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CITY OF VANCOUVER

ADMINISTRATIVE REPORT

Report Date: January 20, 2009
Contact: Peter Judd
Contact No.: 604.873.7303
RTS No.: 07854
VanRIMS No.: 08-2000-20
Meeting Date: February 3, 2009

TO: Vancouver City Council

FROM: General Manager of Engineering Services

SUBJECT: Municipal Access Arrangements for A2B Fibre Inc. for the Installation of Telecommunications Equipment in Streets

RECOMMENDATION

A. THAT the General Manager of Engineering Services and the Director of Legal Services be authorized to conclude negotiations and execute and deliver interim legal arrangements with A2B Fibre Inc., to permit the company to install and operate a telecommunications network under City streets by installing ducts in various new locations, 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 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 A2B Fibre Inc., to permit the company 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.

C. THAT no legal rights or obligations will arise or be created by Council's adoption of Recommendation A or B 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, B and C.

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 arrangements with A2B Fibre Inc. ("A2B"), to permit A2B to build and operate a telecommunications network in the streets of Vancouver. They propose to utilize two types of installation, each requiring different legal arrangements: conventional trench and duct construction to be secured by interim letter agreements pending enactment of the proposed Street Utilities By-law, and surface inlaid fibre technology secured by a Municipal Access Agreement ("MAA").

BACKGROUND

On September 26, 2006, City Council reviewed the initial draft of the "Street Utilities By-law", intended to regulate all utilities in City streets, and authorized its circulation to the various utilities for their information and comment. This was done and a number of suggested changes will be brought forward to Council as outlined below.

Referral of the revised draft By-law to Council for its consideration has been postponed pending the outcome of a significant legal proceeding commenced by MTS Allstream Inc. against the City which is currently before the Canadian Radio-television and Telecommunications Commission ("CRTC"). The decision in this proceeding will determine the terms and conditions (including the fees payable to the City) which the CRTC will impose on federally regulated telecommunications companies who apply to the CRTC for access to City streets for the purpose of constructing their facilities. It is anticipated that the decision of the CRTC will be rendered in the near future, and the decision can be taken into account when Council considers the terms and conditions that the City will impose on utilities under the proposed By-law.

In the meantime, it is still necessary for the City to grant access to the telecommunications companies to City streets in a timely manner. To date, we have been doing this by letter agreements and Council has authorized such arrangements with several of the telecom providers, starting with Shaw Communications in July 2006.

Additionally, while most telecom companies are utilizing conventional trench and duct construction, the City has had an agreement with one company since 1999 for the use of a different technology, called Surface Inlaid Fibre ("SIF") and, on September 30, 2008, Council authorized entering into an agreement with a second company wanting to utilize this technology.

DISCUSSION

Staff has been approached by a new telecommunications company seeking to build and operate a telecommunications network in the City of Vancouver utilizing both conventional trench and duct and SIF technologies and they are seeking similar arrangements to those granted their competitors, a request with which staff agree.

<u>Conventional Trench and Duct Construction</u>

For the use of conventional trench and duct construction, we recommend continuing our practise of using a series of letter agreements, signed for each individual project that would provide that works built under the interim arrangement will be retroactively subject to the terms and conditions of the Street Utilities By-law, if and when enacted.

Should Council not enact the Street Utilities By-law, either of two things will happen:

1. A2B and the City will enter into an individual site-specific MAA, as we have done in the past, for work done under this arrangement, or

2. A2B (or the City) will apply to the CRTC which will impose the terms and condition upon which A2B may construct its network.

Surface Inlaid Fibre

For SIF installations, which involve a small diameter fibre optic cable and micro-duct inserted into a slot saw-cut into the pavement/sidewalk, rather than having a complete underground duct system installed two feet below grade, we are recommending entering into a MAA.

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

- Less disruption during construction, particularly with specialty pavements
- 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

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.

Additionally, concern has been raised about the relationship between the companies utilizing SIF and the other underground utilities such as BCHydro and Terasen. 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 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, i.e., 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;
- provisions to protect 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;
- 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 as follows:
  - "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 and would be subject to a City overhead of 20%

FINANCIAL IMPLICATIONS

There are no significant financial implications.

CONCLUSION

Staff recommends that Council approve entering into legal agreements with A2B Fibre Inc. as generally described in this report to permit them to install and use both conventional and Surface Inlaid Fibre optic cable in the City streets.

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