



City of Richmond

Report to Committee

To: Public Works and Transportation Committee *To Public Works & Transportation: Sept 20, 2006*
From: Robert Gonzalez, P.Eng. **Date:** July 21, 2006
 Director, Engineering **File:** 03-1000-14-118
Re: **Municipal Access Agreement with Shaw Cablesystems Limited**

Staff Recommendation

That the attached Municipal Access Agreement between the City of Richmond and Shaw Cablesystems Limited be executed.

Robert Gonzalez, P.Eng.
Director, Engineering
(4150)

FOR ORIGINATING DIVISION USE ONLY					
ROUTED TO:		CONCURRENCE		CONCURRENCE OF GENERAL MANAGER	
Budgets	Y	<input checked="" type="checkbox"/>	N		
Law	Y	<input checked="" type="checkbox"/>	N		
Land Management.....	Y	<input checked="" type="checkbox"/>	N		
REVIEWED BY TAG	YES	<input checked="" type="checkbox"/>	NO	REVIEWED BY CAO	YES
		<i>ajs</i>	<input type="checkbox"/>	<i>(ACTING)</i>	<input checked="" type="checkbox"/>
					<i>JE</i>
					<input type="checkbox"/>

Staff Report

Origin

In October, 2003, the City received an application from Shaw Cablesystems Limited to install telecommunication facilities within City Rights-of-Way. On July 20, 2006, after an extended negotiation with City staff, Shaw Cablesystems Limited made application to the City to approve the attached agreement.

Analysis

The Federal Telecommunications Act gives municipalities the right to negotiate access agreements with telecommunications companies governed by the act.

Staff have reviewed the proposed agreement as attached. Attachment 1, highlights all of the revisions which are specific to this agreement.

The important features of this proposed agreement with Shaw Cablesystems Limited are:

1. FCM principles are upheld;
2. This agreement can be amended on a five year notice for the first fifteen years and on a one year notice thereafter;
3. Richmond assumes no liability in the event of damage;
4. Richmond assumes some shared liability for relocation costs.
5. Richmond will recover Causal Costs as they relate to the presence and installation of any of the Shaw Cablesystems' Equipment in the City's streets and rights-of-way.

Financial Impact

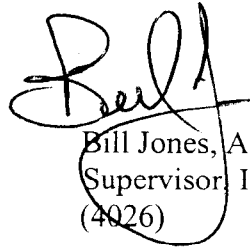
Richmond will realize new revenues as a result of entering into this agreement. However, the agreement does include Permitting and Inspection Fees to be paid by Shaw Cablesystems in the amount of \$500 for installations of twenty (20) metres or less and an additional \$500 per each one hundred (100) metres or part thereof in excess of the first twenty (20) metres. The agreement also includes Lost Productivity costs, Agreement Preparation and Administration costs (15% loading factor added to the Permitting and Inspection fees) and Pavement Degradation Fees to be paid by the Company.

Conclusion

Staff recommend approval to proceed with endorsement of this agreement between the City and Shaw Cablesystems Limited. To date, in Canada, this is one of the most comprehensive and progressive agreements between a City and Shaw Cablesystems Limited, acting as a good corporate citizen. The flexibility and protection from liabilities provided in this agreement, sufficiently protects the City's interests and the compensation amount establishes a basis for negotiating future agreements with other companies.



ACTING
for Siu Tse, M.Eng., P.Eng.
Manager, Engineering Planning
(4075)



Bill Jones, AScT
Supervisor, Infrastructure Planning
(4026)

ST:bj

Municipal Access Agreement

THIS AGREEMENT made this ___ day of _____, 2006

BETWEEN:

CITY OF RICHMOND
6911 No. 3 Road
Richmond, British Columbia
V6Y 2C1
(the "City")

of the First Part

AND:

SHAW CABLESYSTEMS LIMITED
Suite 900, 630 – 3rd Ave SW
Calgary, Alberta
T2P 4L4
(the "Company")

of the Second Part

WHEREAS:

- (a) The Company is a "Canadian carrier" as defined in the *Telecommunications Act* (Canada) ("Telecom Act") and a "distributing undertaking" as defined in the *Broadcasting Act* (Canada) ("Broadcast Act");
- (b) **AND WHEREAS**, for the purpose of its telecommunications and broadcast distribution undertakings within the City of Richmond, the Company requires to enter on, over, under, along or across those highways and other public places (for the purpose of this Agreement "public places" shall include use of highways and rights-of-way for the purpose of public utilities) within the jurisdiction of the City (collectively, the "Service Corridors") from time to time for the purpose of constructing, maintaining, operating, repairing and removing the Company's wires, cables, ducts, conduits, pedestals, vaults, manholes and other accessories, structures and other related telecommunications facilities (as that term is defined in the Telecommunications Act (collectively, the "Equipment") in, on, over, under, along or across the Service Corridors;
- (c) **AND WHEREAS**, the City is the public authority having jurisdiction over the Service Corridors;
- (d) **AND WHEREAS**, the Company must obtain the City's consent to enter on and use the Service Corridors for the purpose of constructing, maintaining, operating, repairing and removing the Equipment in, on, over, under, along or across the Service Corridors;

- (e) **AND WHEREAS**, the Company must not unduly interfere with the public use, enjoyment and safety of the Service Corridors and must share the use of the Service Corridors with other providers of services to the public (the Company and all such providers hereinafter collectively called "Service Providers") when occupying and using the Service Corridors;
- (f) **AND WHEREAS** the City is willing to consent to the occupancy and use of the Service Corridors by the Company for the purpose of construction, operation, maintenance, repairing and removal of the Equipment in, on, over, under, along or across the Service Corridors having due regard to the safety, use and enjoyment of the Service Corridors by others, as described above;
- (g) **AND WHEREAS** the City and the Company have agreed that it would be mutually beneficial to outline the terms and conditions pursuant to which such consent shall be provided by the City to the Company in the form of a non-exclusive right;

NOW THEREFORE in consideration of the promises and mutual covenants herein contained and such other good and valuable consideration the receipt of which is hereby acknowledged and agreed to by the parties, the City and the Company each agree with the other as follows:

Scope of City Consent

1. The City hereby consents to the Company, on a non-exclusive basis, entering on and breaking up the Service Corridors for the purpose of the Company's occupancy and use of the Service Corridors and for constructing, operating, maintaining, repairing and removing its Equipment in respect of its telecommunications and broadcast distribution undertakings, subject to the terms and conditions hereinafter set forth and in accordance with all applicable federal, provincial and municipal statutes, laws and by-laws or other applicable rules and regulations.
2. The Company may access and use the Service Corridors in accordance with the terms of this Agreement for the purpose of exercising its rights under section 1 of this Agreement.

Authorization of Work

3. Subject to sections 4 and 5, the Company shall not excavate, break up or otherwise breach the surface of any Service Corridors for the purpose of constructing, maintaining, operating, repairing or removing any of its Equipment in, on, over, along or across any Service Corridors (collectively called "Work") without first:
 - a) obtaining a permit from the City's General Manager, Engineering & Public Works with regard to the proposed location of said Works (the "Alignment");
 - b) providing detailed engineering plans in accordance with the City's Drafting Standards showing the proposed location and description of the Equipment;
 - c) providing all required information and obtaining all required municipal construction and/or other permits normally required by the City prior to commencing any Work; and

- d) providing such other information as the City's General Manager, Engineering & Public Works may reasonably require.

Emergency Work

- 4. Notwithstanding section 3, the Company may carry out work in an emergency or situation of necessity, involving any Equipment or the activities of the Company on, over, under, along or across any Service Corridor, including any Alignment, which constitutes a danger or potential danger of bodily injury or substantial damage to property provided that, the Company shall use reasonable effort to provide advance notice to the City prior to commencing any emergency repair Work. If advance notice cannot be provided by the Company, the Company shall provide notice to the City as soon as reasonably possible thereafter.

Routine Work

- 5. Notwithstanding section 3, the Company may carry out routine maintenance, field testing, subscriber connections, removal and such other work required for the Equipment as well as placing and splicing existing support structure where there is no need to excavate, break up or otherwise breach the surface of any Service Corridor without seeking a permit from the City; provided that, the Company will notify the City if any routine work involves replacement of surface Equipment with Equipment that is greater than 25% larger than the Equipment it is replacing or if any routine work is for a project that is equal to or exceeds 500 meters in length in any Service Corridor.

Condition of Work

- 6. All Work conducted by the Company in a Service Corridor is subject to the following conditions:
 - a) it shall conform to all applicable federal, provincial and municipal statutes, laws and by-laws or other applicable rules and regulations, including, but not limited to, the specific terms identified in the City's permits and the provisions of this Agreement;
 - b) all Work shall be conducted and completed to the satisfaction of the City's General Manager, Engineering & Public Works, acting reasonably, including use of sound engineering practices and adhering to City policies relevant to engineering matters;
 - c) the portions of the Equipment which pass over or under existing utilities or cross beneath streets shall be placed in a carrier pipe or be encased in concrete;
 - d) if the Company breaks the surface of a Service Corridor, it shall repair and restore the surface of the Service Corridor to substantially the same condition it was at before such Work was undertaken by the Company and to the satisfaction of the City's General Manager, Engineering & Public Works, acting reasonably. If the Company fails to repair and restore a Service Corridor to the reasonable satisfaction of the City's General Manager, Engineering & Public Works within ten (10) business days of being notified by the City, the City may effect such

repairs and the Company shall pay reasonable normal City costs related thereto in accordance with Section 23 hereof;

- e) if the City, acting reasonably, requires the Work to be stopped due to a danger or threatened danger to public safety, Company shall cease all such Work forthwith upon receipt of notice from the City. Within three (3) business days of issuing a stop Work order under this section, the City shall provide the Company with written reasons for such order; and
- f) subject to section 12 of this Agreement, the Company is responsible for all costs for the Work.

Company Representations

- 7. The Company represents and warrants to and covenants and agrees with the City that:
 - a) all Work undertaken by the Company within any Service Corridor shall be carried out actively and diligently, in a good and workmanlike manner, in accordance with sound engineering practices and in a manner that shall:
 - (i) not damage or materially interfere with the equipment, property and improvements of the City or other Service Providers, over, under or adjacent to the Service Corridors;
 - (ii) minimize the disruption of the surface and subsurface of the Service Corridors; and
 - (iii) not unduly interfere with the public use and enjoyment of the Service Corridors.
 - b) after completion of any Work, the Company shall restore the Service Corridor to as good a condition as it was before the commencement of such Work and leave the Service Corridor in a sanitary, neat, tidy and safe condition, free of earth, gravel, debris or other materials with may have been placed by the Company on the surface of the Service Corridor, all to the satisfaction of the City's General Manager, Engineering & Public Works, acting reasonably;
 - c) the Company shall not suffer or permit any builders or other lien to be filed or registered against the Service Corridors or other City-owned property;
 - d) if this Agreement is terminated by the City, all the unfulfilled covenants, indemnities and obligations of the Company hereunder shall survive such termination until the Equipment is removed or abandoned;
 - e) the City has made no representations or warranties as to the state of repair of the Service Corridors or the suitability of the Service Corridors for any business, activity or purpose whatsoever and the Company hereby agrees to take the Service Corridors on an "as is" basis; and
 - f) the Company shall at all times maintain the Equipment in a safe condition and good state of repair.

Drawings

8. The Company shall provide “as built” drawings in hard copy and electronically to the City within two (2) calendar months of completing the installation of any new Equipment.

Equipment Locates

9. The Company shall, at no cost to the City, provide locations of its Equipment within twenty-four (24) hours of receiving a request by the City in the case of an emergency and within three (3) business days of receiving a request by the City in all other cases.

Emergency Contacts

10. The Company shall provide to the City’s General Manager, Engineering & Public Works a list of twenty-four (24) hour emergency contact personnel for the Company and shall ensure that the aforementioned list is always current.
11. The City shall provide to the Company a list of twenty-four (24) hour emergency contact personnel for the City and shall ensure that the aforementioned list is always current.

Relocation of Equipment

12.

a) Notice

In the event the City requires the Company to relocate its Equipment as may be required by the City to comply with safety standards or accommodate any relocation, installation, modification, repair, construction, upgrading or removal of City facilities or for its own municipal purposes or, including, without limitation, for the benefit of a private entity or the purpose of public interests, the City agrees to provide to the Company at least one hundred eighty (180) calendar days written notice of the proposed relocation, and any alternate Alignment to accommodate the relocation of the Company’s Equipment. In the event a reasonable alternate Alignment to accommodate the Company’s Equipment is available, the Company, upon receipt of notice of the request for relocation shall relocate such Equipment with the Service Corridors or perform any other work in connection with its Equipment as may be required by the City.

(b) Allocation of Costs

Subject to section 12 (b) (vi), the responsibility for the cost of City-initiated Equipment relocation shall be allocated as follows:

- (i) For any Equipment constructed and/or installed in the Service Corridors after the date of this Agreement and where Company has made application to construct and/or install the Equipment within any Service Corridor after the City had indicated to the Company in its Five Year Capital Works Plan as being required for municipal purposes and Company nevertheless constructs and/or installs its Equipment in such Service Corridor, Company shall be responsible for all of its relocation costs.

(ii) For any Equipment constructed and/or installed in the Service Corridors after the date of this Agreement which is required to be relocated as a result of any municipal project not identified by the City in the City's current Five Year Capital Works Plan, the percentage of costs paid for by the City, minus depreciation, salvage and betterment cost factors, shall be 100% for the first two years and then reduced by 20% in each subsequent year if the relocation is required within the first seven (7) years of the Company's construction and/or installation of such Equipment, and thereafter such costs shall be paid for by the Company. The City shall promptly provide the Company with each new Five Year Capital Works Plan.

(iii) For Company Equipment constructed and/or installed in the Service Corridors up to 10 years prior to the date of this Agreement the City will be responsible to reimburse the Company 50% of the Company's costs to perform the work to relocate its Equipment minus depreciation, salvage and betterment cost factors. The Company will be responsible for all of the remaining costs to relocate its Equipment.

(iv) For Company Equipment constructed and/or installed in the Service Corridors more than 10 years prior to the date of this Agreement, the Company will be responsible for all of the costs to relocate its Equipment.

(v) Each of the parties agree that special circumstances may arise with respect to specific location approvals whereby it may be appropriate for the parties to mutually agree to waive the above-noted provisions and to negotiate alternative arrangements. These alternative arrangements shall be agreed upon in writing prior to Equipment location being approved.

(vi) If relocation is the result of a any projects and/or work of a third party, the City will include the cost of relocating the Company's Equipment with the construction costs required in the City's servicing agreement with such third party and such amounts shall be charged to and payable to the Company by such third party prior to any relocation work by the Company and the City agrees to assist the Company, when or if required, to recover its costs from the third party for the work to relocate its Equipment. Notwithstanding any provision contained hereunder to the contrary, the City shall not require the Company to relocate its Equipment until the Company has received the full amount for its costs to perform any work to relocate the Equipment.

(vii) Notwithstanding any other provision of this Section 12, in the event the City requires the Company to relocate its Equipment primarily for beautification, aesthetic or other similar purposes, the Company shall pay 50% and the City shall pay 50% minus depreciation, salvage and betterment of the Company's costs related to the relocation of the Company's Equipment.

Liability

13. The Company shall indemnify and save harmless the City from and against all actions, causes of action, proceedings, claims and demands brought against the City, and from and against all losses, costs, damages or expenses suffered or incurred by the City, by reason of any damage to property, including property of the City or any third party, or

injury, including injury resulting in death, to persons, including the employees, servants, agents, licensees and invitees of the City or any third party, caused by, resulting from or attributable to the negligent or willful act or omission of the Company or any of its employees, servants, agents, licensees or invitees.

14. The City shall indemnify and save harmless the Company from and against all actions, causes of action, proceedings, claims and demands brought against the Company, and from and against all losses, costs, damages or expenses suffered or incurred by the Company, by reason of any damage to property, including property of the Company or any third party, or injury, including injury resulting in death, to persons, including the employees, servants, agents, licensees an invitees of the Company or any third party, caused by, resulting from or attributable to the negligent or willful act or omission of the City or any of its employees, servants, agents, licensees or invitees.
15. Notwithstanding anything contained in this Agreement, the City and the Company shall not be liable to each other in any way for indirect or consequential losses or damages, or damages for pure economic loss, howsoever caused or contributed to, in connection with this Agreement or with any Equipment or Service Corridor governed hereby.

Term of Agreement

16. Unless otherwise terminated in accordance with the terms of this Agreement, the initial term of this Agreement shall commence on _____ and shall continue for a period of five (5) years. This Agreement shall automatically renew for two (2) successive five (5) year periods, and for successive one (1) year periods thereafter, subject to the renegotiation of the fees set out in Schedule "A", if applicable or unless the City or the Company give written notice of cancellation to the other not less than three (3) months prior to the end of the initial term or any renewal term. For the purpose of this Agreement the initial term and any subsequent renewal terms shall be collectively referred to as the "Term".

Payments to City

17. The Company covenants and agrees to pay the City the costs and fees specified in Schedule "A" which is attached to and forms part of this Agreement and which are therein described and defined as Causal Costs, including, for certainty, Lost Productivity Costs, Permitting and Inspection costs and Pavement Degradation Fees .

Taxes and Utilities

18. Any fees paid by the Company pursuant to this Agreement are not in lieu of any business or property value taxes which are properly assessable in respect of the Company's improvements or operations, and the Company shall pay all such taxes to the taxing authority having jurisdiction including the Local Government Act Section 353.2. The Company shall also be responsible for the payment of the cost of all services and utilities consumed in respect of the Company's operations.
19. All taxes or assessments in the nature of sales taxes, goods and services taxes or value added taxes which may be charged, levied or assessed as a result of this Agreement, whether or not such taxes are charged, levied or assessed as against the City, shall be the responsibility of the Company, and the Company shall on written demand by the City, pay to the City any and all such taxes. The Company shall not be obligated to pay such taxes to the City as

contemplated in this Section if the Company shall have delivered to the City a statutory declaration evidencing that the Company is a registrant pursuant to any such tax legislation and as such, the City is not liable to remit any such sales taxes to any taxing authority.

Security

20. If requested by the City, security in the form of a Letter of Credit, or other security acceptable to the City's General Manager, Engineering & Public Works, acting reasonably, shall be deposited with the City to ensure performance of the Company's road restoration work for each permit for Work obtained from the City's General Manager, Engineering & Public Works pursuant to section 3 hereof. The security will be released by the City to the Company upon acceptance of the road restoration work by the City's General Manager, Engineering & Public Works. The security shall be in a form of a Letter of Credit in the amount of \$50,000.00.

Company Event of Default

21. The occurrence of any of the following events shall constitute a "Company Event of Default":
 - a) if any amount due and payable hereunder by the Company to the City remains unpaid for a period of thirty (30) calendar days after written notice from the City to the Company, the amount thereof is not in *bona fide* dispute, the City has given the Company a further thirty (30) calendar days notice of its default in payment and the Company has failed to pay such amount within such thirty (30) calendar day period;
 - b) if the Company has failed to perform a material non-payment obligation hereunder other than as a result of an event of *force majeure* as described in section 41, the City has given the Company written notice of such failure and such failure has continued for a period of forty-five (45) calendar days after such notice from the City; provided, however, that if such a failure is capable of being cured but cannot reasonably be cured within such forty-five (45) calendar day period, and the Company is prosecuting such cure with diligence, such longer time period as may be necessary to complete such cure if the same is prosecuted with due diligence; or
 - c) if a proceeding in respect of the Company under the *Bankruptcy and Insolvency Act* (Canada), the *Companies Creditors Arrangement Act* (Canada), the *Winding-up and Restructuring Act* (Canada) or any other bankruptcy, insolvency or other similar rules or laws of right benefit or for dealing with the rights of debtors and creditors (ii) the appointment of an interim receiver, receiver, receiver and manager or liquidator over a substantial portion of the assets of the Company, or (iii) any enforcement of or realization upon any security over any portion of Equipment of the Company has occurred.

Remedies Upon Company Events of Default

22. Upon the occurrence of a Company Event of Default the City may take such action as it determines, in its sole discretion, to be necessary to correct any default by the Company hereunder and recover its reasonable costs incurred in curing such Company Event of

Default and pursue any legal remedies it may have under applicable law or principles of equity relating to such default, including specific performance.

23. If the Company fails to complete the relocation of the Equipment in accordance with section 12 or fails to repair the Service Corridors or do anything else required by the Company pursuant to this Agreement in a timely and expeditious manner to the satisfaction of the City's General Manager, Engineering & Public Works, acting reasonably, the City may, but is not obligated to, at its option complete such relocation or repair and the Company shall pay the cost of such relocation or repair to the City forthwith plus an overhead equal to fifteen percent (15%) of such cost and, in default of payment thereof, the amount of such cost with interest at the rate of one percent (1%) per annum above the prime lending rate of the Canadian Imperial Bank of Commerce carrying on business in the City shall be due and payable by the Company to the City upon receipt by the Company of an invoice setting out such costs and interest.

Dispute Resolution

24. The parties will attempt to resolve any dispute arising out of this Agreement promptly through discussions at the operational level. In the event a resolution is not achieved, the disputing party shall provide the other party with written notice of the same and the parties shall attempt to resolve such dispute between senior officers who have the authority to settle such dispute. All negotiations conducted by such officer shall be confidential and shall be treated as compromise and settlement negotiations. If the parties fail to resolve such dispute within thirty (30) calendar days of the non-disputing party's receipt of the written notice, either party may initiate legal proceedings and/or submit the matter to the Canadian Radio-television Telecommunications Commission for resolution.

Termination

25. Upon termination of this Agreement for any reason:
 - a) the Company and the City shall enter into meaningful negotiations for a new Agreement; and
 - b) the Company shall notify the City if the Company no longer requires any pedestals, vaults, and structures located above the surface of the ground in any Alignment (collectively, the "Surface Equipment") and, at the request of the City, the Company shall, within a reasonable period of time after such request, remove any Surface Equipment it no longer requires. Upon removal of the Surface Equipment by the Company, it shall forthwith repair any damage resulting from such removal and restore the Service Corridor to substantially the same condition in which they existed prior to the removal. If the Company fails to remove the Surface Equipment it no longer requires and restore the Service Corridor as contemplated by this section, the City may complete the removal and restoration and charge all direct costs incurred to the Company. The Company agrees that the insurance policy referred to in Sections 33 and 34, hereof, shall remain in full force and effect until all of the Surface Equipment not required by the Company is removed as requested by the City in accordance with this section.

26. Notwithstanding the expiry or earlier termination of this Agreement each party shall be liable to the other party for all of its respective obligations incurred hereunder prior to the date of such termination.

Successors and Assigns

27. This Agreement shall be binding upon and shall inure to the benefit of the Company and the City and their respective successors and assignees. For the purposes of this Agreement, "successors" of a party shall include any person, firm, corporation, or other entity which at any time, whether by merger, acquisition, purchase, or otherwise, shall acquire all or substantially all of the such party's assets located in Richmond, BC. The Company may assign this Agreement during the Term to an "affiliate", as that term is defined in the *Canada Business Corporations Act* (Canada) and shall provide advance written notice to the City of such assignment.
28. In the event of assignment of the Agreement by the Company to someone other than an "affiliate", the Company shall seek the City's prior written consent, which consent cannot be unreasonably withheld, and shall remain liable under this Agreement in all respects up to the assignment date and the City may require the assignee to enter into an agreement to assume all obligations under this Agreement as of the assignment date.
29. Despite section 28, the Company may pledge the rights granted by this Agreement as security without the consent of the City to any person directly or indirectly providing financing to the Company but such pledge shall not release the Company from its obligations and liabilities under this Agreement.

Ownership

30. No use of a Service Corridor under this Agreement shall create or vest in the Company any ownership or property rights in a Service Corridor, and the Company shall be and remain a mere non-exclusive licensee of the Service Corridor and, subject to the abandonment of Equipment referred to in section 39, placement of the Equipment in a Service Corridor shall not create or vest in the City any ownership or property rights to the Equipment and the City hereby acknowledges the Company's ownership of the Equipment.

Non-Exclusivity

31. Nothing in this Agreement shall be construed as affecting any rights or otherwise of others not a party to this Agreement to use any Service Corridor in accordance with the City's legal authority.

Workers' Compensation Board

32. The Company agrees that it shall at its own expense procure and carry or cause to be procured and carried and paid for, full Workers' Compensation Board coverage for itself and all workers, employees, servants and others engaged in or upon any work or service which is the subject of this Agreement. The Company agrees that for any work or service which is the subject of this Agreement, it is the Principal Contractor for the purposes of the Workers' Compensation Board Industrial Health and Safety Regulations for the Province of British Columbia. The Company shall abide by all applicable Workers' Compensation Board safety rules and shall ensure that all applicable Workers'

Compensation Board safety rules and regulations are observed during the performance of any works which are subject to this Agreement, not only by the Company but by all subcontractors, workers, materialmen and others engaged in any such works. Prior to commencement of any such works, the Company shall complete and file a "Construction Notice of Project" with the Workers' Compensation Board and shall, if requested by City, provide a copy of the same to the City confirming that the Company shall be the Principal Contractor responsible for coordination of safety and health under the Works' Compensation Board Industrial Health and Safety Regulations.

Insurance

33. The Company shall maintain Comprehensive General Liability Insurance and Automotive Liability Insurance (both owned and non-owned units) in sufficient amount and description as will protect the Company and the City from claims for damages, personal injury including death, and for claims from property damage or loss which may arise from the Company's operations in the City under this Agreement, including the installation, maintenance, operation, relocation or removal of the Equipment on or in the Service Corridors or any act or omission of the Company's agents or employees while engaged in the work of installing, maintaining, repairing, replacing, operating, relocating, or removing the Equipment.
34. In addition to the foregoing the Company covenants and agrees that:
 - a) the limits of liability under the Comprehensive General Liability Insurance for personal injury, bodily injury and property damage combined shall be for not less than Five Million (\$5,000,000.00) Dollars for each occurrence;
 - b) the City shall be added as an additional insured under the Comprehensive General Liability Insurance;
 - c) a Cross Liability clause shall be made part of the Comprehensive General Liability Insurance;
 - d) the Comprehensive General Liability Insurance shall extend to cover the contractual obligations of the Company as stated within this Agreement;
 - e) the limits of liability under the Automotive Liability Insurance for personal injury, bodily injury and property damage combined shall be for not less than Three Million (\$3,000,000.00) Dollars for each occurrence or incident;
 - f) all policies shall provide that they cannot be cancelled, lapsed or materially changed to the adversity of the City without at least thirty (30) calendar days notice to the City by registered mail; and
 - g) upon execution of this Agreement the Company shall file with the City a certificate or certificates of insurance and shall thereafter provide such certificates of insurance upon request by the City.

Utility Coordination

35. The Company agrees to participate in any utility coordinating committees or forums as may be established by the City, and to pay its proportionate share of the reasonable costs of the administration of such forums. The City and Company agree that as part of such

committee the parties will consider such matters as capacity needs as they relate to the use of the Service Corridors by all Service Providers.

Third Party Equipment

36. In all cases where the Company shares ownership or other rights with a third party in respect of any Equipment situated in, on, over, under, along or across an Alignment occupied or used by the Company under this Agreement, the Company shall remain responsible for performing all of its obligations under this Agreement, as if it is the sole owner of the Equipment. In its agreements with third parties the Company will include provision that third parties comply with all applicable federal, provincial and municipal statutes, laws and by-laws or other applicable rules and regulations.

Occupational Health and Safety and Traffic

37. The Company shall conform and shall be responsible for the conformance by its officers, employees, agents, contractors and invitees to all health and safety laws including any regulations requiring installation of safety devices or appliances, and any applicable traffic laws or regulations (collectively "Safety Rules"). The City may, on twenty-four (24) hours written notice to the Company, or sooner if in the reasonable opinion of the City the likelihood of harm to persons is imminent, suspend Work performed by or on behalf of the Company on that portion of the Equipment located in, on, under, along or across Service Corridors where it has been confirmed that the Company has not complied with the Safety Rules or because conditions of imminent danger to public safety exists that would likely result in injury to any person. Such suspension shall continue until the lack of compliance or danger is eliminated.

Environmental Responsibility

38. The Company agrees to assume all environmental liability, including but not limited to liability for clean up of any hazardous substances which it brings to or causes to be brought to any Alignment it occupies and uses hereunder. For the purpose of clarity, the Company is not liable for any hazardous substances which may or are present in, on, under, along and/or around the Service Corridors which were not brought to or caused to be brought to said Service Corridors by Company or which were brought by any party who the Company is not responsible for at law. For the purpose of this section 38, "hazardous substance" means any hazardous substance and includes, but is not limited to, radiation, petroleum products and byproducts, industrial wastes, contaminants, pollutants, dangerous substances, and toxic substances, as defined in or pursuant to any law, ordinance, rule, regulation, by-law or code, whether federal, provincial or municipal.

Obsolete Equipment

39. The Company shall notify the City promptly when it abandons Equipment situated in, on, over, under, along or across the Service Corridors. Upon such notification, the City may thereafter, at any time, require the Company to remove abandoned Surface Equipment within a specified period of time, being no less than ninety (90) days from the date of the City's notification, failing which the City may remove the abandoned equipment at the Company's cost and expense or, at the City's discretion the abandoned Surface

Equipment shall be deemed to have been abandoned by the Company and title thereto shall vest in the City. In the event the Company notifies the City that it proposes to abandon Equipment located under a Service Corridor and in the City's opinion acting reasonably, such equipment is in a poor, dilapidated or deteriorating physical condition and constitutes a hazard to persons or property, is an imminent threat to public safety or interferes with the efficient management and operation of the Service Corridor, the Company shall, at the request of the City, remove such buried abandoned Equipment from the Service Corridor.

Notice

40. Any and all notices required or permitted to be given hereunder shall be in writing and may be sufficiently given by personal delivery, mail or by fax transmission to the City at the following address:

City of Richmond
6911 No. 3 Road
Richmond, British Columbia V6Y 2C1
Attention: General Manager, Engineering & Public Works
Fax Number: (604) 276-4197

And to the Company at the following address:

Shaw Cablesystems Limited
Suite 900, 630 – 3rd Ave SW
Calgary, Alberta T2P 4L4
Attention: Vice President, Operations
Fax: (403) 750-4501

With Copy to:
Legal Department
Fax: (403) 716-6544

Any notice may also be given by prepaid registered mail mailed within the Province of British Columbia and such notice if delivered by mail shall be effective five (5) calendar days following the date of mailing, except in the event that there shall be a disruption in postal services at the date of mailing, in which case notice shall be effective by personal delivery or a facsimile transmission as stated above.

Force Majeure

41. Neither of the parties will be liable for failing to perform any of its respective obligations, covenants and agreements herein contained (excepting always obligations, covenants or agreements to pay), if failure, damage or loss is caused by an event of force majeure including acts of God or of the enemies of Canada, fire or other casualty, war, disaster, riots, strikes, walk-outs or other disturbances or for any other causes beyond the control of the party seeking relief and any date affected thereby shall be extended for the number of days equal to that number of days during which any such event is operative.

Confidentiality

42. During the term of this Agreement, the City may be entrusted with confidential information which the Company may be required to provide to the City hereunder, such

confidential information may include but is not limited to, information relating to the Equipment and the Work, the "as-built" drawings provided by the Company to the City hereunder, or such other information the Company considers of a competitive nature respecting the Company's customers, Equipment, material and its business operations. Except as required by law, including, without limitation, the Freedom of Information and Protection of Privacy Act, the City agrees that it will not use such confidential information for any purposes whatsoever except in the performance of this Agreement, and it shall not disclose any such confidential information to any third party whomsoever unless such disclosure is consented to in writing by the Company or is otherwise required by law and then only after the City has provided written notice of such requirement to the Company. The Company may, at its discretion, seek a protective order preventing such disclosure. The obligation of the City to keep such information confidential is necessary to protect the trade, commercial and financial interest of the Company. The City acknowledges and agrees that any breach whatsoever of the covenants, provisions and restriction contained in this section 42 by the City shall cause, and shall be deemed to be a breach of the City's obligations to the Company hereunder which may cause serious damage and injury to the Company which may not be fully or adequately compensated by monetary damages. The parties accordingly agree, that in addition to claiming damages the Company may seek interim and permanent equitable relief, including without limitation, interim, interlocutory and permanent injunctive relief, in the event of any breach of obligation of confidentiality described herein. All such rights and remedies shall be cumulative and in addition to all other rights and remedies shall be cumulative and in addition to all other rights and remedies whatsoever to which the Company may be entitled. Notwithstanding the foregoing, in the event the City is required pursuant to the *Freedom of Information and Protection of Privacy Act* to disclose the confidential information of the Company the City agrees to promptly notify the Company of the matter of disclosure.

Miscellaneous

43. Independent Contractors. The relationship of the Company and the City established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed:
 - a) to give either party the power to direct or control the day-to-day activities of the other;
 - b) to constitute the parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking; or
 - c) to allow either party to create or assume any obligation on behalf of the other party for any purpose whatsoever.
44. This Agreement is the entire Agreement between the City and the Company regarding the subject of this Agreement and it can be amended or supplemented only by a document executed in writing by both the City and the Company.
45. The Company and the City acknowledge that it is in the Company's best interest to enter into municipal access agreements which have consistent terms and conditions. The Company will use reasonable commercial efforts to ensure that the terms and conditions

contained in municipal access agreements between Company and any other municipality in British Columbia are consistent in all material respects with the terms and conditions contained herein.

46. This Agreement benefits and binds the City and the Company and the successors of each of them.
47. If any term of this Agreement is found to be invalid, illegal, or unenforceable by a court having the jurisdiction to do so, that term is to be considered to have been severed from this Agreement and the rest of this Agreement remains in force unaffected by that finding or by the severance of that term.
48. This Agreement creates contractual rights only between the City and the Company and not an interest in the Service Corridors and the Company covenants and agrees with the City that the Company shall desist always from any registration of this Agreement or of any right howsoever arising under it.
49. No alleged waiver or breach of this Agreement is effective unless it is an express waiver in writing of the breach in respect of which it is asserted against the party alleged to have given the waiver. No waiver by a party of any breach of this Agreement operates as a waiver of any other breach of this Agreement.
50. In this Agreement, unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender and a corporation.
51. This Agreement shall be governed by and construed and enforced in accordance with 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.
52. The use of headings in this Agreement is for convenience of reference only and shall not affect the construction or interpretation hereof.
53. This Agreement contains the entire understanding between the parties hereto relating to the subject matter contained herein and supercedes any and all prior agreements, arrangement, communications or representations, whether oral or written.

IN WITNESS WHEREOF the parties hereto have executed this Agreement by their duly authorized representatives.

On behalf of the **City of Richmond**

Mayor

Clerk

On behalf of: **Shaw Cablesystems Limited**

Name & Title: _____

Name & Title: _____

Schedule "A"
to the Municipal Access Agreement made _____, 2006 between the City of
Richmond and Shaw Cablesystems Limited

A. Definition of Causal Costs

"Causal Costs" include the costs described herein, which are incurred by the City as a direct result of the presence and/or the proposed installation of any of the Company's Equipment including but not limited to the construction, maintenance or operation of the Equipment in, on, under, over, along and across the Service Corridors.

B. Definition of Lost Productivity

"Lost Productivity Costs" means those significant additional costs incurred by the City that are identifiable and directly attributable to the presence of the Company's Equipment on, over, under, along or across Services Corridors in relation to the construction, installation, repair, replacement, extension or maintenance of sewage lines, conduits, ducts and pipes owned by the City.

C. Costs General:

Permitting and Inspection Costs

- 1.1 The following fees plus a loading factor of 15% are charged to recover the costs of the City reviewing and circulating Company applications, issuing permits and inspecting the Company's restoration work in any Alignment:
 - (a) Five Hundred Dollars (\$500.00) for each permit involving twenty (20) meters or less for any Work authorized pursuant to Section 3 of this Agreement; and
 - (b) an additional Five Hundred Dollars (\$500.00) for each one hundred (100) meters or part thereof in excess of the first twenty (20) meters referred to in (a), above.
- 1.2 The fees outlined above in subsections (a) and (b) are 2005 rates and shall be adjusted annually on December 31 of each year commencing in [2006], based on a percentage increase equal to the Consumer Price Index Variation as set out in the Canadian Economic Observer published by Statistics Canada, and expressed as a percentage rate per annum, calculated and compounded annually for each and every year of the Agreement. If the change in the Consumer Price Index is a negative sum for any given year then the change in the base rate for that year shall be zero.

Pavement Degradation Fees

2. In instances where the Company excavates, breaks up or otherwise breaches the surface of any Service Corridor, the Company will contribute to the cost of the pavement degradation based on the total area of pavement excavated and such amount will be payable within thirty (30) days of completing the restoration of the applicable Service Corridor, on a one time project basis, in accordance with the following table:

Age of Street in Years Since Last Paved as determined by the City	Fee Per Square Meter of Excavation
0 – 5 Years	\$40.00
6 – 10 Years	\$30.00
11- 15 Years	\$20.00
16 – 20 Years	\$10.00
21 Years or greater	\$ 0.00

Lost Productivity

3. The Company agrees that, from time to time, the City may incur Lost Productivity Costs. Where the City has incurred Lost Productivity Costs the Company covenants and agrees to pay to the City the Lost Productivity Costs within forty five (45) days of receipt of an invoice thereof, provided that the City has provided reasonable written documentation substantiating Lost Productivity Costs, including, but not limited to:
- (a) the location of the Company’s Equipment;
 - (b) a description of the City work, including, the sewage lines, conduits, ducts and pipes affected and any other utilities located in the trench;
 - (c) an explanation of the nature of the interference caused by the Company’s Equipment; and
 - (d) an itemized breakdown of the Lost Productivity Costs including, but not limited to labour, supplies, equipment and applicable loading factors and evidence of the Company’s pro-rated share of such costs as allocated amongst the various Service Providers or such other persons located in the Service Corridor with the Company’s Equipment.
4. If the Company disputes the Lost Productivity Costs, including but not limited to the prorated share thereof or whether the Company should be responsible for such costs (the “Dispute”), such Dispute shall be addressed under Section 24 (Dispute Resolution) of this Agreement.