

Environment & Sustainability Standing Committee
November 1, 2012

TO: Chair and Members of Environment & Sustainability Standing Committee

Original Signed

SUBMITTED BY: _____
Richard MacLellan, Acting Director, Planning and Infrastructure

DATE: October 22, 2012

SUBJECT: Heritage Gas Municipal Operating Access Agreement Extension

ORIGIN

The Municipal Operating Access Agreement between Heritage Gas and the Halifax Regional Municipality (HRM) was executed April 30, 2010, and expires on December 31, 2012.

RECOMMENDATION

It is recommended that the Environment and Sustainability Standing Committee recommend to Regional Council that the existing Municipal Operating Access Agreement with Heritage Gas Ltd. be extended for an additional two years, in accordance with the attached Amendment.

BACKGROUND

The Municipal Operating Access Agreement (MOAA) was approved by Regional Council and executed on April 30, 2010. The agreement provides an exclusive encroachment license for use of HRM's streets for the purpose of constructing, operating and maintaining a gas distribution system. It identifies design expectations, permitting and relocation obligations, as well as indemnity and insurance obligations. The Agreement has a three year fixed term (Clause 3, Term of Agreement) commencing on January 1, 2010, and ending December 31, 2012. This Agreement follows a previous MOAA which had a five year term and was executed in March, 2005. In addition, the Agreement allows for a one time, two year extension to the Agreement upon written notification "provided no later than December 31, 2011".

DISCUSSION

Neither Heritage Gas nor the Halifax Regional Municipality issued a written notification of a desire to extend the MOAA by the agreed to date of December 31, 2012. It was mid 2012 before it was realized that the extension date was missed. Upon review by HRM staff and by Heritage Gas staff, it was agreed that the existing Agreement should nevertheless be extended, as had been allowed for in Clause 3(2).

HRM Legal Services advised that because the option in Clause 3(2), which provided for the two year extension within the existing Agreement, had expired, it would be necessary for Regional Council to approve an amendment to the Agreement, extending and exercising such option, and to have that amendment signed by HRM and Heritage Gas in order to extend the term of the Agreement. Heritage Gas has indicated that it is agreeable with this approach. If HRM and Heritage Gas do not extend the term of the Agreement, it will terminate at the end of 2012 (see Attachment 1).

BUDGET IMPLICATIONS

As this action will result in an extension of the existing Agreement, no budget implications are anticipated. Fees associated with the extension are as per the Streets By-Law.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Project and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Project and Operating reserves, as well as any relevant legislation.

COMMUNITY ENGAGEMENT

None

ENVIRONMENTAL IMPLICATIONS

None

ALTERNATIVES

None

ATTACHMENTS

Attachment 1 Amendment No. 1 to the Municipal Operating Access Agreement between
HRM and Heritage Gas


A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

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