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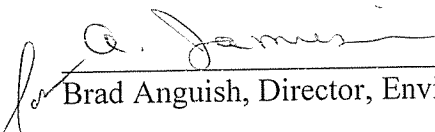
PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

Halifax Regional Council  
October 26, 2004

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

**SUBMITTED BY:**

  
George McLellan, Chief Administrative Officer

  
Brad Anguish, Director, Environmental Management Services

**DATE:** October 26, 2004

**SUBJECT:** Development Agreement - HRM and Heritage Gas

### **ORIGIN**

HRM and SaskEnergy (major shareholder of Heritage Gas) enacted a 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 expired on December 31, 2002; and the MOU was subsequently extended to December 31, 2003. In December 2003, natural gas started to flow, and Heritage Gas and HRM staff started working toward a permanent Development Agreement, similar in nature to the MOU, to permanently formalize the working relationship.

### **RECOMMENDATION**

It is recommended:

- (A) that Council authorize the execution of the Development agreement between Heritage Gas and HRM.

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## **BACKGROUND**

Elements of the MOU which have carried over to the Development Agreement include guiding principles, sharing of services, and a framework for 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 such as use of HRM staff resources. Schedule "A" includes a list of HRM services that may be provided to Heritage Gas on a fee for service basis. At one point, it had been hoped that HRM services provided to Heritage Gas could form the basis of a nominal equity investment in the company; however the Heritage Gas shareholders have informed us they are not interested in that option at this time.

## **DISCUSSION**

The Development Agreement contains some significant improvements or changes from the MOU.

1. **Joint Project Planning Committee** - To ensure that capital project and infrastructure development respective to each party's operations is reviewed to maximize benefits & synergies to each party. The committee will review capital projects and the sharing of services to create cost efficiencies that will benefit both parties.
2. **Contiguous Systems** - Heritage Gas agrees to at its own cost construct extension of its gas distribution network, where HRM undertakes the construction or renewal of HRM infrastructure within a street contiguous to any portion of the then existing Heritage Gas infrastructure, unless the expansion is deemed to be clearly uneconomic by Heritage Gas.
3. **Orphan Systems** - HRM agrees to construct orphan systems where the orphan system is located within the area of planned expansion, subject to the prior approval of Heritage Gas, and subject to a budget appropriation approved by Council. HRM staff would evaluate orphan system opportunities and evaluate based on criteria such as projected payback period, opportunity to minimize disruption to residents, difficulty of future easement negotiations, and availability of funds. The cost recovery mechanism regarding orphan systems has been refined and improved since the sale of Lakeside Terrace and Troop Ave. orphan systems in August.
4. **Telecommunications** - Heritage Gas will cooperate with HRM in its efforts to co-locate telecommunication services in a common trench with natural gas distribution infrastructure.

## **BUDGET IMPLICATIONS**

This agreement is designed to ensure all costs incurred by HRM on behalf of Heritage Gas are fully recovered.

## **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.

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**ALTERNATIVES**

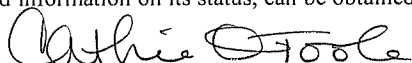
Failure to approve this Development Agreement would mean that the relationship and transactions between Heritage Gas and HRM would have to continue to occur on a good faith basis, until such time as a formal development agreement could be reached.

**ATTACHMENTS**

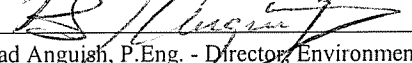
**Development Agreement between HRM and Heritage Gas**

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, CGA - Manager, Environmental Performance (Energy & Utilities)



Brad Anguish, P.Eng. - Director, Environmental Management Services

# DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("DA") is made this        day of October, 2004.

## BETWEEN:

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

- and -

**Heritage Gas Limited**, a body corporate with head office located in HRM, in the Province of Nova Scotia, (hereinafter called "Heritage")

**Whereas** on February 7, 2003 the Nova Scotia UARB "granted a full regulation class franchise for a period of 25 years to Heritage Gas Limited, for the counties of Cumberland, Colchester, Pictou and Halifax, the Municipality of the District of East Hants and the Goldboro area of Guysborough County, subject to the approval of the Governor in Council, and subject to the terms and conditions set forth in Appendix 'A' of the Board Decision";

**Whereas** on June 3, 2003 Heritage Gas officially accepted the franchise rights for natural gas distribution in Nova Scotia;

**Whereas** Heritage entered into a Memorandum of Understanding (MOU) with the Halifax Regional Municipality, the scope of which was limited to evaluating the feasibility of natural gas distribution and any related opportunities arising out of the creation of common infrastructure, including identifying any applicable government policies, regulatory approvals, stakeholder and shareholder approvals, and design, construction, permitting and financing issues;

**Whereas** this DA was developed under the guidelines and principles of the HRM – Heritage MOU and represents the commitment by both the HRM and Heritage to development of Heritage's natural gas distribution system within the HRM, which will be to the benefit of each Party;

**Whereas** the Parties have been working together since the acceptance by Heritage of the natural gas distribution franchise in the Province of Nova Scotia and those joint efforts have resulted in significant successes;

**Whereas** the Parties are interested in entering into this D A that will continue the Parties' efforts to facilitate the development of natural gas distribution in the HRM;

**Whereas** Heritage and the HRM have entered into an interim Municipal Access Operating Agreement dated November 21, 2003 ("MAOA") for the purposes of outlining terms and conditions governing the interaction between the HRM and Heritage regarding operational matters of the natural gas distribution system within the HRM;

**Whereas** HRM has expressed a strong interest in ensuring that opportunities related to telecommunication conduit, district heating on the Halifax peninsula, other utility infrastructure and municipal infrastructure, arising out of natural gas distribution construction are realized;

**Whereas** HRM's participation in this DA will be compensated on a "fee for services" basis;

**Whereas** this DA sets out the framework of the Parties to implement together the following endeavors;

The Parties hereby agree :

## **1. PARTIES**

This Development Agreement ("DA") is made between HRM and Heritage. The term "Party(ies)" refers to HRM or Heritage.

## **2. GUIDING PRINCIPLES**

This DA is based on the following fundamental business principles:

- (a) Both parties will work together to establish a relationship that is based on honesty, openness and willingness. A strong relationship will be a key fundamental principle in establishing a trusting business environment and will be required to successfully continue the development of natural gas distribution business in Nova Scotia.
- (b) Safety is the fundamental principle in developing a natural gas franchise and other business opportunities.

- (c) All current and future natural gas distribution business opportunities will be considered with a view to optimizing opportunities to develop a cost effective natural gas distribution system, with minimal transfer of cost between the parties.
- (d) Heritage and HRM will work together to identify and, where possible, implement cost sharing/savings opportunities between them.
- (e) Time is of the essence to ensure the timely development of natural gas distribution infrastructure.

### **3. JOINT PROJECT PLANNING COMMITTEE**

- (1) Immediately following the execution of this DA, the Parties agree to create a Joint Project Planning Committee (the "Committee") to ensure that capital project and infrastructure development respective to each Party's operations is reviewed to maximize benefits to each Party.
- (2) The Committee shall consist of the following:
  - HRM: Phillip Francis, P. Eng., Manager of Rights of Way  
Cathie O'Toole, Manager of Environmental Performance (Energy & Utilities)  
M. E. Donovan, Legal Services  
George McLellan, CAO
  - Heritage: Ray Ritcey, President  
Harvey Fedyk, P.Eng. Vice-President, Engineering and Operations
- (3) The Parties may designate alternates from time to time.
- (4) The Committee will be responsible for the obligations of this DA 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.
- (5) The purpose of the Committee will be to initiate and analyze project and developmental opportunities that can provide synergies and cost savings in the development of related infrastructure in each Party's control. Further, the Committee will be responsible to jointly develop a natural gas distribution plan, on an annual basis.

- (6) The Parties agree that they shall, at their respective costs, proceed and diligently evaluate all analyses, feasibility studies and associated approvals in a manner and schedule compatible with the full evaluation and eventual implementation as contemplated by this DA. The Parties also agree that the Committee will work in good faith to develop any processes over the term of this DA that will assist with carrying out the intentions of this DA, to the mutual benefit of the Parties.
- (7) The Committee shall regularly review and explore opportunities for the sharing of services to create cost efficiencies in the development of the natural gas distribution system.

#### **4. SHARING OF SERVICES**

- (1) Heritage will evaluate, and where cost effective, will utilize various services, which can be provided by HRM; and in turn, HRM will evaluate, and where feasible, will provide to Heritage services and processes that can be utilized in natural gas infrastructure development and ongoing operations.
- (2) HRM agrees to evaluate, and where cost effective, will utilize various services which can be provided by Heritage; and in turn, Heritage will evaluate, and where feasible, will provide to HRM services and processes that can be utilized in natural gas and/or other infrastructure development and ongoing operations.
- (3) Items and descriptions of such services are listed in "Schedule A" of this DA which provides a breakdown of the various "fee for services" items and distinguishes between "capital related" services and "operational related" services.
- (4) The list of services and corresponding rates in Schedule A will be reviewed and adjusted on a periodic basis. Schedule B represents a listing of anticipated opportunities within the current year to be considered by the Committee. At a minimum, reviews and adjustments of Schedules A and B will be completed every 12 months from the execution date of this DA. At any time of review, the parties have the opportunity to amend the content of the Schedules by mutual agreement in writing, in order to reflect changes in the services provided. The parties recognize that at the time of executing this DA, not all potential services could be identified, and the parties will continue to work together to identify further opportunities to efficiently share services, including, but not limited to, the areas of customer service systems, emergency response matters, conversion opportunities, and public information. The review of the "fee" for services will be the responsibility of

the Committee and will be submitted to the appropriate authorities of HRM and to Heritage.

- (5) Written or electronic notification must be made by an approved Heritage representative to the corresponding approved HRM representative prior to any service being rendered.

## **5. PAYMENT OF "FEE FOR SERVICES"**

- (1) Heritage agrees to pay HRM for pre-approved "fee for services" on a quarterly basis. Invoices will be submitted for payment to Heritage in accordance with the notice provisions outlined herein.
- (2) HRM agrees to pay Heritage for pre-approved "fee for services" on a quarterly basis. Invoices will be submitted for payment to the HRM in accordance with the notice provisions outlined herein.
- (3) The quarterly invoices required pursuant to (1) and (2) above shall contain a detailed accounting of time, services rendered and value of services rendered, on a quarterly basis.

## **6. CONTIGUOUS SYSTEMS**

Where HRM undertakes the construction or renewal of HRM infrastructure within a street contiguous to any portion of the then existing Heritage natural gas system, or within 50 feet thereof, Heritage agrees, unless the expansion is determined clearly uneconomic by Heritage, at its own cost to construct an extension of its natural gas distribution network within the HRM project.

## **7. ORPHAN SYSTEMS**

- (1) Subject to an appropriation by HRM Council, HRM agrees to invest the capital necessary to construct orphan gas systems, where the orphan system is located within the area of planned expansion, subject to the prior approval of Heritage. The Parties agree that any such system shall be built for the benefit and use of Heritage, subject to the provisions outlined in this Article.
- (2) Heritage agrees to compensate HRM for orphan pipeline systems constructed by HRM, and additional orphan systems subsequently approved and constructed in accordance herein.



- (3) Payment for an orphan system shall be rendered immediately prior to connection of the orphan system to the Heritage gas system, or within two years of the date of completion of the construction of the orphan system, whichever first occurs. The Parties shall enter into a purchase and sale agreement with respect to the acquisition of the orphan system, conveying full rights of ownership of the orphan system to Heritage, subject only to the required payment.
- (4) HRM will be reimbursed for the cost of any orphan systems so constructed by the payment of any incremental costs incurred (defined on Schedule B attached hereto) , together with 50% of common costs, a 50-50 sharing of any savings arising out of the co-location of services, plus HRM's costs of capital financing in effect at the time of completion of the project together with any applicable HST. Schedule "C" attached hereto outlines an illustrative example of the methodology contemplated for determining costs and savings associated with orphan system construction.
- (5) Subject to the provisions of 7(1), Heritage agrees to prepare and file an application to the NSUARB for the permits required for such construction and such permits will be through the franchise rights of Heritage.
- (6) To facilitate orphan construction, Heritage and HRM will review annual projects.

## **8. PERMITS and APPROVALS**

Heritage agrees to acquire all necessary permits and approvals from HRM that may apply to the development of natural gas infrastructure in HRM. HRM will work with Heritage in an effort to streamline the process, in order to ensure the above permits and approvals process is as timely, efficient and effective as possible. Heritage will work with HRM to finalize the Operating Agreement between the parties by December 31, 2004.

## **9. TELECOMMUNICATIONS**

Heritage will cooperate with the HRM in its efforts to co-locate telecommunication services in a common trench with natural gas distribution infrastructure.

## 10. 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  
Tel: (902) 490-5375  
For the Attention of George McLellan, Chief Administration Officer
  
- (b) in the case of Heritage to:  
P.O. Box 1020  
88 Alderney Drive  
3<sup>rd</sup> Floor,  
Dartmouth Ferry Terminal building  
Dartmouth, Nova Scotia  
B2Y 4W3  
Fax: (902) 466-2140  
Tel: (902) 466-2019  
For the Attention of Ray Ritcey, 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.

## 11. IN EFFECT and TERMINATION

- (1) This DA will become effective upon execution of this DA.
  
- (2) This agreement may be terminated by either party on three months written notice. In the event of termination, the parties agree to accelerate the requirement for acquisition of any approved Orphan Systems pursuant to the provisions of Article 7, such that all Orphan Systems which have not been transferred to the ownership of Heritage shall be acquired by Heritage within thirty (30) days of the date of termination of this DA.

## 12. REGULATORY REQUIREMENTS

The Parties agree to work together to secure any applicable regulatory approvals from the NSUARB with respect to matters which arise from this DA.

## 13. CONFIDENTIALITY

- (1) Heritage agrees that this DA 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.
- (2) HRM and Heritage each acknowledge that, during the performance of the DA, 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 DA, and that it is essential to the conduct of each party's business that the Confidential Information be kept confidential.
- (3) HRM and Heritage 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 Heritage 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, if requested.
- (4) 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.

**Halifax Regional Municipality**

Per:

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Per:

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**Heritage Gas Limited**

Per:

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Per:

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**SCHEDULE "A"**  
**HRM SERVICES**

Item	"Fee for Service"	Annual Value and/or Billing Rate	Description of Services
<b>Engineering and Permitting</b>			
1	HRM Natural Gas Development Team	Costs to be billed at actual time spent  Estimated costs of \$80k - \$100k for 2 members (per year)	Heritage will continue to use HRM staff working in an integrated manner with Heritage Gas. This item covers HRM engineering staff time required for the processing of permits, but could also include other types of services such as lands and legal. Value to be actual time spent by members of the HRM Natural Gas Development Team.
2	Access to HRM's GIS	To be determined. Estimated at \$10K per year	Heritage requires access to HRM's GIS for detailed design of facilities located within the street right-of-way.
3	Joint surveys	To be determined. Estimated at \$10K per year	Where Heritage is required to perform topographic surveys, such surveys could be conducted jointly with HRM and HRWC. The possibility of jointly conducting low altitude aerial photography for base mapping preparation also exists.
4	Orphan Systems		Refer to Article 7 and Schedule B of DA
5	Harbour Solutions Projects on the Halifax Peninsula and in Dartmouth	To be determined	Includes joint efforts on the Halifax and Dartmouth projects with specific focus on acquiring easement rights in lands owned and occupied by DND, CN and JD Irving  Opportunities also include possible installation of conduit in the south end of the Halifax Peninsula to allow for future insertion of PE mains.
<b>Construction and Operations</b>			
6	Construction restoration	To be determined	Potential assumption of responsibility by HRM crews/contractors for restoration activities (sod, paving) subject to reimbursement for associated costs.
7	Facilities Rental (e.g. Dartmouth Ferry Terminal	Lease Agreement Rental Rates	Involves rental of office space but could also include warehousing space and operations facilities.

8	Meter Reading and Billing	Cost of service to be negotiated with HRWC	To be reviewed once Heritage has acquired 500 billing customers.
9	District Energy on Halifax Peninsula	To be determined and subject to approval by HRM in advance.	Heritage will assist HRM in estimating capital costs and routing for supplying natural gas to a district energy plant(s) on the peninsula.

**SCHEDULE "B"**  
**HRM SERVICES for 2005 Construction Projects in HRM**

The following schedule represents priorities and assistance required by Heritage Gas for completion of projects in HRM in 2005.

Item	"Fee for Service"	Annual Value and/or Billing Rate	Description of Services
<b>2005 Heritage Gas Projects in HRM</b>			
1	Manager of ROW assistance in Heritage projects for 2005 (Reference to Item 1 on Schedule "A", as this is a subset of that item, and not in addition to the item)	Estimated at \$40,000 for 2005; however, billing will be in accordance with actual time spent, only.	<p>This item is directly in relation to Item 1 listed on Schedule "A", and is not to be read in addition to that item.</p> <p>Heritage has been and will continue to use HRM staff working in an integrated manner with Heritage Gas. This item covers the use of engineering and construction staff but could also include other types of services such as lands and legal. Value to be actual time spent by members of the HRM Natural Gas Development Team and is approximately at a 50% annual capacity for the year.</p> <p>The Manager of Rights of Way will be required to facilitate review of HRM Red Book guidelines on infrastructure development in HRM together with the review of asphalt management of HRM streets.</p> <p>This cost also recognizes the additional technical assistance that will be required by the Manager of Rights of Way to provide necessary permits in a timely fashion to ensure Heritage construction projects are not delayed.</p>
2	Approval of acquiring services of streets construction inspector on a HRM contract basis to assist street permitting projects	\$20,000 (contract term)	<p>Regular permitting fees as required by HRM will be waived should HRM employ a streets construction inspector services to provide expert guidance on approving location of natural gas pipelines in HRM streets and lands.</p> <p>Contract costs will be charged by HRM to Heritage.</p>

## SCHEDULE "C"

### Example of Payment Methodology Orphan System Construction

#### FUTURE ORPHAN SYSTEM CONSTRUCTION PROJECT - EXAMPLE CALCULATION ONLY

Final As Built Costs

R		Actual		
1	Metres of NPS 2 Installed	200	\$/m	
2				
3	Design by Heritage Gas	\$1,111.11	\$5.56	4.5% Costs not billed to HRM
4	3rd Party Engineering	\$1,265.16	\$6.33	5.2%
5	Materials	\$1,131.17	\$5.66	4.6% Costs not billed to HRM
6	3rd Party Inspection - Heritage Gas	\$1,111.11	\$5.56	4.5% Costs not billed to HRM
7	UARB Regulatory Costs Incl. Certifying Authority	\$2,400.00	\$12.00	9.8%
8	Contractor	\$12,000.00	\$60.00	49.0%
9	50% of common costs for pipeline	\$1,030.00	\$5.15	4.2%
10	HRM design and permitting and approvals	\$1,000.00	\$5.00	4.1%
11	HRM inspection costs	\$1,000.00	\$5.00	4.1%
12	HST on applicable Items	\$2,444.27	\$12.22	10.0% = 15% X (R4+R8+R8+R9+R10+R11)
13	<b>TOTAL PROJECT</b>	<b>\$24,492.82</b>	<b>\$122.46</b>	<b>100.0%</b>
14				
15	Actual Unit Cost	\$122.46	Cost per m	
16	Compared to Capital Cost Model Estimate	\$127.60	historical costs	Unit price agreement required prior to orphan construction. Based on
17				
18	Cost Reimbursement to HRM		Reference or Calculation	
19	HRM Expenditures (net of HST)	\$18,695.16	=(R13-R12-R3-R5-R6)	
20	Carrying Costs from Date of Construction	\$1,417.72	see interest calculation below	
21	50% Share of Cost Savings on Project	\$513.59	=50% X (\$127.60/m-\$124.13/m) X 200 meters of pipe	
22	<b>Reimbursement to HRM</b>	<b>\$20,626.46</b>		
23				
24	HST on applicable expenditures	\$1,941.27		
25	<b>Total</b>	<b>\$22,567.73</b>		

#### FUTURE ORPHAN SYSTEM CONSTRUCTION PROJECT - EXAMPLE CARRYING COST CALCULATION

Financing Costs	6.50%		per year based on HRM cost of capital					
Total Capital	\$18,695.16		R19					
Months	1	2	3	4	5	6	7	8
	May-03	Jun-03	Jul-03	Aug-03	Sep-03	Oct-03	Nov-03	Dec-03
Monthly Finance Cost	0.54%	0.54%	0.54%	0.54%	0.54%	0.54%	0.54%	0.54%
Finance Costs	\$101.27	\$101.27	\$101.27	\$101.27	\$101.27	\$101.27	\$101.27	\$101.27
	9	10	11	12	13	14		
	Jan-04	Feb-04	Mar-04	Apr-04	May-04	Jun-04		
	0.54%	0.54%	0.54%	0.54%	0.54%	0.54%		
	\$101.27	\$101.27	\$101.27	\$101.27	\$101.27	\$101.27		
<b>Total Finance Costs</b>	<b>\$1,417.72</b>							

LakesideFinalCosts (HRM Final analysis 2004 Aug 31) modified to include Cost Savings.xls