

CORPORATION OF THE TOWNSHIP OF ESQUIMALT

BY-LAW NO. 224

A By-Law to ratify and adopt an agreement between the Corporation of the Township of Esquimalt and the British Columbia Electric Power and Gas Company Limited.

WHEREAS the British Columbia Electric Power and Gas Company Limited have applied to the Municipal Council of the Township of Esquimalt for authority to use the public highways in the Township for the purpose of supplying gas.

AND WHEREAS the Municipal Council deem it expedient to grant the request of the said Company and an agreement licensing and regulating the said Company and authorizing the use of public highways in so far as its purposes in the said Township is concerned, has been entered into by the Corporation of the Township of Esquimalt and the said Company.

NOW THEREFORE the Municipal Council of the Township of Esquimalt enacts as follows:

1. That the agreement between the Corporation and Company, a copy or counterpart of which is attached hereto, is hereby adopted and ratified and the Reeve and Municipal Clerk of the Corporation of the Township of Esquimalt are hereby authorized and directed to execute the same and affix the Corporate Seal and deliver it to the said British Columbia Electric Power and Gas Company Limited.
2. This By-Law may be cited as the "Gas Agreement By-Law, 1932".

PASSED the Municipal Council on the 7th day of November, 1932.

RECONSIDERED, ADOPTED AND FINALLY PASSED the Municipal Council this 21st day of November, 1932.

"A. Heald"
Reeve

"G. H. Pullen"
Clerk

THIS AGREEMENT made in duplicate this day of
October in the year One thousand nine hundred and thirty-two:

BETWEEN:

CORPORATION OF THE TOWNSHIP OF ESQUIMALT,
hereinafter called "the Corporation",

AND;

BRITISH COLUMBIA ELECTRIC POWER & GAS COMPANY, LIMITED,
a company incorporated under the laws of the
Province of British Columbia with registered office
situate in the City of Vancouver in the said
Province, hereinafter called "the Company".

OF THE SECOND PART:

WHEREAS subsection one hundred and five (105) of Section fifty-four (54) of the Municipal Act provides that the Corporation shall have power to licence and regulate any Gas Company and to authorize the use of the public highways by such Company:

AND WHEREAS the Company has applied to the Corporation for authority to enter upon and construct, lay down, operate and maintain under the highways within the limits of the Township of Esquimalt (hereinafter called "the Township") a system of mains and pipes for the purpose of conveying gas into and through the Township and for distributing gas to purchasers or consumers within the limits of the Township and for the purpose of operating the business connected therewith, which authority the Corporation has agreed to grant on the terms and conditions hereinafter set forth.

NOW THEREFORE THIS AGREEMENT WITNESSETH that, in pursuance of the premises and the powers vested in the Corporation by the above recited Municipal Act and all other powers in that behalf the Corporation enabling, it is hereby mutually agreed and declared as follows:

1. The Corporation in so far as it has power so to do but not otherwise does hereby grant authority to the Company to enter upon, construct, lay down, operate and maintain under the highways within the limits of the Township over which the Corporation has control, a system of mains and pipes for the purpose of conveying gas into and through the Township and for distributing gas to purchasers or consumers within the Township and for the purpose of operating the business connected therewith and to re-enter upon such highways from time to time as may be necessary for the purpose of repairing, operating, maintaining or removing such mains and pipes or any part of same.
2. Before laying down such mains or pipes the Company shall file with the Engineer of the Corporation detailed plans and specifications showing the size and dimensions of same and the mains and pipes shall not be laid down except in such position and location as may be approved of by the said Engineer, and such approval shall not be unreasonably withheld.
3. In constructing and laying down the system the Company shall

not make any excavation in any highway for a distance exceeding one block at a time unless the Company has received the written consent of the said Engineer to make such excavation, and the Company shall before commencing the work of any excavation give to the said Engineer at least five days' notice in writing of its intention to proceed with such work, and when the work thereon shall have commenced it shall be proceeded with to completion so far as practicable without intermissions or delays and as rapidly as the same can be carried on with due regard to the proper and efficient construction of the same. The Company, in excavating any highway at a street intersection, shall make suitable provision for traffic across such intersection. When the work has been completed upon any highway the Company shall without unnecessary delay commence the removal of all earth, gravel, dirt, debris or other material which shall have been put upon the highway, and shall remove the same completely so far as it is possible to do so, and shall put such highway in as good a state of repair and condition as it was in before the commencement of the work and maintain such condition for a period not exceeding two (2) years. The Company shall also take proper steps to protect persons and property from falling or being injured by reason of any such excavation and shall cause all necessary red lights to be placed in conspicuous places at the top of all excavations from sunset on each day until sunrise on the following day.

4. After the mains and pipes have been installed and put in working order in case of any accident to the plant causing an interruption to the service, the Company shall have the right without notice to the Corporation to enter upon any highway with such servants, workmen or plant as it may require for the purpose of making repairs. PROVIDED, HOWEVER, that such repairs shall be done in an efficient and proper manner and without unnecessary or undue damage to the property of the Corporation or any other person, and shall be proceeded with to completion as rapidly as possible, and such highway shall forthwith so far as it is possible to do so, be put and left in equally as good a state of repair or condition as it was in before the commencement of the work of making such repairs.
5. The mains and pipes shall be laid in such manner as not to interfere with any public or private sewer or any other pipe belonging to the Corporation or with any other pipe, conduit, duct, manhole or system which shall have been laid down in any highway under the permission of the Corporation or by virtue of any chapter granted by competent authority.
6. The Company hereby covenants and agrees that in the work of construction, operation, maintenance and repair of the gas system the Company will in no wise destroy or damage the property of the Corporation or of any corporation, firm or person except as it is by the terms hereof expressly authorized to do and that in any event it will if and so often as any such damage is done to the property of the Corporation or any other corporation, firm or person, proceed immediately and at its expense to repair the same in such manner as to leave the same in as good repair as it was in prior to the doing of such damage.
7. The Company covenants with the Corporation that it will indemnify and save harmless the said Corporation from and against

all actions, proceedings, claims and demands of any corporation, firm or person against the Corporation arising out of the work of the laying, construction, operation, inspection, maintenance and repair of the gas system, mains and pipes to be laid and/or established within the limits of the Township by the Company.

8. The Company agrees that it will within the period of two (2) years from the date of the execution of this agreement expend a sum of not less than Twenty Thousand Dollars (\$20,000.00) in the construction of a gas system within the limits of the Township, the allocation of such expenditure to be left to the discretion of the Company. The Company further agrees to continue during the currency of this agreement the business of supplying gas to the residents of the Township in the territory in which any mains and pipes are laid under the terms of this agreement.

9. The Company further agrees that the rates, meter rentals and the minimum rates to be charged to purchasers or consumers of gas within the Township shall not exceed the rates, meter rentals and minimum rates from time to time charged by the Company during such period to purchasers or consumers of gas in the City of Victoria for like quantities, and for like purposes and under conditions similar to those relating to the supply of gas to purchasers or consumers in the said City of Victoria, PROVIDED that the fact that the purchasers or consumers of gas within the Township reside a greater distance from the source of supply of gas than purchasers or consumers in the City of Victoria, or that the fact that the cost of delivering gas to purchasers or consumers in the Township is greater than the cost of delivering the same to purchasers or consumers of the same class in the City of Victoria, shall not be deemed a different condition.

10. The Company further agrees that the gas to be supplied to the purchasers or consumers in the Township shall at all times be of a quality and standard conforming with regulations for the time being in force and from time to time formulated under the provisions of the "Gas Inspection Act", being Chapter 82 of the Revised Statutes of Canada, 1927, and any amending Act.

11. At the expiration of thirty (30) years from the date of this agreement, the Corporation, upon giving at least twelve (12) months written notice prior to the expiration of said period of thirty (30) years of its intention so to do, shall have the right to purchase the whole of the gas system of the Company within the Township together with all the real and personal property of the Company situated within the Township and actually used or to be used in the operation of the gas system, upon payment being made to the Company by the Corporation of the value thereof as a going concern, such value to be mutually agreed upon between the Corporation and the Company, and in case of failure to agree then such value shall be determined by arbitration pursuant to the provisions of the Arbitration Act of British Columbia. It is however, understood and agreed by and between the parties hereto that the Corporation shall not be called upon to pay for more real and personal property not actually in use in the said operation than is reasonably necessary for the operation and maintenance of said gas system; PROVIDED that if, when such value is agreed upon or determined as aforesaid, the laws of the

said Province require the consent of the Lieutenant-Governor in Council to the purchase of or to any By-Law for the purchase of the said gas system by the Corporation, or require the assent of the electors or of the ratepayers of the Township to such purchase and/or to the purchase money being raised or borrowed by the Corporation, and any such consent or assent is not given, then the Corporation and the Company shall be released from all obligations to complete such purchase and sale pursuant to such notice and from all liability from failure to so complete, but the Corporation shall pay the Company's costs of the arbitration.

12. The Corporation shall, subject to the provisions of Clause 11 hereof, have six months after the value is finally determined on to complete the purchase: Provided, however, that until the purchase is completed, the Company shall be entitled to retain possession of the said gas system and property and to operate the same and to retain all the profits derived therefrom.

13. In the event of the Corporation failing to purchase the gas system and property of the Company at the expiration of thirty years as hereinbefore provided the said Corporation shall have a similar right or purchase at the end of each period of ten years thereafter upon the same terms and conditions as mentioned in Clauses 11 and 12 hereof.

14. It is hereby mutually agreed by and between the parties hereto and this agreement is made upon the distinct and express understanding that nothing herein contained shall be deemed or construed as a grant to the Company of the exclusive right to the privileges herein contained and that the Corporation shall be at liberty at any time it may desire to grant the same or similar privileges to any other person, persons or corporation.

15. This agreement shall enure to the benefit of and be binding upon the parties hereto as well as their respective successors and assigns.

IN WITNESS WHEREOF the parties hereto have hereunto caused their corporate seals to be affixed the day and year first above written.

THE CORPORATE SEAL OF CORPORATION)
OF THE TOWNSHIP OF ESQUIMALT was)
hereunto affixed in the presence)
of:)

REEVE.)

CLERK.)

THE CORPORATE SEAL OF BRITISH)
COLUMBIA ELECTRIC POWER & GAS COM-)
PANY LIMITED was hereunto affixed)
in the presence of:)

DIRECTOR.)

SECRETARY)