

CITY OF CASTLEGAR

BY-LAW NO. 407

A Bylaw to authorize the City of Castlegar to expropriate limited estates and rights in certain parcels of land for a water distribution system.

WHEREAS:

A. Pursuant to Section 635 of the Municipal Act the City Council may by bylaw, expropriate, break up, take and enter into possession of and use any property necessary or convenient for the purposes set out in that section;

B. The Council of the City of Castlegar has deemed it necessary in the interests of the City of Castlegar to construct, operate, maintain, repair, extend, improve and alter a water distribution system, and for that purpose it has become necessary and convenient to acquire rights-of-way in and to certain parcels of land; and

C. The City of Castlegar has been unsuccessful in obtaining these rights-of-way by way of negotiation;

NOW THEREFORE THE COUNCIL of the City of Castlegar, in open meeting assembled, enacts as follows:

1. The City of Castlegar by its servants, agents, contractors and employees is hereby authorized,

(a) for the purpose of constructing, operating, maintaining, repairing, extending, improving or altering its water distribution system, and

(b) without the consent of the owners of those lands affected, to enter on, break up, take, or enter into possession of and use certain limited estates and rights in the lands described in Schedule "B" hereto.

2. The City of Castlegar hereby expropriates,

(a) for the purpose of constructing, operating, maintaining, repairing, extending, improving or altering its water distribution system, and

(b) without the consent of the owners of those lands affected, the limited estates and rights set out in the statutory right-of-way document, being Schedule "A" to this Bylaw, in the lands described in Schedule "B", which limited estates and rights are necessary and convenient for this purpose.

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3. The Mayor and Clerk are hereby empowered to do all things necessary to give effect to this Bylaw.

4. This Bylaw shall not come into effect until it has been published once in the British Columbia Gazette and once in a newspaper published and circulating in the City, and until a certified copy of this Bylaw has been filed in the appropriate Land Title Office.

5. This Bylaw may be cited for all purposes as "City of Castlegar Waterworks Right-of-Way Expropriation Bylaw No. 407 , 1984".

READ A FIRST TIME THIS 14th DAY OF FEBRUARY , 1984

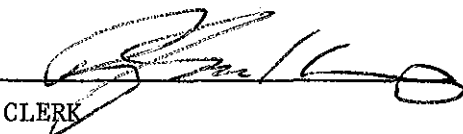
READ A SECOND TIME THIS 14th DAY OF FEBRUARY , 1984

READ A THIRD TIME THIS 14th DAY OF FEBRUARY , 1984

ALL THREE READINGS PASSED BY A UNANIMOUS DECISION OF ALL MEMBERS OF THE CITY COUNCIL.

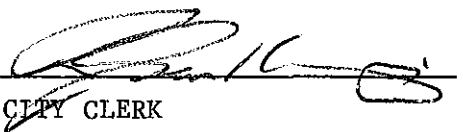
RECONSIDERED, FINALLY PASSED AND ADOPTED THIS THE 14TH DAY OF AUGUST , 1984 BY A UNANIMOUS DECISION OF ALL MEMBERS OF THE COUNCIL PRESENT AND ELIGIBLE TO VOTE.

  
MAYOR

  
CLERK

I hereby certify that the foregoing is a true copy of the original Bylaw as passed by the City Council and sealed with the Corporate Seal.

DATED THIS 15TH DAY OF AUGUST , 1984.

  
CITY CLERK

BY-LAW NO. 407

SCHEDULE "A"

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LAND TITLE ACT  
FORM 17 (Section 151, 152(1), 220) APPLICATION

NOTE: Before submitting this application, applicants should check and satisfy themselves as to the tax position, including taxes of the Crown Provincial, a Municipality and Improvement District and Irrigation Districts.

NATURE OF CHARGE: Right-of-Way      TRUE VALUE: Nominal      HEREWITH FEES: \$10.00

HARMAN, WILSON & COMPANY, Barristers & Solicitors, 540-645 Fort Street, Victoria  
British Columbia, V8W 2N7, Phone 386-1351

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Signature of Applicant

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THIS INDENTURE made the            day of            , A.D. 198 .

BETWEEN:

(hereinafter called the "Grantor")

OF THE FIRST PART

AND:

CITY OF CASTLEGAR  
a municipal corporation with offices located at  
460 Columbia Avenue  
Castlegar, British Columbia  
V1N 1G7

(hereinafter called the "Grantee")

OF THE SECOND PART

WHEREAS the Grantor is the registered owner or is entitled to become the registered owner of an estate in fee simple of ALL AND SINGULAR those certain parcels or tracts of land and premises situate, lying and being in the City of Castlegar, in the Province of British Columbia and being more particularly known and described as:

(hereinafter called the "Lands of the Grantor")

AND WHEREAS this Right-of-Way is necessary for the operation and maintenance of the Works:

AND WHEREAS to facilitate the installation of a water distribution system, including all pipes, valves, fittings and facilities in connection therewith (herein called the "Works"), the Grantor has agreed to permit the construction by the Grantee of the Works on a portion of the Lands of the Grantor and to grant for that purpose the Right-of-Way hereinafter described.

NOW THEREFORE THIS INDENTURE WITNESSETH that in consideration of the sum of One Dollar (\$1.00) of lawful money of Canada, now paid by the Grantee to the Grantor (the receipt and sufficiency of which is hereby acknowledged by the Grantor), and in consideration of the covenants and conditions hereinafter contained to be observed and performed by the Grantee and for other valuable consideration:

1.0 THE GRANTOR DOTH HEREBY:

1.1 Grant, convey, confirm and transfer, in perpetuity, unto the Grantee the full, free and uninterrupted right, license, liberty, privilege, permission and right-of-way to lay down, install, construct, entrench, operate, maintain, inspect, alter, remove, replace, bury, cleanse, string, and otherwise establish one or more systems of Works upon, over, under and across that part of the Lands of the Grantor as shown outlined and marked on Right-of-Way Plan number \_\_\_\_\_.

(hereinafter called the "Perpetual Right-of-Way")

1.2 Covenant and agree to and with the Grantee that for the purposes aforesaid and upon, over, under and across the Perpetual Right-of-Way the Grantee shall for itself and its servants, agents, workmen, contractors and all other licensees of the Grantee together with machinery, vehicles, equipment, and materials be entitled at all times to enter, use, pass and repass, labour, construct, erect, install, dig, carry away soil or other surface or subsurface materials, clear of all trees, growth, buildings or obstruction now or hereafter in existence, as may be necessary, useful, or convenient in connection with the operations of the Grantee in relation to the Works.

1.3 Grant, convey, confirm and transfer unto the Grantee for itself, and its servants, agents, workmen, contractors and all other licensees of the Grantee together with machinery, vehicles, equipment and materials the right at all times to enter upon and to pass and repass over such of the Lands of the Grantor as may reasonably be required for the purpose of ingress to and egress from the Perpetual Right-of-Way.

1.4 Transfer, assign and convey to the Grantee all right, title and interest in and to any Works that the Grantee, or the Grantor have prior to this Agreement established or constructed or maintained or operated within the Perpetual Right-of-Way or in relation to any similar Works previously constructed by any party whatsoever within the Perpetual Right-of-Way.

- 2.0 THE GRANTOR HEREBY COVENANTS TO AND AGREES WITH THE GRANTEE, as follows:
- 2.1 That the Grantor will not, nor permit any other person to erect, place, install or maintain any building, structure, mobile home, concrete driveway or patio, pipe, wire or other conduit on, over or under any portion of the Perpetual Right-of-Way so that it in any way interferes with or damages or prevents access to, or is likely to cause harm to Works authorized hereby to be installed in or upon the Perpetual Right-of-Way.
- 2.2 That the Grantor will not do nor knowingly permit to be done any act or thing which will interfere with or injure the said Works and in particular will not carry out any blasting on or adjacent to the Perpetual Right-of-Way without the consent in writing of the Grantee, provided that such consent shall not be unreasonably withheld.
- 2.3 That the Grantor will not substantially add to or diminish the soil cover over any of the Works installed in the Perpetual Right-of-Way and in particular, without limiting the generality of the foregoing, will not construct open drains or ditches along or across any of the Works installed in the Perpetual Right-of-Way without the consent of the Grantee which will not be unreasonably withheld.
- 2.4 That the Grantor will from time to time and at all times upon every reasonable request and at the cost of the Grantee do and execute or cause to be made, done or executed all such further and other lawful acts, deeds, things, devices, conveyances and assurances in law whatsoever for the better assuring unto the Grantee of the rights hereby granted.
- 3.0 THE GRANTEE HEREBY COVENANTS TO AND AGREES WITH THE GRANTOR, as follows:
- 3.1 That the Grantee will not bury any debris or rubbish of any kind in excavations or backfill, and will remove shoring and like temporary structures as backfilling proceeds.
- 3.2 That the Grantee will thoroughly clean all lands to which it has had access hereunder of all rubbish and construction debris created or placed thereon by the Grantee and will leave such lands in a neat and clean condition.
- 3.3 That the Grantee will, as soon as weather and soil conditions permit, and so often as it may exercise its right of entry hereunder to any of the Lands of the Grantor, replace the surface soil as nearly as may be reasonably possible to the same condition as it was prior to such entry, in order to restore the natural drainage to such lands. PROVIDED HOWEVER that nothing herein contained shall require the Grantee to restore any trees or other surface growth but the Grantee shall leave such lands in a condition which will not inhibit natural regeneration of such growth.

- 3.4 That the Grantee will, as far as reasonably possible, carry out all work in a proper and workmanlike manner so as to do as little injury to the Lands of the Grantor as possible.
- 3.5 That the Grantee will make good at its own expense all damage or disturbance which may be caused to the surface soil of the Lands of the Grantor in the exercise of its rights hereunder.
- 3.6 The Grantee will, as far as reasonably possible, restore any fences, lawns, flower beds, at its cost as nearly as may be reasonably possible to the same condition that they were in prior to any entry by the Grantee upon the Lands of the Grantor.
- 4.0 THE PARTIES HERETO EACH HEREBY COVENANT TO AND AGREE WITH THE OTHER, as follows:
- 4.1 The said Works referred to above, together with all pipes, valves, conduits, wires, casings, fittings, lines, meters, appliances, facilities, attachments or devices used in connection therewith shall constitute the Works.
- 4.2 Notwithstanding any rule of law or equity to the contrary, the Works brought on to, set, constructed, laid, erected in, upon or under the Perpetual Right-of-Way by the Grantee shall at all times remain the property of the Grantee notwithstanding that the same may be annexed or affixed to the freehold and shall at any time and from time to time be removable in whole or in part by the Grantee.
- 4.3 In the event that the Grantee abandons the Works or any part thereof the Grantee may, if it so elects, leave the whole or any part thereof in place.
- 4.4 That no part of the title in fee simple to the soil shall pass to or be vested in the Grantee under or by virtue of these presents and the Grantor may fully use and enjoy all of the Lands of the Grantor subject only to the rights and restrictions herein contained.
- 4.5 That the covenants herein contained shall be covenants running with the land and that none of the covenants herein contained shall be personal or binding upon the Grantor, save and except during the Grantor's seisin or ownership of any interest in the Lands of the Grantor, and with respect only to that portion of the Lands of the Grantor of which the Grantor shall be seised or in which he shall have an interest, but that the Lands of the Grantor, nevertheless, be and remain at all times charged therewith.
- 4.6 If at the date hereof the Grantor is not the sole registered owner of the Lands of the Grantor, this Agreement shall nevertheless bind the Grantor to the full extent of his interest therein, and if he shall acquire a greater or the entire interest in fee simple, this Agreement shall likewise extend to such after-acquired interests.

4.7 Where the expression "Grantor" includes more than one person, all covenants herein on the part of the Grantor shall be construed as being several as well as joint.

4.8 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors and assigns as the case may be and wherever the singular or masculine is used, it shall be construed as if the plural or the feminine or neuter, as the case may be, had been used, where the parties or the context hereto so require and the rest of the sentence shall be construed as if the grammatical and terminological changes thereby rendered necessary had been made.

IN WITNESS WHEREOF the parties hereto have executed these presents in the manner and on the date hereinafter appearing.

SIGNED, SEALED AND DELIVERED )  
in the presence of: )  
 )  
 )  
\_\_\_\_\_)  
Witness' Signature )  
 )  
\_\_\_\_\_)  
Address (including City) )  
 )  
\_\_\_\_\_)  
Occupation )  
(as to all signatures of Grantor)

\_\_\_\_\_

THE CORPORATE SEAL of the )  
GRANTOR was hereunto affixed )  
in the presence of its proper )  
Officers in that behalf: )  
 )  
 )  
\_\_\_\_\_)  
Authorized Signatory ) (SEAL)  
 )  
\_\_\_\_\_)  
Authorized Signatory )

SCHEDULE "B"

1. That portion of:

- (1) City of Castlegar,  
Nelson-Slocan Assessment District,  
Lot "A",  
District Lot 7174,  
Plan 6443;

as is shown outlined on Statutory Right-of-Way Plan No. 15651, deposited in the Land Title Office at Nelson, British Columbia.

2. Those portions of:

- (1) Trail Assessment Authority,  
Blocks 1 and 2,  
District Lots 8072 and 7199,  
Kootenay District,  
Plan 1809;
- (2) Blocks 3 and 4,  
District Lots 7199, 7721, and 8072,  
Kootenay District,  
Plan 1809;
- (3) City of Castlegar,  
Lot "A",  
District Lot 7199,  
Kootenay District,  
Plan 11812;

as are shown outlined on Statutory Right-of-Way Plan No. 15653, deposited in the Land Title Office at Nelson, British Columbia.

3. That portion of:

- (1) Lot "A",  
District Lot 7198,  
Kootenay District,  
Plan 6157;

as is shown outlined on Statutory Right-of-Way Plan No. 15654, deposited in the Land Title Office at Nelson, British Columbia.

4. That portion of:

- (1) Nelson-Slocan Assessment District,  
The Most Westerly 20 chains of  
Lot 7171,  
Kootenay District;

as is shown outlined on Statutory Right-of-Way Plan No. 15655, deposited in the Land Title Office at Nelson, British Columbia.