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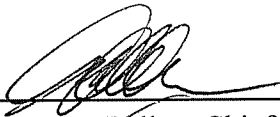


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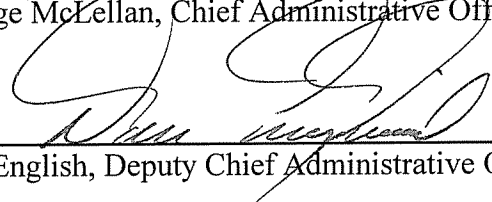
Halifax Regional Council
April 26, 2005

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:



George McLellan, Chief Administrative Officer



Dan English, Deputy Chief Administrative Officer

DATE: April 8, 2005

SUBJECT: Heritage Gas Municipal Operating Access Agreement

ORIGIN

This report originates as a result of the expiry of the Interim Municipal Operating Access Agreement with Heritage Gas.

RECOMMENDATION

It is recommended that Halifax Regional Council approve the execution of the Municipal Operating Access Agreement with Heritage Gas attached as Appendix "B".

BACKGROUND

On November 18th 2003, Regional Council approved the execution of an interim Municipal Operating Access Agreement (MOAA) with Heritage Gas. This agreement expired on December 31, 2004.

Pursuant to that agreement Heritage has extended its gas infrastructure in HRM by approximately 10 km, with about 8 km in Burnside and 2 km in Crichton Park. This brings the total system length in HRM to approximately 27 km. A map showing the existing system and proposed 2005 expansion areas is attached as Appendix "A".

DISCUSSION

To facilitate the continued expansion of the Heritage Gas distribution system within HRM streets, an extension to the MOAA or permanent MOAA is required. A proposed agreement is attached as Appendix "B".

This MOAA covers operational matters only. Business issues are covered by the Development Agreement with Heritage Gas approved by Council on October 26, 2004. Taxation is in accordance with provincial legislation, the Natural Gas Distribution Taxation Act.

The operational issues covered by the interim MOA include design, permitting, record information, relocation and liability. The provision for an HRM Gas Engineering Team remains.

This agreement differs from the initial interim agreement as follows:

- ▶ Five year term rather than a long-term 20-year agreement. This will allow the Municipality to gain further experience, before a long-term agreement is put in place.
- ▶ Future settlement maintenance fees paid by Heritage to be applied to address pavement issues in streets in which Heritage infrastructure has been installed, as opposed to being applied to the general fund.
- ▶ 120 day time frame for provision of GIS information in respect of newly installed infrastructure. The previous 60 day time frame has proven impractical.
- ▶ HRM to provide GIS information to assist with the development of its gas distribution system which parallels a similar commitment by Heritage to provide HRM with GIS information.
- ▶ HRM to request line locates for all municipal projects, the purpose of which is to avoid accidents with gas lines.
- ▶ HRM to jointly promote the "Call Before You Dig" safety program, again to avoid accidents with gas lines, which program is currently under development.

Heritage Gas is developing a natural gas distribution system without the direct government subsidies, where subsidies tend to be common in areas of developing greenfield natural gas distribution systems. The cost-effective installation of natural gas pipelines in existing HRM streets with a lot of existing infrastructure has presented some challenges; however, HRM and Heritage Gas have gained considerable experience and on going improvements and efficiencies are being developed.

Therefore it is recommended that the agreement found at Appendix "B" be approved for execution by the Mayor and Clerk

BUDGET IMPLICATIONS

All HRM actual and direct time costs will be charged back to Heritage Gas.

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.

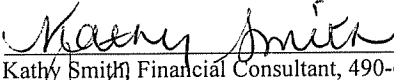
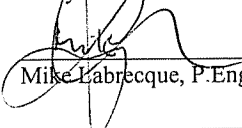
ALTERNATIVES

Council could choose not to approve this MOAA. Staff does not recommend this alternative.

ATTACHMENTS

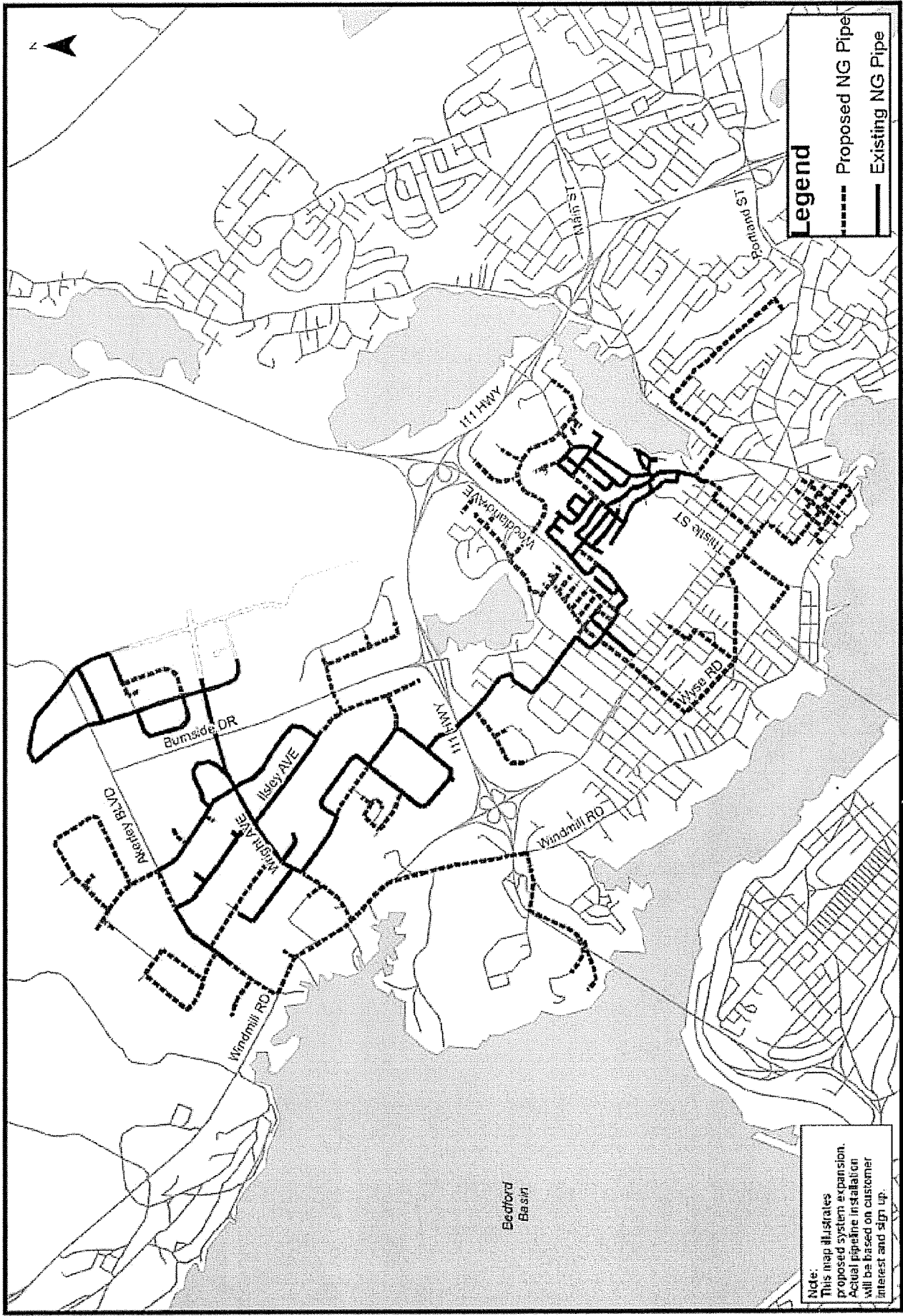
**Appendix "A" - Heritage Gas System and Proposed 2005 Expansion
Appendix "B" - Draft Agreement**

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:	M. E. Donovan, Manager, Legal Services - 490-4226 Phil Francis, P.Eng., Manager, Right of Way Services - 490-6219
Report Approved by:	 Kathy Smith Financial Consultant, 490-6153
Report Approved by:	 Mike Labrecque, P.Eng., Director, Transportation & Public Works - 490-4851

Proposed Dartmouth Natural Gas Roll Out - Mains

2005



MUNICIPAL OPERATING ACCESS AGREEMENT – 2005-2009

THIS MUNICIPAL OPERATING ACCESS AGREEMENT - made this ____ day of March, 2005.

BETWEEN:

HALIFAX REGIONAL MUNICIPALITY

(hereinafter called the "Municipality")

- and -

HERITAGE GAS LIMITED

(hereinafter called "Heritage")

WHEREAS the award of the natural gas distribution franchise to Heritage by the Nova Scotia Utility and Review Board was approved by the Province of Nova Scotia by Order in Council dated February 21, 2003 granting Heritage a full regulation class franchise for the construction and operation of a natural gas distribution system in certain areas of Nova Scotia;

AND WHEREAS the Municipality holds title to the Streets within the Municipality which it maintains;

AND WHEREAS Heritage wishes to use municipal streets for the installation and operation of a Gas Distribution System;

AND WHEREAS by resolution of the Halifax Regional Municipality Council passed on November 18, 2003, the Municipality consented to the construction and use of natural gas distribution facilities by Heritage in, upon, across, over, under and along its streets subject to the terms and conditions of an Interim Municipal Operating Access Agreement signed on November 21, 2003 and renewed from time to time and expired on December 31, 2004.

AND WHEREAS the Halifax Regional Municipality Council approved on April , 2005 the terms and conditions of this final Municipal Operating Access Agreement for the period January 1, 2005 to December 31, 2009.

THEREFORE, in consideration of the mutual terms, conditions and covenants contained herein, the parties agree as follows:

Definitions

1. In this agreement,
 - a. "Engineer" means the Engineer as defined by the Municipal Government Act (Nova Scotia);
 - b. "Gas Distribution System" includes any pipe, pipeline, main, service, trap, vent, vault, manhole, meter, gauge, regulator, valve, appliance, attachment, appurtenance and any other property located or to be located in, upon, along, across, under or over the Streets of the Municipality and used or useful in transportation, transmission or distribution of natural gas and related underground telecommunications and underground power systems in the same and/or contiguous conduits;
 - c. "Municipality" means the Halifax Regional Municipality;

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- d. "Municipal Service Systems Design Guideline" is a document adopted by the Municipality, as approved by the Engineer, setting minimum design and construction standards for service systems within the Municipality, and as amended from time to time;
- e. "NSUARB" means the Nova Scotia Utility and Review Board;
- f. "Street" means Street as defined by the Municipal Government Act and for the purposes of this Agreement includes the public streets, highways, roads, lanes, sidewalks, thoroughfares, bridges and squares as the same now or may hereafter exist within the Municipality.

License and Consent

- 2. (1) The Municipality hereby grants Heritage an exclusive encroachment license for use of its Streets for the purpose of constructing, operating and maintaining the Gas Distribution System.
- (2) This agreement does not grant a right to attach gas lines to municipally owned bridges; such attachments are subject to the approval of the Engineer on a case by case basis.
- (3) The grant of the license is subject to the terms and conditions of this agreement, and compliance with all federal, provincial and municipal laws including the Halifax Regional Municipality Streets Bylaw S-300, as amended from time to time.
- (4) Without limiting the generality of the foregoing, Heritage confirms that it will comply with all requirements of the Nova Scotia Occupational Health and Safety Act with regard to the Gas Distribution System.

Term of Agreement

- 3. (1) This Municipal Operating Access Agreement shall be for a period of five (5) years (the "Term") commencing on January 1, 2005 until December 31, 2009 , subject to the earlier abandonment of said franchise, in which case this agreement shall automatically terminate on the date of the abandonment except where otherwise provided by this Agreement.
- (2) Six months prior to the expiry of the Term, the parties shall enter into negotiations to renew this Agreement upon such terms and conditions as may be agreed upon. In the event the parties do not agree on the terms and conditions of a renewal agreement prior to one month before the end of the Term, the matter shall be determined by the NSUARB pursuant to Section 78 of the Public Utilities Act (Nova Scotia) and Section 9 of the Gas Distribution Act (Nova Scotia). The parties agree that in the interim, in such case, the terms and conditions of the Agreement shall govern until such time that an order is issued on the matter by the NSUARB.

Training

- 4. Heritage commits to providing training at no cost to the Municipality with respect to natural gas awareness and emergency response issues for appropriate Municipality engineers, operations staff and building/street inspectors relating to the Gas Distribution System. Heritage will also participate in discussions regarding planning requirements for an emergency response training center in the Municipality.

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Construction Schedule

5. (1) The Municipality and Heritage each recognize the benefits of joint infrastructure planning between the Municipality and Heritage. Heritage shall continue the open dialogue process with the Engineer to ensure natural gas project planning is current and the Municipality shall continue the open dialogue with Heritage to ensure project planning is current. At a minimum Heritage shall meet with the Engineer, before October 31st of each year, for the purpose of exchanging known or proposed plans of both the Gas Distribution System and the Municipality's service systems for the following year.
- (2) The Municipality and Heritage shall jointly promote the "Call Before You Dig" safety program within each organization and the public during the annual construction season and any other pertinent occasion.

Design

6. (1) The Engineer shall be the final approval authority for the location of all portions of the Gas Distribution System located within municipal Streets. The location and installation of the Gas Distribution System shall be in accordance with the Municipal Service System Design Guidelines and consistent with applicable Canadian gas codes including CSA Z662 as amended from time to time.
- (2) The Municipality generally intends to base its approvals on its gas pipeline design guidelines, which form part of its Municipal Service System Design Guidelines, as amended from time to time in consultation with Heritage and others. These guidelines are consistent with Canadian gas code requirements including CSA Z662.
- (3) Individual deviations from municipal guidelines may be considered on a Street by Street or on any other basis that the Engineer might approve.
- (4) Heritage is responsible to restore Streets to the Municipality's standards. Notwithstanding the generality of the foregoing and unless otherwise approved by the Engineer, where a pavement cut is made on a Street that has been paved within the previous five (5) years, full repavement of the Street, curb to curb, and limited to the length of the Street cut, is required.

Permits

7. (1) In accordance with the Municipality's Streets Bylaw S-300, Heritage shall obtain a Utility Permit and a Streets and Services Permit for every Street where the Gas Distribution System is proposed to be installed.
- (2) Notwithstanding the generality of subsection (1) and notwithstanding any other provision herein, a future settlement maintenance fee as required by s.24 of the the Municipality's Streets Bylaw will apply to work covered by this Agreement. It is agreed that the future settlement maintenance fee shall be exclusively used on streets where natural gas distribution lines have been installed.

Notwithstanding any other provision herein, Heritage or its contractor shall also provide refundable performance security to the Municipality in the estimated amount of Street restoration costs to guarantee the restoration of Streets to the satisfaction of the Engineer.

With respect to construction scheduling, the Municipality will require Heritage or its contractor to minimize potential traffic and related disruptions. Construction should be coordinated with the Municipality's capital budget projects.

MUNICIPAL OPERATING ACCESS AGREEMENT – 2005-2009

If service connections are not installed during initial construction of the Gas Distribution System on a Street, then a separate Streets and Services Permit is required for the service connection.

Municipal Gas Engineering Team

8. (1) Subject to ss. 8(2), Heritage agrees to pay the Municipality the costs of its "Municipal Gas Engineering Team", the composition of which shall be comprised initially of one Engineer and one engineering assistant, who have the responsibility for the review and approval of Heritage's construction projects within the Municipality. The Municipality agrees that the costs charged back to Heritage represent actual and direct time associated with the development of the natural gas project. Any changes to the Municipal Gas Engineering team will be subject to further agreement of the parties.
- (2) Costs attributable to the Municipal Gas Engineering Team shall be in accordance to the Development Agreement signed by the Municipality and Heritage on October 25, 2004
- (3) During the period the Municipal Gas Engineering Team is in operation, the costs paid by Heritage shall be in lieu of all municipal inspection and administration fees and permits, where such approvals and permits are processed by the Municipal Gas Engineering Team and without limiting the generality of the foregoing, the costs paid by Heritage shall be in lieu of the application fee for any Streets and Services permit required in respect of the construction of the Gas Distribution System. (See s.23(2) of Bylaw S-300.)
- (4) Reasonable printing costs for reproducing plans are not included within the Municipal Gas Engineering Team budget and are to be billed quarterly and paid by Heritage within thirty (30) days of billing.
- (5) The Municipality will provide quarterly invoices and supporting monthly activity reports to Heritage for the Heritage Engineering and Operations team and payment shall be rendered within thirty (30) days of receipt of said invoice.
- (6) It is agreed that the services provided by Municipal staff are the standard engineering services provided by the Municipality in such matters including the provision of the Municipality's record information, GIS digital information where available, liaison with Heritage in coordination with other utilities to determine the appropriate locations for the gas pipelines on each Street, the processing and issuing of permits, review of construction phasing and timing, audit inspection of construction activities, reviewing record information submitted by Heritage, final review of Street restoration, and issuance of acceptance certificates and releases of performance security.

Damage to Municipal Property

9. (1) If any portion of any Street or municipal infrastructure is damaged by reason of defects in any portion of the Gas Distribution System, or by reason of any other cause arising directly from the presence of the Gas Distribution System, Heritage shall, at its own cost and expense, immediately repair any such damage and restore such portion of such damaged Street to as good or better condition as existed before such defect or other cause of damage occurred, such work to be done under the direction and to the satisfaction of the Engineer. Post construction pavement impacts resulting from the initial installation of the gas distribution system shall be repaired from funds secured by the future settlement maintenance fee.

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- (2) Heritage agrees that trees on municipal property are to be protected at all times and agrees to adhere to the provisions of the Municipality's Trees Bylaw, T-600 and the Streets Bylaw, S-300, as amended from time to time. The Gas Distribution System is to be designed on the premise that, unless approved by the Engineer, municipal trees are not to be adversely affected by the installation or operation of the Gas Distribution System.
- (3) If any tree is damaged or destroyed by reason of a defect in any portion of the Gas Distribution System, or by reason of any other cause arising directly from the construction or the operation of the Gas Distribution System, Heritage shall, at its own cost and expense, repair any such damage or replace such trees under the direction and to the satisfaction of the Engineer.

Emergency Response

10. (1) Heritage shall provide:
 - a. to the Engineer a list of emergency contact personnel from Heritage available at all times and shall ensure that the aforementioned list is always current; and
 - b. a person to liaise in developing the Emergency Measures gas response program.
- (2) It is agreed that the Emergency Measures gas response program shall be reviewed annually by appropriate representatives of the Municipality and Heritage.

Record Information and GIS

11. (1) Heritage shall provide, at its expense, to the Municipality record drawings in hard copy form and in an electronic format compatible with the Municipality's corporate geographic information system (GIS) and in the format directed by the Municipality's GIS Manager, of any new installation, within four (4) months of completing the installation of any portion of the Gas Distribution System.
- (2) Heritage shall participate with the Municipality in a program of electronic data capture of municipal infrastructure associated with the installation of the Gas Distribution System. As part of that participation Heritage will continue to provide the Municipality with any GIS information captured as a part of the installation of any portion of its gas system.
- (3) The Municipality shall provide, at its expense, to Heritage existing GIS information that may assist in the development of the natural gas distribution system.

Locate Requirement

12. (1) The Municipality shall request line locates for all municipal projects.
- (2) Upon receiving a request from the Municipality, Heritage shall, at no cost to the Municipality, provide locations of its Gas Distribution System:
 - (a) Within two (2) hours in the event of an emergency, using reasonable best efforts;
 - (b) Within twenty-four (24) hours in the event of a priority request;
 - (c) Within forty-eight (48) hours in all other cases.

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Utility Coordinating Committee

13. Heritage shall participate in the Halifax Utility Coordinating Committee (HUCC) during the term of this Agreement.

Relocations

14. (1) Upon receipt of ninety (90) days notice from the Municipality, Heritage, at its own expense, shall relocate its Gas Distribution System within a Street, or perform any other work in connection with the Street as may be required by the Municipality for municipal purposes or at law, provided that in cases of emergency, after first making a reasonable attempt to contact Heritage and whether or not a Gas Distribution System locate has been obtained from Heritage, the Municipality may take any measures deemed necessary for public safety or the public interest with respect to the Gas Distribution System that may be required as the Municipality in its sole discretion, acting reasonably, shall determine, and Heritage shall forthwith reimburse the Municipality for all actual expenses thereby incurred.
- (2) Heritage shall not be required to bear the expense of any removal or relocation made at the request of the Municipality on behalf or for the benefit of any private developer or other third party.
- (3) At the request of the Engineer, Heritage shall structurally support any portion of its Gas Distribution System at its own cost where necessary as part of the process of implementing any municipal improvements except those carried out within 5 years of receiving a Permit.

Warranty re Condition of Streets

15. The Municipality has made no representations or warranties as to the state of repair of the Streets or the suitability of the Streets for any business, activity or purpose whatsoever and Heritage hereby agrees to take the Streets on an "as is" basis.

Liability

16. (1) Except for the gross negligence of the Municipality Heritage agrees that the Municipality is not responsible, either directly or indirectly, for any damage to Heritage facilities that may result from the activities of the Municipality, its officers, employees, contractors or agents. The Municipality assumes responsibility and will reimburse Heritage for any and all loss or damage caused to the Gas Distribution System due to the Municipality's own gross negligence.
- (2) Notwithstanding subsection (1), the Municipality is not liable either on the basis of gross negligence or on any other basis to Heritage for any consequential or economic losses on account of the actions of the Municipality its agents or employees working in, under, over, along, upon and across its Streets and roads or other the owned or occupied property.

Indemnification

- 17.1 Save and except for loss or damage caused by the gross negligence of the Municipality, Heritage covenants and agrees to indemnify and save harmless the Municipality's agents, officers, elected officials, employees and assigns from any and all losses, claims, including any claim for injurious affection, charges, damages and expenses which the Municipality may at any time bear, sustain or suffer, by reason, or on account of the placement, installation, relocation, maintenance or use of Heritage facilities in, on, under, over, along or across a Street or road, and Heritage will, upon demand and at its own sole risk and expense, defend any and all suits, actions or other legal

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proceedings which may be brought or instituted by third persons against the Municipality on any such claim, demand or cause of action, and will pay and satisfy any judgment or decree which may be rendered against the Municipality for any and all legal expenses incurred in connection therewith. Heritage's obligation to indemnify and save harmless the Municipality shall survive the termination of this interim agreement.

- 17.2 Subject to the provisions of this Agreement, the Municipality covenants and agrees to indemnify and save harmless Heritage's agents, officers, employees and assigns from any and all losses, claims, including any claim for injurious affection, charges, damages and expenses which Heritage may at any time bear, sustain or suffer, by reason, or on account of the gross negligence of the Municipality and the Municipality will, upon demand and at its own sole risk and expense, defend any and all suits, actions or other legal proceedings which may be brought or instituted by third persons against Heritage on any such claim, demand or cause of action, and will pay and satisfy any judgment or decree which may be rendered against Heritage for any and all legal expenses incurred in connection therewith. The Municipality's obligation to indemnify and save harmless Heritage shall survive the termination of this interim agreement.

Insurance

18. Heritage confirms that it has and shall maintain insurance in sufficient amount and description as will protect Heritage from claims for damages, personal injury including death, and for claims from property damage which may arise from Heritage's operations in the Municipality under this agreement, including the use or maintenance of its Gas Distribution System in its Streets or any act or omission of Heritage's agents or employees while engaged in the work of placing, maintaining, renewing or removing any portion of its Gas Distribution System and such coverage shall include all costs, charges and expenses reasonably incurred with any injury or damage. Heritage confirms that the insurance that it presently has meets the requirements of the terms and conditions of its franchise grant pursuant to s.13 of the Gas Distribution Regulations.

Abandonment or Discontinued Use of Pipeline Infrastructure

19. In the event of the abandonment or the discontinued use of all or any part of the Gas Distribution System, any removal is subject to the consent of the Municipality but subject always to any overriding direction or order of the NSUARB.

Assignment

20. This agreement may be transferred or assigned by Heritage with the approval of the NSUARB and with the consent of the Municipality, which consent shall not be unreasonably withheld.

Breach

21. The Municipality and Heritage agree that should Heritage or the Municipality materially fail to carry out any of the terms, covenants and conditions herein contained or default in any of its obligations under the terms hereof and fail within thirty (30) days after receiving written notice from the other party to correct any such failure capable of correction, then this Agreement may, at the option of the non-defaulting party, subject to the approval of the NSUARB thereupon be terminated by giving written notice to be effective upon receipt, provided that Heritage shall continue to be liable to the Municipality for all payments due and obligations incurred under the Agreement prior to such termination.

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Termination

22. Subject to the approval of the NSUARB, if this Agreement is terminated by the Municipality for reasons outlined in section 21, all the unfulfilled covenants, indemnities and obligations of Heritage hereunder shall survive such termination.

Confidentiality

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

Notices

24. Any notice required or permitted to be given hereunder or any tender or delivery of documents may be given by personal delivery or, if other than the delivery of an original document, by facsimile transmission to:

the Municipality: Halifax Regional Municipality
P. O. Box 1749
Halifax, NS B3J 3A5
Attention: Legal Services
Fax: (902) 490-4232

Heritage: Heritage Gas Limited
P.O. Box 1020
88 Alderney Drive
Dartmouth Ferry Terminal Building – 3RD Floor
Dartmouth, Nova Scotia, B2Y 4W3
Fax: (902) 466-2140
Attention: Ray Ritcey, President

Entire Agreement

25. This agreement is the entire agreement between the Municipality and Heritage regarding the subject of this agreement and it can be amended or supplemented only by a document executed in writing by both the Municipality and Heritage.

Binding

26. This agreement benefits and binds the Municipality and Heritage, their assigns and the successors of each of them.

Waiver

27. (1) No alleged waiver or breach of this agreement is effective unless it is an express waiver in writing of the breach in respect of which it is asserted against the party alleged to have given the waiver. No waiver by a party of any breach of this agreement operates as a waiver of any other breach of this agreement.

The parties to this agreement shall be entitled to resort to any remedies available to them in law or in equity in some or all combination in their discretion. No delay or failure of either party to exercise any right or remedy will operate as a waiver thereof, except where specifically provided herein to the contrary.

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Unenforceability

28. In the event that any covenant or provision herein shall be determined to be void or unenforceable in whole or in part for any reason whatsoever, such unenforceability or invalidity shall not affect the enforceability or validity of the remaining covenants or provisions or parts thereof contained in this Agreement and such void or unenforceable covenants or provisions shall be deemed to be severable from the others herein provided.

Time

29. Time shall be of the essence of this Agreement and of each and every part hereto.

Interpretation

30. In this agreement, unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender and a corporation.

Conflict of Laws

31. This agreement shall be construed and enforced in accordance with the laws of the Province of Nova Scotia and the laws of Canada applicable herein and the parties irrevocably attorn to the jurisdiction of the Courts of Nova Scotia.

IN WITNESS WHEREOF the parties hereto have executed this Agreement by their duly authorized representatives on the day first above written.

SIGNED, SEALED AND DELIVERED)
In the presence of:)

HALIFAX REGIONAL MUNICIPALITY

Mayor

Clerk

HERITAGE GAS LIMITED

)
)
) Per: _____
) Dean Reeve, Acting Chief Executive Officer

)
)
) Per: _____
) Ray Ritcey, President