

Governance and Priorities Committee Report

For the Meeting of November 19, 2015

To: Governance and Priorities Committee **Date:** November 6, 2015
From: Fraser Work, Director Engineering and Public Works
Subject: Fibre Optic Connection Shared Infrastructure Agreement with Shaw

RECOMMENDATION

That Council authorize the Mayor and Corporate Administrator to execute an agreement with Shaw Cablesystems Limited ("Shaw") to permit the City's use of Shaw's fibre optic pipe conduits in the 500 block of Pandora Avenue in exchange for the City transferring to Shaw an abandoned 50 metre portion of watermain located on Pandora, in a form satisfactory to staff.

EXECUTIVE SUMMARY

The City owns and operates a fibre optic conduit and cable system that interconnects City Hall to various City owned facilities. As part of telecommunications for the new Johnson Street Bridge, a connection is required between the bridge and the City fibre network at City Hall. The connection will provide the bridge control room with telephone lines, City computer network, monitoring and security. Council approved \$50k funding for the fibre optic connection as part of the July 2015 additional funding request for the Johnson Street bridge replacement.

To facilitate the connection without extensive construction of pipe conduits and to seek cost savings, staff have approached Shaw and developed a plan to connect City Hall to the new Johnson Street Bridge by maximizing use of existing infrastructure in the 500 block of Pandora Avenue. The City owns fibre optic conduits within the area in blue shading, as shown on Figure 1. Shaw owns the fibre optic conduits within the area in red shading, as shown on Figure 1.



Figure 1 - Fibre Optic Route from Johnson Street Bridge to City Hall

Shaw is prepared to grant to the City a license to connect to and use Shaw's conduit system, in perpetuity. In exchange the City would transfer ownership to Shaw of a 50 metre long section of abandoned watermain located on Pandora Street within the area shaded in yellow, as shown on Figure 1. Only the conduit would be shared. The fibre optic cables are a separate, secure infrastructure that would remain under the respective ownership of Shaw or the City. The parties' financial obligations under the agreement require that Shaw will provide all the materials necessary to make the connections. The City will provide all the labour to connect Shaw's current conduit through the abandoned watermain. The City cost portion is estimated to be \$20k.

The alternative to entering into this agreement with Shaw is for the City to install fibre optic conduits for the entire 500 block of Pandora Street at an estimated cost of \$50k. Future opportunity for the City includes extension of the fibre line to service the Yates Street Parkade in addition to strengthening the resiliency of the grid.

The agreement would be in a form similar to the draft attached in Appendix 1, as accepted by staff.


Respectfully submitted,


Jas Paul
Assistant Director of
Engineering


Fraser Work
Director Public Works and
Engineering

Report accepted and recommended by the City Manager:

Date:


Nov. 17, 2015

List of Attachments

Appendix 1 - Draft Fibre Optic Connection Shared Infrastructure Agreement

FIBRE OPTIC CONNECTION SHARED INFRASTRUCTURE AGREEMENT

THIS AGREEMENT dated for reference the 1st day of November, 2015 is

BETWEEN:

THE CORPORATION OF THE CITY OF VICTORIA, a municipal corporation under the laws of British Columbia, having an address at 1 Centennial Square, Victoria, British Columbia, V8W 1P6

(the "City")

AND:

SHAW CABLESYSTEMS LIMITED, extra-provincially registered in the Province of British Columbia under number A0075382, having an address at Suite 900, 630 – 3rd Avenue SW Calgary, Alberta, T2P 4L4

("Shaw")

WHEREAS:

- A. The City owns and operates a fibre optic conduit and cable system that extends from City Hall through Centennial Square to the City's vault located at the intersection of Government Street and Pandora Avenue (the "City Vault"), which system is shown in blue and labelled "City Conduit" on the map attached as Schedule "A";
- B. Shaw owns and operates a fibre optic conduit and cable system that extends down Pandora Avenue from Government Street to Shaw's vault located in front of 534 Pandora Avenue (the "Shaw Vault"), which system is shown in red and labelled "Shaw Conduit" on the map attached as Schedule "A";
- C. Located west of the Shaw Vault is an abandoned City water main measuring approximately fifty (50) metres in length and running along Pandora Avenue to Store Street (the "Water Main"), as shown in blue and labelled "Water Main" on the sketch attached as Schedule "A";
- D. The City wishes to transfer the Water Main to Shaw in order to enable Shaw to connect the Shaw Vault to the Water Main and to use the Water Main as a conduit to run Shaw's fibre optic cable system through to the green on Wharf Street, as shown on the sketch attached as Schedule "A";
- E. In exchange for the transfer of the Water Main to Shaw, Shaw wishes to grant to the City a licence to connect to and use Shaw's conduit system, in perpetuity, from the City Vault through to Wharf Street, in order enable to the City to run fibre optic cables from the Johnson Street Bridge Replacement Bridge to City Hall;

NOW THEREFORE in consideration of the covenants and agreements herein reserved and contained, and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by both parties), the City and Shaw covenant and agree with one another as follows:

Transfer of Water Main to Shaw

1. The City agrees to sell and transfer to Shaw the Water Main which is now in possession of the City and all the right, title, and interest of the City in and to the Water Main to the use of Shaw.
2. The parties acknowledge and agree that nothing in this Agreement creates nor vests in Shaw any ownership or property rights in the City's existing conduit system, from City Hall to the City Vault.
3. The City covenants that:
 - (a) the City now has good right to transfer the Water Main to Shaw;
 - (b) the Water Main is free and clear of all charges and encumbrances;
 - (c) the City will from time to time upon reasonable request of Shaw make, do and execute all such further acts, deeds and assurances for the more effectually assigning and assuring the Water Main to Shaw.
4. Shaw acknowledges and agrees that the City is selling and transferring the Water Main to Shaw on an "as is" basis, with no representations or warranties as to its condition or its suitability for Shaw's purposes.
5. The rights granted to Shaw hereunder may not be assigned or otherwise transferred without the City's prior written consent, which consent will not be unreasonably withheld.

Grant of Licence to City for Use of Shaw Conduit System

6. Shaw hereby grants to the City a non-exclusive licence to connect to and use Shaw's conduit system, in perpetuity, from the City Vault to the green at the Wharf Street intersection, including through the Shaw Vault and through the Water Main and its associated conduit connections (together, the "Shaw Conduit System") for the purpose of locating, installing, attaching, adjusting, replacing, removing, maintaining and operating up to three (3) of its own fibre optic cables, and for no other purpose.
7. The licence granted pursuant to section 6 above includes a licence in favour of the City and its employees, agents, contractors and any permitted assignees to access the Shaw Conduit System on forty-eight (48) hours' written notice to Shaw for the purpose of installing, maintaining, repairing, replacing, and removing the City's fibre optic cables, except that the City must not interfere with the use of the Shaw Conduit System by Shaw or other

licensees and, if the City considers that it will require restriction of other users of the Shaw Conduit System, the City must first obtain prior written consent from Shaw and then restrict other users only at the times and in accordance with directions from Shaw.

8. The City accepts the use of the Shaw Conduit System on an as-is basis with no representations or warranties as to its condition or its suitability for the City's purposes.
9. Shaw acknowledges and agrees that all fibre optic cables installed by the City within the Shaw Conduit System shall be and remain the sole property of the City and nothing in this Agreement creates nor vests in Shaw any ownership or property rights in the City's fibre optic cables.
10. The rights granted to the City under section 6 above may not be sublicensed, assigned, or otherwise transferred without Shaw's prior written consent, which consent will not be unreasonably withheld.

Parties' Financial Obligations

11. Shaw will provide, at its own cost, all materials necessary to:
 - (a) connect the Shaw Vault to the Water Main; and
 - (b) extend Shaw's conduit from the west side of the Water Main to Wharf Street.
12. The City will provide, at its own cost, all labour necessary to:
 - (a) connect the Shaw Vault to the Water Main;
 - (b) extend Shaw's conduit from the west side of the Water Main to Wharf Street; and
 - (c) pull the City's fibre optic cables from the City Vault through the Shaw Conduit System to Wharf Street.

General

13. Any notice required by this Agreement shall be made in writing and shall be considered given if delivered or mailed to the intended party at its address specified on page 1 of this Agreement, except in the case of the written notice described in section 7, which notice may be sent by email to the following email address: _____. The notice will be deemed to have been received on the day it is delivered, if delivered personally or by email (where permitted), or 7 days after the date it was mailed. Either party may, by notice in writing to the other, specify another address for service of notices under this Agreement.
14. This Agreement will bind and benefit each party to this Agreement, and its respective successors, administrators, employees, agents, and contractors.

15. Nothing contained in this Agreement shall be construed to constitute the parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking, or to allow either party to create or assume any obligation on behalf of the other party for any purpose whatsoever.
16. The Schedules attached to this Agreement form part of this Agreement.
17. This Agreement constitutes the entire agreement between the parties and may not be amended except by agreement in writing signed by all parties to this Agreement.
18. If any section, subsection, sentence, clause or phrase in this Agreement is for any reason held to be invalid by the decision of a court of competent jurisdiction, the invalid portion is to be severed and the decision that it is invalid does not affect the validity of the remainder of this Agreement, the parties hereby agreeing that they would have entered into the Agreement without the severed portion.
19. Nothing contained or implied in this Agreement will limit, impair, or affect the City's rights and powers in the exercise of its functions pursuant to the *Community Charter* (British Columbia) or any other enactment and all such powers and rights may be fully exercised in relation to the subject matter of this Agreement as if this Agreement had not been entered into between Shaw and the City.
20. The use of headings in this Agreement is for convenience of reference only and shall not affect the construction or interpretation hereof.
21. This Agreement shall be construed and governed by the laws of the Province of British Columbia and the laws of Canada which may be applicable to a party in the Province of British Columbia.
22. Time is of the essence of this Agreement.

IN WITNESS WHEREOF the said parties hereto have duly executed this Agreement on the dates written below.

DATED at Victoria, British Columbia, this _____ day of November, 2015.

SHAW CABLESYSTEMS LIMITED by its
authorized signatory:

Name:

Title:

DATED at Victoria, British Columbia, this _____ day of November, 2015.

THE CORPORATION OF THE CITY OF VICTORIA
by its authorized signatories:

Name:

Title:

Name:

Title:

SCHEDULE A

MAP