. By resolution dated August 26, 2008, Seven Sisters agreed as part of the Municipal Water Project, to transfer its water distribution system, and the funds being held in its reserve to the Municipality;
- F. The Public Utilities Board has approved the merger of the four water systems by Board Orders 166/08 and 67/09;

THE MUNICIPALITY AND SEVEN SISTERS AGREE AS FOLLOWS:

Purchase of Seven Sisters water distribution system

1. In consideration of payment of \$10.00 and other good and valuable consideration, and on the terms and conditions set out in this Agreement, Seven Sisters agrees to sell the Seven Sisters water distribution system described in Schedule A to the Municipality ("Water System").
2. Seven Sisters is selling the Water System to the Municipality free and clear of all liens, charges and encumbrances.
3. Seven Sisters shall assign the benefit of any warranties or guarantees it has relating to the Water System to the Municipality, to the extent such warranties and guarantees are assignable.
4. The effective date of the sale and purchase of the Water System, the date in which Seven Sisters shall provide possession of the Water System to the Municipality, the date on which the Municipality takes over responsibility for the Water System and pays the purchase price shall be a date mutually agreed upon but no later than the date of the completion of the Municipal Water Project. The Municipality shall provide notice in writing to Seven Sisters of the completion date ("Possession Date").
5. Seven Sisters is responsible for and the Municipality does not assume, have or accept any responsibility or liability whatsoever in respect of the Water System before the Possession Date for the following:
 - a. the payment of taxes, encumbrances, liens, or charges,
 - b. any actions, suits, claims and demands, and
 - c. any environmental requirements. Any and all costs, charges, fees, claims, demands and requirements arising out of or related thereto shall be borne and carried out entirely by Seven Sisters. The Municipality shall take title to the Water System free and clear of any outstanding or future work or remediation orders, or environmental requirements.
6. Seven Sisters undertakes that it has reasonably reviewed its records and operations, and as of the date of the signing of this Agreement, there are no outstanding matters of the nature described in subsections 5 a., b. or c. Seven Sisters shall reasonably review its records and operations as of the Possession Date to confirm if there are any outstanding matters of the nature described in subsections 5 a., b. c. Seven Sisters shall notify the Municipality on the Possession Date of any such matter.

7. Seven Sisters undertakes and agrees to assume all obligations for and undertakes to pay and satisfy all liabilities, costs, and damages and to indemnify the Municipality for any matter or thing, and all costs, liability, and damages it may incur, including payment of all legal fees, relating to or arising out of any claim or demand by anyone respecting the Water System before the Possession Date. Seven Sisters shall not be responsible for any such claim arising after the Possession Date.
8. Seven Sisters shall be responsible to collect any fees and charges for services provided by Seven Sisters to the users of the Water System prior to the Possession Date.

Transfer of the water distribution system reserve

9. On the Possession Date, Seven Sisters shall transfer to the Municipality all or the required portion of funds held in the Seven Sisters reserve ("Reserve Funds"). The Municipality shall use the Reserve Funds as follows:
 - a. Place the equivalent of 15% of the last years revenue of Seven Sisters operating funds into the consolidated municipal reserve fund to be created by the merger of the four water systems as part of the Municipal Water Project, and
 - b. The balance of the Reserve Funds against the local improvement costs to be incurred by the property owners of the Water System as shown on Schedule E of RM of Whitemouth By-law No. 501/08 with the correction of removing Roll no. 172550 Lot 3 Block 3 Plan 15079, Roll no. 189930 Lot 3 Plan 21820 and adding Roll no. 172900 Desc 4 Plan 9456, Roll no. 179200 Lot 16 Plan 4534, and Roll no. 189910 Lot 1 Plan 21820 arising from the Municipal Water Project. This portion of the Reserve Funds shall be applied equally among the property owners of the Water System as shown on Schedule E of RM of Whitemouth By-law No. 501/08 with the correction of removing Roll no. 172550 Lot 3 Block 3 Plan 15079, Roll no. 189930 Lot 3 Plan 21820 and adding Roll no. 172900 Desc 4 Plan 9456, Roll no. 179200 Lot 16 Plan 4534, and Roll no. 189910 Lot 1 Plan 21820.
 - c. Any new connections to the Water System after August 26, 2008 are not eligible to receive any amount of the reserve funds from the Water System to help offset the cost of the local improvement.

General

10. Seven Sisters and the Municipality agree to provide, obtain and/or execute such further and other conveyances, documents and evidence as may be required to give effect to this Agreement.

11. The preamble forms part of this Agreement.

IN WITNESS WHEREOF the Municipality and Seven Sisters have executed this Agreement as of the date first above written.

THE RURAL MUNICIPALITY OF WHITEMOUTH



Reeve



Chief Administrative Officer

SEVEN SISTERS FALLS WATER CO-OP LTD.



Witness

(Secretary)



President

SCHEDULE A
TO AN AGREEMENT BETWEEN
THE RURAL MUNICIPALITY OF WHITEMOUTH and
SEVEN SISTERS FALLS WATER CO-OP LTD.

Description of the Seven Sisters water distribution system

Water lines, water meters, chattels, fixtures, structures, equipment, and facilities as described in "as built plans" that will be given to the RM of Whitemouth on the Possession date.