



CHAPTER 57.

An Act relating to The Corporation of the City of Victoria.

[Assented to 27th March, 1953.]

Preamble.

WHEREAS pursuant to the provisions of section 5 of the "Victoria City Act, 1936 (Second Session)," being chapter 65 of the Statutes of 1936 (Second Session), the Council of The Corporation of the City of Victoria did, by an agreement dated the twenty-eighth day of November, A.D. 1952, agree to sell to Hallet and Carey (B.C.) Limited its right, title, and interest in and to the leasehold lands and premises described in the said section 5, chapter 65, as more particularly set out in Schedule "A" hereto:

And whereas some doubt exists as to whether the said Agreement is within the powers accorded the said Corporation by the said chapter 65:

And whereas The Corporation of the City of Victoria has by its petition prayed that legislation be enacted to validate the said Agreement and further to enact as hereafter set forth:

And whereas it is expedient to grant the prayer of the said petition:

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

PART I.

Short title.

1. This Act may be cited as the "Victoria City Act, 1953."

Interpretation.

2. In this Act, unless the context otherwise requires:—

"Corporation" means The Corporation of the City of Victoria:

"Municipality" means the Municipality of the City of Victoria:

"Council" means the Municipal Council of the said Corporation.

In defining any word or expression used in this Act, not by this Act expressly defined, reference may be had to the provisions of the "Municipal Act" and the private Acts of the said Corporation heretofore enacted.

PART II.

Repeals s. 15.

3. Section 15 of the "Victoria City Act, 1923," is repealed.

PART III.

MISCELLANEOUS.

Validating Agreement
Ogden Point Elevator.

4. Notwithstanding anything contained in the "Municipal Act" or any other Statute, the Agreement set out in Schedule "A" hereto is ratified, confirmed, and declared to be binding according to the tenor thereof on The Corporation of the City of Victoria and Hallet and Carey (B.C.) Limited, and the parties to the said Agreement are respectively authorized to perform, carry out, and fulfil everything necessary or expedient to give full effect to the said Agreement.

Power to set aside
corporate lands for
parking, etc.

5. It shall be lawful for the Council to make, alter, and repeal by-laws to provide for the setting-aside of corporate lands to provide parking-space for city officials, city employees, and other persons doing business with or on behalf of the city and its different institutions, and for the imposition of fines on summary convictions for trespassers.

SCHEDULE "A."

THIS INDENTURE made the 28th day of November, A.D. 1952.

BETWEEN:

THE CORPORATION OF THE CITY OF VICTORIA, a body constituted under the laws of the Province of British Columbia (hereinafter called "the City")

OF THE ONE PART,

AND

HALLET AND CAREY (B.C.) LIMITED, a Company duly incorporated under the laws of the Province of British Columbia and carrying on business at 355 Marine Building, in the City of Vancouver, in the Province aforesaid (hereinafter called "the Company")

OF THE SECOND PART.

WHEREAS by a Lease (hereinafter called "the said Lease") dated the 29th day of June 1927 and made between His Majesty the King represented therein by the Minister of Marine and Fisheries of Canada of the First Part and Panama Pacific Grain Terminals, Limited, as Lessee of the second part the lands and premises described in the said Lease as follows:

ALL that portion of Pier No. 3 at Ogden Point at the City of Victoria, in the Province of British Columbia, more particularly described as follows: Measuring from the Northwest corner of Pier No. 3, thence easterly nine hundred and seventy-five (975) feet along the line of the face of the Pier; thence Southerly at right angles to the face of the Pier one hundred and thirty (130) feet; thence Westerly and parallel with the face of the Pier nine hundred and seventy-five (975) feet more or less to the extreme outer end of the Pier; thence Northerly one hundred and thirty (130) feet more or less to the point of beginning; together with a Right of Way for ingress to

and egress from the said property from Dallas Road to the said demised premises,
were demised to the said Panama Pacific Grain Terminals, Limited, for a term of twenty-five years from and after the 29th day of June, 1927, at the yearly rental of One Thousand Dollars (\$1,000.00) and subject to the performance and observance by the said Panama Pacific Grain Terminals, Limited, of the covenants and conditions therein contained.

AND WHEREAS the said lease granted unto the Lessee an option to renew the said lease for two further consecutive terms of twenty-five (25) years each upon the terms and conditions in the said lease contained.

AND WHEREAS by an Indenture made the 14th day of March, 1931, Panama Pacific Grain Terminals, Limited, by and with the consent of the Minister of Transport granted unto the Canadian Northern Railway Company a free and uninterrupted right of way over a portion of the said demised premises:

AND WHEREAS Panama Pacific Grain Terminals, Limited, by a Quit Claim and Assignment in writing dated the 2nd day of January, 1937, did, by and with the consent of the Minister of Transport, transfer and assign the benefit of the said lease and the then unexpired portion of the term thereof unto the City.

AND WHEREAS by an Indenture dated the 1st day of August, 1951, the City, by and with the consent of the Minister of Transport, did grant a sublease of the said demised premises to Kerr Gifford & Co., Inc., upon the terms and subject to the conditions in the said Indenture contained: which said term has expired and the said Kerr Gifford & Co., Inc., are now sub-tenants from month to month.

AND WHEREAS the City has exercised the first option to renew the said lease;

AND WHEREAS the City has agreed to sell, transfer and assign the said lease and the buildings, machinery and equipment situate on the lands in the said lease described (herein called the "said demised premises") to the Company upon the terms and subject to the conditions hereinafter contained:

NOW THIS INDENTURE WITNESSETH:

1. As one entire transaction for a total consideration of Two Hundred and Two Thousand Five Hundred Dollars (\$202,500.00) of lawful money of Canada payable as hereinafter provided the City hereby agrees as follows:

(a) At and for a price of One Thousand Dollars (\$1,000.00) to assign unto the Company the benefit of the said lease and the unexpired portion of the term thereof and any renewal thereof subject to the payment of the rent and performance and observance of the covenants, conditions and stipulations in the said lease contained by the Lessee, and subject to the said sub-tenancy in favour of Kerr Gifford & Co., Inc.

(b) At and for a price of Fifty-two Thousand Five Hundred Dollars (\$52,500.00) to transfer, set over and assign unto the Company the buildings situate on the said demised premises subject to the provisions in the said lease contained.

(c) At and for the price of One Hundred Forty-nine Thousand Dollars (\$149,000.00) to transfer, set over and assign unto the Company the machinery and equipment situate on the said demised premises.

2. The said sum of Two Hundred and Two Thousand Five Hundred Dollars (\$202,500.00) shall be payable at the times and in the manner following, that is to say:

(a) The sum of One Hundred Fifty-two Thousand Five Hundred Dollars (\$152,500.00) on or before the execution of these presents (the receipt whereof the City doth hereby acknowledge).

(b) The sum of Fifteen Thousand Dollars (\$15,000.00) one (1) month from the date hereof.

(c) The sum of Fifteen Thousand Dollars (\$15,000.00) two (2) months from the date hereof.

(d) The sum of Twenty Thousand Dollars (\$20,000.00) three (3) months from the date hereof.

3. The Company shall on the dates aforesaid, pay to the City interest on so much of the purchase price as remains unpaid from time to time computed from the 2nd day of October, 1952, at the rate of Five Per Centum (5%) per annum. Interest after maturity at the rate aforesaid shall be payable from day to day.

4. The City covenants with the Company as follows:

(a) That, notwithstanding the said sub-tenancy in favour of Kerr, Gifford & Co., Inc., and the said Right of Way in favour of the Canadian Northern Railway Company, the said Lease is a good, valid and subsisting Lease for the unexpired term of twenty-five years from the 29th day of June, 1952, and the right to renew for a further term of twenty-five years free from all encumbrances save as aforesaid.

(b) That the City has not done, suffered or permitted any act, matter or thing whereby the said lease or its interest in the lands described herein can be impaired, impeached or invalidated.

(c) That the City has a good safeholding and marketable title to all the buildings, machinery and equipment on the said demised premises free from encumbrances subject only to the terms and conditions in the said lease contained.

(d) That the City will obtain the consent of the responsible Minister of Her Majesty, the Queen, to the assignment, transfer and sale herein agreed to be made as provided in Clause 1 hereof.

(e) That the City has, in accordance with the provisions in the said lease contained, duly exercised the first option to renew the said lease for a further term of twenty-five years.

(f) That upon performance by the Company of the terms and conditions on its part herein contained and upon payment of the said purchase price the City will execute a formal assignment of the said lease and will transfer, set over and assign unto the Company, BUT SUBJECT to the terms of the said lease, the buildings, machinery and equipment situate on the demised premises.

(g) That Kerr, Gifford & Co., Inc. are in possession of the said demised premises as tenants from month to month and may lawfully be required to vacate and deliver up possession of the said demised premises upon one month's notice which the City agrees to give effective December 31st, 1952.

5. In consideration of the premises the City hereby covenants and agrees with the Company pursuant to the powers contained in the Victoria City Act 1936 (Second Session), to the extent that it can by law so do, to grant and adopt and fix and continue in force the provisions for a fixed valuation for municipal assessment purposes set forth in the Agreement dated the 20th day of August, 1927, made between the City and the Panama Pacific Grain Terminals, Limited and adopted and confirmed by By-laws Number 2398 and Number 2408.

6. The Company covenants with the City as follows:

(a) That it will pay the purchase price and interest thereon as hereinbefore provided at the times and in the manner in Clauses 2 and 3 hereof set forth.

(b) That it will during the unexpired term of the said lease and any renewal thereof pay the rent thereby reserved and perform and observe the covenants on the part of the Lessee therein contained and will keep the City indemnified against all actions, causes of action, damages, costs, claims and demands whether at law or in equity which may be hereafter brought against the City by reason of the failure of the Company to observe and perform the covenants and conditions of the Lessee in the said lease contained.

7. If default is made in payment of any principal, interest or other moneys as and when the same become due, the whole of the purchase money shall at the option of the City become payable forthwith.

8. The Company subject to the tenancy of Kerr Gifford & Co., Inc. shall be entitled to possession and occupation of the said premises as from the date hereof, until default shall have been made in any of the terms and conditions of this agreement, and provided also that the Company shall not do or permit anything whereby said premises shall be injured or depreciated in value. All buildings and improvements which now are on the said lands, or which hereafter during the continuance of this agreement may be place on or made to the said lands, shall remain thereon and shall not be removed or destroyed until the final payment of the said purchase and other moneys has been made.

9. If the Company shall at any time make default in any of the payments hereby agreed to be made or any part thereof or in complying with any of the terms of this agreement for five (5) days after notice of such default, then at the option of the City without further notice or act on its part the City shall be at liberty to determine this agreement and the Company shall conclusively be deemed to have waived and abandoned to the City all rights and interests at law or in equity under or arising out of this agreement, and all payments on account hereof shall notwithstanding any previous forbearance by the City, or demand by the City, belong absolutely to the City, any rule or law or equity to the contrary notwithstanding, and the City shall hold the same freed from these Presents without any right on the part of the Company to reclamation or to any compensation therefor. Part compliance only with any of the terms or conditions hereof or part payment of any instalment or other monies in arrear (even though accepted by the City or the City's agent) shall not operate as a waiver of the strict fulfilment of this agreement unless the City shall expressly waive the same by writing. No waiver by the City of the strict fulfilment of this agreement by the Company shall excuse any default not expressly so waived, and no extension of time by the City for the performance of any act hereunder shall excuse any failure to perform such act within the time fixed by such extension. The City shall be entitled immediately upon any default by the Company without giving any notice or making any demand, to take immediate possession of the premises and remove the Company therefrom.

10. The Company further covenants with the City that in the event the Company shall, within two years of the date of these presents, dispose of the interests hereby acquired, then and in such case the Company will pay to the City a sum of money equal to the net selling price received on the disposal of the said interests after deducting therefrom the following:

- (a) The capital cost to the Company of the said interests,
- (b) The capital cost to the Company of any alterations, additions or improvements to the said interests,
- (c) Any operating losses related to the said interests incurred by the Company prior to the disposal of the said interests,
- (d) Any commission or expenses incurred by the Company in acquiring and disposing of the said interests.

11. Any notice or demand which the City may desire to give to or make upon the Company may be mailed to the Company in prepaid registered letter addressed to:

Hallet and Carey (B.C.) Limited,
355 Marine Building,
Vancouver, B.C.

and shall be deemed to have been given or made at the expiration of two days after it shall have been so mailed.

12. Time shall be of the essence of this contract in all respects.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written.

The corporate seal of THE CORPORATION
OF THE CITY OF VICTORIA was hereunto
affixed in the presence of:

“ M. F. HUNTER ”
City Clerk, Victoria, B.C.

THE CORPORATION OF
THE CITY OF VICTORIA

“ C. L. HARRISON ”
Mayor
[SEAL.]

The corporate seal of HALLET AND
CAREY (B.C.) LIMITED was hereunto
affixed in the presence of:

“ R. A. VERNON LESTER ”
Vice-President

“ R. K. LESTER ”
Secretary.

[SEAL.]

VICTORIA, B.C.

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