



**STAFF REPORT  
ACTION REQUIRED**

**Municipal Access Agreement for Telecommunications Installations – Dotto One (8241104 Canada Inc.) and Standing Delegated Authority**

<b>Date:</b>	March 18, 2013
<b>To:</b>	Public Works & Infrastructure Committee
<b>From:</b>	General Manager, Transportation Services
<b>Wards:</b>	All Wards
<b>Reference Number:</b>	PW2013019te.row

**SUMMARY**

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The purpose of this report is to authorize an agreement with 8241104 Canada Inc., c.o.b. Dotto One, to enable this telecommunications firm to install and maintain fibre optic and other cable, conduit and ancillary plant in City of Toronto streets pursuant to the terms and conditions negotiated to address City interests.

This report also seeks standing delegated authority for the General Manager of Transportation Services to negotiate, enter into and sign Municipal Access Agreements which are based on the City's current standard form agreement.

**RECOMMENDATIONS**

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The General Manager, Transportation Services recommends that:

1. City Council approval be given to enter into a Municipal Access Agreement with 8241104 Canada Inc., c.o.b. Dotto One, which is in possession of a Canadian Carrier status as defined in the Telecommunications Act, and licensed by the CRTC, to authorize the construction, installation, maintenance and operation of fibre optic and other cables, conduit and ancillary plant in the City of Toronto public highways, and incorporating the terms as set out in this report and such other terms and conditions as may be satisfactory to the General Manager of Transportation Services and the City Solicitor.

2. City Council delegate standing authority to the General Manager of Transportation Services to negotiate, enter into and execute on behalf of the City any Municipal Access Agreement, based on the standard form agreement currently used by staff, to construct, install, maintain and operate fibre optic and other cables, conduits and ancillary plants in the City of Toronto public highways, including, without limitation, any renewals, extensions or subsequent amendments to a Municipal Access Agreement, on terms and conditions satisfactory to the General Manager of Transportation Services, and in a form satisfactory to the City Solicitor subject to the following condition:
  - a) Any variation from the City's standard form Municipal Access Agreement, or any subsequent amendment, shall not materially impact the potential liability of the City; and
3. City Council authorize and direct the appropriate City officials to take the necessary action to implement the foregoing, including the introduction in Council of any Bills that may be required.

### **Financial Impact**

Entering into the proposed Municipal Access Agreement will not result in any direct financial impact to the City. The applicant will be responsible for any costs incurred by the City due to construction, installation and maintenance of its plant in City streets in accordance with the City's usual permitting process.

### **ISSUE BACKGROUND**

City Council, at its meeting of September 22, 23, 24 and 25, 2003, adopted, as amended, Clause No. 71 in Report No. 9 of the Policy and Finance Committee entitled "Supreme Court of Canada Decision – Leave to Appeal Application – Canadian Radio-Television and Telecommunications Commission (CRTC) Decision 2001-23 Terms and Conditions for Access to Municipal Property by Telecommunications Carriers."

The Clause contained a confidential joint report (September 8, 2003) from the Commissioner of Works and Emergency Services and the City Solicitor, and resulted, among other things, in instructions to staff to engage in discussions with telecommunications companies requesting changes to agreements with the City. This decision has also provided a basis for staff to come up with a template agreement to be used as the basis of discussions with new companies wishing to have access to City streets in the future. City Council has now authorized agreements with several companies based upon this template model.

Similarly, a new company known as 8241104 Canada Inc., c.o.b. Dotto One, has approached the City and negotiated for consent to access the municipal public highway, by way of a Municipal Access Agreement. The firm is agreeable to the terms and conditions as discussed in the following report.

## **COMMENTS**

8241104 Canada Inc., c.o.b. Dotto One, is an Ontario Corporation, 100 percent Canadian owned. The firm is in possession of a Canadian Carrier status as defined in the Telecommunications Act, and licensed by the CRTC.

Principals of the firm advise that their business plan calls for the installation of dark fibre networks for business enterprises, telecommunications carriers and government and institutional users. The firm would own and maintain the network and lease or sell dark fibres to its customers. They advise that the primary area of focus is the downtown with future intention to extend the network to other centre areas of Toronto and eventually to surrounding municipalities. They indicate that they intend to deploy their network using existing ducts and cable pathways, traditional trenching and through microtrench technology as a last resort.

It is noted that other firms with MAA's with the City have deployed the "micro-trenching" technology. This entails installing fibre optic cables in the top layer of the City's surface infrastructure through the use of narrow, shallow cuts. The cable is then inlaid and sealed into the infrastructure. This methodology has the potential of being less intrusive and destructive to the City's surface facilities than the traditional open trench method. This approach may ultimately be advantageous and staff will address any concerns in the context of the permitting process. In particular, we have noted the potential susceptibility to damage of such shallow-laid infrastructure due to City and utility work. In addition, we want to secure the proper restoration of the city's infrastructure to maintain the integrity of the surface facilities.

Installations are already in place in Toronto and we are aware that similar networks have been installed in, among other places, the City of Vancouver and surrounding area. Staff have contacted officials from the Cities of Vancouver and North Vancouver, who have indicated that the installations have been generally successful. Staff will address technical protocol with Dotto One engineers prior to issuance of a permit.

### Summary of Key Terms:

The standard Municipal Access Agreement proposed by staff for Dotto One and similar companies includes the following provisions:

1. The standard term granted by the City for access to public highways is 15 years, with an option of renewal for a further five years by mutual consent.

2. Since 8241104 Canada Inc., c.o.b. Dotto One, is in possession of a Canadian Carrier status as defined in the Telecommunications Act, and licensed by the CRTC, the City will not, at the present time, charge the company a fee in the nature of a land-based licence or lease fee for the use of the public highways during the term, unless it is permitted by law, including Provincial or Federal legislation and/or a future binding decision (CRTC, court) to do so.
3. The company shall be obliged to pay any applicable taxes, levies, charges, etc.
4. All work done by the company within the public highway is subject to the City's standard requirements for persons doing construction or otherwise occupying the public highway (i.e., submission of permit applications, pre-approval of plans, issuance of permits, provision of security, warranty of temporary restoration, submission of as-built drawings, etc.). All works are to be done to the satisfaction of the General Manager in accordance with City policies.
5. The company shall, prior to construction, post financial security in the form of a letter of credit sufficient to secure payment of the estimated total cost of the repair and restoration of the public highways.
6. The company will participate in joint planning and co-ordinating processes to reduce disruption and damage to the public highways and at all times will be a member of a "locate" service.
7. The company shall pay all required permit and construction fees, including but not limited to the cost of permanent restoration, including pavement degradation and work around costs incurred by the City as a result of the activities of persons doing construction within the public highways, including Canadian Carriers and Distribution Undertakings.
8. The company agrees that, in order to avoid disruption of the public highway, it shall make every effort to first establish whether another company has available support structure capacity, which is, in the opinion of the General Manager, reasonable and feasible for use by the company. Similarly, where the company has excess capacity, it shall disclose such excess capacity to others and make it available on such terms as may be agreed. The company also agrees, where space is available, to make every effort to enter into a sublease or other arrangement to utilize the Pipe System (decommissioned downtown high-pressure water conduit owned by the City and leased/managed by MTS Allstream).
9. At the option of the City, prior to the commencement of any work, the company agrees to install additional ducts on behalf of the City with the City paying the

incremental cost incurred by the company with no mark-up for profit for such installation. The City would subsequently own such plant.

10. Any future removal/relocation of the company's plant that may be required for a bonafide municipal purpose is subject to a sliding scale of cost allocation. The City would pay for relocations in the first three years after the issuance of a permit, with the company thereafter assuming an increasing share of the cost over time. After 10 years, 100 percent of the cost of relocation is the responsibility of the company. These provisions are not applicable to the company's plant installed by the micro-trenching technique. For this plant, the company will be responsible for the entire removal/relocation cost regardless of the time period.
11. Insurance, including general liability Insurance in the amount of \$5 million per occurrence, is required in a form and amount satisfactory to the City.
12. The company shall indemnify and save harmless the City with respect to any claims or losses incurred as a result of the construction and maintenance of the network and the use of the public highways, except in the event of damage or injury due to the gross negligence of the City. The City shall not be liable for any damage to the network however caused where the company has failed to provide "as-built drawings" or accurate locate information as requested.
13. The agreement contains commercial provisions satisfactory to the City Solicitor and the General Manager, including requiring the City's consent for assignment of the agreement in the event control of the company changes, default, termination and related remedies.
14. The consent granted by the City is non-exclusive.

These key terms are the same ones that appear in the City's template Municipal Access Agreement which will be used as a basis for negotiating future agreements under the standing delegated authority requested in this report.

A standing delegated authority for negotiating and entering into these agreements would avoid unduly lengthening committee and Council agendas, provide a higher level of customer service and eliminate the need to report on an additional three (3) pending agreements which are wholly within the scope of authority being sought.

The authority being sought would only allow for variation from the current template if the variation does not materially affect the potential liability of the City. If the General Manager is of the view that the variation, or any subsequent amendment to the agreement, does materially affect the potential liability of the City, then specific authority to enter into that agreement will be the subject of a staff report to committee and Council as required.

## Conclusions:

8241104 Canada Inc., c.o.b. Dotto One, is in possession of a Canadian Carrier status as defined in the Telecommunications Act, and licensed by the CRTC, has sought the City's consent to construct, install, maintain and operate a fibre optic cable network within the City's public highways. The proposed Municipal Access Agreement, as negotiated by representatives of the company and City staff, and recommended in this report would permit the company to carry out its operations in City public highways on standard terms and conditions recommended by City staff.

The City Solicitor has been consulted and assisted in the preparation of this report.

## **CONTACT**

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## **SIGNATURE**

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