



CITY OF VANCOUVER

ADMINISTRATIVE REPORT

Date: May 31, 2005
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TO: Vancouver City Council

FROM: General Manager of Engineering Services

SUBJECT: Interim City-wide Municipal Access Agreement - TeraSpan Networks Inc.

RECOMMENDATION

- A. THAT the General Manager of Engineering Services and Director of Legal Services be authorized to conclude negotiations, and execute and deliver a legal agreement with TeraSpan Networks Inc. to permit it to extend its telecommunications network in City streets in locations approved by the City, on terms and conditions generally as described in this report, and such other terms and conditions satisfactory to the General Manager of Engineering Services and Director of Legal Services.

- B. THAT no legal rights or obligations will arise or be created by Council's adoption of Recommendation A unless and until all legal documentation has been executed and delivered by the respective parties.

GENERAL MANAGER'S COMMENTS

The General Manager of Engineering Services RECOMMENDS approval of A and B.

COUNCIL POLICY

Where Council's pre-existing standing authority for the execution of contracts by City staff is not applicable, specific Council authorization is required.

PURPOSE

This report seeks Council approval for staff to negotiate and execute an agreement with TeraSpan Networks Inc. to allow them to build additions to their telecommunications system within the City of Vancouver by renewing their expired City-wide Municipal Access Agreement (MAA).

BACKGROUND

TeraSpan Networks Inc. (TeraSpan) is a relatively small, competitive telecommunications company operating in the Vancouver and Victoria areas. The City of Vancouver first entered into a Municipal Access Agreement with TeraSpan in August of 2000, which was extended in December 2000 and again in May 2001. This last renewal, like many of the MAAs, has expired, triggered by a CRTC ruling.

TeraSpan uses non-standard technology. Rather than digging two feet beneath the surface and installing ductwork through which fibre is pulled, their technology places the fibre-optic cables directly into a shallow saw-cut in the pavement/sidewalk. This technique has many advantages, particularly in minimizing both the damage to the pavement and disruption to traffic and pedestrians. Conversely, there are some detrimental effects with having the fibre close to the surface where it is in jeopardy of being damaged by work crews performing street maintenance etc. To mitigate this, our MAA includes language releasing the City from liability for damage to TeraSpan facilities.

The regulatory system by which the City allowed telecommunication companies access to the City streets changed significantly following a ruling by the CRTC in 2001 (the "CRTC Decision").

Vancouver and the Federation of Canadian Municipalities appealed the decision to the Federal Court of Appeal, where the CRTC Decision was upheld. Subsequently, leave to appeal to the Supreme Court of Canada was sought but not granted.

A number of other CRTC decisions have eroded the ability of municipal governments to administer publicly-owned lands and the Federation of Canadian Municipalities, the City of Vancouver and other municipalities are presently involved in litigation with the telecom companies with respect to these decisions.

The FCM is preparing a submission to Industry Canada requesting amendments to the Telecommunications Act to more fairly represent the municipal interests.

City of Vancouver staff are currently considering recommending that Council consider a utility bylaw to regulate all utilities in City streets.

In the meantime, it is still necessary for the City to grant access to the companies to City streets in a timely manner. Until City Council approves a long term policy for access to City streets by utility companies, interim agreements are sought, either for specific locations, as and when required, or on a City wide basis as is recommended in this case.

DISCUSSION

As TeraSpan continues to operate its existing telecom network in the City and now wishes to build certain telecom works within City streets for a new customer, the City requires that TeraSpan have in interim MAA with the City.

Given the non-standard technology used by this company, the form of interim agreement recommended is a renewal of the now expired MAA with minor modification to reflect the current environment. Many of the terms of this interim MAA would be substantially the same as interim MAAs that have been signed with a number of telecom companies, which include the following terms:

- City to approve the location and design of installations as it affects other utilities
- TeraSpan to pay City costs for inspection, lost parking meter revenue, traffic signing and pavement/sidewalk repairs to City requirements
- TeraSpan to provide as-built information for their new facilities
- TeraSpan to indemnify the City to the satisfaction of the Director of Legal Services
- Agreement may be terminated by either party on 180 days notice

Additional terms for TeraSpan, needed due to their non-standard technology and to update their existing agreement, include:

- The City is not liable for damage to TeraSpan equipment
- Obligation to pay annual fees contained in the earlier agreement is removed due to CRTC Decision

FINANCIAL IMPLICATIONS

There are no financial implications.

CONCLUSION

Staff recommends that Council authorize the City to enter into a City wide interim MAA with TeraSpan Networks Inc. for expansions to their telecommunications network in various locations, as generally described in this report.

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