

FACILITIES ATTACHMENT LICENSE AGREEMENT

This Facilities Attachment License Agreement (this "**Agreement**") between The City of Merritt (the "**City**") and Shaw Cablesystems Limited ("**Shaw**") outlines the terms agreed to by the parties regarding the granting of access to and use by Shaw of certain City facilities for the purpose of the provision of Shaw's Wi-Fi services.

In consideration of the mutual agreements and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, Shaw and the City agree as follows:

1. **Grant:** The City hereby consents and grants Shaw a non-exclusive right and license to access and attach in, on or to the City's facilities, including, but not limited to, attaching to, on or within traffic lights, cross walk poles, aerial structures, vehicle and/or public transportation corridors, lands and/or civic buildings owned by the City (collectively, "**Facilities**"), to install, operate and maintain certain telecommunication devices, cable and related equipment (the "**Work**") used for the purpose of transmission, emission or reception of signs, signals, writings, images, sounds or intelligence of any nature related to Shaw's Wi-Fi services (the "**Purpose**").
2. **Term:** The term of this Agreement shall commence on November 15, 2015 and shall continue for a period of five (5) years. Either party may terminate this Agreement if the other party breaches any of its material obligations hereunder and fails to remedy or commence actions to remedy such breach within thirty (30) days of receipt of notice from the non-breaching party.
3. **Work on the Facilities:** Prior to any Work, Shaw shall obtain the City's consent for such Work at a particular Facility. Upon Shaw obtaining such consent, Shaw agrees that all Work shall: (a) be carried out in a good, workmanlike and timely manner; (b) not unduly interfere with the Facilities; (c) comply with all applicable construction and safety codes; and (d) be responsible for all of its costs for its Work, including, without limitation, the cost to power the Work, which shall be paid to the City as follows: i) \$25.00 per indoor access point at a Facility per year; and ii) \$40.00 per outdoor access point at a Facility per year. Upon completion of the Work Shaw shall restore and repair any damage caused by the Work to the Facilities to the condition in which it existed prior to the Work. Shaw agrees to obtain all permits that are applicable for the installation of the Work required by the City's bylaw and perform all such Work in accordance with such bylaws. Nothing in this Agreement relieves Shaw from the ordinary jurisdiction of the City and, in particular, nothing in this Agreement relieves Shaw from the requirement for a highway use permit in order to dig in road allowances.
4. **No Interference:** The City shall not alter, remove or access Shaw's Work without Shaw's prior written approval unless due to an emergency situation, nor shall the City install or permit third parties to make installations of any equipment on or in the Facilities that causes interference with the Work without Shaw's prior written consent unless due to an emergency situation. Any third party or City equipment already installed or committed to be installed prior to the commencement of the Term are exempt from this clause, however at the time Shaw seeks the City's consent to install Work at a Facility, the City agrees to identify any equipment that is committed to be installed. The City agrees that upon receipt of notice by Shaw of such interference it shall immediately make or cause to be made such adjustments to such equipment to eliminate the interference. Shaw shall not alter, remove or access any City property or third party property located on Facilities without the City's prior written approval. For the purpose of clarity, neither party is responsible for any interference caused by radio waves or other technologies used by any person at the Facilities where the Work is located.

5. Indemnity: Shaw shall indemnify and save harmless the City from and against all actions, causes of action, proceedings, claims and demands brought against, for all losses, costs, or expenses incurred by the City, for damage to property, including property of the City or any third party, and for injury to persons incurred by the City, including its employees, servants, agents, and licensees or any third party, caused by, or attributable to, the negligence or willful act or omission of Shaw or any of its employees, servants or agents as a result of this Agreement. Shaw's obligation to indemnify the City is subject to the City giving Shaw prompt notice of the claim, provide all information that the City has with respect to the claim and grant Shaw sole carriage of the action and defense of such claim. Shaw shall not be liable for indirect or consequential losses or damages, or for damages for pure economic loss, howsoever caused or contributed to, in connection with this Agreement or with any of Shaw's Work.

6. Insurance: Shaw shall maintain general liability insurance to protect from claims for damages, personal injury, including death, and for claims from property damages which may arise from the Work. Such insurance limits shall not be less than five million dollars (\$5,000,000.00) for each occurrence and shall add the City as an additional insured. Shaw will provide the City a certificate of insurance annually during the Term to evidence such insurance is in effect and further agrees to instruct its insurers to provide the City no less than thirty (30) days notice before cancellation of such insurance.

7. Abandonment: Shaw may abandon its use of part or all of the Facilities at any time during the Term. Shaw shall remove any Work it abandons that is installed on Facilities and make all necessary repairs at its expense to ensure Facility locations are in the same or similar condition as they were prior to the Work.

8. Relocation: If at any time during the Term, the City is required to relocate, a particular Facility that has Work attached to it, the City shall provide Shaw with no less than ninety (90) calendar days notice. Shaw shall at its cost remove the Work from the affected Facility immediately upon the expiry of the notice period. If Shaw fails to remove such Work, the City may remove the Work and the reasonable costs incurred by the City shall be payable by Shaw. If the affected Facility is moved to a new location Shaw shall be permitted to relocate its Work to the Facility at the new location; or in the alternative if such relocation is not feasible or if the new location is not in the immediate area of the original site, the City will reasonably assist Shaw in finding a suitable alternative location for such Work. If the City notifies Shaw that there is an emergency situation involving public health or safety or any services at any Facility, Shaw shall remove its Work immediately. Once the emergency situation has been contained Shaw may reinstall its Work at the affected Facility. The City reserves the right to expand, demolish, alter or relocate its facilities at its sole discretion, and will provide Shaw with ninety (90) days notice thereof except in cases of emergency.

9. Consideration: In consideration of the grant herein by the City to Shaw, Shaw agrees to pay the City \$250.00 for each outdoor access point at a Facility and \$100.00 for each indoor access point in a Facility, by September 30th of each year for the Term, for each Facility where Shaw has installed and operating the Works. All amounts set forth in this Agreement are in Canadian funds and exclusive of applicable sales taxes.

10. Ownership: The City acknowledges that notwithstanding any rule of law or equity to the contrary, all Work installed by Shaw will remain the property of Shaw even though it is attached to the Facilities.

11. Governing Law: This Agreement will be governed by and construed under the laws of the Province of British Columbia. The parties agree to submit any dispute regarding this Agreement to the exclusive jurisdiction of a competent court located within the Province of British Columbia.

12. **Binding Agreement:** The parties agree that this Agreement and the agreements and understandings set out herein will be binding upon and enforceable against the parties.

13. **No Representation:** The City has made no representations or warranties as to the state of repair of the Facilities, or the suitability of the Facilities for any business, activity or purpose whatsoever, and Shaw hereby agrees to use the Facilities on an "as is" basis.

ACCEPTED AND AGREED:

SHAW CABLESYSTEMS LIMITED

By:



Name/Title: Ron McKenzie
Senior Vice President, Business

CITY OF MERRITT

By:



Name/Title:
SHAWN BOVEN, CAO

CITY OF MERRITT

By:



Name/Title:

NEIL MENARD/MAYOR

