

SERVICES AGREEMENT

This Services Agreement is made as of the day of May, 2004.

B E T W E E N :

BUSINESS EDUCATION COUNCIL OF NIAGARA, a non-profit corporation incorporated pursuant to the laws of the Province of Ontario;

(hereinafter referred to as the "**BEC**");

- and -

THE CORPORATION OF THE TOWN OF PELHAM;

(hereinafter referred to as the "**Participant**");

RECITALS

WHEREAS:

- (A) The BEC and Her Majesty The Queen In Right Of The Province Of Ontario as represented by the Minister of Enterprise, Opportunity and Innovation, now known as Minister of Economic Development and Trade (hereinafter referred to as "**Ontario**") have entered into an agreement (the "**Funding Agreement**") dated the 1st day of September, 2003 whereby Ontario agreed to provide certain financial assistance to the BEC in the form of grant funds to assist the BEC in providing value-added services to residents and businesses in the Niagara region through an electronic community portal that enables increased economic development and investment attraction to the region and results in new innovative community-based online applications;
- (B) Pursuant to the Funding Agreement, the BEC is required to match the Ontario grant funds with cash or in-kind contributions from the BEC or other arms-length parties from the public and/or private sector in an amount of not less than 53.3% of the total Project (as such term is hereinafter defined) expenditures; and
- (C) The Participant wishes to participate in and contribute to the Project.

NOW THEREFORE THIS AGREEMENT WITNESSES that for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, it is agreed between the parties hereto as follows:

ARTICLE 1 DEFINITIONS

1.1 ***Defined Terms.*** In this Services Agreement and in the Schedules hereto, the following terms shall have the meanings set out below unless the context requires otherwise (in which case the term will not be capitalized):

- (a) **"Effective Date"** means the date 1st day of May, 2004 or such earlier or later date as may be agreed upon in writing by the parties;
- (b) **"Funding Agreement"** means the agreement between Ontario and the BEC dated the 1st day of September, 2003 and all of the schedules thereto;
- (c) **"Intellectual Property"** includes, without limitation, all intellectual property, rights, whether registered or not, including patents, trade-marks, trade names, brand names and other distinctive trade dress, designs, graphics, symbols, indicia of origin, copyright, trade secrets, know-how and other similar proprietary rights;
- (d) **"Project"** means the creation and hosting of a Niagara community electronic portal, the implementation of a scalable platform to enable Niagara's municipalities to provide an immediate suite of online services to residents, and the creation and hosting of a comprehensive Niagara business information system;
- (e) **"Services"** means the services to be provided by the BEC or pursuant to the Services Agreement, as more particularly described in Article 5 and Schedule "B" herein;
- (f) **"Services Agreement"** means this Agreement including the Schedules to this Agreement, as it or they may be amended or supplemented from time to time;
- (g) **"Term"** means the period commencing as of the Effective Date and ending on the date specified in Article 6 herein.

ARTICLE 2

CONTEXT

2.1 **Intent.** The BEC shall deliver the Services defined in this Services Agreement and discharge the duties and responsibilities specified in Article 5.

ARTICLE 3

PARTICIPANT CONTRIBUTION

3.1 **Investment.** In consideration of the BEC providing the Services herein, the Participant agrees to pay the BEC a fee (the "**Service Fee**") during the Term of this Services Agreement. The Service Fee will be paid and satisfied by way of cash and by way of "in kind" contribution (as hereinafter defined). For the purposes of this Services Agreement, an "in-kind" contribution shall consist of promotional mailers to the residents living in the Participant's city or town, as the case may be. The Participant agrees to pay the BEC the Service Fees set forth in Schedule "A" hereto.

3.2 **Invoicing.** The BEC shall invoice the Participant on a yearly basis for the Services provided hereunder on May 1st of each year during the Term or any renewal thereof. The Participant hereby acknowledges and agrees that all invoices are due and payable within thirty (30) days of issuance.

3.3 **Taxes.** The Participant acknowledges that the Service Fees do not include any duties, sales taxes, goods and services tax or value added taxes (collectively, the "**Taxes**"). The Participant agrees that whenever imposed, all Taxes are payable by the Participant.

ARTICLE 4

PROJECT GOVERNANCE

4.1 **Governance Committee.**

(a) The Participant acknowledges that the Project will be overseen by a governance committee (the "**Governance Committee**") composed of twelve (12) members. The Governance Committee shall act in an advisory capacity to the BEC on issues related to the design, implementation and ongoing maintenance of the Project and the services provided to residents of the Niagara Region therein. A quorum for Governance Committee meetings shall be a majority of the voting members.

(b) The Governance Committee will meet quarterly and all questions posed for consideration at a Governance Committee meeting shall be determined by a majority vote. In the event of a deadlock, the Chairperson of the Governance Committee shall have a casting vote. All decisions made by the Governance Committee shall be presented to the BEC as recommendations. The BEC shall use reasonable efforts to implement such recommendations, subject to budgetary, administrative and other constraints.

4.2 Structure. The BEC and the Participant agree that the twelve (12) member Governance Committee shall be composed of ten (10) voting members and two (2) non-voting members. The voting and non-voting members shall be composed of nominees from the following participants:

Voting Members:

- Regional Municipality of Niagara - two (2) members
- City of St. Catharines - one (1) member
- City of Niagara Falls - one (1) member
- Other local municipalities (City of Welland, Town of Fort Erie, Town of Grimsby, Town of Lincoln, City of Port Colborne, City of Thorold, Town of Niagara-on-the-Lake, Town of Pelham and Township of Wainfleet) - two (2) members
- Public Sector Agencies - two (2) members
- Business Sector - one (1) member
- Private-Sector Partner (Telus Enterprise Solutions and Sun Microsystems) - one (1) member

Non-Voting Members:

- Project Agent and chairperson of the Governance Committee (BEC) - one (1) member
- Project Manager - one (1) member

4.3 Term.

(a) The initial term of any nominee shall be for two (2) years. A Participant shall notify the BEC in writing no later than thirty (30) days prior to the commencement of each two (2) year period of the Term who its Governance Committee nominee shall be for the two (2) year period.

(b) The Participant agrees that the City of Welland, the Town of Fort Erie, the Town of Grimsby, the Town of Lincoln, the City of Port Colborne, the City of Thorold, the Town of Niagara-on-the-Lake, Town of Pelham and Township

of Wainfleet (collectively, the "**Area Municipalities**") shall be represented on the Governance Committee by two (2) nominees chosen by the Area Municipalities, as agreed amongst themselves.

ARTICLE 5

SERVICES

5.1 ***Duties and Responsibilities of the BEC.*** The BEC covenants with the Participant to provide the Services set out in Schedule "B" hereto. The BEC undertakes to complete the Services in a professional and competent matter.

ARTICLE 6

TERM

6.1 ***Commencement and Duration.*** The Term of this Services Agreement is for a period of two (2) years commencing on the Effective Date and ending on April 30, 2006 (the "**Term**").

6.2 ***Renewal.*** This Services Agreement may be renewed for a further period as agreed by the parties provided that the BEC and the Participant agree in writing as to the amount of the Service Fee to be paid to the BEC by the Participant for each year of the renewal term. In the event that the parties fail to agree on the amount of the Service Fee for each year of the renewal term prior to the expiration of the initial Term herein, this Services Agreement will come to an end on the last day of the Term and be of no further force and effect.

6.3 ***Effect of Termination.*** At the end of the Term, the parties agree as follows:

- (a) the Participant shall pay the BEC all costs, Service Fees and Taxes due and owing to the date of termination; and
- (b) the BEC shall ensure that access to services related to the Participant's municipality or town will be removed from the community portal, as will any link to the Participant's website or webpage.

ARTICLE 7

REPRESENTATIONS AND WARRANTIES

7.1 ***Representations and Warranties of the BEC.*** The BEC hereby represents and warrants to the Participant as follows, and acknowledges that the Participant is

relying upon the accuracy of the representations and warranties of the BEC set out in this Services Agreement:

(a) ***Incorporation and Power.*** The BEC is a non-profit corporation duly incorporated under the laws of the Province of Ontario and is duly organized, validly subsisting and in good standing under such laws.

(b) ***Corporate Authority.*** The BEC has all necessary corporate power, authority and capacity to enter into this Services Agreement and all other agreements and instruments to be executed by it as contemplated by this Services Agreement and to carry out its obligations under this Services Agreement and such other agreements and instruments.

(c) ***Execution and Delivery.*** The execution and delivery of this Services Agreement and all other agreements and instruments to be executed and delivered as contemplated by this Services Agreement and the completion of the Services contemplated by this Services Agreement and such other agreements and instruments have been duly authorized by all necessary action on the part of the BEC and its members.

7.2 *Representations and Warranties of the Participant.* The Participant hereby represents and warrants to the BEC as follows, and acknowledges that the BEC is relying upon the accuracy of all representations and warranties of the Participant set out in this Services Agreement:

(a) ***Incorporation and Power.*** The Participant is a corporation duly incorporated under the laws of the Province of Ontario and is duly organized, validly subsisting and in good standing under such laws.

(b) ***Authority.*** The Participant has taken all necessary corporate action required to be taken by it to authorize this Services Agreement and the transaction contemplated hereunder and has all necessary power, authority and capacity to enter into this Services Agreement and all other agreements and instruments to be executed by it as contemplated by this Services Agreement and to carry out its obligations under this Services Agreement and such other agreements and instruments.

(c) ***Execution and Delivery.*** The execution and delivery of this Services Agreement and all other agreements and instruments to be executed and delivered as contemplated by this Services Agreement and the completion of the transactions contemplated by this Services Agreement and such other agreements and instruments have been duly authorized by all necessary action on the part of the Participant and its council. A copy of the by-law authorizing

the execution of this Services Agreement is attached as Schedule "C".

ARTICLE 8

COVENANTS

8.1 ***Covenants of the Participant.*** The Participant covenants with the BEC as follows:

- (a) to pay the Service Fees and applicable Taxes as and when due without deduction, abatement or set-off;
- (b) during the Term of this Agreement or any renewal hereof, the Participant will not enter into any agreement under which it or its residents will receive services or access to services which are the same or similar to the Services provided hereunder; and
- (c) it shall hold all information received through the Niagara community portal from residents or businesses using the electronic community portal in strict confidence, exercising the degree of care that is required by all applicable law.

ARTICLE 9

INTELLECTUAL PROPERTY AND CONFIDENTIALITY

9.1 ***General.*** All Intellectual Property developed by or resulting from the Project shall be and remain the exclusive property of the BEC.

9.2 ***License of Intellectual Property.*** Subject to the terms and conditions of this Services Agreement, the Participant hereby grants to the BEC during the Term and any renewal hereof a non-exclusive, non-transferrable, world-wide, fully paid, royalty free right and license to display the Participant's Intellectual Property on the community portal. The BEC acknowledges and agrees that it has no right or title in any of the Participant's Intellectual Property.

9.3 ***Confidentiality.*** Each party agrees to retain in confidence and not (except in furtherance of this Services Agreement) to use or disclose any confidential or proprietary business and/or technical information of the other party without the prior written consent of the other party and then only to the extent specified in such consent. Each party will maintain the confidentiality of the confidential information of the other party with access only by those employees, agents and subcontractors who have a need to access such information for the purpose for which it is given and

who are bound to keep the information confidential. However, subject to applicable law, neither party will have any confidentiality obligation with respect to disclosure of such information to others, not parties to this Services Agreement that:

- (a) is or becomes available to the public through no breach of this Services Agreement;
- (b) was previously known by the receiving party without any obligation to hold it in confidence;
- (c) is received from a third party free to disclose such information without restriction;
- (d) is independently developed by the receiving party without the use of the confidential information of the disclosing party;
- (e) is approved for release by written authorization of the disclosing party, but only to the extent of such an authorization; or
- (f) is disclosed in response to a valid order of a court or other governmental body, but only to the extent of and for the purposes of such order, and only if the receiving party first notifies the disclosing party of the order and permits the disclosing party to seek an appropriate protective order.

ARTICLE 10

INDEMNIFICATION

10.1 *Indemnity by the BEC.* The BEC agrees to indemnify and hold the Participant, its representatives and its respective directors, officers and employees harmless from and against any claim, demand, action, cause of action, damage, loss, deficiency, cost, liability or expense ("Claim") which may be made or brought against such indemnified party or which it may suffer or incur in respect of, or arising out of:

- (a) any incorrectness, inaccuracy, misrepresentation or breach of any representation or warranty made by the BEC in this Services Agreement; and
- (b) any non-performance or non-fulfilment of any covenant or agreement on the part of the BEC contained in this Services Agreement.

10.2 *Limitation of Liability.* The BEC's total cumulative liability arising in any manner under or in connection with this Services Agreement or the Services provided hereunder shall be limited to the recovery by the Participant during the Term of this

Agreement of actual, direct damages up to a maximum of the total amount of the cash portion of the Service Fees received by the BEC from the Participant during the Term of this Agreement. Without limiting the generality of the foregoing, in no event will the BEC or its officers be liable for loss or damage of data and/or other information, business interruption or anticipated revenues or profits, failure to realize unexpected savings or any special, indirect, incidental or consequential damages arising under or in connection with this Services Agreement or the use of or inability to use the Niagara community portal even if advised of the possibility of such damages.

10.3 *Indemnity by the Participant.* The Participant agrees to indemnify and hold the BEC, its representatives and its respective directors, officers and employees harmless from and against any Claim which may be made or brought against such indemnified party or which it may suffer or incur directly or indirectly as a result of in respect of or arising out of:

- (a) any incorrectness, inaccuracy, misrepresentation or breach of any representation or warranty made by the Participant in this Services Agreement; and
- (b) any non-performance or non-fulfilment of any covenant or agreement on the part of the Participant contained in this Services Agreement.

ARTICLE 11

GENERAL

11.1 *Articles and Headings.* The division of this Services Agreement into articles, sections, paragraphs, subparagraphs and clauses, and the insertion of headings is for convenience of reference only and shall not affect the construction or interpretation of this Services Agreement.

11.2 *Number and Gender.* In this Services Agreement, unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders.

11.3 *Notices.* Any notice, designation, communication, request, demand or other document, required or permitted to be given, sent or delivered hereunder to any party hereto shall be in writing and shall be sufficiently given, sent or delivered if it is:

- (a) delivered personally to the party;
- (b) sent to the party entitled to receive it by prepaid courier service

or mail; or

- (c) sent prepaid by facsimile or other similar means of electronic communication.

Notices shall be sent to the following applicable addresses or facsimile numbers:

- (d) in the case of the BEC:
3340 Schmon Parkway, Unit #2
Thorold, ON L2V 4Y6
Facsimile: 905-684-4230
Attention: Ted Palmer
- (e) in the case of the Participant:
20 Pelham Town Square
Fonthill, ON LOR 1E0
Facsimile: 905-892-5055
Attention: Gord Cherney

or to such other address or facsimile number as the party entitled to or receiving such notice, designation, communication, request, demand or other document shall, by a notice given in accordance with this section, have communicated to the party giving, sending or delivering such notice, designation, communication, request, demand or other document.

Any notice, designation, communication, request, demand or other document given, sent or delivered as aforesaid shall:

- (a) if delivered as aforesaid, be deemed to have been given, sent, delivered and received on the date of delivery;
- (b) if sent by courier or mail as aforesaid, be deemed to have been given, sent, delivered and received (even if not actually received) on the fourth business day following the date of mailing, unless at any time between the date of mailing and the fourth business day thereafter there is a discontinuance or interruption of regular postal service, whether due to strike, lockout or work slow down, affecting postal service at the point of dispatch, delivery or any intermediate point, in which case the same shall be deemed to have been given, sent, delivered and received in the ordinary course of the mails, allowing for such discontinuance or interruption of regular postal service; and

- (c) if sent by facsimile as aforesaid, be deemed to have been given, sent, delivered and received on the next Business Day after the date the sender receives the fax answer back confirming receipt by the recipient.

11.4 *Governing Law.* This Services Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in that Province and shall be treated, in all respects, as an Ontario contract.

11.5 *Entire Agreement.* This Services Agreement and the Schedules hereto constitute the entire agreement between the parties pertaining to the subject matter of this Services Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no conditions, warranties, representations or other agreements between the parties in connection with the subject matter of this Services Agreement, whether oral or written, express or implied, statutory or otherwise, except as specifically set out in this Services Agreement.

11.6 *Severability.* Any provision of this Services Agreement which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or invalidity and shall be severed from the balance of this Services Agreement, all without affecting the remaining provisions of this Services Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

11.7 *Rights and Waivers.* All rights and remedies of the parties are separate and cumulative, and none of them, whether exercised or not, shall be deemed to be to the exclusion of any other rights or remedies and shall be deemed to limit or prejudice any other legal or equitable rights or remedies which either of the parties may have.

11.8 *Independent Legal Advice.* The Participant acknowledges that it has been advised to retain independent legal advice prior to signing this Services Agreement and agrees that its failure to retain such independent legal counsel shall not affect (and it shall not assert that it affects) the validity of any of the provisions of this Services Agreement.

11.9 *Interpretation Not Affected by Party Drafting.* Each party acknowledges that it and its legal counsel have reviewed and participated in settling the terms of this Services Agreement, and each of the parties hereby agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting party shall not be applicable in the interpretation of this Services Agreement.

11.9 *Time of the Essence.* Time shall be of the essence of this Services Agreement.

11.10 *Amendments.* No modification, supplement, termination, waiver or amendment to this Services Agreement may be made unless agreed to by the parties in writing.

11.11 *Successors and Assigns.* This Services Agreement cannot be assigned by the BEC or the Participant without the prior written consent of the other party. This Services Agreement shall be binding upon and enure to the benefit of the parties and their respective successors and permitted assigns. Nothing herein, express or implied, is intended to confer upon any person, other than the parties and their respective successors and permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Services Agreement.

11.12 *Force Majeure.* No party shall be liable for or considered to be in breach of this Services Agreement to the extent that a failure to perform its obligations under this Services Agreement shall be due to a Force Majeure (as hereinafter defined). To the extent either party is prevented by Force Majeure from carrying out, in whole or in part, its obligations hereunder and such party (the "**Claiming Party**") gives notice and details of the Force Majeure to the other party as soon as practicable, the Claiming Party shall be excused from the performance of its obligations hereunder. The Claiming Party shall take all reasonable actions in attempt to remedy the Force Majeure with all reasonable dispatch. For the purposes of this Services Agreement, Force Majeure includes the inability of either party to perform its obligations herein by reason of any fire, explosion, war, riot, strike, walk out, labour controversy, flood, shortage of labour or necessary materials or supplies, breakdown in or the loss of equipment or software, act of God or public enemy, any law, act or order of any court, board or government or other authority of competent jurisdiction, any inability on the part of the Telus Services Partnership ("**TSP**") (or such other software provider) to provide the software and services necessary to operate the Project pursuant to the terms of the agreements between TSP and the BEC, or any other cause (whether or not of the same character as the foregoing) beyond the reasonable control of either party.

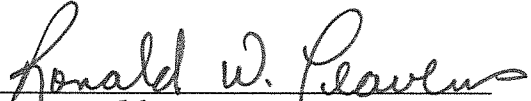
IN WITNESS WHEREOF the parties hereto have executed this Services Agreement as of the day and year first written above.

BUSINESS EDUCATION COUNCIL OF NIAGARA

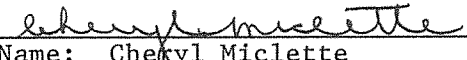
By:  _____

Name: Ted Palmer
Title: Executive Director
I have authority to bind the Corporation.

**THE CORPORATION OF THE TOWN OF
PELHAM**

By: 
Name: Ronald W. Leavens
Title: Mayor
I have authority to bind the Corporation.

By:


Name: Cheryl Miclette
Title: Clerk

SCHEDULE "A"

Town of Pelham
(the "Participant")

- (a) Service Fee for the first year of the Term, being May 1, 2004 to April 30, 2005, shall be the sum of \$8,480.00;
- (b) Service Fee for the second year of the Term, being May 1, 2005 to April 30, 2006, shall be the sum of \$8,480.00;
- (c) In-Kind Contribution for the first year of the Term, being May 1, 2004 to April 30, 2005, shall be the sum of \$4,828.00, representing the cost of promotional mailers to residents and businesses of Pelham; and
- (d) In-Kind Contribution for the second year of the Term, being May 1, 2005 to April 30, 2006, shall be the sum of \$4,828.00, representing the cost of promotional mailers to residents and businesses of Pelham.

SCHEDULE "B"**Services To Be Provided By
Business Education Council of Niagara****YourNiagara Portal**

The Your Niagara portal is a geographically based portal designed to provide a focused Internet-window on information and services of particular interest to residents, visitors, businesses, organizations and governments in Niagara. As a collection of 12 communities, all the features of a fully functional community portal will be applied to the organizations, governments, businesses and unique personality of each community in Niagara. For all of the following functions, the user will be able to focus the YourNiagara Portal on their local community, another community in Niagara or on Niagara as a whole.

As additional features of interest to portal users, the YourNiagara Portal will also include the implementation of TELUS Content Channels: News, Finance, Weather, Sports Scoreboard, Stock Quotes, Horoscopes, Calendar, Ski Reports, Lotteries and Forums.

**Electronic Services
Delivery**

The portal will provide access to various applications such as BookIt, PayIt, Service Tracking, and the ESD applications including eForms, Polls & Surveys as well as banner ad capabilities. Using these applications, users and municipalities will be able to perform and administer the following tasks:

- Rent a recreational facility
- Register for a class
- Book a meeting room
- Pay for the above items using a credit card
- Make a service request and subsequently return to the portal to track its progress or resolution
- Pay a parking ticket
- Fill out and submit an online form
- Buy a business license
- Buy a pet license
- Pay for the above licenses

Common Payment Engine

Employing a common payment engine within the portal means that any participating organizations (e.g. municipalities, not-for-profit organizations, sports associations, small business) that wish to sell products or services online can do so through the portal rather than having to implement their own online payment facility through their own web site. For the user, this means that they can do multiple transactions in a single session (e.g. book a tai chi class and register their child for swimming in their own municipality and pay a parking ticket in another city) and pay once. By consolidating payments through the portal, the total number of transactions is higher and therefore the cost per transaction, to be negotiated with a financial institution, is lower. The common payment engine will be set up initially to take credit card transactions (with debit card transactions implemented as soon as that is available).

Content Manager

The portal will draw content from a wide variety of information sources and will highlight different information at different times. For instance, if a community wants to promote a major event, that information can be brought to the front page of the portal for a specific period of time.

The Content Manager will allow hosting and organization of web sites (if desired), databases and documents. As a central information broker, the Content Manager will identify and categorize content contributors to submit, author or publish information to the portal. Guidelines and filters will be in place to ensure that the content is "family friendly" at all times.

Custom Niagara Search Engine

The portal will feature two search features:

- a Niagara-focused search engine and
- a regular search engine that searches the entire web.

The Niagara-focused search engine will be directed (by the portal administrator) specifically at Niagara, Ontario web sites, databases – any electronic information source – so that the results are specifically from this local area. So, for instance, if a user types in "live theatre" or "appliance retailers" in the Niagara-focused

search, they will only receive results from this geographic area. In addition, we're planning that the Niagara-focused search engine will use 'natural language' – a highly user friendly search technique that achieves very targeted and relevant search results.

SCHEDULE "C"

Authorizing By-Law of Participant

THE CORPORATION OF THE
TOWN OF PELHAM
BY-LAW #2583 (2004)

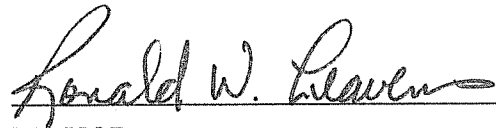
Being a by-law to authorize the Mayor & Clerk to enter into an Agreement with the Business Education Council of Niagara with respect to participation in a project known as "Connect Niagara".

WHEREAS the Council of the Corporation of the Town of Pelham deems it desirable to enter into an Agreement with the Business Education Council of Niagara with respect to participation in a project known as "Connect Niagara";

NOW THEREFORE COUNCIL OF THE CORPORATION OF THE TOWN OF PELHAM ENACTS AS FOLLOWS:

- (1) THAT the Agreement attached hereto and made part of this by-law between the Corporation of the Town of Pelham and the Business Education Council of Niagara be and the same is hereby approved.
- (2) THAT the Mayor and Clerk be and each of them is hereby authorized and instructed on behalf of the Corporation of the Town of Pelham to execute the said agreement and the Clerk is hereby authorized to affix the Corporate Seal thereto.

READ A FIRST, SECOND AND THIRD TIME
AND FINALLY PASSED BY COUNCIL THIS
7th. DAY OF JUNE, 2004 A.D.


MAYOR