Agenda - Executive Policy Committee – November 7, 2012

Moved by Councillor

That Rule 10(3) of The Procedure By-law No. 50/2007 be suspended in order that the following item, which was received less than 96 hours preceding the committee meeting, be considered by Committee.

Report - Standing Policy Committee on Planning, Property and Development – November 6, 2012

Item No. 11 Shaw WiFi Facilities Attachment License Agreement

STANDING COMMITTEE RECOMMENDATION:

On November 6, 2012, the Standing Policy Committee on Planning, Property and Development concurred in the recommendation of the Winnipeg Public Service and submits the following to Council:

1. That a Facilities Attachment License Agreement in favour of Shaw Cablesystems Limited for the attachment of WiFi equipment to City facilities be approved in accordance with the terms and conditions outlined in Schedule A attached and any other terms and conditions deemed necessary by the Director of Planning, Property and Development and the City Solicitor/Director of Legal services to protect the City's interest.

2. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

Agenda - Executive Policy Committee – November 7, 2012

Report - Standing Policy Committee on Planning, Property and Development – November

DECISION MAKING HISTORY:

STANDING COMMITTEE RECOMMENDATION:

On November 6, 2012, the Standing Policy Committee on Planning, Property and Development concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

ADMINISTRATIVE REPORT

Title: **Shaw WiFi Facilities Attachment License Agreement**

Critical Path: Standing Policy Committee on Property and Development, EPC, Council

AUTHORIZATION

Author	Department Head	CFO	CAO
I. Day	B. Thorgrimson	M Ruta CFO	D. Joshi, COO

RECOMMENDATIONS

1. That a Facilities Attachment License Agreement in favour of Shaw Cablesystems Limited for the attachment of WiFi equipment to City facilities be approved in accordance with the terms and conditions outlined in Schedule A attached and any other terms and conditions deemed necessary by the Director of Planning, Property and Development and the City Solicitor/Director of Legal services to protect the City's interest.

2. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

REASON FOR THE REPORT

- Agreements with a term greater than five years require Council approval.

IMPLICATIONS OF THE RECOMMENDATIONS

- There is no cost to the City for the project as the total project cost is being borne by Shaw Cabelsystems Limited.
- Planning, Property and Development has determined that there are no regulatory, environmental or human resource implications to license the City facilities as set out in the attached Schedule A.
- Acceptance of the proposal and subsequent signing of the licensing agreement commits the City to a 10-year contract (with one 5-year renewal option).

HISTORY

Shaw Cablesystems Limited (Shaw) approached the City in the late 2011 with a proposal to install WiFi equipment in City facilities, which are used by the public, with the intention of providing their customers access to Shaw WiFi zones (wireless networks). Following negotiations between Shaw and the City, a facilities attachment license agreement was signed on June 28, 2012, under the Delegation of Authority for Real Property Transactions which delegated the authority for real estate transactions to the Chief Administrative Officer (report adopted by Council on January 28, 2009). The license agreement is for a period of 5 years with no renewal term, provides the City with an annual payment of $18.88 for each facility with an attachment, and contains a cancellation clause that allows either party to cancel without penalty as long as 120 days prior written notice is provided. The agreement allows Shaw access to those City facilities that the public uses in order to attach their WiFi equipment for the benefit of their customers. Existing Shaw customers will then be able to log into a Shaw WiFi zone (hot-spot) using their mobile devices and use Shaw's services. The roll-out includes libraries, pools, community centres and arenas.

The total cost of the project (permitting, hardware, cable installation, etc.) is being borne by Shaw at no cost to the City. The agreement is non-exclusive so a similar arrangement can be provided to other telecommunications companies (if requested) provided that the equipment can be accommodated in the existing facilities.

Revised Agreement
The initial facilities attachment license agreement, signed on June 28, 2012, referred to a subsequent agreement that would extend the term from five years to ten years. The revised terms and conditions (attached as Schedule A) includes the extended term of 10 years and one renewal term of 5 years (upon mutual agreement), an annual payment to the City of $18.88 for each facility with an attachment, and a cancellation clause that can be invoked if after 30 days any material obligations have not been remedied. Details of the proposed terms and conditions of the license agreement are provided in Schedule A. The longer term allows Shaw to capitalize their infrastructure investment over a greater length of time.

Shaw expects to install the equipment in fifty facilities by the beginning of the new year. They anticipate that eventually approximately 235 City facilities, accessible to the public, will be WiFi enabled.

As the term of the revised agreement is greater than five (5) years, Council approval is being sought for the proposed terms and conditions of the license agreement attached in Schedule A.

FINANCIAL IMPACT

Financial Impact Statement

Date: September 27, 2012

Project Name:

Shaw WiFi Facilities Attachment License Agreement

First Year of Program **2012**

	2012	2013	2014	2015	2016
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ -	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	750	4,500	4,500	4,500	4,500
Net Cost/(Benefit)	$ (750)	$ (4,500)	$ (4,500)	$ (4,500)	$ (4,500)
Less: Existing Budget Amounts	(750)	(4,500)	(4,500)	(4,500)	(4,500)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Annual revenues consist of 235 facilities @ ~ $19 each or roughly $4,500 per annum for a period of 10 years. The 2012 amount has been prorated assuming a November 1 commencement date.

"Original signed by"

Mike McGinn, CA
Manager of Finance

CONSULTATION

In preparing this report there was consultation with:

Legal Services Department as to legal issues

SUBMITTED BY

Department:	Planning, Property and Development
Division:	Municipal Accommodations
Prepared by:	Iain Day
Date:	September 27, 2012
File No.	MA2012-118

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Schedule A: Terms and Conditions

Licensor:	City of Winnipeg.
Lecensee:	Shaw Cablesystems Limited.
Location:	City-owned facilities used by the public.
Use:	Operation of WiFi hotspots for Shaw customers.
Term:	Ten (10) year term.
Option to Renew:	One five (5) year term to be renewed by mutual agreement.
Annual Rent:	$18.88 per facility plus GST and PST.
Cancellation:	Either party has the right to cancel immediately if the other party defaults on any of its material obligations and fails to remedy the default within thirty (30) days of receiving notice of the default.
Insurance:	Tenant to provide general liability insurance in the amount of five million dollars ($5,000,000) for damages, personal injury, including death, and for claims for property damages which may arise from the Work.
Non-exclusive:	Tenant acknowledges and agrees that the City may license the same Facilities to other service providers of telecommunications services.
Relocation:	If the City is required to relocate a particular Facility that has the Work attached to it, the City shall provide Shaw with no less than ninety (90) days notice.
Renovations and Repairs:	Tenant acknowledges that the City shall have access to the Facilities for maintenance, repairs, and making alterations or improvements to the Facilities.
Tenant Responsibility:	Tenant agrees to carry out the Work in a good, workmanlike and timely manner, to be responsible for all of its costs for its Work, to carry out the Work during normal business hours unless prior arrangement is made with the City's Contract Administrator, to comply with all applicable construction and safety codes, to require security clearances or prior arrangement for City staff to be present, to carry out the Work by properly identified Shaw staff, to be pre-approved for the location of the installation and the type of equipment to be installed, to submit a safe work plan, to not unduly interfere with any City property attached to the Facilities, not to assign, transfer, sub-let, or set over its rights of interest without prior written consent of the City, not to place signs or advertising without prior written approval of the City.

The terms and conditions referenced herein represent material matters that will be contained in the new licensing agreement subject to Council approval. Other clause that protect both the City's and Shaw interests and/or provide further clarification will be added as may be required.