

CITY OF KELOWNA
BYLAW NO. 8664

Leathead Road Trunk Sewer Agreement No. 1

WHEREAS pursuant to the provisions of Section 937.1 of the *Local Government Act*, the Council of the City of Kelowna is empowered by bylaw to enter into an agreement for the provision of works;

AND WHEREAS the Council of the City of Kelowna has proceeded on the initiative plan, in compliance with Sections 629 and 630 of the *Local Government Act*, by mailing to the owners of the parcels in the area that is the subject of the agreement notice of the intention of the Council to enter into the agreement herein authorized, and notice of the intention of the Council to enter into the agreement has been given by publication of a notice under Section 629 and 630 of the *Local Government Act*,

AND WHEREAS any petition received against the proposed work was not sufficient to prevent Council from proceeding with the work pursuant to Sections 629 and 630 of the *Local Government Act*,

NOW THEREFORE, the Municipal Council of the City of Kelowna, in open meeting assembled, enacts as follows:

1. The Council is hereby authorized to enter into and carry out the Leathead Road Trunk Sewer Agreement No. 1 with Phoenix Investments Ltd. attached to and forming part of this bylaw as Schedule "A" for the installation of trunk sewer works along Leathead Road from Lester Road to Fleming Road.
2. The Mayor and Clerk are authorized to execute, seal and deliver the Leathead Road Trunk Sewer Agreement No. 1 and all other transfers, statements, plans, documents and other instruments contemplated by or necessarily relating to the agreement.
3. This bylaw shall take effect on the date of its adoption by Council.
4. This bylaw shall be cited as "Leathead Road Trunk Sewer Agreement Bylaw No. 8664".

Read a first, second and third time by the Municipal Council this 9th day of April, 2001.

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

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**LEATHEAD ROAD
TRUNK SEWER AGREEMENT NO. 1**

THIS AGREEMENT dated for reference the day of _____, 2001

BETWEEN:

PHOENIX INVESTMENTS LTD.
1850 Springfield Road
Kelowna, BC, V1Y-2A9

Originals

(the "Owner")

AND:

City of Kelowna
1435 Water Street
Kelowna, B.C. V1Y 1J4

(the "City")

WHEREAS the Owner is the owner in fee simple of Lands in the City (the "Lands") and desires to install certain works and services benefiting the Lands; and

WHEREAS the parties have agreed that it is to their mutual benefit that the Owner install trunk sewer works on Leathead Road (the "Leathead Road Sewer Works") in respect of which the City may impose sewer connection charges under Bylaw 8469, as amended, (collectively referred to herein as "Bylaw 8469"); and

WHEREAS the Owner and the City have agreed that the City will remit to the Owner a portion of the charges it collects under Bylaw 8469;

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THIS AGREEMENT is evidence that, in consideration of the installation of the Leathead Road Sewer Works by the Owner and the terms set out below, the parties agree as follows:

- 1 The City will pay to the Owner, in accordance with the payment provisions set out in this Agreement, 95 per cent of its revenues under Bylaw 8469 in respect of real property that is within the area outlined in heavy black line on the map attached to and forming part of this Agreement as Schedule "A" (the "Leathead Road Service Area"), to a maximum total of payments to the Owner under this Agreement estimated at \$80,055 (subject to paragraphs 4 and 5).
2. The payments required by paragraph 1 shall be made by the City on an annual basis commencing June 30, 2001 until the City's total liability for payment under this Agreement has been extinguished, and each payment shall be accompanied by a list of the applicable real properties in the Leathead Road Service Area in respect of which payment has, during that twelve month period, been made to the City under Bylaw 8469.
- 3 The Owner agrees that the City has no liability to make payments under paragraph 1 except to the extent that the City is in receipt of connection charges under Bylaw 8469 in respect of the Leathead Road Service Area.
4. The parties acknowledge that the amount referred in paragraph 1 is based on an estimated total cost for the Leathead Road Sewer Works, being \$177,981. In the event that the actual cost of the works (the "Final Cost") is greater than or less than that amount, the parties agree that the amount referred to in paragraph 1 shall be adjusted proportionately.

The estimated cost and cost sharing and a sample repayment calculation under this section are set out in Schedule "B" attached to and forming part of this Agreement.

- 5 The City agrees that each of the annual payments as referred to in paragraph 2, that are made subsequent to substantial completion of the Leathead Road Sewer Works, will include interest at 5%, calculated and compounded annually, on the total amount outstanding on the date of the last payment (or if no payment has been made subsequent to substantial completion of the works, interest will be calculated on the amount outstanding on the date of substantial completion of the works) from the date of such last payment (or date of substantial completion as the case may be) to the date of such payment.
6. The Owner shall be responsible for all costs of the Leathead Road Sewer Works.

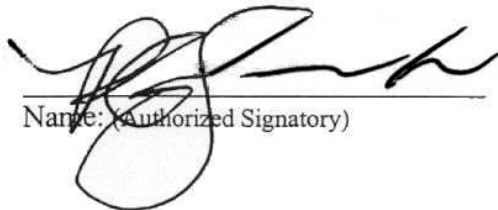
7. The parties agree that the Final Cost shall be the actual cost to the Owner of designing and installing the Leathead Road Sewer Works, certified in writing by a member of the Association of Professional Engineers and Geoscientists of British Columbia who has supervised the design and installation of those works, and that any dispute between the parties as to the Final Cost shall be referred for a determination, to a member of the Association selected jointly by the parties, with the cost of such determination to be shared between the parties in accordance with their respective degrees of responsibility as determined under this paragraph for any costs in dispute.
8. The Owner acknowledges that the City has not required the Owner to install the Leathead Road Sewer Works and that the Owner is not entitled to receive any payment in respect of the Leathead Road Sewer Works under s.939 of the ~~Municipal Act~~ *Local Gov't Act*.
9. The City shall have no further obligations to the Owner under this Agreement or in respect of the Leathead Road Sewer Works after the amounts referred to in paragraph 1, adjusted in accordance with paragraphs 4 and 5, have been paid to the Owner.

CITY OF KELOWNA
By its authorized signatories:

Mayor

City Clerk

PHOENIX INVESTMENTS LTD
by its authorized signatories:



Name: (Authorized Signatory)

Name: (Authorized Signatory)



N.T.S.
DATE: NOV. 01:00

SCHEDULE "B"

Leathead Road Service Area - Estimate of Costs & Payment of City Share

Estimated Cost of Works (Construction plus Engineering):	\$ 166,337
7% GST:	<u>\$11,644</u>
Total Estimated Cost of Works:	\$ 177,981
Less Service Area Fees Payable by Owner:	<u>(\$97,926)</u>
Outstanding Balance:	\$ 80,055

Sample Repayment - City to Phoenix Investments Ltd.

Revenues collected by City under Bylaw 8469 (Example):	\$50,000
City of Kelowna Distribution to Owner:	95%
City of Kelowna Reimbursement to Owner:	\$47,500
Amount Outstanding:	\$28,991

Note:

This sheet is for information purposes only. For actual costs refer to repayment agreement.

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ENGINEERING

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Works and Utilities Department

City Hall
1435 Water Street
Kelowna, B.C. V1Y 1J4
Tel: (250) 862-5500 Option 5
Fax: (250) 862-3349

February 23, 2001
File No.: 5340-09-22

Ron Jacobsen
PHOENIX Investments Ltd.
2727 Highway 97 North
Kelowna, B.C.
V1X 5J8

Dear Mr. Jacobsen:

Re: Leathead Road Trunk Sewer extension – Document clarification

We met on Thursday to discuss some of the details contained in the documents that we sent to you previously. I understand that you have some concerns about a couple of our standard clauses contained in the Works and Services Agreement. This letter will serve as clarification and interpretation of the Fees and Charges section of the document, as follows:

Section 4.1, clauses (a) to (c) on Page 10 & 11 of 20

You (Phoenix) are required to compensate the City of Kelowna for all the fees and charges that are applicable to connecting to the sewer main, and that have been previously quoted to you. Your payment for the Sewer Service Area Connection charges will be made in the form of credit applied to the value of the Sewer main installation work that you will have completed. You will not be required to pay any of the Sewer Service Area Connection fees in advance of Construction. You will, however, be required to pay the applicable Sewer Development fee for the Body Shop building at the time of connection (when you obtain your on-site plumbing permit), which amounts to \$450. You have paid downstream charges (DCC's) for the Dealership so you will not have to pay Sewer Development fees for that building. Sewer Development fees were shown on the quotations for both buildings that were faxed to your office previously, and inadvertently included in the total of the amount you will be credited. As a result, this will reduce the overall fees that you pay and increase the amount that you can collect with the recovery agreement. To address this, I have attached a revised page 2 and Schedule B for you to replace in the Trunk Sewer Agreement No. 1.

You will not be required to pay any legal fees or disbursements related to the preparation of the agreements and ancillary documents.

I hope this clarification is suitable to allow you to sign and forward the documents to us.

Yours truly,

W. J. Berry, P.Eng.
Wastewater Manager

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