



ADMINISTRATIVE REPORT

Report Date: January 15, 2019
Contact: Karim Hirji
Contact No.: 604.873.7288
RTS No.: 12905
VanRIMS No.: 08-2000-20
Meeting Date: February 26, 2019

TO: Vancouver City Council
FROM: General Manager of Engineering Services
SUBJECT: Municipal Access Agreement with VariNet Teleservices Inc.

RECOMMENDATION

- A. THAT the General Manager of Engineering Services and the Director of Legal Services be authorized to negotiate and execute a legal agreement with VariNet Teleservices Inc., to permit them to install and operate a telecommunications network on City streets, in generally the form of the City's standard Municipal Access Agreement and otherwise on 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 arrangements with VariNet Teleservices Inc. ("VariNet") to permit VariNet to build and operate a telecommunications network in the streets of Vancouver using conventional installation methods. Telecommunications companies are permitted to build and operate telecommunication networks within City streets under the Street Utilities By-law ("By-law"), or under the terms and conditions established in the City's standard Municipal Access Agreement ("MAA"). VariNet has requested a MAA with the City for building and operating their telecommunication infrastructure.

Council approval is required for the City to enter into a MAA with VariNet. The City is strongly committed to the equitable treatment of all utility companies wishing to access City streets and as such, an existing MAA with MTS Allstream prepared in accordance

with a ruling by the Canadian Radio-television and Telecommunications Commission (“CRTC”) will serve as the City’s standard agreement for the proposed MAA with VariNet.

COUNCIL AUTHORITY/PREVIOUS DECISIONS

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

Section 290 of the *Vancouver Charter* provides that no person shall 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 MAA or the Street Utilities By-law.

Since the enactment of the Street Utilities By-law on October 18, 2011, Council has given the General Manager of Engineering Services and the Director of Legal Services authority to execute and deliver a legal agreement with Rogers and Shaw on November 27, 2012 and with TeraGo on July 23, 2013.

CITY MANAGER'S/GENERAL MANAGER'S COMMENTS

The General Manager of Engineering Services and the City Manager recommends approval of the foregoing.

REPORT

Background/Context

This report seeks Council’s approval to enter into the City’s standard MAA with VariNet to permit them to build and operate telecommunications network within City streets using conventional installation methods.

The standard MAA and the By-law which the City uses to permit access to City streets for telecommunication companies is based on two significant CRTC rulings. The most significant of these rulings was the 2001 Ledcor Industries Limited (“Ledcor”) v. Vancouver decision. In the Ledcor v. Vancouver decision, the CRTC established a series of principles which shifted a substantial part of the costs (eg. plan review & administration, site inspections, and pavement degradation) of installing telecommunications infrastructure to municipalities. This ruling was followed in 2009 by the MTS Allstream Inc. (“MTSA”) v. Vancouver decision. The MTSA v. Vancouver decision clarified many of the Ledcor principles, giving municipalities increased rights and authority 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.

The MAA and the By-law are used for permitting access to streets for conventional installation methods. Conventional installation methods are whereby communications equipment is installed at standard depths with standard excavation and backfill methods.

Strategic Analysis

VariNet has requested access to City streets to expand their telecommunication networks; it aligns with City objectives 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.

Should Council not authorize entering into a MAA 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 MAA would serve as a template for the VariNet 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, 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

Financial

This agreement and any subsequent scope of work pursuant to this agreement would be subject to the current fees and costs set in the Street Utilities By-law for cost recovery (e.g., Plan Review Fees and Street Degradation Costs).

CONCLUSION

Staff recommend that Council authorize the City to enter into a Municipal Access Agreement with VariNet Networks Inc. as generally described in this report, permitting the company to install and operate a telecommunications network within City streets using conventional installation methods. Approval of these recommendations will meet the requirement of the City to provide access to telecommunications companies, be equitable with approvals for other telecommunications companies and promote advanced telecommunications services in the City.

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