



P.O. Box 1749  
Halifax, Nova Scotia  
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**Item No. 11.1.14**  
**Halifax Regional Council**  
**June 23, 2015**

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

**SUBMITTED BY:**

Original signed by 

Richard Butts, Chief Administrative Officer

Original Signed by 

Mike Labrecque, Deputy Chief Administrative Officer

**DATE:** June 10, 2015

**SUBJECT:** Heritage Gas Municipal Operating Access Agreement (MOAA)

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#### **ORIGIN**

This report originates as a result of the expiry of the Municipal Operating Access Agreement with Heritage Gas, on the 31<sup>st</sup> day of December 2014.

#### **LEGISLATIVE AUTHORITY**

Pursuant to subsection 9(2) of the Gas Distribution Act, which makes applicable section 78 of the Public Utilities Act, no gas distribution franchise shall, in any city or town, erect or place in, upon, along, under or across any street, road or highway, any pipe, without first obtaining the consent of the council of such city or town.

Subsection 10(c) of By-Law E-200 Respecting Encroachments Upon, Under or Over a Street, provides that Council may enter into an agreement with a gas distribution company which has been approved by the Nova Scotia Utility and Review Board to distribute gas within the municipality permitting the construction and maintenance of an encroachment upon such terms and conditions that Council may deem appropriate.

#### **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 most recent version of the MOAA expired on December 31, 2012. Subsequently, the Municipal Access Agreement was extended an additional two years, expiring on December 31, 2014. At the commencement of the most recent version of the MOAA, Heritage Gas had installed a total of 177 km of natural gas main line. Over the past five years, Heritage Gas has expanded its gas infrastructure to include the Halifax Peninsula, to Fairview, Clayton Park, Bayer's Lake and Bedford (West and South). As of the end of 2014, Heritage Gas total system length has grown to 400 km of natural gas main lines and approximately 4500 service lines connecting customers in the Municipality.

## **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 March 2014, and concluded in April 2015. 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 material differences from the previous MOAA include:

- Numerous amendments and deletions to address ambiguities and redundancies vis-à-vis the previous MOAA.
- The term of this new Agreement has been modified to provide for an initial five (5) year term and providing additional automatic one (1) year terms providing neither party provides a Notice of Termination at least six (6) months prior to the end of the term. Automatic extensions shall be limited to five (5) annual terms. ***This differs from the previous MOAA in that its term was for three (3) years with a provision for an extension of two (2) additional years, providing notice of extension was provided in writing by either party.***
- Heritage Gas agrees to provide training, at no cost to the Municipality in the following areas:
  - Natural Gas awareness for municipal engineers, operations staff and building/street inspectors;
  - Handling of emergency situations relating to the Gas Distribution system for emergency response staff including, but not limited to, EMO, fire fighters, and 911 operators;
  - Safe excavation and construction in the vicinity of the Gas Distribution System for HRM and its contractors.
- ***This Agreement expands Heritage Gas' commitment to providing training to HRM and its contractors.***
- The "Design" Clause has added a section to reflect new subdivision developments within the Served Area of the Municipality. Development Applications will now be reviewed by Heritage Gas where they will assess the benefits of participating in and providing natural gas service for proposed subdivisions. If the utility commits to providing natural gas, the developer will be obligated to incorporate such infrastructure in design drawings.
- **HRM wanted to ensure that access to natural gas in new areas of development within the**

**municipality was supported and encouraged whenever Heritage Gas considers system expansion to be economically feasible.**

- The “Permits” Clause has been modified to:
  - recognize the need for the utility to possess an Annual Permit to access the right of way for emergency and maintenance issues;
  - Eliminate the requirement for a separate Streets and Services permit for gas line laterals which were included with a mains installation but require non pavement excavation to expose the lateral connection for the completion of the customer’s connection;
  - Include HRM service standards for approval of Streets and Services permit applications, including:
    - Ten (10) business day turn around 80% of the time for natural gas mains permit applications; and
    - Five (5) business day turn around for all lateral permit applications.

**The previous MOAA included a provision for developing a “Business Process Map” approach to service delivery objectives. It was agreed that this approach should be replaced with a more defined methodology which includes commitments from both utility and municipality.**

- The “Locates” clause has been modified to require HRM staff and its contractors to have valid Natural Gas locates information and to adhere to Heritage Gas Safe Excavation Practices in the vicinity of the gas distribution system.
- The “Relocation” Clause includes two (2) new sections which deal with street reconstruction and with the permanent closing of municipal streets.
  - Heritage Gas agrees that they shall relocate any portion of their gas distribution system which interferes with municipal street reconstruction, as articulated in Schedule “A” – HRM Street Reconstruction
  - The Municipality will, in the event of the closing of any street or any part of a Street where a gas line has been constructed in accordance with the Agreement, give Heritage reasonable notice of such closing and will provide Heritage with easements over that part of the Street closed sufficient to allow Heritage to preserve any part of the Gas Distribution System in its then existing location or pay Heritage Gas the costs of relocating of the gas line.
- **Heritage Gas had previously agreed to committing to lowering gas lines in the right of way whenever that infrastructure impacted HRM’s road reconstruction. This insures that the Municipality does not incur additional construction costs as a result of working around gas lines. The latest MOAA incorporates this commitment.**
- The Liability and Indemnification clauses have been clarified such that:
  - In no event shall either party be liable to the other, on any basis whatsoever, for any indirect or consequential damages, damages for lost profits or pure economic losses.
  - Save and except for loss or damage caused by the gross negligence of HRM, Heritage indemnifies HRM from any and all losses, claims, charges, damages and expenses which the Municipality may at any time bear, sustain or suffer (including damages to the Streets or the Municipality’s facilities located on, in or under the Streets), 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.
  - HRM indemnifies Heritage only for the gross negligence of HRM.
- 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.

### **FINANCIAL IMPLICATIONS**

There are no financial implications anticipated.

### **COMMUNITY ENGAGEMENT**

Not applicable.

### **ENVIRONMENTAL IMPLICATIONS**

Not applicable.

### **ALTERNATIVES**

Council could decide not to approve the proposed MOAA at this time and direct staff to conduct further negotiations with Heritage Gas.

### **ATTACHMENTS**

Appendix A - Heritage Gas/HRM Municipal Operating Access Agreement

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A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.php> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

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Report Approved by: Bruce Zvaniga, Director Transportation and Public Works, 902.490.4855

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**THIS MUNICIPAL OPERATING ACCESS AGREEMENT** made this \_\_\_\_ day of  
, 2015.

**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 certain Streets within the Municipality which it also maintains;

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

**AND WHEREAS** a Municipal Operating Access Agreement between the parties regarding the installation and operation of a Gas Distribution System in the Streets expired on December 31, 2014 but the terms and conditions of which continue to apply pursuant to Section 3(3) thereof;

**AND WHEREAS** the parties wish to enter into a new Municipal Operating Access Agreement as set out herein.

**THEREFORE**, in consideration of the mutual terms, conditions and covenants contained herein, the parties agree 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, valve box, meter, gauge, regulator, valve, 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 *Halifax Regional Municipality Charter* 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 encroachment license for use of Streets under the jurisdiction of the Municipality 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 and other like structures; 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, the Pipeline Regulations (Nova Scotia), and the Halifax Regional Municipality's Municipal Design Guidelines, 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 materially affect the rights of Heritage under 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 open space or parkland for natural gas infrastructure location, particularly when within shared municipal utility corridors. The Municipality, at its sole discretion, reserves the right to refuse Heritage access to municipal parkland and open space 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 a Street under the jurisdiction of the Municipality.

### **Term of Agreement**

3. (1) This Agreement shall be for a period of five (5) years (the “Term”), commencing on January 1, 2015 and continuing until December 31, 2019, subject to the earlier abandonment by Heritage of its franchise, in which case this Agreement shall automatically terminate on the date of the abandonment except where otherwise provided by this Agreement.
- (2) The Term shall be automatically renewed for additional one-year periods (each a “Renewal Term”), unless either party provides written notice of termination to the other party at least six (6) months prior to the end of the then current Term or Renewal Term. There shall be a maximum of five (5) Renewal Terms.
- (3) Six months prior to the expiry of the fifth Renewal Term (if any), the parties shall enter into negotiations to renew or replace this Agreement upon such terms and conditions as may be agreed upon. In the event that the parties do not agree on the terms and conditions of a renewal or replacement agreement prior to one month before the end of the fifth Renewal Term, the matter shall, on the request of either party, 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), in which case, the terms and conditions of this Agreement shall continue to apply until such time as an order is issued by the NSUARB or the parties otherwise agree upon terms for the renewal or replacement of this Agreement.

### **Training**

4. (1) Heritage, upon request, commits to providing training at no cost to the Municipality with respect to natural gas awareness for appropriate Municipality engineers, operations staff and building/street inspectors relating to the Gas Distribution System.
- (2) Heritage commits to providing training at no cost to the Municipality with respect to the handling of emergency situations relating to the Gas Distribution System. Such training shall be provided to the Municipality’s emergency response staff including, but not limited to: Emergency Measures Office, fire fighters and 911 operators.
- (3) Heritage, upon request, commits to providing training at no cost to the Municipality and its contractors doing work in the Municipality’s Streets, with respect to safe excavation and construction in the vicinity of 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 and the Municipality shall continue to maintain an open dialogue with each other to ensure that each is aware of the other's project plans involving the Streets. At a minimum, Heritage and the Engineer shall meet before October 31<sup>st</sup> of each year, for the purpose of exchanging known or proposed plans of both the Gas Distribution System and the Municipality's capital projects for the following year. Heritage will have sole discretion to determine the extent and scope of its participation in any joint Municipality/Heritage capital projects.
- (2) With respect to construction scheduling, Heritage and its contractors shall minimize potential traffic and related disruptions.

## **Design**

6. (1) The Engineer shall be the sole 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 Technical Specifications, as well as applicable Canadian gas codes including CSA Z662 as amended from time to time.
- (2) Deviations from the Municipal Design Guidelines may be considered by the Engineer on a Street by Street or on any other basis that the Engineer might approve.
- (3) Heritage is responsible to restore Streets on which it cuts the pavement, to the Municipality's standards.
- (4) The moratorium provisions of Section 28(j) of the Municipality's Streets By-Law S-300 as amended from time to time shall apply where a pavement cut is proposed by Heritage on a Street which has recently been resurfaced, reconstructed or received a pavement treatment. The Engineer, in his or her sole discretion, may provide an exception to such moratoriums on a case-by-case basis for emergency repairs, new developments, "no-heat" situations, or any other circumstance that the Engineer deems appropriate.
- (5) Where a proposed installation of the Gas Distribution System conflicts with an existing or proposed installation of other utilities, the Municipality shall, at the request of Heritage, facilitate a discussion between Heritage and such other Utilities.
- (6) 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 Distribution System itself. Heritage shall review the Preliminary Subdivision Application (where applicable) and/or the Concept



Subdivision Application and confirm interest and availability to the Municipality to install a Gas Distribution System in such lands.

Where interest has been confirmed by Heritage, the developer shall include detailed Gas Distribution design on the Final Subdivision Application submission of Engineering Design Drawings, which shall be circulated to Heritage Gas for review and approval of the gas design.

## Permits

7. (1) In accordance with the Municipality's Streets By-Law S-300, Heritage shall obtain the necessary permits for every Street where the Gas Distribution System is proposed to be installed or maintained.
- (2) 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. If, at a later date, laterals that have been installed as part of a previous permit and require ROW access to connect their customer, Heritage will not be required to obtain an additional permit, provided that Heritage holds an annual permit for such Street(s); notifies the Municipality when the work is taking place; and pays the Municipality the required inspection fees set out in the annual permit.
- (3) The Municipality shall provide the following service standard for processing completed Streets and Services permit applications:
  - 10 business day turn-around, 80% of the time, measured on a calendar quarter basis, for all natural gas main permit applications; and
  - 5 business day turnaround, 80% of the time, measured on a calendar quarter basis, for all natural gas lateral applications.

The service standard shall be contingent on:

- Submitted applications reflecting Heritage Gas' anticipated work program, timing and scope;
- A single mains permit being submitted during a given work day;
- Timely review of complex applications with allowance for site visit and feedback; and
- Completed Streets & Services Permit applications being submitted at least 30 business days in advance of commencement of construction.

The sole remedy for non-compliance with respect to the foregoing service standards shall be a review meeting between HRM's DCAO and Heritage's Vice President Engineering, Construction & Operations to discuss the Municipality's Streets and Services permit application review process and resource allocation, to be held within ten (10) days of a written request by Heritage to the Municipality.

## **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 construction or operation 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 or municipal infrastructure 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.
- (2) After expiry of the performance security period set out in Section 24 of the Municipality's Streets By-Law S-300, loss of pavement life or pavement impacts resulting from the initial installation of the Gas Distribution System shall be remediated by the Municipality as specified in the Streets By-Law, S-300.
- (3) 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 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.
- (4) Where the installation of Heritage infrastructure in the HRM right of way may impact a tree on private property, such 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.
- (5) 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 tree(s) in accordance with the Municipality's Tree By-Law, T-600. 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 with in developing the Emergency Management gas response program.
- (2) Heritage shall provide a copy of its Emergency Management program to the Municipality's Emergency Management representative when revisions are completed and an updated document is issued. 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 an electronic format within three (3) months of completing the installation.
- (2) Both parties are aware that the steel pipelines constructed by Heritage 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.
- (3) For greater clarity, the Municipality agrees that any topographic surveys and base mapping drawings prepared by Heritage and disclosed to the Municipality, other than the information included in the record drawings referred to in ss.10 (1) above, shall remain the property of Heritage and shall not be disclosed by the Municipality to any third party without the express written consent of Heritage. The topographic surveys and base mapping drawings prepared by Heritage, shall be used by the Municipality for the sole purpose to update Municipal Street records and for no other purpose whatsoever. Heritage makes no representations or warranties as to the accuracy or completeness of topographic surveys and base mapping drawings, and the Municipality shall have no claim whatsoever against Heritage with respect to, or arising out of, the use of such topographic surveys and base mapping drawings by the Municipality.
- (4) The Municipality shall provide, at the Municipality's expense, to Heritage existing GIS information of the Municipality that may assist in the development of the Gas Distribution System.

### **Locate Requirement**

- 11. (1) The Municipality and its contractors 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. The Municipality shall require staff of the Municipality and contractors engaged by the Municipality to have valid natural gas locate

information at all times, and to adhere to the Heritage safe excavation practices in the vicinity of the Gas Distribution System.

- (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 safe excavation practices both within municipal departments and to third parties working in the Street.
- (4) The Municipality shall provide to Heritage, at the Municipality's expense, existing record information and field locations of underground infrastructure including, but not limited to: traffic loops, street light infrastructure and any other infrastructure owned and operated by the Municipality, that may assist in the development, construction, installation, maintenance and operation of the Gas Distribution System, including and without limiting the generality of the foregoing, any record, data, plans, or information respecting the location and condition of any municipal services or infrastructure located on, in or under the Streets (collectively the "Record Information"). The Municipality makes no representations or warranties as to the accuracy or completeness of Record Information and Heritage shall have no claim whatsoever against the Municipality with respect to, or arising out of, the use of such Record Information by Heritage.

### **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, and shall undertake necessary infrastructure relocation in accordance with By-Law S-300 – Streets Bylaw. For greater clarity, the Municipality shall not request infrastructure relocation to accommodate tree planting.
  - (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.
- (4) Relocation of a portion of the Gas Distribution System which interferes with Municipal Street reconstruction shall be confirmed and implemented in accordance with Schedule "A – HRM Street Reconstruction".
- (5) The Municipality will, in the event of the closing of any Street or any part of a Street where a gas line has been constructed in accordance with this Agreement, give Heritage reasonable notice of such closing and will provide Heritage with easements over that part of the Street closed sufficient to allow Heritage to preserve any part of the Gas Distribution System in its then existing location or pay Heritage the costs of relocating of the gas line.

#### **Warranty Concerning Condition of Streets**

14. The Municipality makes 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 use the Streets on an "as is" basis.

#### **Limitation of Liability**

15. (1) In no event shall either party be liable to the other, on any basis whatsoever, for any indirect, incidental or consequential damages, damages for lost profits, or pure economic losses.

#### **Indemnification**

16. (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 (including damages to the Streets or the Municipality's facilities located on, in or under the Streets), 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 (including any damages to the Gas Distribution System), 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 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 Agreement.

## **Insurance**

17. Heritage confirms that it has and shall maintain insurance in sufficient amount and description (no less than those required by the NSUARB) 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 the 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. Heritage shall add the Municipality as Additional Insured under such policies of insurance.

## **Abandonment or Discontinued Use of Pipeline Infrastructure**

18. In the event that Heritage abandons underground infrastructure in the Streets, it shall do so in compliance with HRM's Abandonment of Underground Infrastructure Policy (Schedule "B"), but subject always to any overriding direction or order of the NSUARB.

## **Assignment**

19. This Agreement may be transferred or assigned by either with the approval of the NSUARB and with the consent of the other party, which consent shall not be unreasonably withheld.

## **Breach**

20. 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**

21. Subject to the right of either party to apply to the NSUARB 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, S.N.S. 1999, c.5.

### **Effect of Termination**

22. Subject to the approval of the NSUARB, if this Agreement is terminated by the Municipality for reasons outlined in section 20, 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 by Heritage, and this agreement may be disclosed to the public in its entirety.

### **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: Director, Transportation & Public Works  
   Fax: (902) 490-6904

Heritage:                                      Heritage Gas Limited  
   200 – 238 Brownlow Avenue  
   Dartmouth, NS B3B 1Y2  
   Attention: Vice President of Engineering, Construction  
   and Operations  
   Fax: (902) 466-2140



### **Entire Agreement**

25. This Agreement is the entire agreement between the Municipality and Heritage regarding the subject matter 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 permitted 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.
- (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**

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.

## Choice 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 therein.

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

)

)     **HALIFAX REGIONAL MUNICIPALITY**

)  
\_\_\_\_\_  
) Mike Savage, Mayor  
  
)  
\_\_\_\_\_  
) Cathy Mellett, Municipal Clerk  
  
)

)     **HERITAGE GAS LIMITED**

) Per: \_\_\_\_\_  
) Chris Smith, President  
  
)  
Per: \_\_\_\_\_  
) John Hawkins, Vice-President,  
) Engineering, Construction & Operations  
)

## **HRM/Heritage Municipal Operating Access Agreement**

### **Schedule “A” HRM Street Reconstruction**

<b>Steps</b>	<b>Description</b>	<b>Responsibility</b>	<b>Comments</b>
Step 1	Street reconstruction project is identified by HRM in Q4 of the previous year	HRM	Part of normal coordination process
Step 2	In Q4 Heritage Gas undertakes a hydrovac survey to confirm pipeline depth and accurately locate service tees	Heritage Gas	HRM to provide Streets & Services permits (not subject to Permit Fee or Pavement Impact Charge)
Step 3	HRM and Heritage Gas evaluate the specific project against several parameters (e.g., class of street, type of existing soils, depth of reconstruction, depth to gas line and tees, presence of bedrock) and jointly determine if lowering the gas facilities is a requirement for the project (partial or full)	HRM / Heritage Gas	It is expected that full gas line lowering would not be required for all projects – HRM / Heritage Gas would determine where it is appropriate for Heritage Gas to lower the following components of the gas system: <ul style="list-style-type: none"> <li>• Service laterals</li> <li>• Main pipeline</li> </ul>
Step 4	If the gas line requires to be lowered, Heritage Gas schedules the work in conjunction with the street reconstruction project	Heritage Gas	Heritage Gas to coordinate with HRM to ensure work is timed in the most cost effective manner for both parties (e.g., minimizing excavation and backfill costs, avoiding the cost of temporary surface restoration and not delaying HRM’s contractor)
Step 5	If the gas line <u>does not</u> require to be lowered, then HRM proceeds with the street reconstruction project in accordance with its own specifications and the Heritage Gas Safe Working Procedure	HRM	Heritage Gas assists HRM and its contractor, and provides inspection services as required to facilitate the contractor’s work
Step 6	Contractor requests locates	Contractor	Heritage Gas locates pipelines and services
Step 7	HRM’s contractor removes asphalt and granular material down to 300 mm below street surface and requests re-locates	Contractor	Mechanical excavation allowed (unless by exception under site specific conditions)  Heritage Gas re-locates pipelines and services on partially excavated street
Step 8	HRM’s contractor completes the street excavation while maintaining existing materials in place above pipelines and services as described in the Safe Working Procedure	Contractor	Contractor is not allowed to excavate any closer than 300 mm above the pipeline – no hand excavation is required by the HRM contractor because Heritage Gas has already located the infrastructure – Heritage Gas will assist contractor in maintaining 1.0 ft of cover over top of gas main
Step 9	HRM’s contractor places and compacts granular materials in accordance with HRM specifications except above pipelines and services, as described in the Safe Working Procedure	Contractor	
Step 10	HRM’s contractor carries out compaction testing	Contractor	Heritage Gas is prepared to pay for compaction testing above gas line if required to confirm compaction
Step 11	HRM’s contractor completes the street reconstruction in accordance with HRM’s specifications	Contractor	Presence of gas line not a constraint once the backfill is completed
Step 12	Specific steps for working under curbs and sidewalks	HRM / Heritage Gas	Where curbs and sidewalks replacement are part of the street reconstruction project, the process would restart at Step 2 and specific steps identified (would vary from street to street in accordance with site specific conditions)



PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

## **Municipal Operating Access Agreement** **Schedule B**

### **Abandonment of Underground Infrastructure Policy**

**Effective: June 12, 2009**  
**Updated: January 1, 2015**

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**Definition:** The following policy shall be followed when designing and reviewing requests to abandon underground infrastructure.

**Application:** Halifax Regional Municipality designs and reviews projects which may require the abandonment of existing underground infrastructure. The purpose of this policy is to establish a set of guidelines to consider when underground infrastructure located within the public right-of-way is to be abandoned.

**Exclusions:** This policy does not apply to underground infrastructure that is located on private property.

**Procedure:** The following shall be adhered to when considering the decision to abandon underground infrastructure:

- Underground infrastructure generally consists of pipes carrying gas or liquids (watermains, water laterals, sewer mains, sewer laterals, natural gas lines, natural gas laterals) and communication conduits, power conduits, etc.
- Underground infrastructure which will be abandoned shall be removed; however, exceptions will be permitted as approved by the Municipal Engineer. Acceptable exceptions may generally consist of the following:
  - Removing the abandoned underground infrastructure will require a street with a high surface distress index to be excavated.
  - Where, in the opinion of the Municipal Engineer, the underground infrastructure is stable and its removal will result in excessive disruption.
  - The abandoned underground infrastructure has a high potential for re-use.
- If HRM permits the underground infrastructure to remain, the following shall govern. The owner of the abandoned underground infrastructure shall:
  - Maintain ownership.
  - Provide record drawings to HRM standards within a timely manner for the abandoned underground infrastructure.

- Inspect the abandoned underground infrastructure on a regular basis for structural capacity and make any required repairs in a timely manner.
- Remove/relocate any abandoned underground infrastructure without any unnecessary delay and at the owner's expense where it interferes with any works or undertakings of HRM (as per By-Law S-300 By-Law Respecting Streets).

Original Signed

David Hubley, P. Eng., Manager  
Project Planning and Design

March 3, 2015  
Date:

Original Signed

Bruce Zvaniga  
Director, Transportation & Public Works

June 16, 2015  
Date: