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Halifax Regional Council  
April 8, 2003

**TO:** Mayor Kelly and Members of Halifax Regional Council

**SUBMITTED BY:**   
George McLellan, Chief Administrative Officer

**DATE:** April 1, 2003

**SUBJECT:** Extension - MOU between HRM and SaskEnergy

**ORIGIN**

HRM and SaskEnergy (major shareholder of Heritage Gas) executed a Memorandum of Understanding (MOU) on February 6, 2002, to establish a foundation for a working relationship which would enable the evaluation of the feasibility of natural gas distribution within HRM, and any related opportunities and synergies consequential to the development of natural gas distribution. The term of the MOU included the "Evaluation Phase" of the venture, and was to expire upon execution of a Development Agreement or December 31, 2002. The Natural Gas Council Subcommittee met on March 3, 2003, and indicated they supported an extension.

**RECOMMENDATION**

It is recommended that :

1. Council approve the extension of the MOU between HRM and SaskEnergy effective January 1, 2003, to the earlier of December 31, 2003, or the date upon which a Development Agreement is executed with SaskEnergy.

## **BACKGROUND**

Heritage Gas has received regulatory approval to proceed with distribution, but have not yet accepted the franchise. It is anticipated Heritage Gas will accept the franchise in the near future, and in the mean time SaskEnergy has requested an extension of the MOU to cover the period January 1, 2003 to December 31<sup>st</sup>, 2003 to enable Heritage Gas and HRM to continue discussions within the framework of the 2002 MOU and to utilize and build upon the existing relationship between Heritage Gas and HRM to advance the development of natural gas distribution in HRM. It is anticipated that during the period of the extension, a development agreement will be signed. At such time as the development agreement is signed, the MOU would expire and the development agreement would then govern the relationship between Heritage Gas and HRM.

## **DISCUSSION**

It is anticipated the development agreement will outline and discuss joint business opportunities between Heritage Gas and HRM including, but not limited to:

- Definition of partnership
- List of proposed opportunities and synergies
- Benefit analysis for each party
- Costs and responsibilities of possible opportunities and synergies
- A framework for services that may be provided to Heritage Gas by the HRM.
- The recovery of “direct” costs incurred by the HRM on behalf of Heritage Gas regarding the development of the Heritage Gas’ franchise, including infrastructure development (orphan systems), lease rental and other direct costs that occurred in 2002 and that will occur in 2003. Recovery mechanisms may include equity participation, direct payment and/or other settlement methods as agreed to by both parties.

Costs/responsibilities regarding MOU implementation and completion of the development agreement will continue as outlined in the 2002 Memorandum of Understanding which states that all costs and expenses incurred by either of the Parties during the Evaluation Phase shall be borne by the Parties individually, and all third party costs and expenses approved by the Committee and incurred in furtherance of the purposes of this MOU shall be shared equally by the parties. Any costs incurred prior to the 2002 MOU are for the party that incurred the cost.

Heritage Gas acknowledges that should a development agreement not be finalized, the “direct” costs identified as specific to natural gas infrastructure development will be reimbursed to HRM (ie: Office rent, orphan systems, engineering and GIS services).

**BUDGET IMPLICATIONS**

None at this time, however there will eventually be recovery of direct costs recovered, as mentioned above.

**FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN**

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

**ALTERNATIVES**

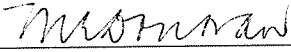
None

**ATTACHMENTS**

- **MOU Extension**
- **Feb. 6, 2002 MOU**

Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Cathie O'Toole  
Executive Assistant, CAO's Office

Report Approved by:   
Mary Ellen Donovan, Solicitor  
HRM Legal Services

## EXTENSION - MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING - EXTENSION is made the        day of  
April, 2003.

### BETWEEN:

**The Halifax Regional Municipality** a municipality located in the Province of  
Nova Scotia, (hereinafter called "HRM")

- and -

**SaskEnergy International Incorporated**, a body corporate with head office at  
Regina, in the Province of Saskatchewan, (hereinafter called "SEII")

**WHEREAS** the Parties are interested in evaluating the feasibility of pursuing potential projects  
in the Halifax Regional Municipality with respect to natural gas distribution and any related  
opportunities consequential upon the development of an open trench and other common  
infrastructure; and

**WHEREAS** this MOU sets out the intent of the Parties to co-operate together in these  
endeavours; and

**WHEREAS** Cabinet approved the granting of a franchise to Heritage Gas of which SaskEnergy  
is the major shareholder, and

**WHEREAS** the MOU was approved by resolution of Council on

The Parties hereby agree as follows:

#### 1. SCOPE

The scope of this MOU is limited to continuing to evaluate the feasibility of natural gas  
distribution and any related opportunities arising out of the creation of common infrastructure  
within HRM, including identifying any government policies, regulatory approvals, stakeholder  
and shareholder approvals, design, construction, permitting and financing, to be referenced as the  
"Evaluation Phase" - Stage I. The extended MOU enables HRM and SEII to move toward the  
"Development Phase of the Venture" (the "Development Phase") and pursue a development  
agreement that will outline and discuss business opportunities between the parties including, but  
not limited to:

- (A) Definition of Partnership
- (B) List of proposed opportunities and synergies
- (C) Benefit analysis for each party

- (D) Costs and responsibilities of the opportunity development
- (E) Framework for services that may be provided to Heritage Gas by HRM
- (F) Recovery of "direct" costs incurred by HRM on behalf of Heritage Gas regarding the development of the Heritage Gas franchise, including infrastructure development (orphan systems), lease rental and other direct costs incurred in 2002 and that will be incurred in 2003. Recovery mechanisms may include equity participation, direct payment and/or other settlement methods as agreed to by both parties.

## 7. GUIDING PRINCIPLES

The MOU will be based on the following fundamental business principles:

(A) Both parties will work together to establish a relationship which is based on honesty, openness and willingness. A strong relationship will be a key fundamental principle in establishing a trusting business environment.

(B) Safety is the fundamental principal in developing a feasible natural gas franchise and other business opportunities.

(C) All natural gas distribution business opportunities will be considered with a view to optimizing opportunities to develop a cost effective gas distribution system, with minimal transferral of cost between the parties.

## 3. EVALUATION PHASE

The executive committee (the "Committee") will continue to consist of the following persons:

HRM: Phillip Francis, Mary Ellen Donovan and George McLellan

SEII: Harvey Fedyk, Ray Ritcey and Dean Reeve

The Parties may designate alternates from time to time.

The Committee will be responsible for the obligations of this MOU of their respective corporations and have overall responsibility for the successful completion of same. All activities shall be conducted in the most thorough and cost effective manner possible. All decisions should be by unanimous agreement as decided by the representatives or their alternates.

The purpose of the Committee will be to initiate and analyse developmental opportunities that will be considered the Evaluation Phase (Stage I) of a business opportunity. The Parties agree that they shall, at their respective costs, proceed and diligently evaluate all analysis, feasibility studies and associated approvals in a manner and schedule which is compatible with the full evaluation of the Venture as contemplated by this MOU.

#### 4. COSTS

Costs/responsibilities regarding MOU implementation and completion of the development agreement will continue as outlined in the 2002 Memorandum of Understanding. All or any costs to be incurred by the Parties shall be borne by the Parties as follows:

(A) all costs and expenses incurred by either of the Parties during the Evaluation Phase shall be borne by the Parties individually, and

(B) all third party costs and expenses approved by the Committee and incurred in furtherance of the purposes of this MOU shall be shared equally by the parties.

Any costs incurred prior to the 2002 MOU are for the party that incurred the cost.

The development agreement will include a framework for services that may be provided to SEII by HRM, costs and responsibilities of the opportunity development, and recovery of "direct" costs incurred by the HRM on behalf of SEII (Heritage Gas) regarding the development of the Heritage Gas' franchise, including infrastructure development (orphan systems), lease rental and other direct costs incurred in 2002 and that will be incurred in 2003. Recovery mechanisms may include equity participation, direct payment and/or other settlement methods as agreed to by both parties.

SEII acknowledges that should a development agreement not be finalized, the "direct" costs identified as specific to natural gas infrastructure development will be reimbursed to HRM (ie: Office rent, orphan systems, engineering and GIS services).

#### 5. PARTICIPATION

The Parties may participate in the Evaluation Phase (Stage I) through affiliated or subsidiary corporations; provided however, that each of the HRM and SEII are to remain bound by due performance of the covenants and agreements contained in this MOU.

The Parties acknowledge that additional parties may have an interest in joining the Evaluation Phase of the Venture as the Parties shall unanimously agree.

To proceed to the Development Phase of a Venture (Stage II), the Parties agree to negotiate and execute an Agreement subject to

(A) receipt of approval of the senior management and/or board of directors/Government/Council of each of the Parties, as the case may be; and

(B) receipt of all regulatory approvals necessary to proceed.

## 6. EXCLUSIVITY AND NON-SOLICITATION

During the term of this MOU neither of the Parties will enter into discussions to solicit, or negotiate, directly or indirectly, with other persons or entities concerning participation in any project within the scope of this MOU unless otherwise unanimously and previously agreed in writing by the Parties. The Parties covenant to and with each other that at the commencement of this MOU neither Party is participating in any project which contravenes this MOU.

If following completion of the Evaluation Phase (Stage I), and where the Parties agree that a viable business Opportunity exists, they shall proceed in good faith to negotiate and execute an Agreement setting out the detailed terms related to Stage II - The Development Phase of the Venture (the "Development Phase").

## 7. NOTICES

Any notice, demand or communication required or permitted to be given to any Party shall be in writing and shall be personally delivered or sent by facsimile to the address of such Party:

(A) in the case of HRM to:

PO Box 1749

1841 Argyle Street

Halifax, Nova Scotia

B3J 3A5

Fax: (902) 490-4044

Telephone: (902) 490-4026

For the attention of George McLellan, Chief Administration Officer

(B) in the case of SEII to:

500-1777 Victoria Ave.

Regina, Saskatchewan

S4P 4K5

Fax: (306)525-3422

Telephone: (306) 777-9402

For the Attention of Dean Reeve, Vice President

and shall be deemed to have been received by such Party on the earliest of the date of delivery in the case of personal delivery, and the day following the date of communication by facsimile.

## 9. TERMINATION

This MOU will become effective upon execution and will terminate upon the happening of the earlier of the following:

(A) December 31, 2003 or

(B) Execution of a Development Agreement

10. CONFIDENTIALITY

SEII agrees that this MOU is a public document and to the extent that the Freedom of Information and Protection of Privacy provisions of the Municipal Government Act, S.N.S. 1998, c.18 apply that such provisions are hereby waived.

HRM and SEII each acknowledge that, during the performance of the MOU, each party may have access to information of a confidential or proprietary nature to the other party (the "Confidential Information") provided one to the other for the purposes of the MOU, and that it is essential to the conduct of each party's business that the Confidential Information be kept confidential.

HRM and SEII each agree to keep the Confidential Information confidential and that all such Confidential Information shall be deemed to be and remain the sole property of the other party. Neither HRM nor SEII shall, during the term of this Agreement and for a period of two (2) years thereafter, directly or indirectly, use the Confidential Information or disclose the Confidential Information to or for the benefit of any person, firm, corporation, or other entity, wheresoever situated, except with the prior written approval of the other party. Each party shall return to the other all Confidential Information together with any copies thereof, promptly upon termination or expiration of this Agreement.

To assist with compliance with this agreement, the party seeking to maintain confidentiality of information provided shall mark any such document confidential.

**In Witness Whereof** the parties hereto have executed this Agreement as of the day and year first above written.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

**Halifax Regional Municipality**

Per: \_\_\_\_\_  
Mayor

Per: \_\_\_\_\_  
Municipal Clerk

**SaskEnergy International Incorporated**

Per: \_\_\_\_\_  
Vice-President

Per: \_\_\_\_\_  
General Counsel & Corporate  
Secretary



MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is made this <sup>6</sup> day of <sup>February</sup> January, 2002.

BETWEEN:

The Halifax Regional Municipality a municipality located in the Province of Nova Scotia, (hereinafter called "HRM")

- and -

SaskEnergy International Incorporated, a body corporate with head office at Regina, in the Province of Saskatchewan, (hereinafter called "SEII")

APPROVED  
AS TO FORM  
*M.S.*  
Municipal Solicitor

This Memorandum of Understanding ("MOU") is made between HRM and SEII. The term "Party" throughout this MOU refers to HRM or SEII and no other, and the term "Parties" herein refers to HRM and SEII and no other.

Whereas the Parties are interested in evaluating the feasibility of pursuing potential projects in the Halifax Regional Municipality with respect to natural gas distribution and any related opportunities consequential upon the development of an open trench and other common infrastructure; and

Whereas this MOU sets out the intent of the Parties to co-operate together in these endeavours;

The Parties hereby agree as follows:

1. SCOPE

Although it is ultimately the intention of SEII to seek a province wide gas distribution franchise, the scope of this MOU is limited to evaluating the feasibility of natural gas distribution within HRM and any related opportunities arising out of the creation of common infrastructure, including identifying any government policies, regulatory approvals, stakeholder and shareholder approvals, design, construction, permitting and financing, to be referenced as the "Evaluation Phase" - Stage I.

2. **GUIDING PRINCIPLES**

This MOU will be based on the following fundamental business principles:

(a) Both parties will work together to establish a relationship which is based on honesty, openness and willingness. A strong relationship will be a key fundamental principle in establishing a trusting business environment.

(b) Safety is the fundamental principal in developing a feasible natural gas franchise and other business opportunities.

(c) All natural gas distribution business opportunities will be considered with a view to optimizing opportunities to develop a cost effective gas distribution system, with minimal transferral of cost between the parties.

3. **EVALUATION PHASE**

Immediately following the execution of this MOU, the Parties will create an executive committee (the "Committee") of six consisting of the following persons:

HRM: Phillip Francis, Mary Ellen Donovan and George McLellan

SEII: Harvey Fedyk, Ray Ritcey and Dean Reeve

The Parties may designate alternates from time to time.

The Committee will be responsible for the obligations of this MOU of their respective corporations and have overall responsibility for the successful completion of same. All activities shall be conducted in the most thorough and cost effective manner possible. All decisions should be by unanimous agreement as decided by the representatives or their alternates.

The purpose of the Committee will be to initiate and analyze developmental opportunities that will be considered the Evaluation Phase (Stage I) of a business opportunity.

The Parties agree that they shall, at their respective costs, proceed and diligently evaluate all analysis, feasibility studies and associated approvals in a manner and schedule which is compatible with the full evaluation of the Venture as contemplated by this MOU.

#### 4. COSTS

All or any costs to be incurred by the Parties shall be borne by the Parties as follows:

- (a) all costs and expenses incurred by either of the Parties during the Evaluation Phase shall be borne by the Parties individually; and
- (b) all third party costs and expenses approved by the Committee and incurred in furtherance of the purposes of this MOU shall be shared equally by the Parties.

Any costs previously incurred are for the party that incurred the cost.

#### 5. PARTICIPATION

The Parties may participate in the Evaluation Phase (Stage I) through affiliated or subsidiary corporations; provided however, that each of the HRM and SEII are to remain bound by due performance of the covenants and agreements contained in this MOU.

The Parties acknowledge that additional parties may have an interest in joining the Evaluation Phase of the Venture as the Parties shall unanimously agree.

To proceed to the Development Phase of a Venture (Stage II), the Parties agree to negotiate and execute an Agreement, subject to

- (a) receipt of approval of the senior management and/or board of directors/Government/Council of each of the Parties, as the case may be; and
- (b) receipt of all regulatory approvals necessary to proceed.

#### 6. EXCLUSIVITY AND NON-SOLICITATION

During the term of this MOU, neither of the Parties will enter into discussions, solicit or negotiate, directly or indirectly, with other persons or entities concerning participation in any project within the scope of this MOU unless otherwise unanimously and previously agreed in writing by the Parties. The Parties covenant to and with each other that at the commencement of this MOU neither Party is participating in any project which contravenes this MOU.

If following completion of the Evaluation Phase (Stage I) and if either Party elects not to participate in the Venture, or parts thereof, such Party will notify the other Party in writing, and both Parties shall be free to pursue other options without any obligation to the other Party. Further, either Party will be entitled to use all jointly developed confidential information to implement such projects without any obligation to reimburse the other Party for its share of costs expended in developing such information.

## 7. THE AGREEMENT

The Parties agree that following the Evaluation Phase (Stage I), and where the Parties agree that a viable business opportunity exists, they shall proceed in good faith to negotiate and execute an Agreement setting out the detailed terms related to Stage II – the Development Phase of the Venture (the "Development Phase")

## 8. NOTICES

Any notice, demand or communication required or permitted to be given to any Party shall be in writing and shall be personally delivered or sent by facsimile to the address of such Party:

(a) in the case of HRM to:

PO Box 1749

1841 Argyle Street

Halifax, Nova Scotia

B3J 3A5

Fax: (902) 490-4044

Telephone: (902) 490-5375

For the Attention of George McLellan, Acting Chief Administration Officer

(b) in the case of SEII to:

500-1777 Victoria Ave.

Regina, Saskatchewan

S4P 4K5

Fax: (306) 525-3422

Telephone: (306) 777-9402

For the Attention of Dean Reeve, Vice President

and shall be deemed to have been received by such Party on the earliest of the date of delivery in the case of personal delivery, and the day following the date of communication by facsimile.

9. TERMINATION

This MOU will become effective upon execution and will terminate upon the happening of the earliest of any of the following:

- (a) Per 6 above; or
- (b) December 31, 2002; or
- (c) A Development Agreement is executed by the Parties.

10. CONFIDENTIALITY

SEII agrees that this MOU is a public document and to the extent that the Freedom of Information and Protection of Privacy provisions of the Municipal Government Act, S.N.S. 1998, c.18 apply that such provisions are hereby waived.

HRM and SEII each acknowledge that, during the performance of the MOU, each party may have access to information of a confidential or proprietary nature to the other party (the "Confidential Information") provided one to the other for the purposes of the MOU, and that it is essential to the conduct of each party's business that the Confidential Information be kept confidential.

HRM and SEII each agree to keep the Confidential Information confidential and that all such Confidential Information shall be deemed to be and remain the sole property of the other party. Neither HRM nor SEII shall, during the term of this Agreement and for a period of two (2) years thereafter, directly or indirectly, use the Confidential Information or disclose the Confidential Information to or for the benefit of any person, firm, corporation, or other entity, wheresoever situated, except with the prior written approval of the other party. Each party shall return to the other all Confidential Information together with any copies thereof, promptly upon termination or expiration of this Agreement.

To assist with compliance with this agreement, the party seeking to maintain confidentiality of information provided shall mark any such document confidential.

In Witness Whereof the parties hereto have executed this Agreement as of the day and year first above written.

Jane Cook  
Witness  
Deanne Harper  
Witness

**Halifax Regional Municipality**

~~Per: \_\_\_\_\_  
Mayor~~  
Per: Vi Carmichael  
municipal clerk

**SaskEnergy International  
Incorporated**

Per: [Signature]  
Vice-President  
Per: [Signature]  
General Counsel & Corporate Secretary