

THE RURAL MUNICIPALITY OF WHITEMOUTH

BY-LAW NO. 668/17

BEING A BY-LAW OF THE RURAL MUNICIPALITY OF WHITEMOUTH TO AUTHORIZE THE ENTERING INTO AND EXECUTION OF AN AGREEMENT WITH THE RURAL MUNICIPALITY OF REYNOLDS AND HER MAJESTY THE QUEEN, IN RIGHT OF THE GOVERNMENT OF MANITOBA REPRESENTED BY THE HONOURABLE MINISTER OF CONSERVATION AND CLIMATE

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 interest of the residents of The Rural Municipality of Whitemouth that The Rural Municipality of Whitemouth enter into an Agreement with the Rural Municipality of Reynolds and Her Majesty the Queen as represented by the Minister of Conservation and Climate;

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

NOW THEREFORE BE IT AND IT IS HEREBY ENACTED as a By-Law of The Rural Municipality of Whitemouth as follows:

1. **THAT** the entering into of the 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 be and are hereby authorized and empowered to sign the Agreement and affix thereto the seal of the Municipality.
3. **THAT** upon this By-Law coming into force and taking effect that By-Law No. 263/97 of the Rural Municipality of Whitemouth will be repealed in its entirety.

DONE, PASSED AND ENACTED by the Council of The Rural Municipality of Whitemouth in regular session assembled, this 28th day of July, A.D., 2020



Reeve



Chief Administrative Officer

Read a first time this 10th day of March, A.D., 2020

Read a second time this 24th day of March, A.D., 2020

Read a third time this 28th day of July A.D., 2020

**SCHEDULE "A" TO BY-LAW NO. 668/17 OF THE RURAL MUNICIPALITY
OF WHITEMOUTH AND TO BY-LAW NO. 11/2020 OF THE RURAL
MUNICIPALITY OF REYNOLDS**

THIS AGREEMENT MADE IN TRIPLICATE THIS *28th* DAY OF *July*, AD., 2020
BETWEEN:

THE RURAL MUNICIPALITY OF WHITEMOUTH

(Hereinafter referred to as "Whitemouth")

PARTY OF THE FIRST PART,

and

THE RURAL MUNICIPALITY OF REYNOLDS

(Hereinafter referred to as "Reynolds")

PARTY OF THE SECOND PART,

and

**HER MAJESTY THE QUEEN, IN RIGHT OF THE PROVINCE OF MANITOBA
REPRESENTED BY THE HONOURABLE MINISTER OF
CONSERVATION AND CLIMATE**

(Hereinafter referred to as "Manitoba")

PARTY OF THE THIRD PART,

WHEREAS:

- A. The parties to this Agreement agree that a program (the "Program") to operate a Waste Management Facility (the "Facility") in the Rural Municipality of Whitemouth, under the supervision and management of a joint committee is in their best respective interests;
- B. The parties have identified lands described as NW ¼ 21-11-12 EPM jointly owned by Reynolds and Whitemouth (the "Site") is (still) an appropriate location for the "Facility";
- C. The Program will continue to operate in accordance with the Waste Management Facilities Regulation 37/2016 (the "Regulation"), pursuant to The Waste Management Facility Permit 13498 P1 (the "permit").

THEREFORE the parties agree as follows:

SECTION 1 TERM OF AGREEMENT

- 1 (1) This Agreement shall be effective from April 1, 2020, and shall continue until March 31, 2022, unless terminated under Section 5 or extended under subsection 1 (2).
- 1 (2) This Agreement may be extended or renewed for such further term or other terms as may be agreed in writing by the parties.

SECTION 2 THE PROGRAM

- 2 (1) Manitoba agrees to work with the other parties toward the continuation of the Program in accordance with an annual program and budget prepared each year by the Whitemouth Reynolds Waste North Whiteshell Management Committee established under Section 3 and approved by the parties in accordance with Section 4.

- 2 (2) The Program shall be implemented in accordance with the requirements of the permit and any amendments to the Regulation.
- 2 (3) The Program shall include on site operations only and shall not include the pickup and delivery of solid waste or recyclables to the Site.

SECTION 3 STEERING COMMITTEE

- 3 (1) The Whitemouth Reynolds North Whiteshell Waste Management Committee (the "Committee") is hereby established in accordance with this Section.
- 3 (2) The Committee shall have six members appointed as follows:
 - (a) two members representing Whitemouth, as appointed by the Council of Whitemouth;
 - (b) two members representing Reynolds, as appointed by the Council of Reynolds; and
 - (c) two members representing Manitoba, as appointed by the Minister of Conservation and Climate.
- 3 (3) Each party may identify one or more alternates, one of whom may participate in the Committee in the event that a member appointed by that party is unable to participate and provide a list of all members and alternates yearly.
- 3 (4) The Council of each of Reynolds and Whitemouth will appoint a member or members to the Committee at the first council meeting after a vacancy occurs.
- 3 (5) The Committee shall, at its first meeting after November 1st in each year, elect a Chairperson, a Vice-Chairperson and such other officers as they deem necessary for the proper performance of the duties of the Committee. Each of those officers shall serve for a term of one year and may be reappointed.
- 3 (6) The Committee shall be governed by the following rules of procedure:
 - (a) The Committee shall meet a minimum of once every three (3) months but may meet more often as necessary to achieve its purposes.
 - (b) Meetings may be convened by the Chairperson on the fourth Monday of each month and rescheduled when required at a time and place to be determined by the Chairperson. Notice of meetings shall be mailed, emailed, telephoned or provided in any other reasonable manner to each member of the committee not less than fourteen (14) days before the meeting takes place.
 - (c) Notwithstanding paragraph (b), meetings may be held at any time without formal notice if all members are present or those absent have waived notice or have signified their consent in writing to the meeting being held in their absence.
 - (d) A quorum of the Committee shall consist of four (4) members with at least one (1) representing each party.
 - (e) Decisions taken at any meeting shall be decided by a majority of votes; and
 - (f) Members shall not vote by proxy. Any member may participate in a meeting by means of a conference telephone call or other communications equipment by which all persons participating

in the meeting can hear each other. A member participating in such a manner shall be deemed to be present at the meeting.

- 3 (7) Subject to subsection 3 (6), the Committee may develop its own rules of procedure.
- 3 (8) The Committee shall appoint:
 - (a) a secretary, who may or may not be a member of the Committee; and
 - (b) such other officers as the Committee considers necessary for the proper functioning of the Committee.
- 3 (9) Each party shall be responsible for financing the costs of participation in the Committee of the members or alternates appointed by that party.
- 3 (10) The Committee shall be responsible for:
 - (a) the control, supervision and management of the Program and the Facility;
 - (b) evaluating the progress of the Program;
 - (c) reviewing proposals relating to the Program;
 - (d) preparing goals for the Program; and
 - (e) developing annual plans and annual budgets for the Program to be considered by each of the Parties.

SECTION 4 FINANCING OF THE PROGRAM

- 4 (1) Subject to subsections 4 (7), 4 (8), and 4 (9), one-third (1/3) of budgeted capital costs of the Program shall be paid by each party unless otherwise agreed to in writing by all parties.
- 4 (2) Subject to subsections 4 (7), 4 (8), and 4 (9), the operating costs of the Program shall be apportioned by each party on a volume based formula as follows:
 - (a) Reynolds shall pay, on a prorated basis, operating costs for that part or parts of the Rural Municipality of Reynolds that will be served by the Program.
 - (b) Whitemouth shall pay operating costs on a prorated basis, for the whole of the Rural Municipality of Whitemouth;
 - (c) Manitoba shall pay operating costs on a prorated basis based on their volume based equivalency figures;and in accordance with the methodology set out on the volume based model shown in Schedule "A"
- 4 (3) In each fiscal year, the Committee will prepare a draft annual program and a draft budget of the capital costs and the operating costs of the Facility for the following fiscal year and will submit this budget to the parties for approval in writing by November 1 in each fiscal year.
- 4 (4) Where the parties approve the annual program and budget submitted to them by the Committee, the annual program and budget will be adopted by the parties for that fiscal year.
- 4 (5) Where any two of the parties does not approve the annual program and budget submitted by

the Committee in accordance with subsection 4 (3), the annual program and budget will be referred back to the Committee for reconsideration, and subsection 4 (3) will apply to any annual program and budget which is reconsidered.

- 4 (6) The annual program and budget for the Program shall be finalized by December 31 of the Year prior to implementation.
- 4 (7) Where an annual program and budget for a fiscal year is adopted by the parties, Manitoba shall, within sixty (60) days of a receipt of an invoice or a notice in writing submitted by the Chairperson of the Committee to Manitoba setting out the operating costs and capital costs incurred as part of the program and Manitoba's proportionate share, pay to the Program its share of the operating costs and capital costs, as determined in the approved budget.
- 4 (8) Where an annual program and budget for a fiscal year is adopted by the parties, Reynolds shall, within sixty (60) days of a receipt of an invoice or a notice in writing submitted by the Chairperson of the Committee to Reynolds setting out the operating costs and capital costs incurred as part of the program and Reynolds' proportionate share, pay to the Program its share of the operating costs and capital costs, as determined in the approved budget.
- 4 (9) Where an annual program and budget for a fiscal year is adopted by the parties, Whitemouth shall, within sixty (60) days of a receipt of an invoice or a notice in writing submitted by the Chairperson of the Committee to Whitemouth setting out the operating costs and capital costs incurred as part of the program and Whitemouth's proportionate share, pay to the Program its share of the operating costs and capital costs, as determined in the approved budget.
- 4 (10) The volume based formula set out in Schedule "A" methods of waste generated by each party shall be subject to revision upon written agreement of all parties.
- 4 (11) The parties recognize that the annual program as per Schedule "A" as approved by the parties in any subsequent year is based on the on the estimated costs of the program, and the parties agree that adjustments between categories will be accepted, provided those adjustments are approved by the Committee and provided that the total cost of the Program does not exceed the total budget, except with the approval of the parties.
- 4 (12) Any revenues derived from the Program or the use of assets dedicated to or acquired under or through the Program shall be applied to the ongoing maintenance and managements of of lands associated with the Program.

SECTION 5 TERMINATION

- 5 (1) Any of the parties may forthwith terminate its involvement in this Agreement on the first day of any month by giving to the Committee at least two year's written notice of its intention to terminate this Agreement.
- 5 (2) In addition to its rights under subsection 5 (1), and without restricting any other remedies available, any of the parties may, at their sole option, immediately terminate its involvement in this Agreement by giving to the Committee at least two years written notice of its intention to terminate this Agreement if any of the other parties has failed to comply with any term or condition of this Agreement and has not complied after reasonable notice.
- 5 (3) Notwithstanding anything otherwise in this Agreement, in the event that this Agreement is terminated by Reynolds in accordance with subsection 5 (1) or 5 (2), Whitemouth agrees to purchase the Rural Municipality of Reynolds' half interest in the aforementioned land for \$50,000.00 (fifty thousand dollars) plus applicable GST paid to the Rural Municipality of Reynolds concurrent with the signing of a transfer of land by Reynolds.

- 5 (4) Subject to subsection 5 (3), in the event that this Agreement is terminated by any of the parties under subsection 5 (1) or 5 (2), the other parties shall pay to that party an amount determined by:
- (a) determining an appraised value of all capital assets which have been acquired as part of the Program less the cost of the appraisal ("A");
 - (b) determining the prorated contribution of the party based on the volume formula figures in effect when the asset was acquired ("B");
 - (c) multiplying "A" by "B" to obtain the total payment to the party ("C"); and
 - (d) determining the payment by each of the other parties by multiplying "C" by the volume formula figures for each of the other parties in effect when the asset was acquired.
- 5 (5) The payment of the capital assets referred to in Section 5 (4) hereof, shall be paid within two years from the date that the notice of termination was received by the Committee.
- 5 (6) The appraiser hired to assess the assets referred to in Section 5 (4), shall be mutually agreed to by each of the parties.
- 5 (7) Manitoba will not be liable for any municipal taxes on the Site.
- 5 (8) Where a party terminates its involvement in this Agreement under subsection 5 (1) or subsection 5 (2), this Agreement shall continue between the remaining parties to this Agreement with necessary modifications.
- 5 (9) All assets acquired as part of the Program shall be considered to be owned by The RM of Whitemouth and The RM of Reynolds in a proportionate share equal to the contribution of each of the parties.
- 5 (10) Reynolds and Whitemouth hereby each authorize the other parties and person on their behalf to enter onto the Site for the purposes of the Program. This authorization shall continue in the event that either Reynolds or Whitemouth terminates this Agreement.
- 5 (11) Notwithstanding anything in this Agreement, Manitoba shall not be compensated for the value of any real property managed by and operated by the Program in the event that this Agreement is terminated by any of the parties hereto.

SECTION 6 INDEMNITY

- 6 (1) Each party shall use due care in the performance of the obligations under this Agreement to ensure that no person is injured, no property is damaged or lost and no rights are infringed.
- 6 (2) Each party shall be solely responsible for:
- (a) any injury to persons (including death), damage or loss to property or infringement of rights caused by the breach of any term or condition of this Agreement by that Party, or the officers, employees or agents of that Party; and
 - (b) any omission or wrongful or negligent act of that Party, or of the Officers, employees or agents of that Party;

and shall save harmless and indemnify the other Parties, their officers, employees and agents from and against all claims, liabilities and demands with respect to clauses (a) and (b).

- 6 (3) The Committee shall ensure that the parties maintain throughout the term of this Agreement public liability and property damage insurance against claims for personal and bodily injury, death or damage to property arising out of any aspect of the Program, including the operation and maintenance of the Facility, or of any of the acts or omissions of any of the parties or any of its officers, employees or agents of any of the parties, which shall:
- (a) provide a minimum of Two Million Dollars (\$2,000,000.00) coverage Per occurrence;
 - (b) be in a form satisfactory to the Parties;
 - (c) include coverage for premises and operations, completed operations, blanket contractual, broad form property damage, and non-owned automobile liability;
 - (d) be maintained for twenty-four months following the termination or expiration of this Agreement; and
 - (e) shall include a cross-liability clause and shall name each of the parties, including the officers, employees and agents of each of the parties as Additional Insureds.

SECTION 7 RECORDS AND ACCOUNTS

- 7 (1) The Committee shall keep accurate records and accounts of any and all expenditures in respect of the Program and all such records and accounts shall be made available to the other parties for inspection and audit on request.

SECTION 8 NOTICES

- 8 (1) Any notice required or permitted to be given pursuant to this Agreement shall be in writing and shall be delivered personally to the member of the Committee representing the party to whom the notice is delivered or be sent by registered mail, postage prepaid to the following addresses:
- (a) Manitoba: Director of Parks and Protected Spaces
Box 50 – 200 Saulteaux Crescent, Winnipeg, MB R3J 3W3
 - (b) Reynolds: Box 46, Hadashville, MB, R0E 0X0
 - (c) Whitemouth: Box 248, Whitemouth, MB, R0E 2G0
- 8 (2) 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, notice shall be delivered personally.

SECTION 9 SUCCESSORS AND ASSIGNS

- 9 (1) No party shall assign or transfer this Agreement or any of the rights or obligations under this Agreement without first obtaining written permission from the other parties.
- 9 (2) This Agreement shall be binding upon the parties and the successors and permitted assigns of the parties.

SECTION 10 TIME OF ESSENCE

10 (1) Time shall be of the essence of this Agreement.

SECTION 11 ENTIRE AGREEMENT

11 (1) This Agreement and the attached Schedules contain the entire Agreement between the parties. There are no undertakings, representation or promises, express or implied, other than those contained in this Agreement.

11 (2) This Agreement may be amended by the agreement in writing of all of the parties.

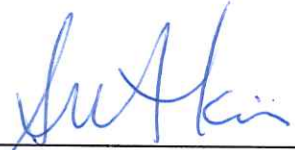
SECTION 12 APPLICABLE LAW AND GST

12 (1) This Agreement shall be interpreted, performed and enforced in accordance with the laws of Manitoba.

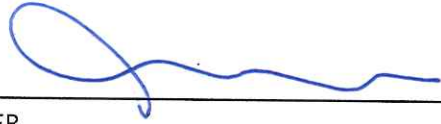
12 (2) Contributions are being made under this Agreement by the Government of Manitoba and are therefore not subject to the federal Good and Services Tax (Registration Number R107863847). The Goods and Services Tax shall not be included or quote in any fees, prices or estimates and shall not be included in any invoice provided, or claim for payment requested, under this Agreement.

This Agreement has been executed on behalf of each of the parties (by a duly authorized representative) on the dates noted below:

**HER MAJESTY THE QUEEN, IN RIGHT
OF THE PROVINCE OF MANITOBA**
represented by the Honourable Minister of
Conservation and Climate



WITNESS



PER

AUG. 20/20

DATE

**THE RURAL MUNICIPALITY OF
REYNOLDS**



WITNESS



REEVE


August 11, 2020

DATE

**THE RURAL MUNICIPALITY OF
WHITEMOUTH**



WITNESS



REEVE

July 28, 2020

DATE

FORMER Schedule A

WHITEMOUTH-REYNOLDS WASTE MANAGEMENT FACILITY

1997 - POPULATION EQUIVALENCY FIGURES

Whitemouth (34.46%) 1,639

Based on 1996 data from Statistics Canada

Reynolds (27.62%) 1,314

Based on 1996 data from Statistics Canada

Manitoba (37.92%) 1,804

Based on an average of the following data:

Equivalent population for Rennie and Seven Sister figures from Cochrane Environmental Consultants Inc Project No. 24705 dated March 1997 - 1,504

Department of Natural Resources Annual Garbage Production (1992 figures) for Rennie and Seven Sisters from R. Dean dated June, 1995 - 2,104

*11/11/97
H.A.C. @ gov. nb. ca*

TOTAL: 4,757

Schedule A

Agreement between the Rural Municipality of Whitemouth and the Rural Municipality of Reynolds and Her Majesty the Queen in Right of the Province of Manitoba as represented by the Minister of Conservation and Climate,

Dated this 26th day of August, 2020.

Volume Based Percentages to be determined based on annual basis by information gathered on site and are subject to change from the listed original amounts.

(For Operating Costs)

Until June 30, 2020 the OPERATING COSTS of the Program shall be paid by the Parties in accordance with the percentages set out in former Schedule "A" as follows:

Rural Municipality of Whitemouth	34.46%
Rural Municipality of Reynolds	27.62%
Manitoba	37.92%

THEREAFTER each party will pay in accordance to the Volume based method below to be discussed annually:

WASTE

NAME	VOLUME	2020 PERCENTAGE
Whitemouth		42.6
Reynolds		12.9
North Whiteshell		44.5

RECYCLING

NAME	VOLUME	2020 PERCENTAGE
Whitemouth		42.4
Reynolds		16.4
North Whiteshell		41.2