



**CITY OF RICHMOND**

**REPORT TO COMMITTEE**

**TO:** Public Works and Transportation Committee  
**FROM:** Paul H. Lee, P.Eng.  
Manager, Engineering Planning  
**RE:** **Utility Access Agreement – Bylaw No. 7259**

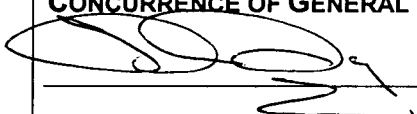
*To PWT - July 18, 2001*  
**DATE:** June 19, 2001  
**FILE:** 8060-20- 7259

**STAFF RECOMMENDATION**

That the bylaw titled "Federally Governed Telecommunication Company Access to City Road Rights-of-Way Regulation, Bylaw No. 7259" be introduced and be given First, Second and Third readings.

  
Paul H. Lee, P.Eng.  
Manager, Engineering Planning

Att. 1

FOR ORIGINATING DIVISION USE ONLY		
<b>ROUTED TO:</b>	<b>CONCURRENCE</b>	<b>CONCURRENCE OF GENERAL MANAGER</b>
Law .....	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>	

## STAFF REPORT

### ORIGIN

Bylaw 6896 was adopted in 1999 and had attached, as Schedule "A", a form of agreement for the use of City of Streets by federally regulated telecommunications firms. The agreement was based on a standard form of agreement recommended by the Federation of Canadian Municipality (FCM) Agreements. The City of Vancouver and Leducor could not agree on the terms of an access agreement and referred the dispute to the Canadian Radio-Television and Telecommunications Commission (CRTC). The CRTC has now ruled on the terms set out in an agreement which were very similar to the master agreement and in almost every area of dispute ruled against the position taken by the FCM and the City.

### FINDINGS OF FACT

In view of this ruling no utility company wishing access to City streets will sign the form of agreement set out in the existing Schedule "A". The CRTC did not allow Vancouver:

1. to charge a rent for the use of their streets;
2. to have the absolute right to have the utility move its' facilities if the City requires it for bona fide municipal purposes;
3. to escape payment of the cost of relocation of the private facilities if the City required their removal; and
4. to have the telecommunications indemnify the City from all liability.

However, staff do not agree with points 2 and 4 and therefore will continue to negotiate inclusion of these clauses (see Schedule "A", Clauses 11, 12 and 13) with Telecommunication companies applying for access within the City.

Staff have recently completed negotiations with GT Group Telecom Services Corp (GT) to allow access to a portion of City streets and have agreed with those clauses to be included in the proposed agreement. This agreement has been negotiated with the company with the CRTC ruling in mind. This agreement will form the basis of future agreements with other companies and a blank version of this agreement is recommended to become the new Schedule "A".

### ANALYSIS

The CRTC ruling was a major set back for Cities in their negotiations with private telecommunications firms that want to use our streets. However this ruling is currently being appealed and if the appeal is successful, Schedule "A" will be amended to reflect any changes required.

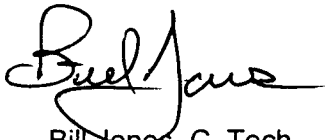
Negotiations with GT have taken a considerable length of time and they have asked staff if they could install a small portion of fibre cable prior to adoption of the bylaw, as they have customers waiting for service. Staff have agreed provided that they sign a form of agreement similar to Schedule "A", pay the application fee set out in agreement, have the design approved and lodge with the City proof of insurance and a letter of Credit in amount sufficient to cover the costs of repair of the streets. If Council adopts the bylaw the Mayor and Clerk will be authorized to sign the agreement after final adoption.

### FINANCIAL IMPACT

The City should not be out of pocket for any costs for entering into this agreement, but in light of the CRTC ruling will not be able to charge GT an occupation rent for use of the City's streets. However, the agreement does include administrative permit costs to be paid by the Company in the amount of \$500 for installations of fifty (50) metres or less and an additional \$500 per each one hundred (100) metres or part thereof in excess of the first fifty (50) metres.

### CONCLUSION

The form of agreement attached to the bylaw is not the form of agreement that the City would prefer, but in light of the current ruling of the CRTC is one which the City will have to use until there is a successful appeal of the CRTC ruling. Upon final adoption of Bylaw No. 7259, the Mayor and Clerk are authorized to sign future access agreements with Telecommunication companies.

A handwritten signature in black ink, appearing to read "Bill Jones", with a stylized flourish at the end.

Bill Jones, C. Tech.  
Supervisor, Infrastructure Planning

BJ:pk

**CITY OF RICHMOND**

**FEDERALLY GOVERNED TELECOMMUNICATION COMPANY ACCESS  
TO CITY ROAD RIGHTS-OF-WAY REGULATION BYLAW NO. 7259**

The Council of the City of Richmond enacts as follows:

**PART ONE: GENERAL PROVISIONS**

- 1.1 Every Federally Governed Telecommunication Company wishing to locate antennas, wires, conduits, cables and other plant on, under or over **City** streets and rights-of-way, must:
- (a) apply in writing to the **General Manager, Engineering & Public Works**, including and specifying:
    - (i) the desired location of the works;
    - (ii) the type of works to be placed;
    - (iii) the purpose of the works; and
    - (iv) the date by which the company wishes to commence installation;
  - (b) enter into an agreement substantially in the form of Schedule A which is attached and forms a part of this bylaw; and
  - (c) lodge all insurance and security required by the **City** and make all payments required to be made by the agreement.
- 1.2 The **General Manager, Engineering & Public Works** must ensure that the proposed works do not interfere with the installation or maintenance of any other **City** utilities.
- 1.3 The Mayor and City Clerk are authorized to enter access agreements which are substantially in the form of Schedule A.

**PART TWO: INTERPRETATION**

- 2.1 In this bylaw, unless the context otherwise requires:

**CITY**

means the City of Richmond.

**GENERAL MANAGER OF  
ENGINEERING & PUBLIC  
WORKS**

means the person appointed by Council to the position of General Manager of Engineering and Public Works, and includes a person designated as his alternate.

### **PART THREE: PREVIOUS BYLAW REPEAL**

- 3.1 Federally Governed Telecommunication Company Access to City Road Rights-of-Way Regulation Bylaw No. 6896 (adopted February 22<sup>nd</sup>, 1999) is repealed.

### **PART FOUR: SEVERABILITY AND CITATION**

- 4.1 If any part, section, sub-section, clause, or sub-clause of this bylaw is, for any reason, held to be invalid by the decision of a Court of competent jurisdiction, such decision does not affect the validity of the remaining portions of this bylaw.
- 4.2 This bylaw is cited as "**Federally Governed Telecommunication Company Access to City Road Rights-of-Way Regulation Bylaw No. 7259**".

READ A FIRST TIME ON:

\_\_\_\_\_

READ A SECOND TIME ON:

\_\_\_\_\_

READ A THIRD TIME ON:

\_\_\_\_\_

ADOPTED ON:

\_\_\_\_\_

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CITY CLERK

INTERIM MUNICIPAL ACCESS AGREEMENT

THIS AGREEMENT made this \_\_\_\_ day of

BETWEEN:

**THE CITY OF RICHMOND**

6911 No. 3 Road  
Richmond, British Columbia  
V6Y 2C1

(the "City")

of the First Part

AND:

(the "Company")

of the Second Part

WHEREAS:

- (a) The Company operates a communications undertaking by transmitting signals and information through its facilities;
- (b) The Company is a Canadian carrier as defined in section 2 of the *Telecommunications Act*, SC 1993, c. 38, as amended;
- (c) The Company wishes to install, maintain, operate, relocate and remove wires, fibre-optic cables, ducts, conduits, manholes and other accessories, structures and equipment (collectively, the "Equipment") in, on, under, over, along and across highways, streets, road allowances, lanes, bridges, viaducts and any other ways open to public use (singularly a "Service Corridor" and collectively, the "Service Corridors") within the City; and

- (d) The City is willing to permit the use of Service Corridors on the terms & conditions herein contained.

NOW THEREFORE in consideration of the sum of TEN DOLLARS (\$10.00) paid by each of the parties to the others and of the premises mutual covenants herein contained, the City and the Company each agree with each other as follows:

#### **Permission Granted**

1. The City hereby agrees to permit the Company to use the Service Corridors for the purpose of installing, maintaining, repairing, replacing, operating, and removing the Equipment subject to the terms and conditions hereinafter set forth and in accordance with all applicable federal, provincial (including BC Ministry of Transportation and Highways "Traffic Control Manual for Work on Roadways") and municipal statutes, laws, bylaws and specifications (including Municipal Master Construction Document specifications) or other rules and regulations pertaining to the application and use of the Service Corridors or the Equipment.

#### **Approvals**

2. The Company shall not excavate, break up or otherwise breach the surface of any Service Corridor for the purpose of constructing, maintaining or removing any of its Equipment in, on, under, over, along or across a Service Corridor without first obtaining the written approval of the City's General Manager, Engineering & Public Works with regard to the proposed location of the Equipment in, under, over, above and across the Service Corridor. In applying for such approval the Company shall submit to the City's General Manager, Engineering & Public Works:

- a) detailed engineering plans in accordance with the City's Drafting Standards showing the proposed location and description of the Equipment;
- b) a schedule setting out the proposed timetable for commencement and completion of the works and the dates and times during which the Company proposes to carry out such works; and

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

3. In granting any approval, the City's General Manager, Engineering & Public Works may for the purposes of establishing sound engineering practices and City policies relevant to engineering matters establish terms and conditions under which the work is to be conducted.

#### **Routine Work**

4. Notwithstanding sections 2 and 3, the Company may carry out routine maintenance, field testing, subscriber connections, or removal of Equipment as well as placing and splicing in existing support structure where there is no need to excavate, break up or otherwise breach the surface of any Service Corridor without the consent of the City.

#### **Condition of Work**

5. All work conducted by the Company in a Service Corridor, including installation, maintenance, repair, replacement, operation, relocation and removal of its Equipment, is subject to the following conditions:

- a) all work shall be conducted and completed to the satisfaction of the City's General Manager, Engineering & Public Works, at the City's General Manager, Engineering & Public Works' sole discretion;
- b) 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;
- c) 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 in before such work was undertaken by the Company and to the satisfaction of the City's General Manager, Engineering & Public Works. If the Company fails to



repair and restore a Service Corridor to the satisfaction of the City's General Manager, Engineering & Public Works within ten (10) days of being notified by the City, the City may effect such repairs and the Company shall pay normal City costs related thereto in accordance with paragraph 12 hereof;

- d) if the City, acting reasonably, requires the installation, maintenance, operation, repair, replacement, relocation or removal of the Equipment to be stopped, the Company shall cease all such installation, maintenance, repair, replacement, operation, relocation or removal of the Equipment forthwith upon receipt of notice from the City. Within three (3) days of issuing a stop work order under this clause, the City shall provide the Company with written reasons for such order; and
- e) the Company is responsible for all installation, maintenance, repair, replacement, operation, relocation and removal of the Equipment including the cost of such work.

#### **Company Representations**

- 6. 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 practice and in a manner that shall:
    - (i) not damage or materially interfere with the equipment, property and improvements of the City or other persons situate in, 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 related to the installation, maintenance, repair, replacement operation, relocation, or removal of the Equipment, 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 which 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;
- 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;
- 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**

7. The Company shall provide "as built" drawings to the City within two (2) months of completing the installation of any of the Equipment.

### **Equipment Locates**

8. 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 forty-eight (48) hours of receiving a request by the City in all other cases.

### **Emergency Contacts**

9. 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.

10. 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**

11. Upon receipt of sixty (60) days notice from the City, the Company shall relocate its Equipment within a Service Corridor, or perform any other work arising due to the placement of the Equipment in connection with the Service Corridors which may be required by the City for its own municipal Service Corridor management purposes or the purposes of any other Public Authority, provided that in cases of emergency, the City may take any measures deemed necessary for public safety with respect to the Equipment that may be required in the circumstances as the City shall determine, and the Company shall reimburse the City for all expenses thereby incurred.

12. If the Company fails to complete the relocation of the Equipment in accordance with paragraph 11 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, 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 two percent (2%)

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.

### **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 intentional or negligent 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 and invitees of the Company or any third party, caused by, resulting from or attributable to the intentional or negligent 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 and Termination**

16. This Agreement shall commence upon the date of execution and shall, unless renewed, terminate one (1) year after the first day of the month in which the Agreement is executed. The

Agreement shall automatically renew for successive one (1) year periods without limitation to the number of renewal periods unless either the City or the Company give written notice of cancellation to the other not less than three (3) months prior to the expiration of this Agreement or any renewal term provided that either party may submit an application to the CRTC regarding such termination and provided, also, that any such termination shall not affect the use, operation or maintenance of any existing Equipment of the Company. Notwithstanding such termination the Company shall continue to be liable to the City for all payments due and obligations incurred thereunder prior to the date of such termination.

### **Interim Agreement**

17. The parties acknowledge and agree that this Agreement is intended to be an interim agreement only and is intended to be replaced and superseded by a further form of agreement governing the subject matter hereof (the "Master Agreement") at such time as the Master Agreement is executed and delivered by the parties thereto. Until such time, this Agreement evidences the legal and binding obligations of the parties.

### **Consent Permit Fees**

18. The Company covenants and agrees to pay to the City a consent permit fee for each written consent obtained from the City's General Manager, Engineering & Public Works pursuant to section 2 above with regard to the location of Equipment in, on, under, over, above and across the Service Corridors as follows:

- a) five hundred dollars (\$500) for permits involving fifty (50) metres or less; and
- b) an additional five hundred dollars (\$500) per each one hundred (100) metres or part thereof in excess of the first fifty (50) metres.

### **Most Favoured Nation**

19. The parties agree that:

- a) if, subsequent to the execution of this Agreement, the Company enters into any municipal access agreement which is substantially similar in purpose to this Agreement with any other municipality in British Columbia (other than the City of

Vancouver) which is substantially similar to the municipality of Richmond, which the City considers to be more favourable than this Agreement, and that agreement is not part of a more detailed partnership agreement between the Company and the municipality and the provisions favourable to the municipality are not part of CRTC-ordered benefit package commitments relating to that municipality, then the City may at its option terminate this Agreement with one hundred and twenty (120) days notice and the parties will enter into a new agreement on the same terms and conditions as are contained in such other agreement; and

- b) the parties acknowledge that CRTC Decision 2001-23 developed principles for municipalities and carriers to follow when negotiating terms and conditions for access to municipal rights of way. This Decision is now the subject of an appeal to the Federal Court of Canada. If a CRTC decision or judicial review and resulting final determination (a "Final Determination") approves terms and conditions of such access that would have a significant impact on the terms and conditions of such access as provided by this Agreement, then the parties will renegotiate the terms and conditions of this Agreement to achieve parity with the Final Determination.

### **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 and Public Works, acting reasonably, shall be deposited with the City to ensure performance of the Company's road restoration work for each written consent obtained from the City's General Manager, Engineering & Public Works pursuant to section 2 above. 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 the following amount:

- a) twenty-five thousand dollars (\$25,000) for permits involving pavement restoration valued at up to twenty-five thousand dollars (\$25,000) at any one time; and

- b) an additional amount of security corresponding to the value of pavement restoration of permits in excess of the first twenty-five thousand dollars (\$25,000).

### **Compliance**

21. The City and the Company mutually agree that should the Company fail to carry out any of the material terms, covenants and conditions herein contained or default in any of its obligations under the terms hereof or fail within thirty (30) days after receiving written notice from the City to correct any such failure capable of correction, then this Agreement shall thereupon be null and void and of no affect and the Company shall thereupon remove all its Equipment from the Service Corridors.

### **Assignment**

22. This Agreement shall be binding upon and shall enure to the benefit of the parties hereto and their respective successors and assigns. The Company shall not assign, transfer or sublet any rights or privileges granted hereunder without the prior written consent of the City which consent shall not be unreasonable withheld. Notwithstanding the foregoing, the Company may, without the City's prior consent, assign, transfer or sub-let in whole or in part the rights and privileges hereby granted under this Agreement to a person that directly or indirectly controls, is controlled by, or is under common control with the Company and to a purchaser of all or part of the Company's assets, for which CRTC approval has been granted.

23. The Company may pledge the license 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**

24. 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 placement of the Equipment in a Service Corridor shall not create or vest in the City any ownership or property rights to the Equipment.

### **Non-Exclusivity**

25. 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**

26. The Company agrees that it shall at its own expense procure and carry or cause to be produced 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 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 Workers' Compensation Board Industrial Health and Safety Regulations.

### **Insurance**

27. The Company shall maintain insurance 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 and such coverage shall include all costs, charges and expenses reasonably incurred with any injury or damage.

28. In addition to the foregoing the Company covenants and agrees that:

- a) the limits of liability 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 additional named 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) all policies shall provide that they cannot be canceled, lapsed or materially changed to the adversity of the City without at least thirty (30) days notice to the City by registered mail; and
- f) upon execution of this Agreement the Company shall file with the City a certified copy of each insurance policy required and shall thereafter provide such certified copies on request by the City.

**Notice**

29. Any notice required or permitted to be given hereunder or any tender or delivery of documents may be sufficiently given by personal delivery or, if other than the delivery of an original document, by facsimile transmission to the City at the following address:

**The 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:

Any notice may also be given by prepaid registered mail mailed within the Province of British Columbia and such notice shall be effective five (5) 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.

**Miscellaneous**

30. 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.
31. This Agreement benefits and binds the City and the Company and the successors of each of them.
32. 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.
33. 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.
34. 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.
35. In this Agreement, unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender and a corporation.
36. 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.

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

I have the authority to bind the Corporation