




P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Item No. 10.2.1
Halifax Regional Council
November 20, 2012

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original signed _____
 Councillor Dalrymple, Chair, Environment and Sustainability Standing
Committee

DATE: November 8, 2012

SUBJECT: Heritage Gas Municipal Operating Access Agreement Extension

ORIGIN

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

The Environment and Sustainability Standing Committee discussed the possibility of extending this agreement at their meeting on November 1, 2012.

RECOMMENDATION

The Environment and Sustainability Standing Committee recommends to Halifax Regional Council that the existing Municipal Operating Access Agreement with Heritage Gas Ltd. be extended for an additional two years, in accordance with Attachment 1 of the staff report dated October 22, 2012.

BACKGROUND

As outlined in the attached staff report, the Municipal Operating Access Agreement (MOAA) was approved by Regional Council and executed on April 30, 2010. The Agreement has a three year fixed term commencing January 1, 2010 and allows for a one time, two year extension upon written notification "provided no later than December 31, 2011."

DISCUSSION

While the Standing Committee expressed support for continued gas installation in HRM, it identified several examples of installations which caused disruption to businesses and to commuters during the last construction season. In particular, Bayers Road (Halifax), Windmill Road (Dartmouth), and Pleasant Street/Main Road (Eastern Passage) were identified as examples where extended disruption to the right of way was experienced. Staff agreed to provide details respecting the specific examples to clarify whether the utility work was unnecessarily delayed, or did not comply with regulation.

The Standing Committee questioned whether the length of the MOAA extension should be changed in light of the expressed concerns. However, after some discussion, there was no consensus on modifying the recommended 2 year extension. It was agreed that an extension was warranted. Given the tight deadline of December 31, 2012, the Standing Committee, therefore, requested that staff's recommendation be brought to Regional Council as soon as possible.

BUDGET IMPLICATIONS

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

FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN

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

COMMUNITY ENGAGEMENT

The Environment and Sustainability Standing Committee's meetings are open to the public.

ENVIRONMENTAL IMPLICATIONS

None

ALTERNATIVES

That the Agreement be extended for a shorter period.

ATTACHMENTS

Staff report dated October 22, 2012

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: Ted Aubut, Legislative Assistant, 490-6519

Financial Approval by: Greg Keefe, Director of Finance and Information Technology/CFO, 490-6308



P.O. Box 1749
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**Environment & Sustainability Standing Committee
November 1, 2012**

TO: Chair and Members of Environment & Sustainability Standing Committee

SUBMITTED BY: Original Signed
Richard MacLellan, Acting Director, Planning and Infrastructure

DATE: October 22, 2012

SUBJECT: Heritage Gas Municipal Operating Access Agreement Extension

ORIGIN

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

RECOMMENDATION

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

BACKGROUND

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

DISCUSSION

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

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

BUDGET IMPLICATIONS

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

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

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

**AMENDMENT NO. 1 DATED AS OF _____ (THE "EFFECTIVE DATE") TO
THE MUNICIPAL OPERATING ACCESS AGREEMENT DATED AS OF APRIL 30, 2010**

BETWEEN:

HALIFAX REGIONAL MUNICIPALITY

(hereinafter referred to as the "Municipality")

- and -

HERITAGE GAS LIMITED

(hereinafter referred to as "Heritage")

WHEREAS the Municipality and Heritage entered into a Municipal Operating Access Agreement dated April 30, 2010 (the "Agreement") regarding the installation and operation of a Gas Distribution System in the Municipality;

AND WHEREAS the Agreement expires on December 31, 2012 but contains an option for either party to extend the Term of the Agreement for a period of two (2) additional years;

AND WHEREAS the option to extend the Term of the Agreement expired on December 31, 2011 and was not exercised by either party;

AND WHEREAS the parties nevertheless now wish to extend the Term of the Agreement for an additional two (2) years beyond December 31, 2012;

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

1. Section 3(2) of the Agreement shall be deleted and replaced with the following:

"The parties agree to a one time, mutually agreed upon 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, 2012".

2. Pursuant to section 3(2) of the Agreement, as amended, the parties agree to exercise the option to extend the Term of the Agreement for two (2) additional years so that it shall now expire on December 31, 2014.

3. All other terms of the Agreement shall remain the same.

IN WITNESS WHEREOF the parties hereto have executed this Amendment by their duly authorized representatives as of the Effective Date.

SIGNED, SEALED AND DELIVERED
in the presence of:

HERITAGE GAS LIMITED

HALIFAX REGIONAL MUNICIPALITY

Mayor

Municipal Clerk