



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Item No. 11.1.2

**Halifax Regional Council
April 27, 2010**

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:

A handwritten signature in cursive script, appearing to read "Dan English".

Dan English, Chief Administrative Officer

A handwritten signature in cursive script, appearing to read "Wayne Anstey".

Wayne Anstey, Deputy Chief Administrative Officer - Operations

Officer

DATE: April 12, 2010

SUBJECT: Heritage Gas Municipal Operating Access Agreement

ORIGIN

This report originates as a result of the expiry of the Municipal Operating Access Agreement with Heritage Gas, on the 31st day of December 2009, and subsequently, by mutual agreement, extending that Agreement to April 30, 2010, to finalize negotiations and process the new Agreement.

RECOMMENDATION

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

BACKGROUND

On April 26, 2005, Halifax Regional Council approved the execution of the first Municipal Operating Access Agreement (MOAA) with Heritage Gas. This followed an interim agreement which was in place since November 18, 2003. The MOAA expired on December 31, 2009. At the commencement of the initial MOAA, Heritage Gas had installed a total of 27 km of gas line in HRM. Over the past five years, Heritage Gas has expanded its gas infrastructure to include the Halifax Peninsula. In 2010, Heritage Gas plans to expand infrastructure to Fairview, Clayton Park, Bayer's Lake and Bedford (West and South). As of the end of 2009, Heritage Gas total system length has grown to 177km.

DISCUSSION

To facilitate the continued expansion of the Heritage Gas distribution system within the Halifax Regional Municipality's streets, a new MOAA is necessary. As a result, negotiations between Heritage Gas and HRM commenced in September 2009, and concluded in March 2010. Letters extending the existing MOAA to the end of April 2010, are attached as Appendix "B". The proposed agreement is attached as Appendix "A".

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

The issues covered by the MOAA include design, construction, permitting, damage to municipal property, record information, relocation, and liability. The main differences from the initial MOAA include:

- ▶ The term of this Agreement has been reduced from five years to three years, with a one time option for a two year renewal at the end of year two of the Agreement.
- ▶ Newly paved street cuts provisions have been changed to reflect recent changes to the Streets By-law S-300. The moratorium provision of the Streets By-law prohibits street cuts on streets that have been paved within the previous two years. In addition, the MOAA articulates exceptions to the pavement moratorium which could include "A new development or no-heat situation".
- ▶ References to "future settlement charge" has been replaced with "pavement impact charge" to reflect recent streets By-law S-300 amendments.
- ▶ The "Permits" Clause has added a section to articulate service level performance by including a Business Process Map which identifies duties/responsibilities of a permit applicant, utilities, HRM Right of Way department and other impacted HRM departments. The process map also identifies service level expectations including response times for both Heritage Gas and HRM.
- ▶ The "Municipal Gas Engineering Team" approach to review and approval of Heritage Gas' construction projects is replaced with a Permit Fee Schedule, as identified in

- Attachment “A” of the MOAA. This schedule will identify fees necessary to recover Administrative, Engineering and Inspection costs associated with processing permits of differing degrees of difficulty.
- ▶ With respect to managing HRM trees, the agreement has added a provision which includes privately owned trees which are impacted by the installation of Heritage Gas infrastructure in the HRM right of way.
 - ▶ The annual review of the Emergency Measures gas response program requirement has been modified to require Heritage Gas to submit its Emergency Management program to the Municipality’s Emergency Management representative for review and action, as necessary.
 - ▶ Responsibility for submission of record drawings “compatible with the Municipality’s corporate geographic information system (GIS) and in the format directed by the Municipality’s GIS Manager” has been modified to reference the HRM Municipal Design Guideline which captures the detail of record drawing requirements.
 - ▶ With the expanded Record Drawing requirements included in the Municipal Design Guideline, Section 2 of Clause 11 - “Record Information and GIS” relating to “Heritage Gas and HRM participating in “ a program of has been restated to clarify that Heritage Gas shall retain ownership of any “topographic surveys and base mapping drawings prepared by Heritage Gas” other than the data included with record drawings.
 - ▶ The Locate Requirement Clause of the MOAA has been modified to include a section which states that HRM will proactively promote Call Before You Dig and excavation safety within municipal departments and third parties working in the street.
 - ▶ The Relocations Clause was modified to allow for 120 days to respond to a notice for relocation of infrastructure. In addition, HRM and Heritage Gas agreed that it was prudent to remove any reference to the Municipality “taking measures... with respect to the Gas Distribution System”.
 - ▶ A “Telecommunication Conduits” clause has been added to explore the potential value of the Municipality installing telecommunications conduits in a common trench with gas mains. Heritage Gas and HRM agree to undertake a demonstration project within two years of the signing of the Agreement, the objective of which will be to “establish design standards, technical and construction parameters, capital costs and financial feasibility” of a municipally owned buried conduit system.
 - ▶ The Liability Clause, Clause 17 was modified to define HRM gross negligence to include neglecting “to request locate information as required by the Regulations made pursuant to the Pipeline Act.
 - ▶ A new Clause titled “Agreement Interpretation” was added to provide for an interpretation resolution procedure, which was agreed shall be “through arbitration pursuant to the terms of the Commercial Arbitration Act”.

BUDGET IMPLICATIONS

The Street and Services Permit Fee schedule shall replace the existing recovery of HRM administration, Engineering and Inspection costs which have been charged directly to Heritage Gas quarterly. The quarterly costs reflect actual hours charged to permit applications. Therefore, there is a direct co-relation to the level of capital program Heritage Gas undertakes annually, and the complexity of projects.

The new fee schedule reflects anticipated changes to the Streets By-law, which reflect full cost recovery for services provided by the Municipality. Staff's belief is that the new fee schedule is cost neutral. It is anticipated that there will be an increase in revenue in 2010 due to an increased scope of work.

The MOAA fee schedule reflects anticipated additional Street and Services fee changes which will capture administration, engineering and inspection cost recovery. If applied to the fee schedule to past years, there would be, on average, about a 10% reduction in fees collected. However, with anticipated expanded application of fees to include Halifax Water and other utilities operating in the Municipal right of way, we now expect to fully recover all associated costs.

On average the recoveries from Heritage Gas since 2006 have been approximately \$156,000 per year.

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

There are no recommended alternatives.

ATTACHMENTS

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1. Appendix A - Heritage Gas/Halifax Regional Municipality Municipal Operating Access Agreement
 2. Appendix B - Letters of MOAA Extension

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

Report Prepared by: Angus Doyle, P.Eng., Manager, Utilities Coordination, 490-5019

Report Approved by:



Taso Koutroulakis, P.Eng., A/Manager, Traffic & Right of Way, 490-4816

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Cathie O'Toole, CGA, Director of Finance, 490-6308

Report Approved by:



Ken Reashor, P.Eng., A/Director, Transportation and Public Works, 490-4855

Appendix A

THIS MUNICIPAL OPERATING ACCESS AGREEMENT made this _____ day of April, 2010.

BETWEEN:

HALIFAX REGIONAL MUNICIPALITY

(hereinafter called the "Municipality")

-and-

HERITAGE GAS LIMITED

(hereinafter called "Heritage")

**APPROVED
AS TO FORM**


Municipal Solicitor

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

AND WHEREAS the Halifax Regional Municipality Council approved on April , 2010 the terms and conditions of this Municipal Operating Access Agreement for the period January 1, 2010 to December 31, 2012.

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

Definitions

1. In this Agreement,
 - (1) "Engineer" means the Engineer of the Halifax Regional Municipality and includes a person acting under the supervision and direction of the Engineer;
 - (2) "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;

- (3) "Municipality" means the Halifax Regional Municipality;
- (4) "Municipal Design Guidelines" 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;
- (5) "NSUARB" means the Nova Scotia Utility and Review Board;
- (6) "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;
- (7) "Municipal Gas Engineering Team" refers to the HRM staff who has the responsibility for the review, inspection and approval of Heritage's construction projects within the Street and comprises, according to need, the Engineer, inspector(s) and engineering assistant(s).

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 and standards including CSA Code Z662, Pipeline Regulations (Nova Scotia), and the Halifax Regional Municipality Streets By-Law S-300, as amended from time to time. To the best of its ability, the Municipality shall endeavour to notify Heritage well in advance of any proposed municipal law changes that have the affect of amending this Agreement, and to facilitate consultations between Heritage and the Municipality regarding the contents of such municipal law changes.
- (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.
- (5) By exception, under unique circumstances, Heritage may apply for access to designated municipal Parkland for natural gas infrastructure location. The Municipality, at its sole discretion, reserves the right to refuse Heritage access to municipal Parkland or to set conditions under which access shall be granted on a case by case basis.

- (6) The intent of this Agreement and the guiding principle under which future decisions will be made is that Heritage's obligations under this Agreement shall not be more onerous than those of other utilities having access to or occupation of the HRM Street.

Term of Agreement

3. (1) This Municipal Operating Access Agreement shall be for a period of three (3) years (the "Term") commencing on January 1, 2010 until December 31, 2012, 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) The parties agree to a one time, mutually agreed option to extend the Term for two (2) additional years to December 31, 2014, upon written notification from either party. Notification shall be provided no later than December 31, 2011."
- (3) 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 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 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.

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 to 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. Heritage will have sole discretion to determine the extent and scope of joint Municipality/Heritage capital projects.
- (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, which approval shall not be unreasonably withheld. The location and installation of the Gas Distribution System shall be in accordance with the Municipal Design Guidelines, and consistent with Heritage's Natural Gas Design and Construction Guideline referred to in ss.6(6), as well as applicable Canadian gas codes including CSA Z662 as amended from time to time.
- (2) The Municipality generally intends to base its approvals on the Municipality's design guidelines, which form part of its Municipal Design Guidelines, as amended from time to time in consultation with Heritage and others. These guidelines shall be 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 proposed on a Street, the moratorium provisions of the Municipality's Streets By-Law S-300 as amended from time to time shall apply.
- (5) Exceptions to the moratorium referenced in ss.6(4) above shall include:
 - (a) Access to Street for emergency repair/maintenance as authorized by the annual utility permit issued under Street By-Law S-300;
 - (b) The Engineer, on a case by case basis, will review other requests, which could include a new development or a no-heat situation.
- (6) The Municipality shall assist Heritage in developing a Natural Gas Design and Construction Guideline consolidating the provisions that govern the installation of the Gas Distribution System, including specific criteria, clearances and restoration standards. The Municipality shall facilitate discussions between Heritage, HRM departments, and affected utilities to establish clear achievable guidelines.

Permits

7. (1) In accordance with the Municipality's Streets By-Law 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) Heritage agrees to pay the Municipality the cost of permit fees in accordance with Schedule 'A' which shall apply until such time that the Municipality amends Streets By-Law S-300.
- (3) Notwithstanding the generality of subsection (1) and notwithstanding any other provision herein, a Pavement Impact Charge as required by the Municipality's Streets By-Law will apply to work covered by this Agreement. It is agreed that these funds collected from the Pavement Impact Charge shall be exclusively used on streets where natural gas distribution lines have been installed.

- (4) 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.
- (5) With respect to construction scheduling, the Municipality will require Heritage or its contractor to minimize potential traffic and related disruptions. To the fullest practicable extent, construction shall be coordinated with the Municipality's capital budget projects.
- (6) Service connections shall not require a separate Streets and Services Permit if they are installed as part of the initial construction of the Gas Distribution System on a Street and if the services are shown on the approved engineering drawings.
- (7) The Municipality's service delivery objectives shall meet those defined in the Municipality's 'Business Process Map' when adopted by the Joint Project Planning Committee. The Municipality and Heritage shall adhere to the fullest practical extent to the response times set for those steps of the process that are within their respective control.
- (8) 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 performances security.
- (9) The Municipality and Heritage shall work together to establish a relationship that is based on honesty, openness and willingness, and shall commit to shared service delivery values such as timeliness, courteousness, and staff knowledge and competence.
- (10) The Municipality and Heritage shall work together to identify and, where possible, implement cost sharing/savings opportunities, with a view to optimizing opportunities to develop a cost effective natural gas distribution system with minimal transfer of cost between the parties. When evaluating alternatives that have been proposed by Heritage and are deemed equally acceptable from a technical standpoint by the Municipality, the Municipality shall take into account the cost to Heritage as one of the factors to be considered in the granting of its approvals.

Damage to Municipal Property

8. (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. After expiry of the warranty period, pavement impacts resulting from the initial installation of the gas distribution system shall be repaired from funds secured by the Pavement Impact Charge and/or the future settlement maintenance fee.

- (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 Tree By-Law, T-600 and Streets By-Law, S-300, as amended from time to time. The Gas Distribution System is to be designed on the premises 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) Where the installation of Heritage Gas infrastructure in the HRM right of way may impact a private tree, this private tree shall be considered in a similar manner as a Municipality owned tree, unless the property owner provides written permission. This is subject to change if regulatory changes relating to Municipal management rights, specifically associated with trees on private property, are enacted.
- (4) 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 such damage or replace such trees under the direction and to the satisfaction of the Engineer. The Municipality and Heritage agree that compensation for damage to trees is appropriately addressed under this Agreement and that the preparation of individual estimates of tree value as a condition of a Streets and Services permit shall only be required by exception.

Emergency Response

9. (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 Management gas response program.
- (2) Heritage shall provide annually a copy of its Emergency Management program to the Municipality's Emergency Management representative. The Municipality shall indicate if any review is required and appropriate representatives of the Municipality and Heritage shall be made available for discussion.

Record Drawings and GIS

10. (1) As specified in the Municipality's Municipal Design Guidelines, and excepting new developments and joint projects that are conducted under the Municipality's or another utility's direction, Heritage shall provide, at its expense, to the Municipality record drawings of the Gas Distribution System on a project by project basis in

hard copy form and in an electronic format within three (3) months of completing the installation.

- (2) For new developments, Heritage uses the developer's base drawings for its design plans and shall not be responsible for the preparation of record drawings other than for the gas line itself.
- (3) Both parties are aware that the steel pipelines constructed by Heritage Gas are located in xyz Geographic coordinate system using total station surveying equipment and/or Global Positioning System, whereas PE mains are located only in xy coordinates by measuring offsets from above-ground landmarks.
- (4) For greater clarity, the Municipality agrees that any topographic surveys and base mapping drawings prepared by Heritage, other than the information included in the record drawings referred to in s.10 (1) above, shall remain the property of Heritage and shall not be used by the Municipality or any third party without the express written consent of Heritage.
- (5) 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

11. (1) The Municipality shall request line locates for all municipal projects that require excavation, included but not limited to sign installation, traffic loop modifications, tree planting, and any other projects undertaken by the Municipality.
- (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.
- (3) The Municipality shall, at no cost to Heritage, take an active role in promoting Call Before You Dig and excavation safety both within municipal departments and to third parties working in the Street.

Utility Coordinating Committee

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

Relocations

13. (1) Upon receipt of one hundred and twenty (120) days notice from the Municipality, Heritage 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 the municipal purposes or at law.

- (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 as 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 Concerning Condition of Streets

14. 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.

Telecommunication Conduits

15. The Municipality and Heritage commit to working together on the potential development of joint trenched telecommunication conduits / natural gas infrastructure in areas immediately surrounding existing no-pole zones within the downtown cores. At the Municipality's discretion and at its own expense, a demonstration project will be undertaken within two years of the signing of the Agreement. The demonstration project's objective will be to establish design standards, technical and construction parameters, capital costs and financial feasibility. Should this demonstration project be successful and have synergies that result in lower costs to Heritage, the Municipality and Heritage will negotiate the terms of an Agreement for continuing development of joint infrastructure.

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 the Gas Distribution System 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) Except for the negligence of Heritage, the Municipality agrees that Heritage is not responsible, either directly or indirectly, for any damage to the Municipality's facilities located on, in or under the Street that may result from the activities of Heritage, its officers, employees, contractors or agents. Heritage assumes responsibility and will reimburse the Municipality for any and all loss or damage caused to the Street due to Heritage's own negligence.
 - (3) Gross negligence as referred to in ss.16(1) shall include situations where the Municipality neglects to request locate information as required by the Regulations made pursuant to the Pipeline Act.

- (4) Notwithstanding subsections (1) and (2), Heritage and the Municipality are not liable one to the other either on the basis of gross negligence or on any other basis for any consequential or economic losses due to the actions of the other party, its agents or employees working in, under, over, along, upon or across the Street and roads or other the owned or occupied property of the Municipality or to the Gas Distribution System.

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 anytime 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 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 Agreement.
- (2) 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 person against Heritage on any such claim, demand or cause of action, and will pay 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 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 form 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, and 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.

Agreement Interpretation

22. Subject to the right of either party to apply to the Nova Scotia Utility and Review Board for the resolution of disputes arising under this Agreement, the Municipality and Heritage agree that any disputes concerning the interpretation or application of this Agreement shall be resolved through arbitration pursuant to the terms of the Commercial Arbitration Act, Stats. N.S. 1999, c.5.

Termination

23. 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

24. 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 Municipality Government Act, S.N.S. 1998, c.18 apply, such provisions are hereby waived.

Notices

25. 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, NS B2Y 4W3
Attention: Ray Ritcey, President
Fax: (902) 466-2140

Entire Agreement

26. 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

27. This Agreement benefits and binds the Municipality and Heritage, their assigns and the successors of each of them.

Waiver

28. (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.
- (2) 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.

Unenforceability

29. 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

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

Interpretation

31. 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

32. 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

 Peter Kelly, Mayor

 Cathy Mellett, Acting Municipal Clerk

HERITAGE GAS LIMITED

Per: _____
 Ray Ritcey, President

Schedule "A"

HRM Permit Fees

	Permit Type	HRM Complexity Level	Fee
1.	Service Laterals	Level 2	\$200.00
2.	PE Mains	Level 3	\$700.00
3.	EP Mains	Level 3	\$700.00

Notes:

Level 2 Complexity provides for an allowance for review and processing of the application, a site visit before the application can be processed, plus two visits by the Street inspector.

Level 3 Complexity could require several hours of consultation and review by the Engineering Assistant, involvement by the Right of Way Engineer, as well as a series of site inspections.

Level 4 Complexity is the highest complexity, and shall include significant engineering and inspection time. Permit applications of this complexity shall require full cost recovery of HRM staff time.

Clarification:

- If a single individual Street and Services Permit is issued for a pipeline project where the permitted length exceeds 500 metres, it shall be processed as a Level 4 Complexity permit unless HRM and Heritage can find a way of reducing permit length.
- If a single individual Street and Services Permit is issued for a pipeline project where the permitted length is equal to, or less than 20 metres, it shall be processed as a level 2 Complexity permit.

Permit costs reflect 2010 hourly salary and mileage rates, and shall be adjusted from time to time to reflect changes to actual costs. Permit fee changes shall be consistent with, and shall not exceed those set in By-law S-300 except for level 4 complexity projects.



December 14, 2009

Mr. Dan English
Chief Administrative Officer
Halifax Regional Municipality
PO Box 1749
Halifax, NS B3J 3A5

P.O. Box 1020
88 Alderney Drive – 3rd Floor
Ferry Terminal Building
Dartmouth, Nova Scotia B2Y 4W3
Tel: (902) 466-2019
Fax: (902) 466-2140
ritcey@heritagegas.com
www.heritagegas.com

**Call Before You Dig
1-866-313-3030**

Dear Mr. English:

Re: Natural Gas Distribution System – Extension of Municipal Operating Access Agreement

The Halifax Regional Municipality (HRM) and Heritage Gas Limited (HGL) entered into a Municipal Operating Access Agreement (MOAA) on June 9, 2005. This agreement expires at the end of 2009. The purpose of this letter is to extend the period to renew, retroactive to January 1, 2010, to February 28, 2010.

Both parties have been working diligently to finalize revisions to the MOAA. It is acknowledged that while good progress has been made and a majority of issues successfully addressed, there remain a few outstanding issues, largely in terms of the exchange of costs between HGL and HRM.

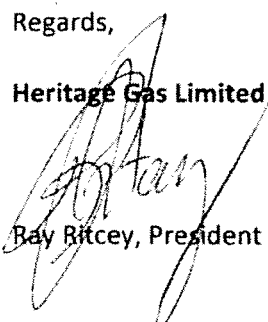
Both parties believe that a two-month extension of the MOAA will be required to address these outstanding issues and allow for the review and approval of the MOAA through the respective governance approval processes. Accordingly HRM and HGL agree to maintain the existing MOAA in place until the end of February, 2010. Both parties further agree that the monetary provisions of the new MOAA will be applicable retroactive to January 1, 2010.

Please sign and return the duplicate copy attached.

If you have any questions please do not hesitate to call me at 466-2019.

Regards,

Heritage Gas Limited



Ray Ritcey, President

The content of the above letter has been agreed to by way of the following signature, signed at Halifax, on December, 2009:

Halifax Regional Municipality

Dan English, Chief Administrative Officer

Date



MAR 22 2010

File

P.O. Box 1020
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February 24, 2010

Mr. Dan English
Chief Administrative Officer
Halifax Regional Municipality
PO Box 1749
Halifax, NS B3J 3A5

Call Before You Dig
1-866-313-3030

Dear Mr. English:

Re: Natural Gas Distribution System – Extension of Municipal Operating Access Agreement

The Halifax Regional Municipality (HRM) and Heritage Gas Limited (HGL) entered into a Municipal Operating Access Agreement (MOAA) on June 9, 2005. This agreement expired at the end of 2009 and was extended once to the end of February 2010. The purpose of this letter is to extend the period to renew, retroactive to January 1, 2010, to March 31, 2010.

Both parties have been working diligently to finalize revisions to the MOAA. The text of the MOAA itself is virtually finalized and associated documentation, attachments and schedules, are nearing completion. There remain few outstanding issues, largely in terms of the exchange of costs between HGL and HRM.

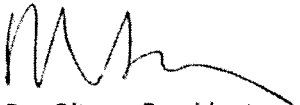
Both parties believe that one-month further extension of the MOAA will be required to address these outstanding issues and allow for the review and approval of the MOAA through the respective governance approval processes. Accordingly HRM and HGL agree to maintain the existing MOAA in place until the end of March, 2010. Both parties further agree that the monetary provisions of the new MOAA will be applicable retroactive to January 1, 2010.

Please sign and return the duplicate copy attached.

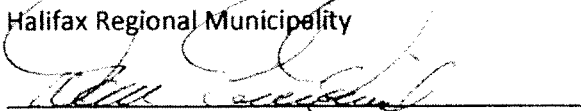
If you have any questions please do not hesitate to call me at 466-2019.


Regards,

Heritage Gas Limited

per 
Ray Ritcey, President

The content of the above letter has been agreed to by way of the following signature, signed at Halifax, on February, 2009.

Halifax Regional Municipality

Dan English, Chief Administrative Officer


Date



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Call Before You Dig
1-866-313-3030

April 9, 2010

Mr. Dan English
Chief Administrative Officer
Halifax Regional Municipality
PO Box 1749
Halifax, NS B3J 3A5

Dear Mr. English:

Re: Natural Gas Distribution System – Extension of Municipal Operating Access Agreement

The Halifax Regional Municipality (HRM) and Heritage Gas Limited (HGL) entered into a Municipal Operating Access Agreement (MOAA) on June 9, 2005. This agreement expired at the end of 2009 and was extended twice to the end of March 2010. Both parties have now reached approval in principle on the terms of the revised MOAA and we hereby request a last extension of the current agreement to April 30, 2010 in order to enable ratification by both parties.

Accordingly HRM and HGL agree to maintain the existing MOAA in place until the end of April, 2010.

Please sign and return the duplicate copy attached.

If you have any questions please do not hesitate to call me at 466-2019.

Regards,

Heritage Gas Limited


Ray Ritcey, President

The content of the above letter has been agreed to by way of the following signature, signed at Halifax, on April, 2009:

Halifax Regional Municipality

Dan English, Chief Administrative Officer

Date _____