



## ADMINISTRATIVE REPORT

Report Date: July 9, 2013  
Contact: Al Luongo  
Contact No.: 604.873.7288  
RTS No.: 10180  
VanRIMS No.: 08-2000-20  
Meeting Date: July 23, 2013

TO: Standing Committee on City Finance and Services  
FROM: General Manager of Engineering Services  
SUBJECT: Municipal Access Agreement with TeraGo Networks Inc.

### **RECOMMENDATION**

- A. THAT the General Manager of Engineering Services and the Director of Legal Services be authorized to execute and deliver a legal agreement with TeraGo Networks Inc., to permit them to install and operate telecommunications network under City streets, on terms and conditions generally 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.

### **REPORT SUMMARY**

This report seeks Council's approval to enter into a Municipal Access Agreement with TeraGo Networks Inc. ("Terago"). Utility companies are permitted to build and operate telecommunication networks within City streets under the Street Utilities By-law, or on the terms and conditions established in the City's standard Municipal Access Agreement for conventional construction trenching methods. While the City's preference is to grant such access under the Street Utilities By-law, TeraGo has indicated their preference is to move forward with a Municipal Access Agreement. The City is strongly committed to the equitable treatment of all utility companies wishing to access City streets and as such, an existing Municipal Access Agreement with MTS Allstream prepared in accordance with a ruling by the Canadian Radio-television and Telecommunications Commission ("CRTC") serves as the City's standard Municipal Access Agreement for conventional trench construction and would serve as the template for the TeraGo Municipal Access Agreement.

### ***COUNCIL AUTHORITY/PREVIOUS DECISIONS***

Section 290 of the *Vancouver Charter* provides that no person may excavate in or damage a street except under terms and conditions imposed by Council. To date, Council has permitted utility companies access to City streets, to build and operate equipment, under terms and conditions established in a Municipal Access Agreement or the Street Utilities By-law.

### ***CITY MANAGER'S/GENERAL MANAGER'S COMMENTS***

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

### ***REPORT***

#### ***Background/Context***

This report seeks Council's approval to enter into the City's standard Municipal Access Agreement for conventional trench construction with TeraGo Networks Inc., to permit them to build and operate telecommunications network within City streets.

The regulatory system by which the City allows telecommunication companies access to City streets has undergone numerous changes over the past decade, following rulings by the CRTC. The most significant being the 2001 Leduc Industries Limited ("Leducor") v. Vancouver decision, in which the CRTC established a series of principles which shifted a substantial part of the costs of installing telecommunications infrastructure to municipalities, and the subsequent 2009 MTS Allstream Inc. ("MTSA") v. Vancouver decision which clarified many of the Leducor principles, essentially restoring the balance and permitting municipalities to recover certain costs from companies accessing City streets.

The CRTC, in its 2009 decision, imposed a Municipal Access Agreement on both MTSA and the City, establishing the terms under which MTSA could gain access to City streets, as well as the costs that the City would be permitted to recover. Concurrently with the CRTC proceedings with MTSA, the City, in its efforts to create an equitable environment for all utility companies and streamline the approval process to reduce both industry and City costs, enacted the Street Utilities By-law ("By-law") on October 18th, 2011.

#### ***Strategic Analysis***

TeraGo has requested access to City streets to expand their telecommunication networks, and it is in the best interests of the City that such access be granted for provision of service to its residents and businesses, in support of our commitment to economic development in the City.

The City's preference is to grant access to City streets under the By-law. The Federation of Canadian Municipalities ("FCM") and its member municipalities are currently working with the CRTC Interconnection Steering Committee ("CISC") and Model Municipal Access Agreement Working Group (MAWG) in developing a non-binding model Municipal Access Agreement. While

there has been progress in its development, TeraGo has indicated their preference is to move forward with a Municipal Access Agreement based on the MTSA Municipal Access Agreement, as opposed to either the By-law or pending model Municipal Access Agreement .

Should Council not authorize entering into a Municipal Access Agreement or should any party be unsuccessful in entering into such an agreement and makes an application to the CRTC, the CRTC may intervene and impose an agreement upon the City and the telecommunication company.

The City is strongly committed to the equitable treatment of all utility companies wishing to access City streets and as such, the MTSA Municipal Access Agreement would serve as a template for the TeraGo agreement, and would generally include the following:

- Reimbursements to the City of costs associated with the installation and operation of utility equipment, including but not limited to, application document review, plan review & administration, inspection fees for each application of new work, lost productivity, pavement degradation, and relocation costs, lost parking meter revenue, costs associated with erecting signs and hooding parking meters; and
- Insurance requirements, indemnity and release provisions.

### ***Implications/Related Issues/Risk (if applicable)***

#### ***Financial***

A key guiding principle is to treat all utility companies equally under the Municipal Access Agreement or the Street Utilities By-law. As such, the fee schedule for the TeraGo Municipal Access Agreement will be aligned with the current fees from the MTSA Municipal Access Agreement including an annual adjustment based on Vancouver CPI, and set at a level expected to recover certain costs incurred by the City as a result of new utility installations. The fees in the Municipal Access Agreement will also be aligned with those in the Street Utilities By-law as outlined in the *2013 Engineering Fees* report.

### ***CONCLUSION***

Staff recommends that Council authorize the City to enter into a Municipal Access Agreement with TeraGo Networks Inc. as generally described in this report, permitting the company to install and operate telecommunications networks within City streets using conventional trench construction.

\* \* \* \* \*