



CITY OF VANCOUVER

ADMINISTRATIVE REPORT

Report Date: September 15, 2008
Contact: Peter Judd
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VanRIMS No.: 08-2000-20
Meeting Date: September 30, 2008

TO: Vancouver City Council

FROM: General Manager of Engineering Services

SUBJECT: Municipal Access Agreement with Novus Entertainment Inc. for the use of Surface Inlaid Fibre Optic Cable

RECOMMENDATION

- A. THAT the General Manager of Engineering Services and the Director of Legal Services be authorized to conclude negotiations, and execute and deliver a Municipal Access Agreement with Novus Entertainment Inc., to permit Novus to install and use surface inlaid fibre optic cable in City streets, as set out in this report, and such other terms and conditions satisfactory to the General Manager of Engineering Services and the 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's approval to enter into a Municipal Access Agreement (MAA) with Novus Entertainment Inc. ("Novus"), to permit Novus to install and use surface inlaid fibre optic cable on terms generally as described in this report.

BACKGROUND

On April 17, 2007, Council authorized entering into legal arrangements with Novus to facilitate their construction of telecommunications facilities in the City streets pending the enactment of the proposed Street Utilities By-Law. This by-law is, in turn, waiting on a decision of the CRTC on a number of issues raised by one of the other telecommunications companies, which is expected around year end.

To date, Novus have been building their facilities using “conventional” trench and duct construction and complying with the City of Vancouver technical specifications.

They are now seeking permission to use another technology, termed “Surface Inlaid Fibre” (“SIF”), where a small diameter fibre optic cable and micro-duct is inserted into a slot sawcut into the pavement/sidewalk, rather than having a complete underground duct system installed two feet below grade.

The advantages of using this technology, in preference to the conventional construction are:

- Less disruption during construction
- Significantly less costly to install
- Less pavement degradation damage

However, there are also some significant disadvantages, including:

- Vulnerability to damage due to adjacent construction activity, particularly if the pavement containing the SIF needs to be removed to get access to the utilities below
- Relatively fragile to damage

The technology was first approved by the City for one company to undertake a pilot project in the Gastown area, where it had the specific advantage of providing connectivity without necessitating tearing up the specialty pavements of that area. Since then, SIF has been used exclusively by the one company and has expanded at a modest rate in many areas, including those without specialty paving.

In recognition of the relative vulnerability to damage by City forces conducting our normal maintenance and construction activity on the streets, the MAA for the use of SIF has included language that relieves the City from any liability from damage to SIF equipment. There have been several incidents where such damage has occurred.

DISCUSSION

While the use of this technology has been slow to expand, concerns have been raised by other utility companies having to work around the SIF. While our existing agreement has protected the City, no such protection has been extended to other utilities. The concern has been expressed by BC Hydro and Terasen Gas, both with extensive underground utility networks and that must commonly work around and under SIF installations.

Our concern stems from the role of the municipality as owner of the street right of way and our need to manage its use for the benefit of all the stakeholders. In this case, concern has been raised about the relationship between the companies utilizing SIF and the other underground utilities. While the benefits of this lower cost system will accrue to the

companies utilizing SIF, some of the extra costs or contingent costs will accrue to the other utility companies that must utilize City streets.

To deal with this imbalance in benefits and costs, we have looked at two options.

The first is to stop permitting the use of SIF. While this might result in the least conflict between surface and underground utilities, we believe that the benefits of lower cost and lower disruption are worth attempting to preserve the method.

The second option involves adding additional conditions on the use of SIF to guide the relationship between a company using SIF and other utilities. This would be accomplished by requiring the company installing SIF to enter into a Municipal Access Agreement (“MAA”) specifically for the use of SIF. The company installing SIF would be exempted from the proposed Street Utilities By-law, once enacted, with respect only to the subject matter of the MAA, the installation and use of SIF.

The MAA would include the following:

- provisions to protect the City from any cost or liability due to the presence of SIF;
- a provision allowing cancellation of the MAA by either party on giving 180 days notice of cancellation;
- provisions protecting underground utilities who must work around SIF, by providing that if an underground utility gives adequate notice, which we have defined as three working days, the company installing SIF would protect, move or remove their fibre or live with the consequences of damage. Novus, BC Hydro and Terasen Gas are agreeable to this provision that protects underground utilities;
- the appropriate fees for cost recovery expected to be applied to all telecommunications companies with enactment of the Street Utilities By-Law (unless the company is exempted from such by-law because it has entered into an MAA with the City), plus the usual administrative requirements such as submission and approval of plan and as-built drawings. The fees would initially be:
 - “Plan Review and Administration Fee”: \$500 for a proposed length of 20m or shorter, \$1500 for a proposed length of greater than 20m; together with a fee of \$10 per metre;
 - “Inspection Fee”: \$65 per block under construction per day;
 - there would be no pavement degradation fees since the City specifications for SIF are designed to minimize such degradation to the point where the fee is inappropriate; and
 - the fees would be adjusted annually, such adjustment to be the then applicable fees and charges set out in the Street Utilities By-law.

While staff is recommending this arrangement only for Novus at this time, we expect to use this as a template for discussions with other companies seeking to use SIF, including the one company with an existing MAA with the City for the installation and use of SIF.

FINANCIAL IMPLICATIONS

There are no significant financial implications.

CONCLUSION

Staff recommends that Council approve entering into a Municipal Access Agreement with Novus Entertainment Inc. to permit them to install and use Surface Inlaid Fibre optic cable in the City streets.

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