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Date December 10, 2019 **Report No. 2019-735**

To Chair and Members
Committee of the Whole – Operations and Administration

From Russ Loukes, P.Eng., Acting General Manager
Public Works Commission

1.0 Type of Report

Consent Item

Item For Consideration

2.0 Topic Agreement to Suppress Locate Requests [Financial Impact –None]

3.0 Recommendation

- A. THAT Report No. 2019-735 titled “Agreement to Suppress Locate Requests” BE RECEIVED; and
- B. THAT the General Manager of Public Works or Designate BE AUTHORIZED to enter into agreement with businesses to suppress locate requests in order to avoid financial impact on the City of Brantford.

4.0 Purpose and Overview

To request council authorization for General Manager of Public Works to enter into an agreement with businesses to suppress locate requests to avoid financial burden on tax and rate payers.

Utility owners provide free locate services to excavators prior to the dig. However major utility expansion projects such as expansion of fiber communication lines throughout the City increases financial burden on the City

and also delays the completion of the locate requests. It is a common practice for private businesses to use third party locate contractors at their own cost through Suppression Agreements with local municipalities. Roger's Cable is interested in entering into the Suppression agreement with the City for their Fiber Uplift project in Brantford which started in 2019 and could end by 2024.

Bell Canada is also undertaking Fiber-To-The Door (Fiber) project to upgrade communications lines throughout the City and they started the project in 2018 and plan to complete in 2021. They suppressed about 50% of the locate requests for the project in 2018 and 2019. However they informed the City that they will not be entering into the Suppression Agreement with the City for the Fiber project. The City will continue to negotiate with Bell Canada to enter into an agreement that reduces the burden on tax and rate payers and helps to complete the locate requests in a reasonable timeframe.

5.0 Background

5.1 Overview of the Locate and the Locate Process

Utility locating, is the provision of utility location information by an owner (or their agent) in the form of ground surface markings and/or facility location documentation, such as drawings, mapping, numeric descriptions or other written documentation in an effort to prevent damage to utility infrastructure (cable, line, pipe, conduit, or structure used to gather, store, or convey products or services) during excavation and/or Hydro-Excavation (Note: Excavation can include augering, blasting, boring, coring, digging, ditching, dredging, drilling, grading, plowing-in, ripping, scraping, trenching and vacuuming). This underground infrastructure includes lines for telecommunication, electricity distribution, natural gas, cable television, fiber optics, traffic lights, street lights, storm drains, water pipes, and wastewater pipes.

Before any digging or excavation can take place, the excavator (any person proposing to or engaging in excavation or demolition work on their own or for another person) must notify all utility companies (through Ontario One Call if all utilities are members of the Ontario One Call) so that they can appropriately locate and mark their underground utility. Locating underground utilities prior to excavation is the responsibility of the excavator under the Construction Regulation (Ontario Regulation 213/91). The exemption to locate is determined by each utility such as gas, electricity and communication.

Due to the fact that there are a variety of different types of materials that go into manufacturing each of the different types of underground lines, different

detection and location methods must be used. For metal pipes and cables, this is often done with electromagnetic equipment consisting of a transmitter and a receiver. For other types of pipe, such as plastic or concrete, other types of radiolocation or modern ground-penetrating radar must be used. Location by these technical means is necessary because maps often lack the pinpoint precision needed to ensure proper clearance. Utility color codes are used to identify existing underground utilities in construction areas, to identify their location and minimize potential damage during excavation. Colored lines painted on the surface, flags, or both are used to mark the location and denote the type of underground utility. The American Public Works Association (APWA) Uniform Color Codes for temporary marking of underground utilities are identified in Table1:

Marking (Colour)	Function/Description
Red	Electric Power Lines, Cables, Conduit and Lighting Cables
Yellow	Gas, Oil, Steam, Petroleum and/or Gaseous Materials
Orange	Communication, Alarm or Signal Lines, Cables and/or Conduit
Blue	Potable Water
Purple	Reclaimed Water, Irrigation and Slurry Lines
Green	Sewers (Sanitary and Storm) and Drain Lines
White	Proposed Excavation
Pink	Temporary Survey Markings

Table 1– Markings colours that locate underground infrastructure

If damages occur to any underground utility before or after obtaining locates, the excavator can be held financially responsible for repairing the damage caused, and possibly be required to provide compensation for those whom are affected by the disruption of service.

5.2 Regulatory Requirements

5.2.1. Ministry of Labour Construction Regulation

According to Ontario Regulation 213/91, s. 228 for Construction Projects, the employer excavating must ensure all gas, electrical and other services are located or marked in or near the area to be excavated. If a service poses a hazard, it must be shut off and disconnected before the excavation activity begins. If a potentially hazardous service cannot be disconnected, the service owner must be asked to supervise uncovering of the service during the excavation.

5.2.2 Fines & Penalties

Enforcement authorities including the Ministry of Labour (MOL), Electrical Safety Authority (ESA), and Technical Standards & Safety Authority (TSSA) can enforce laws and regulations under the *Occupational Health and Safety Act* based on violations of the Construction Regulation.

- An individual can receive a maximum fine of \$25,000, a sentence of up to 12 months in prison, or both.
- A corporation can receive a maximum fine of \$500,000

5.3 Services of Ontario One Call

Ontario One Call is a not-for-profit organization that facilitates excavation requests to ensure homeowners, excavators and infrastructure owners are safe when digging. Established in 1996, this notification service has in place a process where a caller, at any time of the day or night, every day of the year, who has a locate request can contact the notification service and have that request processed. Ontario One Call requires five working days to process a request.

5.3.1 Excavators Contact the Notification Service Before Excavating

Excavators are responsible to contact the notification service to request locates prior to any excavating, 24 hours a day, 7 days a week. The notification service furthermore educates excavators of the necessity to contact the notification service before they dig. The notification service employs best practices to ensure access to the notification service at all times and by a variety of methods (e.g., phone, app, web) to ensure that the locate request process is efficient and effective. The phone number for Ontario One Call is 1-800-400-2255.

5.3.2 Locate Request

The notification service captures the following information, at a minimum, on a locate request: the caller's name and phone number; the excavator's/company's name, address and phone numbers; the specific location of the excavation; the start date and time of the excavation; and the description of the excavation activity.

5.4 Services of Contractor

While adhering to established Canadian Safety Standards, contracted Locate Service Providing (LSP) company authorized by the Corporation of the City of Brantford, are responsible for locating City's buried utilities including wastewater mains, storm water mains, drinking water mains, street lighting and traffic signal electrical connections and traffic control system communication lines. Other utilities such electricity, fiber optic and

other communication, natural gas are also performed by the respective utility owners. Utilities are located using electromagnetic induction and ground penetrating radar technologies.

5.4.1 Locate Report

A written report which may be referred to as the Locate Report and/or Locate Sheet should be issued by the LSP on behalf of the utility owner with detail instructions for appropriately locating the underground utilities.

5.4.2 Use of Records

LSP utilize on-site facility records at all times. Facility records can indicate approximate location, number of facilities and access points for buried facilities within a requested area. The use of owner supplied records is an effective method of identifying facilities as part of the locating process.

When records are not available on-site and electromagnetic techniques cannot be used (example; no tracer wire) or when as-built/as-constructed records are available on-site but there exists no electromagnetic or alternative technique to physically locate the facility, it may be necessary to delay the completion of the locate while archives are accessed, requiring immediate notification of all parties.

5.5 Locate Suppression Agreements

Utility owners wishing to opt out of Ontario One Call notification from a certain excavator for specific type of project can set up special arrangements with the excavator through a Suppression Agreement. In such a case, excavator would use their own company to locate utilities with the authorization from the utility owner and pay for the locate services. Utility will provide access to their infrastructure drawings and information in GIS through a "Data Release Agreement" and also need to enter into an agreement with the City for accessing City's IT system.

The benefits of this approach are:

- Utility owner does not have to incur additional locate costs to support the special/big projects undertaken by the business or excavator
- Business or excavator can complete the locate needs quickly using their own locating contractor

6.0 Input From Other Sources

The City of Brantford legal department has approved the Suppression agreement to form. Continuous Improvement and Finance comments were addressed. The City of Brantford has reached out to companies regarding suppression of locates.

7.0 Analysis

The existing underground utilities are modified to improve service level, address aging infrastructure and to serve new development. Bell Canada and Rogers Cable are attempting to complete the entire City within a 5-year window, in an effort to bring fiber to all residential houses. Bell Canada started this endeavor in 2018 and Rogers Cable began in August of 2019. Both of these projects are causing a financial burden on utility owners such as the City of Brantford due to increased workload and payments to the Locate Service Providers.

Upon City's request, Rogers Cable has agreed to enter into Suppression Agreement (attachment 1) with the City. In this agreement Rogers cable would use their own contractor to locate the City utilities (wastewater mains, storm water mains, drinking water mains, electrical connections for street lighting and traffic signals and traffic system communication lines). Ontario One Call will forward locate requests from Rogers Cable to their own locating contractor instead of forwarding these requests to the City's locating contractor. This will minimize financial burden on the City while utility companies upgrade their infrastructure at a rapid pace utilizing their own Locate Service Providers.

Bell Canada informed the City that it will not be entering into the Suppression Agreement with the City for the Fiber project. It appears roughly 50% of the Fiber project will be completed by the end of 2019 and the remaining 50% of the project will be completed by 2021. The City is still in negotiations with Bell Canada. If Bell Canada does not suppress locate requests for the Fiber project, the City's locate budget must be increased and also the completion of the locate requests for other construction projects in the City may be delayed.

Generally it would be within the City's best interest to enter into a Suppression Agreement. The proposed Suppression agreement can serve as a template for other utilities and/or stakeholders that want to undertake n major projects throughout the City.

8.0 Financial Implications

The 2019 operating budget for locating for all four City Utilities is \$302,897.

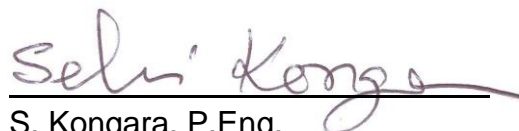
There is no budget impact as Rogers Cable has been suppressing their locate requests for the fiber project. Due to this suppression, the City will save approximately \$300,000 of locate expenses for the 5-year project.

In 2018 and 2019, upon City's request, Bell Canada suppressed about 50% of their locate requests for the Fiber project. Recently, Bell Canada indicated that they will not be entering into Suppression agreement with the City. This means the City tax and rate payers will have to pay the cost to locate underground utilities for the remaining Fiber project for the years 2020 and 2021 which is estimated to be roughly \$150,000. This estimated cost does not include the locate cost to be paid by Brantford Power Inc. for the remaining Fiber project. In the absence of a Suppression agreement with Bell Canada, the 2020 locate budget will need to be increased by approximately 25% for water, wastewater, electrical connections for street lights and traffic signals and traffic network communications utilities.

The City is currently in negotiations with Bell Canada in regards to suppression of locate requests. An update will be provided to Council on the outcome of the negotiations.

9.0 Conclusion

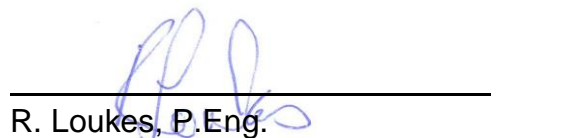
It is recommended to Council to authorize the General Manager of Public Works to enter into Suppression agreements with utility providers/developers as this would reduce financial burden on tax and rate payers. It will also enable the City and businesses to complete the locate requests and projects in a timely manner.



S. Kongara, P.Eng.
Director of Environmental Services



Jim Young
Manager, Water Distribution and Wastewater Collection



R. Loukes, P.Eng.
Acting General Manager, Public Works
Commission

Attachments

Appendix A - Suppression Agreement

In adopting this report, is a by-law or agreement required? If so, it should be referenced in the recommendation section.

By-law required yes no

Agreement(s) or other documents to be signed by Mayor and/or City Clerk yes no

Is the necessary by-law or agreement being sent concurrently to Council? yes no

APPENDIX A

THIS AGREEMENT made as of the _____ day of XXXXXX, 2019.

BETWEEN:

THE CORPORATION OF THE CITY OF BRANTFORD (the “City”)

AND

COMPANY

AND

Locates Service Provider (Note: Please insert name of LSP) (the “LSP”)

WHERE AS:

1. (COMPANY) has embarked on a project to install their fiber utility to each house and building (FIBER PROJECT) in the City. The method of installation calls for excavation and directional drilling to take place. Buried Water and Sewer Utility Assets are required to be located. To this end (COMPANY) will be using a Locate Service Provider (LSP) for the duration of this project the City has its own LSP under contract; and
2. (COMPANY) and its Locate Service Provider (LSP) and the City desire to formalize the locator agreement into writing.

NOW THEREFORE THIS AGREEMENT WITNESSESS THAT in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, and subject to the terms and conditions set out in this Agreement, the parties hereto herby agrees as follows:

1. In this agreement, the following words have the following meanings:
 - a. “Fiber Project” means the installation of fiber optic cables to each house and building in the City of Brantford;
 - b. “Locates” means the process by which the physical location of existing underground utilities are determined;
 - c. “Utilities” shall mean all public utilities including but not limited to the water distribution system (including water main, valves, curb stops), sewer systems, distribution assets of Brantford Power, Brantford Hydro, City Traffic and Lighting system assets, (COMPANY) assets and natural gas distribution systems.

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2. The LSP is required to complete Locates for (COMPANY) to locate all Utilities owned, operated and maintained by the City at each location where (COMPANY) fiber utility is being installed for the entire duration of the (COMPANY) Fiber Project.
 3. The City will not incur any cost for the locates associated for the (COMPANY) Fiber Project.
 4. (COMPANY) is responsible for all cost related the (COMPANY) FIBER PROJECT program in the City of Brantford which includes: suppressing any utility locate for:
 - a. Initial locates for (COMPANY) contractors/excavators to install (COMPANY) Fiber Project conduit;
 - b. Locates associated to the surface restoration;
 - c. Surface restoration, including repairs to roads, curbs, sidewalks, and sod or other landscaping, to the same standard as existed prior to any work being done in conjunction with the (COMPANY) Fiber Project;
 - d. Locates associated with Utilities when the utility is hit or damaged by (COMPANY)'s contractor/excavator and the damaged utility needs to be repaired – locates are required by the group repairing the damage.
 5. As part of this agreement both (COMPANY) and the Locate Service Provider (LSP) will have to sign the “Data Release Agreement” – Appendix A which will be considered part of this agreement in order to have access to the Water and Sewer GIS System.
 6. As part of this agreement (COMPANY) and the Locate Service Provider (LSP) will have to sign the “IT agreement XX” – Appendix “B” which will be considered part of this agreement in order to have access to the City’s IT system through www.portal3.brantford, including the Sewer Information System, Water Information system, miscellaneous electrical and telecommunications infrastructure, and all related engineering drawings. It also includes supplementary and support information that may provide by City staff time to time.
 7. (COMPANY) and the Locate Service Provider (LSP) agree that despite being provided with information regarding the location of various utilities, is their sole responsibility and they will rely upon the appropriate equipment necessary to property identify the location of the utilities. The City will not be in any way be responsible for any property damage or personal injury caused during the (COMPANY) Fiber Project, despite the use of the City’s information in order to assist with the Locates.
 8. (COMPANY) and the Locate Service Provider (LSP) shall indemnify and hold harmless the City from and against all claims, losses, damages, judgements, costs, expense, actions and other proceedings made, sustained, brought, prosecuted or threatened to be brought or prosecuted that are based upon, occasioned by or attributed to any bodily injury to or death of a person or damaged to or loss of property caused by any act or omission on the part of those for whom (COMPANY) an Locate Service Provider (LSP) is responsibility at law arising out of this agreement.

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9. (COMPANY) agrees that the City, and its agents, shall not be liable for any damage to the Locate Service Provider (LSP)'s equipment attached to the signal carrying lines as the result of any signal, voltage or electrical charge carried by the line.
 10. This Agreement is the agreement between the parties hereto, with respect to the Locates and supersedes any prior agreement, whether oral or written, and may only be amended by a written instrument signed by the parties.
 11. The Agreement shall be binding upon and ensure to the benefit of the parties hereto and their respective successors and permitted assigns.
 12. This agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original or electronic form and the parties adopt any signatures received by a receiving fax machine or email as original signatures of the parties; provided, however, that any party providing its signature in such manner shall promptly forward to the other party an original of the signed copy of this Agreement which was so faxed or emailed.
 13. The parties each acknowledge having obtained their own independent legal advice with respect to the terms of this agreement prior to its execution.
 14. Notice by either Party shall be served by registered mail, e-mail or courier, postage or delivery charges prepaid to

The Corporation of the City of Brantford
P.O. Box 818,
100 Wellington Square,
Brantford, Ontario, N3T SR7
Attention: Director of Environmental Services
Selvi_Kongara@brantford.ca
519-759-4150 x 5656

(COMPANY)

And all such notices by mail shall be deemed to have been received by the addressee on the third business day following mailing or, if by e-mail or courier, on the day of delivery or transmission unless delivered or transmitted on a weekend or holiday, in which case it shall be deemed to have been received on the next business day.

IN WITNESS WHEREOF this Agreement has been executed under seal by the parties hereto.

The Corporation Of The City Of Brantford		(COMPANY)
Name/Title		Name/Title
Signature I have the authority to bind this corporation		Signature I have the authority to bind this corporation
Date		Date