



**City of Richmond**

**Report to Committee**

**To:** Public Works and Transportation Committee **Date:** March 4, 2008 *mar 19, 2008*  
**From:** Robert Gonzalez, P.Eng. **File:** 03-1000-21-003  
 Director, Engineering  
**Re:** **Municipal Access Agreement with TELUS Communications Company**

**Staff Recommendation**

That the General Manager, Engineering & Public Works be authorized to enter into and execute the attached Municipal Access Agreement between the City of Richmond and TELUS Communications Company.

Robert Gonzalez, P.Eng.  
General Manager, Engineering and Public Works  
(4150)

Att. 1

FOR ORIGINATING DEPARTMENT USE ONLY			
<b>ROUTED TO:</b>	<b>CONCURRENCE</b>	<b>CONCURRENCE OF GENERAL MANAGER</b>	
Budgets .....	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>		
Law .....	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>		
Real Estate Services .....	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>		
<b>REVIEWED BY TAG</b>	YES <input checked="" type="checkbox"/> <i>GS</i> <i>AK</i>	NO <input type="checkbox"/>	<b>REVIEWED BY CAO</b>
			YES <input checked="" type="checkbox"/> <i>AK</i>
			NO <input type="checkbox"/>

## Staff Report

### Origin

In August 2003, the City received an application from TELUS Communications Company to install telecommunication facilities within City Rights-of-Way which triggered negotiations for the creation of a TELUS Municipal Access Agreement (MAA). On December 18, 2007 after an extended negotiation with City staff, TELUS 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.

Currently, TELUS applies for permission to install underground infrastructure within our rights-of-way/roads on a case by case basis. These applications do not require TELUS to pay for any permit fees, causal costs<sup>1</sup>, design, inspection nor estimating costs. Where the City requires TELUS infrastructure to be relocated to facilitate City capital projects or to conduct repairs, the City would also be required to pay for all of the costs associated with the relocation of this infrastructure including all costs incurred by TELUS. Furthermore, TELUS may currently be allowing third party telecommunications companies to access their infrastructure (such as their conduits) without notification to the City and as such, the City would be responsible for their future relocation costs as well as TELUS's.

Relocation, causal and administration costs incurred by the City in dealing with TELUS infrastructure in public rights of way can be onerous. With the continuing densification of the city centre these costs and issues have become increasingly pronounced and as a result, staff and TELUS have worked toward a Master Access Agreement (MAA). The proposed TELUS MAA (see Appendix A) addresses the above concerns. Some of the key features of the proposed agreement are that:

1. Federation of Canadian Municipalities principles are upheld (see attached);
2. The permit fees defined in Schedule "A" of this agreement can be adjusted twice in each of the five year terms;
3. Richmond assumes some shared liability for relocation costs;
4. Richmond will recover causal costs as they relate to the presence and installation of any of the TELUS infrastructure in the City's streets and rights-of-way.

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<sup>1</sup> Causal costs are those costs that are incurred as a result of additional effort and materials spend working around a private utility installation in maintaining or constructing public infrastructure

The main benefits for TELUS as a result of this agreement including the following:

- The operating terms and conditions for TELUS expanding and managing this infrastructure in Richmond is well understood and documented.
- TELUS can mitigate capital installation costs given that operating terms and conditions are understood. Currently TELUS may be required to avoid City infrastructure through the permitting process or choose to do so on their own accord.

### Financial Impact

Richmond will realize new revenues to offset administration costs and offset additional capital costs in the amount of approximately \$70-\$80,000 per year based on a current average of 70 permits/year as a result of entering into this agreement. With the exception of beautification projects (for which the City will pay 100% of the costs), relocation costs will be paid by TELUS at rates of 50-100% based on the age and date of installation. The agreement also includes Permitting and Inspection Fees to be paid by TELUS in addition to Lost Productivity costs, Agreement Preparation and Administration costs and Pavement Degradation Fees.

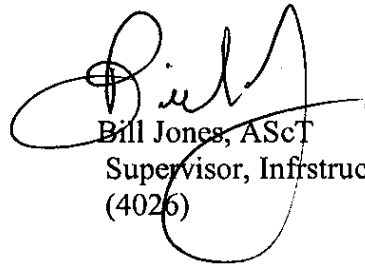
### Conclusion

Staff recommends that the General Manager, Engineering and Public Works be authorized to enter into and execute the attached TELUS MAA. To date, in Canada, this is one of the most comprehensive and progressive agreements between a municipality and TELUS Communications Company, a major telecommunications company, 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.



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

RG:bj



Bill Jones, AScT  
Supervisor, Infrastructure Planning  
(4026)

## MUNICIPAL ACCESS AGREEMENT

THIS AGREEMENT made effective this \_\_\_\_ day of \_\_\_\_\_, 2007

BETWEEN:

**THE CITY OF RICHMOND**

(the "City")

AND:

**TELUS Communications Company**

(the "Company")

**RECITALS:**

- a) **WHEREAS**, the Company is a "Canadian Carrier" as defined in the *Telecommunications Act* (Canada) ("*Telecom Act*") or a "distribution undertaking" as defined in the *Broadcasting Act* (Canada) ("*Broadcast Act*");
- b) **AND WHEREAS**, for the purpose of its telecommunications and broadcast distributions undertakings within the City of Richmond, the Company requires to enter in, on, over, under, along or across those highways and other public places within the jurisdiction of the City (for the purposes of this Agreement "highways and other public places" shall mean all dedicated highways, streets, roads, lanes and bridges open to public use and all rights-of-ways granted to the City for public utility purposes, but only to the extent of the City's jurisdiction over such rights-of-ways and subject always to any limitations and restrictions governing their use) (collectively, the "**Service Corridors**") from time to time for the purpose of constructing, maintaining, operating, repairing and removing the Company's wires, support structures, transmission lines and other related telecommunications facilities (as that term is defined in the *Telecom Act*), such support structures, transmission lines and other related telecommunications facilities hereinafter called "**Equipment**", in, on, over, under, along or across the Service Corridors of Richmond, British Columbia;
- 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 grant its 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;
- g) **AND WHEREAS** the Company has a long standing history of working, in the public interest, to ensure telephone and related services are provided to the residents of the City of Richmond;
- h) **AND WHEREAS** the City and the Company have agreed that it would be mutually beneficial to outline the terms and conditions pursuant to which said 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, 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 for the purpose of constructing, operating, maintaining, repairing and removing its Equipment 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 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 Corridor for the purpose of constructing, maintaining, operating, repairing or removing any of its Equipment in, on, under, over, along or across any Service Corridor, (collectively called “**Work**”) without first:
  - a) obtaining written authorization from the City’s General Manager, Engineering & Public Works (the “General Manager”) with regard to the proposed location of said Works (the “**Alignment**”);
  - b) providing detailed engineering plans in accordance with the City’s Engineering Department Drafting Standards document, as revised by the City from time to time, 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 General Manager 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 activities of the Company in, 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 efforts 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 in existing support structures, 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 must 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 General Manager, 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 or to a mutually accepted standard;
  - 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 in before such Work was undertaken by the Company and to the satisfaction of the General Manager, acting reasonably. If the Company fails to repair and restore a Service Corridor to the reasonable satisfaction of the General Manager 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 22 hereof;

- e) if the City requires the Work to be stopped due to a danger or threatened danger to public safety, the Company shall cease all such Work forthwith upon receipt of notice from the City, provided that, within three (3) business days of issuing a stop work order under this clause, 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 of 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 practice 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 in, on, 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 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 General Manager, 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 with respect to the Work performed under this Agreement;
- 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 digital "as built" drawings in hard copy, or electronically if requested by the City, within two (2) calendar months of completing the installation of any new Equipment.

### **Equipment Locates**

9. The Company agrees to participate with the City and other Service Providers in "B.C. One Call" or similar mutually acceptable centralized utility location notification procedure, and to pay its proportionate share of the costs of the administration of such procedure and to provide cable locates in accordance with these policies at no cost to the City.

### **Emergency Contacts**

10. The Company shall provide to the General Manager a list of twenty-four (24) hour emergency contact telephone numbers for the Company and shall ensure that the aforementioned list is 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 current.

### **Relocation of Equipment**

12.

a) Notice

The Company and the City agree that, if the City requires the relocation of the Company's Equipment for a *bona fide* municipal purpose including, without limitation, to comply with safety standards or to accommodate any relocation, installation, modification, repair, construction, upgrading or removal of City facilities or for its own municipal purposes, then, subject to the terms and conditions of this section 12:

- (a) the City will provide the Company with notice of such relocation in accordance with the requirements of this section 12.a);
- (b) the Company will carry out the relocation of its Equipment in accordance with the City's notice in this section 12.a); and
- (c) the parties will work together in good faith to determine a design that will best take into consideration the cost and complexity of relocation of the Equipment when compared to the overall purpose and cost of the entire project, provided that, the City's decision on design shall be final.

In the event the City requires the Company to relocate its Equipment, then, in addition to providing advance notice as indicated in the City's Five Year Capital Works Plan and after consulting with the Company regarding the scope of the relocation of its Equipment, the City agrees to provide to the Company a further one hundred and eighty (180) days written notice of the proposed relocation. In the event a reasonable alternate Alignment to accommodate the Company's Equipment is available, the Company, upon shall, prior to the expiry of the notice period, commence relocating such Equipment within the Service Corridors or perform any other work in connection with its Equipment as may be required by the City.



b) Allocation of Relocation Costs

For the purposes of this section 12, Equipment shall be comprised of Support Structures and Transmission Facilities. "Support Structures" are defined as the duct, conduits, manholes and pole structures as shown on the Company's drawings, that are used to support or accommodate Transmission Facilities. "Transmission Facilities" are defined as the cables and ancillary equipment that provide telecommunication services.

Subject to section 12.b)iv , the responsibility for the cost of City-initiated Equipment relocation, for a *bona fide* municipal purpose, shall be allocated between the City and the Company as follows:

- i. For any Company-owned Support Structure existing prior to the effective date of this Agreement, the City and the Company shall share Support Structure relocation costs on a 50-50 basis.
- ii. For any Company-owned Support Structure installed in, on, over, under, along or across a Service Corridor after the effective date of this Agreement, relocation costs shall be allocated between the City and the Company as follows:
  - (a) where the Support Structure was installed more than 20 years before the date of the notice of relocation referred to in section 12(a), the Company shall be solely responsible for 100% of the relocation costs;
  - (b) where the Support Structure was installed less than or equal to 20 years before the date of the notice of relocation referred to in section 12(a), the relocation costs shall be equally shared by the City and Company on a 50-50 basis.
- iii. For any Company-owned Transmission Facilities installed in, on, over, under, along or across a Service Corridor either before or after the effective date of this Agreement, relocation costs shall be allocated between the City and the Company on the following basis:
  - (a) where the Transmission Facility was installed less than or equal to five (5) years before the date of the notice of relocation referred to in section 12(a), the City shall be solely responsible for 100% of the relocation costs; and
  - (b) where the Transmission Facility was installed more than five (5) years before the date of the notice of relocation referred to in section 12(a), the relocation costs shall be shared by the City and the Company on the following basis:

<u>Year</u>	<u>City's Share of Relocation Costs</u>
6	80%
7	60%
8	40%
9	20%
10 or more	0%

The Company shall submit certified Transmission Facility installation records to the City for each relocation prior to commencement of any Work.

- iv. 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 an Equipment location being approved. The City will make a good faith effort to accommodate these alternative suggestions in order to assist the Company in its efforts to facilitate the provision of services to its customers.
- v. If relocation is the result of any project or work of a third party, the said third party shall be responsible to pay all costs associated with any relocation of the Company's Equipment and will pay such costs directly to the Company.
- vi. The Company shall have no obligation to pay relocation costs for relocations initiated by the City for purposes such as beautification projects or projects initiated to provide concessions to third parties. For the purposes of this section 12, "beautification projects" shall mean the City's bona fide Ten Year Beautification Undergrounding Program within the City Centre areas or any other such project which requires the relocation of Company's equipment for cosmetic or aesthetic purposes.
- vii. For the purposes of this section 12, "relocation costs" shall mean the reasonable actual costs incurred by the Company in carrying out the relocation of its Equipment, net of all salvage savings and betterment costs.
- viii. Prior to commencing relocation work, the Company shall submit for the City's approval an estimate of the costs of carrying out the relocation, including an itemized breakdown showing the estimated labour, supplies and equipment and applicable loading factors in such detail as may be reasonably required by the City in order to determine the extent and reasonableness of the relocation costs. If the parties are unable to agree on the estimate of the relocation costs, the Company shall proceed with the relocation work and the dispute over the amount of the relocation costs shall be addressed under section 23 (Dispute Resolution) of this Agreement.

## **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 lost profit or other 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 and Termination**

16. Unless otherwise terminated in accordance with its provisions, the initial term of this Agreement shall commence on the effective date of this Agreement and shall be five (5) years in duration. Unless the Agreement is otherwise terminated in accordance with its provisions, it shall be automatically renewed for additional successive five (5) year terms. During each five (5) year term, the City may make adjustments to the permit fees prescribed in section 1.1 of Part C (Permitting and Inspection Fees) of Schedule "A" to more accurately identify and capture its causal costs. Provided, however, that no more than two adjustments shall be made in any five (5) year term.

The initial term and the subsequent terms to the extent applicable shall be called the "**term**". Either party, after the initial five (5) year term, may terminate the Agreement by providing at least one hundred and twenty (120) days written notice.

#### **Payments to the City**

17. The Company covenants and agrees to pay the City the Permitting, Inspection and Pavement Degradation fees specified in Schedule "A" and to reimburse the City for Lost Productivity Costs, all in accordance with the rates, amounts, requirements and procedures of Schedule "A" attached hereto and forming part of this Agreement.

#### **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 City in respect of taxes payable under section 353(2) of the *Local Government Act*. 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 the Company has not demonstrated satisfactory financial performance in its dealings with the City, the City may require security in the form of a Letter of Credit, or other security acceptable to the General Manager, acting reasonably, to be deposited with the City to ensure performance of the Company's road restoration work for each permit for Work obtained from the General Manager 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 General Managers. The security shall be in an amount sufficient to cover the road restoration work.

## 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, and 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 further 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 40, 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) i) if a proceeding is commenced 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, 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 Event of Default

22. Upon the occurrence of a Company Event of Default the City may terminate this Agreement upon written notice to the Company, in which case section 24 shall apply, or take such action as it determines, in its sole discretion, acting reasonably 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. However the City shall not take any direct action that will negatively impact the use, operation, or maintenance of any existing Equipment of the Company.

## **Dispute Resolution**

23. 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 and Telecommunications Commission for resolution. Alternatively, the parties may agree to submit any matter in dispute to arbitration in accordance with the provisions of the *Commercial Arbitration Act* of British Columbia.

## **Termination**

24. Upon termination of this Agreement for any reason:

- a) The Company and the City shall enter into meaningful negotiations for a new Agreement where the Company continues to operate and to use and occupy the Service Corridors; 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 (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 Corridors 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 required 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 32 and 33 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.

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

## **Successors and Assigns**

26. 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 assets of that party. 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 includes any partnership or other unincorporated association in which the Company or any of its affiliated bodies corporate (as so defined) has a controlling interest, upon advance written notice to the City. The Company

may not otherwise assign this Agreement without the advance written consent of the City, which consent may not be unreasonably withheld, conditioned, or delayed.

27. In the event of any assignment of the Agreement by the Company, the Company shall remain jointly and severally liable under this Agreement in all respects with the assignee, and the City may require the assignee to enter into its own agreement with the City before the assignment becomes effective.
28. Despite section 27, 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**

29. 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 37, 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**

30. 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 Coverage**

31. The Company agrees that it shall, at its own expense, procure and carry, or cause to be procured and carried and paid for, all applicable workers' compensation coverage for itself and all workers, employees, and others engaged in or upon any Work. All parties engaged in the Work must abide by all applicable Workers' Compensation Board safety rules and regulations.

### **Insurance**

32. The Company shall maintain Commercial General Liability Insurance in the amounts and description as described below to 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. The Company shall also maintain insurance, on a replacement cost basis, covering loss, theft or damage to its Equipment or other goods or chattels located, in, on, over, under, along or across a Service Corridor or other City-owned property, to their full insurable value.

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

- a) the limits of liability under the Commercial 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 additional insured under the Commercial General Liability Insurance;
- c) a Cross Liability clause shall be made part of the Commercial General Liability Insurance;
- d) the Commercial 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 lapsed 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 certificate or certificates of insurance.

#### **Utility Coordination**

34. 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**

35. 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 a 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**

36. The Company shall conform and shall be responsible for the conformance by its officers, employees, agents, contractors and invitees to all applicable health and safety laws including any regulations requiring installation of safety devices or appliances, and any applicable traffic laws or regulations. The City may, if in its opinion the likelihood of harm to persons is imminent, require the Work to be stopped as provided by and pursuant to the conditions as set out in section 6 e) of this Agreement.

### **Obsolete Equipment**

37. 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.

### **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 or Service Corridor it occupies and uses hereunder. For the purposes 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 purposes of section 38, "**hazardous substances**" means any hazardous substances and includes, but is not limited to, radiation, petroleum products and by-products, 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.

### **Notice**

39. 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:

**TELUS Communications Company**  
Attention: Director, Access and Carrier Agreements  
Telecom Policy & Regulatory Affairs



TELUS  
21-W TELUS Plaza South Tower  
10020 - 100st. NW Edmonton AB.  
Canada T5J 0N5

With a copy to:  
VP Legal Services  
TELUS  
8th Floor, 555 Robson St.  
Vancouver B.C. Canada  
V6B 3K9  
Fax Number: (604) 437-8560

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) 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 effected by personal delivery or a facsimile transmission as stated above.

#### **Force Majeure**

40. 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, lock-out 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.

#### **Miscellaneous**

41. 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.
42. 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.
43. The Company and the City acknowledge that it is in the Company's best interest to enter into municipal access agreements which have terms and conditions consistent with the principles outlined in CRTC Decision 2001-23. The Company will use reasonable commercial efforts to ensure that the terms and conditions contained in similar municipal access agreements between the Company and other municipalities in British Columbia accord with such principles.

44. This Agreement benefits and binds the City and the Company and the successors of each of them.
45. 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.
46. 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.
47. 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.
48. In this Agreement, unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender and a corporation.
49. 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. Notwithstanding anything contained in this Agreement, nothing shall preclude the Company's ability to rely upon and avail itself of the provisions of the *Telecom Act*.
50. This Agreement contains the entire understanding between the parties hereto relating to the subject matter contained herein and supersedes any and all prior agreements, arrangement, communications or representations, whether oral or written.

The City will endeavour to ensure that its bylaws do not conflict with this Agreement. However, in the event of a conflict between the provisions of a City bylaw and this Agreement, the City and the Company shall use their best efforts to re-negotiate the terms of this Agreement to the extent necessary to resolve the conflict.

#### **Equitable Relief**

51. Either party may, in addition to any other remedies it may have at law or equity, seek equitable relief, including, without limitation, injunctive relief, and specific performance to enforce its rights or the other party's obligations under this Agreement.

**IN WITNESS WHEREOF** the parties have executed this agreement under the hands of their duly authorized signing officers.

**TELUS Communications Company**

**Per:** \_\_\_\_\_

**Name (Printed):** \_\_\_\_\_

**Title:** \_\_\_\_\_

**SIGNED, SEALED AND DELIVERED**

**THE CITY OF RICHMOND**

\_\_\_\_\_  
**NAME AND TITLE**

**Schedule "A"**  
**to the Municipal Access Agreement made XXX, 2007 between the City of**  
**Richmond and the TELUS Communications Company**

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

**C. Costs General:**

**Permitting and Inspection Fees**

- 1.1 The following fees including 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 thirty (30) meters or less for any underground Work authorized pursuant to section 3 of this Agreement;
  - (b) an additional \$5.00 per meter for every meter beyond thirty (30) meters for any underground work authorized pursuant to section 3 of this agreement; and
  - (c) One Hundred Seventy-Five dollars (\$175.00) for each permit relating to poles and anchors.

**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 forty-five (45) 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
2 or less	\$40.00
>2 to 4	\$33.00
> 4 to 7	\$27.00
>7 to 10	\$17.00
> 10 to 20	\$7.00
More than 20 years	\$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 23 (Dispute Resolution) of this Agreement.

### **Federation of Canadian Municipalities Guiding Principles**

Shortly after the CRTC deregulation of telecommunication companies, the Federation of Canadian Municipalities (FCM) adopted five guiding principals for municipal governments to apply to all telecom companies requesting access to City streets. They are:

1. the ability to manage the occupancy and uses of rights-of-ways;
2. recovering all costs associated with occupancy and use of rights-of-ways by other parties;
3. not being responsible for the costs of relocating facilities situated along municipal rights-of-ways if relocation is required ie: reconstruction of municipal roads;
4. not being liable for losses associated with the disruption of services or with damages to property as a result of usual municipal activities or the activities of other parties along municipal rights-of-ways; and
5. Municipal governments must receive compensation for the occupancy and use of municipal rights-of-ways by other parties.