

BLACK MOUNTAIN IRRIGATION DISTRICT

BYLAW No. 725

FRIND LATECOMER CHARGE AGREEMENT BYLAW NO. 725

A BYLAW TO AUTHORIZE THE EXECUTION OF AN AGREEMENT WITH FRIND WINERY LTD. FOR THE COLLECTION OF LATECOMER'S CHARGES.

The Trustees of the Black Mountain Irrigation District **ENACT AS FOLLOWS:**

1. That the Chairman of the Board of Trustees and the Administrator are hereby authorized to execute on behalf of the Black Mountain Irrigation District an agreement with Frind Winery Ltd. relating to the collection of latecomer's charges as pertaining to the installation of the 1050mm Transmission Main from Surge Tower to Swainson Road.
2. A Latecomer's Agreement is hereto attached summarizing costs and applicable charges.
3. That the Chairman of the Board of Trustees and the Administrator are hereby authorized to execute on behalf of the Black Mountain Irrigation District all necessary instruments to give effect to the said agreement.
4. This Bylaw may be cited as the "Frind Latecomer Charge Agreement Bylaw No. 725."

INTRODUCED AND GIVEN first reading by the Trustees on the 24th day of February, 2021.

RECONSIDERED AND PASSED by the Trustees on the 24th day of February, 2021.

Colin Day, Chairman of the Trustees

Robert Hrasko, Administrator

I HEREBY certify under the Seal of the Black Mountain Irrigation District that this is a true copy of Bylaw No. 725 of the Black Mountain Irrigation District passed by the Trustees this 24th day of February, 2021.

Robert Hrasko, Administrator



LATECOMER AGREEMENT - FRIND WINERY LTD.

AN AGREEMENT MADE BETWEEN THE DEVELOPER AND THE IMPROVEMENT DISTRICT TO ALLOW FOR THE RECOVERY OF COSTS FOR THE EXCESS CONSTRUCTION OF FACILITIES.

THIS AGREEMENT made this 17 day of feb, 2021

BETWEEN:

Black Mountain Irrigation District (the "Improvement District")

OF THE FIRST PART

AND:

Frind Winery Ltd. (the "Developer")

OF THE SECOND PART

WHEREAS:

- A. The Developer proposes to irrigate and develop certain lands within the Improvement District as shown as the brown shaded lands in the attached Schedule "B" (the "Land");
- B. The Improvement District requires that the Developer provide a water system (the "Water Service") to service the Land and a portion of the Service will serve land other than the Land being developed. That portion of the Water Service which services land other than the Land being developed will be excess or extended capacity under Section 701 of the *Local Government Act* (the "Excess Capacity") and is specifically set out in Schedule "C";
- C. The Improvement District considers that the identified costs to provide the Excess Capacity in whole or in part are excessive, and requires either the Developer, as owner of the Land, or the owners of any other land that, in the opinion of the Improvement District, will benefit from the Water Service, to pay the cost of the Excess Capacity;
- D. This Agreement is authorized and provided for under Part 17, Division 4, Section 701 and 702 of the *Local Government Act*; and
- E. The Board of Trustees of the Improvement District has, by BMID Latecomer Charge Interest Rate Bylaw No. 672, set the rate of interest referred to in paragraph 7 herein.

NOW THEREFORE in consideration of the mutual covenants and agreements made by each of the parties to the other as set out below, and for other valuable consideration, the receipt and sufficiency of which is acknowledged, the Improvement District and the Developer covenant and agree as follows:

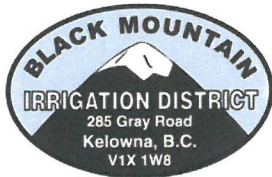
- 1. Construction of the Water Service is confirmed to have been carried out by the Developer in accordance and compliance with the practices, standards and specifications prescribed in the Improvement District's Subdivision Bylaw, and in compliance with the City of Kelowna Subdivision Bylaw. Development guidelines, plans and specifications will be specifically set out by CTQ Consultants and approved by the Improvement District (the "Standards") as required to service the Land.



2. The Developer will notify the Improvement District when it believes the Water Service and the Excess Capacity are complete. However, the Improvement District will be the sole judge of the sufficiency of compliance of the construction of the Water Service with all standards, and has the sole discretion to certify the Completion Date of the Water Service and the availability of the Excess Capacity. The recognized date of Substantial Completion is January 25, 2021.
3. The Improvement District will, under section 702 of the *Local Government Act*, impose and collect a latecomer charge against each parcel of land that benefits from the Excess Capacity (as illustrated as contributing lands in Schedule "B" of this Agreement) as a condition of an owner using or connecting to the services provided under this Agreement (the "Latecomer Charge"). The lands include those within Site 1 on Schedule B that are connected to the domestic water supply mains from the Mission Creek source. Those lands excluded from Latecomer's Charges are those lands serviced from Scotty Creek, the future Belgo Creek irrigation main, or from the Scotty Creek or Cornish Road water wells.
4. The water transmission main consists of two components, being the 1050mm transmission main from the Surge Tower to the UV Disinfection Facility, and the 1050mm transmission main from the UV Disinfection Facility to the switchback on Swainson Road. That portion of the total cost of providing the water service which constitutes the Excess Capacity that will benefit the parcels other than the Land, and that has been identified as eligible for latecomer's charges as defined within the Water Servicing Agreement, is \$1,588,760 and listed in Schedule C.
5. The Improvement District must pay the Developer all Latecomer Charges collected under this Agreement. All development within the Site 1 service area in Schedule "B" will incur the Latecomer Charge which is set at 16.5% of the current BMID CEC bylaw charge in place at the time of development. The obligation of the Improvement District under this Agreement to pay the Developer any Latecomer's Charges is subject to the Improvement District's ability to collect such charges. The current CEC bylaw is provided in Schedule D. This is subject to revision in the future as charges and costs may change.
6. Latecomer Charges will be calculated according to the type of connection as set out in the ratio at the bottom of Schedule "C". Once collected, the Latecomer Charges will be paid to the Developer quarterly (approximately every 90 days).
7. Included in a Latecomer Charge will be interest calculated annually at the rate prescribed by Latecomer Charge Interest Rate Bylaw No. 672, namely at 2.50%. The amount will accrue annually and will be applied to the year-end recoverable Latecomer balance on January 25 annually. See Schedule E for the worksheet for tracking Latecomers payments and balance owing.
8. The Improvement District's obligations to impose and collect Latecomer Charges ceases 15 years after the date of completion of the Water Service as certified by the Improvement District pursuant to paragraph 2 herein. This agreement will terminate on January 25th, 2036 or on an earlier date if the full recovery of Latecomer Charges is achieved.

Terminology

9. Wherever the singular or the masculine are used in this Agreement, they will be construed as meaning the plural or the feminine or body corporate or politic where the context or the parties require.



Binding Effect

10. This Agreement will constitute the entire agreement between these parties and enures to the benefit of and is binding upon the parties hereto, their respective heirs, executors and successors and permitted assigns.
11. The headings in this Agreement are inserted for convenience only and will not be construed as part of this Agreement for the purpose of interpretation.

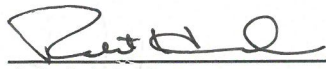
Notice and Payments

12. All notices, requests, demands, payments and other communications delivered pursuant to this Agreement shall be in writing and shall be deemed to have been given if delivered by hand or mail with postage prepaid and addressed to the party at the respective address as set out the first page hereof.

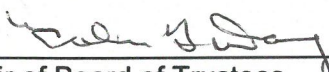
IN WITNESS WHEREOF the parties have signed and sealed this Agreement on the date set out on the first page hereof.

THE CORPORATE SEAL of (the Black Mountain Irrigation District)

was affixed in the presence of:



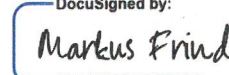
Administrator



Chair of Board of Trustees

THE CORPORATE SEAL of (the Developer, Frind Winery Ltd.)

was affixed in the presence of:

DocuSigned by:


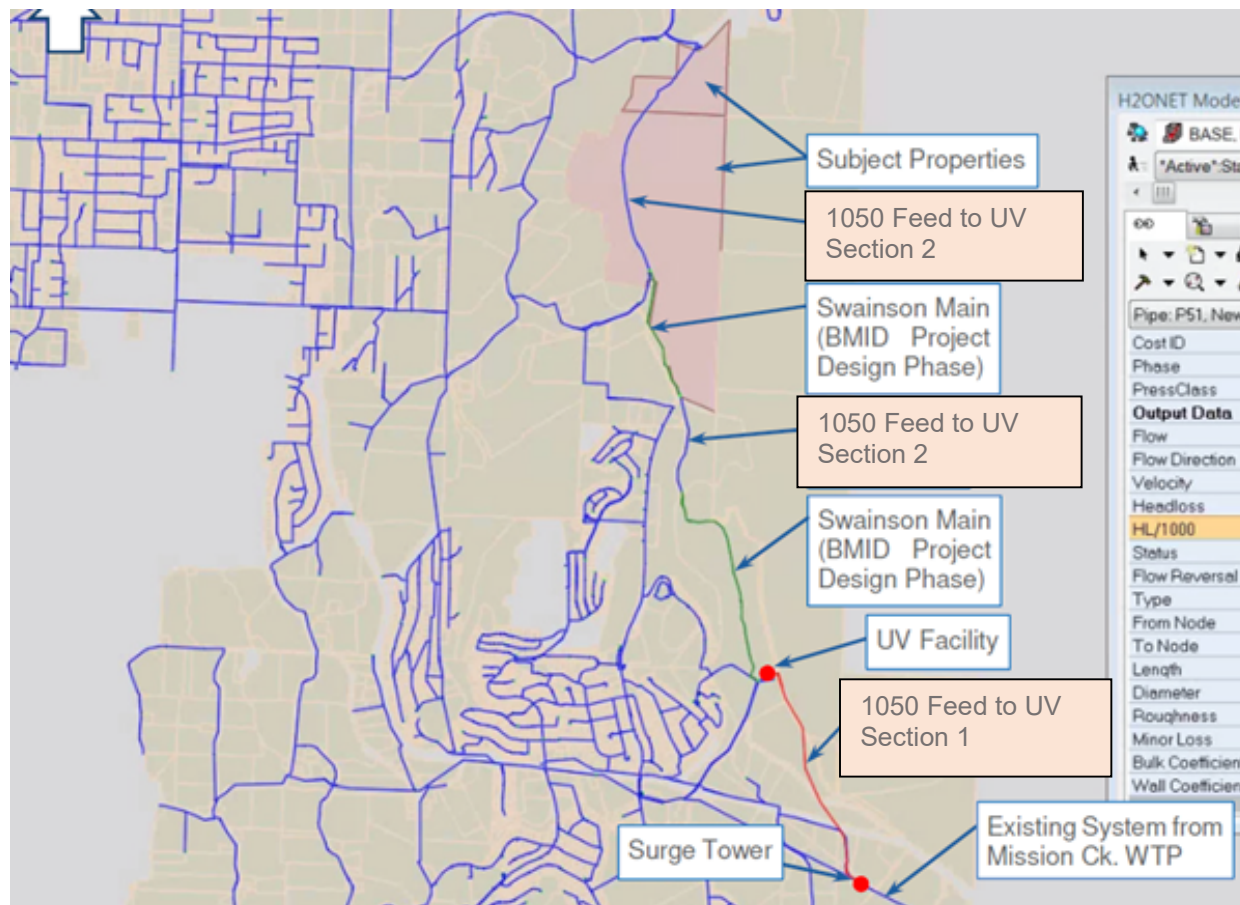
9D8CF65BDDEF4BC
Markus Frind



SCHEDULE – A PROJECT LOCATION

The location of transmission main project is described and illustrated in SCHEDULE A. Figure A-1 provides the location of the segments of work that are to be completed.

Figure A-1 - REQUIRED UPGRADES (Two Sections)



CTQ drawing base

SECTION 1 - 1450 m OF 1050MM DIAMETER STEEL WATERMAIN - SURGE TOWER TO UV FACILITY

SECTION 2 - 1500 m OF 1050MM DIAMETER STEEL WATERMAIN - UV FACILITY TO GULLEY

plus 850 m OF 1050MM DIAMETER STEEL WATERMAIN - GULLEY TO SWITCHBACK ON SWAINSON ROAD

The project connects the primary supply source from Mission Creek to the UV Disinfection Facility and is a core piece of infrastructure for the entire district. System pressures in mid summer will be improved and redundancy and overall water system security and capacity are provided with the addition of this transmission main.



SCHEDULE C - Latecomer's Schedule & Formula

The Improvement District will, under section 702 of the *Local Government Act*, impose and collect a latecomer charge against each parcel of land that benefits from the Excess Capacity (as illustrated in Schedule "A" of this Agreement) as a condition of an owner using or connecting to the services provided under this Agreement (the "Latecomer Charge").

The Schedule "A" Contributing Lands include those within Site 1 that are connected to the domestic water supply mains that are serviced from BMID's Mission Creek source. Lands that are excluded from Latecomer's Charges are those lands serviced from Scotty Creek, through the future Belgo Creek irrigation main, or serviced by the Scotty Creek or Cornish Road wells.

The servicing agreement between the Development and the Improvement District set out the funds that would be eligible for recovery through a Latecomer's Bylaw. The total recoverable amount is summarized below.

TOTAL ESTIMATED PROJECT COST (TEPC)		\$	8,148,145	
BMID CONTRIBUTION (pymt for coating)				\$ 1,248,885
BMID CONTRIBUTION (CEC pd for steel pipe supply)		-\$	1,262,085	-\$ 1,262,085
NET PROJECT COST (NPC)			\$ 6,886,059	
BMID CONTRIBUTION FROM CEC FUND		-\$	1,000,000	
PROJECT COST COVERED BY FRIND			\$ 5,886,059	
	Acres	Rate		
Frind Irrigation CEC pymt	300	\$4,516.29	\$ 1,354,887	
FRIND SHARE (% OF TEPC)	9.51%		\$ 654,864	
ADDITIONAL FRIND CONTRIBUTION (CEC ELIGIBLE)			\$ 2,287,548	
REMAINDER TO COLLECT THROUGH LATECOMER			\$ 1,588,760	
No. of Yrs projected to recover costs (Maximum is 15 years)			12	Based on 12 yr repymt
Estimated repayment per year - actual is based on actual devel. Units		\$	132,397	
UNITS / YEAR (Total Projected Single Family Equivalent units / year)			180	
CALCULATED Latecomer Payment per Grade A average Single family lot		\$	736	
Connection	CEC Dry	CEC Irrig.	Latecomer (dry)	Latecomer (Irrig)
SF Large Lot	\$ 6,950	\$ 5,580	\$ 1,146	\$ 920
SF Medium Lot	\$ 5,580	\$ 4,460	\$ 920	\$ 736
Strata	\$ 4,460	\$ 3,350	\$ 736	\$ 552
4 Plex - MF 3 story	\$ 3,350	\$ 2,680	\$ 552	\$ 442
RATES FOR RECOVERY TO BE 16.5% OF DEVELOPMENT CHARGES FOR BMID CEC BYLAW				

The development lands in the Site 1 service area in Schedule "A" will incur the Latecomer Charge which is set at 16.5% of the current BMID CEC bylaw charge in place at the time of development.



SCHEDULE D - Current CEC Bylaw #706 Rate Schedule

This rate schedule is current as of the date of this Agreement. The Capital Expenditure Charge Bylaw and Rate Schedule in place at the time of the development of Excess Capacity is applicable for Latecomer recovery calculations.

SCHEDULE 'A' - BYLAW No. 706						
CAPITAL EXPENDITURE CHARGES (WATER FACILITIES)						
LAND USE DESIGNATION	"A" & "C" Grade Rate \$/Unit	"D" Grade Rate \$/Unit	UNIT	Notes	CITY ZONING	RDCO ZONING
AGRICULTURAL ZONES						
Agricultural (Regrade)	not applic.	\$ 11,160	ha	Allowed one house on a single property	A1	A1
Forest Resource	not applic.	\$ 14,880	ha			F1
Agritourist Accommodation	\$ 1,790	n/a	bldg.	Additional unit within structure - add \$295 each unit	A1	A1
RURAL RESIDENTIAL ZONES						
Rural Residential 1 - 3	\$ 4,460	\$ 5,580	lot	Allows max. outdoor irrigation area of 1000m ² [0.1ha, 0.25ac] After 1000m ² area exceeded, capital charge applies of \$1.40/m ²	RR1 - RR3	RU1 - RU6
URBAN RESIDENTIAL ZONES						
Large Lot housing	\$ 5,580	\$ 6,980	lot	More than 2000m ² [0.2ha, 0.5ac]	All RU1 - RU3, RH1	R1
Medium & Small Lot housing	\$ 4,460	\$ 5,580	lot	2000m ² [0.2ha, 0.5ac] or less	All RU1 - RU3, RH1	R1
Low Density Cluster Housing	\$ 3,350	\$ 4,460	lot		All RU4	R1 & R1M
Bareland Strata / Manufactured Home Subd.	\$ 3,350	\$ 4,460	lot		RU5	R1M
Multiple Dwelling Housing	\$ 3,350	\$ 4,460	each unit	Duplex, triplex, rate per unit, Townhouse, row housing	RU6, RM2 - RM	R2, R3A, RC1
Mobile Home Park	\$ 3,350	\$ 4,460	MH pad		RM7	RMP
Carriage House on ex. SF Lot	\$ 3,350	n/a	bldg.		All	All
Common building for stratas, hotels, etc.	\$ 3,350	\$ 4,460	each		All	All
Four-plex housing	\$ 2,680	\$ 3,350	each unit	Fourplex, fiveplex, housing, rate for each unit	RM1	R2
Medium Density Multiple Housing	\$ 2,680	\$ 3,350	unit	2, 3 and 4 storey MF units	RM5	R3B
High Rise Apartment Housing	\$ 1,790	\$ 2,230	unit	Rate for MF 5 stories high and higher	RM6	R3C
Congregate Housing, hotel, tourist comm.	\$ 1,790	\$ 2,230	unit	Rate for Single person residences such as congregate care	All	R3D, C7, C8
Secondary suite/bed & breakfast suite	\$ 1,340	\$ 1,340	unit		All	All
COMMERCIAL ZONES						
Commercial Subdivisions	\$ 3,720	\$ 14,880	ha	Regrade fee for Commercial zoned subdivisions	All C1 - C10	C1 - C4 & C6
All commercial zones	\$ 5,580	n/a	150m ²	For first 150m ² of total floor area including mezzanines	All C1 - C10	C1 - C4 & C6
Building charge	\$ 9.30	n/a	per m ² >150m ²	For remainder area greater than 150m ²	All C1 - C10	C1 - C4 & C6
Campground, cabin	\$ 1,790	n/a	unit		All C1 - C10	C5
Hotel, motel, agritourism commercial	\$ 1,790	n/a	unit		All C1 - C10	C7, C8
Golf Course	\$ 7,440	\$ 18,600	ha	Rate for total irrigated area including greens, fairways and tees	All C1 - C10	C6
INDUSTRIAL ZONES						
Industrial Subdivision	\$ 3,720	\$ 14,880	ha	Regrade fee for Industrial zoned subdivisions	All I1-I6	All I1-I5
All industrial lands	\$ 5,580	n/a	150m ²	For first 150m ² of total floor area including mezzanines	All I1-I6	All I1-I5
Building charge	\$ 9.30	n/a	per m ² >150m ²	For remainder area greater than 150m ²	All I1-I6	All I1-I5
PUBLIC AND INSTITUTIONAL ZONES						
Institutional Subdivision	\$ 3,720	\$ 14,880	ha	Regrade fee for Institutional zoned subdivision	All	All
Major, minor Institutional, Utilities	\$ 5,580	n/a	150m ²	For first 150m ² of total floor area including mezzanines	P1, P2, P4	P2
Recreational, Intensive Water use	\$ 5,580	n/a	150m ²	For first 150m ² of total floor area including mezzanines	W1, W2	P3
Building charge	\$ 9.30	n/a	per m ² >150m ²	For remainder area greater than 150m ²	All P1 - P5, W1, W2	P1, P2, P3
Parks & Open Space, Municipal Dist.Park	\$ 3,720	\$ 14,880	ha	Special cases may be assessed on Max. day use	P3, P5	P1
NOTES:						
Land must be regraded for commercial, industrial and institutional zones prior to building development.						
For urban development zones, Grade D unit rate charge includes regrade of D grade land to Grade A						

File 232
Page 8 of 8