

Re: Water Agreement between E.I.F. Industries Ltd.,  
7170 Antrim Avenue, and  
The Corporation of the District of Burnaby

Council, on May 27, 1964, entered into an agreement with Imperial Industries Limited, 7170 Antrim Avenue, whereby the Municipality permitted Imperial Industries to construct an 8" water main across Antrim Avenue for fire protection purposes at the firm's plant. Imperial Industries agreed to maintain, renew, and repair the main and, should the Municipality at any time require a change in location, grade, or elevation of the main, such would be at the risk and expense of Imperial Industries. Imperial Industries also agreed to pay to the Municipality the annual sum of \$25.00 payable on June 1, 1965 and on the first day of June in each succeeding year during the life of the agreement.

E.I.F. Industries Limited purchased the property at 7170 Antrim Avenue from Imperial Industries but neglected to notify the Municipality of change of ownership. Following our request for payment of the \$25.00 fee for the period June 1, 1974 to May 31, 1975, we were informed of the sale and Mr. Hugo Eppich, President of E.I.F. Industries then requested that the Municipality and his firm enter into an agreement regarding the 8" water main.

Council is advised that payment of the \$25.00 fee has been maintained. In fact, E.I.F. Industries has paid the fee for the period June 1, 1974 to May 31, 1975.

The Agreement (draft copy attached), which has the approval of E.I.F. Industries, is, in effect, a result of transfer of the Agreement from Imperial Industries to E.I.F. Industries, with conditions unaltered except that the \$25.00 annual fee has been raised to \$50.00 annually, effective June 1, 1975.

Council is advised that Exhibit "A", attached to the Agreement, formed part of the original Agreement with Imperial Industries, and that the building shown as the "Monterey Plant" is now the E.I.F. warehouse served by the 8" water main. Further, the building noted on the plan as "New Factory" is now the E.I.F. office at 7170 Antrim Avenue.

The Land Agent is of the opinion that the terms of the Agreement are reasonable and recommends acceptance, as does the Municipal Engineer.

RECOMMENDATION:

1. THAT Council approve of the subject Agreement and authorize execution of such.

THIS AGREEMENT made and entered into this 10th day of December, 1974.

BETWEEN:

THE CORPORATION OF THE DISTRICT OF BURNABY  
(hereinafter called the "Corporation")

AND:

E.I.F. INDUSTRIES LIMITED, a body corporate,  
carrying on business at 7170 Antrim Avenue,  
in the Municipality of Burnaby, Province of  
British Columbia.

(hereinafter called the "Company")

WHEREAS the Company is the occupier of lands and premises situated on both sides of Antrim Street in the Municipality of Burnaby and of the buildings (hereinafter called the "buildings") erected thereon.

AND WHEREAS the Company has applied to the Corporation for permission to construct an 8" water main through, under and across Antrim Street for the purpose of providing a single fire protection system for the buildings.

AND WHEREAS the Corporation has agreed, so far as it legally can but not otherwise, to grant the said permission upon the terms, covenants and conditions hereinafter contained on the part of the Company to be performed and observed.

NOW THEREFORE THIS AGREEMENT WITNESSETH:

1. In this agreement "construct" shall include operate, maintain, renew, repair and remove and "construction" shall include operation, maintenance, renewal, repair and removal.
2. The Corporation, so far as it legally can but not otherwise, does hereby license and permit the Company at its own risk and expense to construct an 8" water main (hereinafter called the "said work") through, under and across Antrim Street for the purpose of providing a single fire protection system for the buildings and for no other purpose, in accordance with the plan hereunto annexed marked Exhibit "A", and by this reference made a part of this Agreement.

3. The Company covenants and agrees that

(a) it shall pay to the Corporation for the permission hereby granted the annual sum of \$50.00, payable on the 1st day of June, 1975, and on the 1st day of June in each succeeding year thereafter during the currency of this Agreement.

(b) it shall construct the said work using the best materials and sound engineering procedures and subject at all times to the approval of the Engineer of the Corporation. Provided that the approval by the said Engineer of any material, plan or method of work shall not relieve the Company of its responsibility for any defects or errors therein and shall not be deemed as any assumption of risk or liability by the Corporation or the said Engineer and the Company shall have no claim against the Corporation or the said Engineer on account of the failure or partial failure or insufficiency of any material, plan or method so approved. Such approval shall be considered to mean merely that the said Engineer has no objection to the Company using upon its own full responsibility the material, plan or method proposed.

(c) the Company shall give to the Engineer of the Corporation at least twenty-four hours notice in writing of its intention to commence construction of the said work and shall pay to the Corporation all costs which the Corporation may incur for inspection of the said work.

(d) the Company shall forthwith after constructing the said work fill in all excavations and restore the ground to its previous condition and maintain the same and each and every part of the said work in good and sufficient repair.

(e) the Company shall at its own risk and expense change the location, grade or elevation of the said work or any part thereof whenever the Corporation may so require for the accommodation of works of the Corporation or other works, services or utilities now in place or hereafter to be constructed in Antrim Street,

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(f) the intent being that the Corporation shall be put to no expense or loss to which it would not have been put had the said work not been in existence or under construction.

(i) the Company shall and does hereby release and discharge the Corporation from any and all liability for damage to or destruction of the said work and for damage to or destruction of any other property of the Company which may be caused directly or indirectly by damage to or destruction of the said work, whether the damage or destruction of the said work or of any other property of the Company is caused by the negligence or other actionable wrong of the Corporation, its servants or agents, or otherwise howsoever.

(ii) the Company shall at all times be responsible for and indemnify and save harmless the Corporation from all damage and from all costs and expenses caused to or incurred by the Corporation as well as from all claims and demands, loss, costs, damages, actions, suits or other proceedings by whomsoever made, brought or prosecuted and howsoever caused in any manner based upon, arising out of or connected with the said work or the existence, or construction thereof, or any action taken or thing done or maintained in connection therewith or omitted to be so taken, done or maintained or the exercise or purported exercise in any manner of rights arising under this Agreement, whether the same be caused by the negligence or other actionable wrong of the Corporation, its servants or agents, or otherwise howsoever.

4. It is hereby agreed, covenanted and understood by and between the parties hereto that

(a) if the Company shall fail to perform and observe any of the terms, covenants and conditions in this Agreement contained on its part to be performed and observed, the Corporation may forthwith without notice terminate this Agreement and in any event the Corporation may terminate this Agreement at any time by giving the Company three months notice in writing.

Whenever this Agreement shall cease and determine all rights granted hereunder shall be terminated and the Company shall, if so required by the Corporation, remove the said work,

(b) whenever the said work is removed the Company shall restore that portion of Antrim Street from which the said work is removed in good and sufficient repair and shall so maintain the said portion of Antrim Street during a period of three months after such removal,

(c) the Company shall not transfer or assign this license and permission without the written consent of the Corporation,

(d) the Engineer of the Corporation shall be the sole judge of any material, thing or expense of an engineering nature mentioned herein as well as of the meaning and intention of this Agreement or any part thereof and his decision shall be final and binding upon the Company.

(e) if the Company shall fail to perform any work or service required of it pursuant to this Agreement, the Corporation may perform such work or service and charge the cost thereof to the Company and the Company shall reimburse the Corporation for the cost thereof within twenty days after bills are rendered therefor,

(f) any notice to be given to the Company by the Corporation may be given by sending the same by registered post to the Company at its address hereinbefore set out and such notice shall be deemed to have been served on the day following such posting.

5. This Agreement shall enure to the benefit of and be binding upon the parties hereto as well as their successors and permitted assigns.

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IN WITNESS WHEREOF the Corporation has caused these presents to be sealed with its corporate seal and signed by the Mayor and Clerk and the Company has caused its corporate seal to be hereunto affixed under the hands of its proper officers duly authorized on that behalf as of the day and year first above written.

THE CORPORATE SEAL OF THE CORPORATION OF THE DISTRICT OF BURNABY WAS HEREUNTO AFFIXED IN THE PRESENCE OF:

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CLERK

THE CORPORATE SEAL OF E.I.F. INDUSTRIES LTD. WAS HEREUNTO AFFIXED IN THE PRESENCE OF:

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