

MINUTES
SPECIAL COUNCIL MEETING
BROOKINGS COMMON COUNCIL
CITY OF BROOKINGS
JULY 20, 1973

The meeting was called to order at 6:30 p.m. by Mayor Wilma M. Kemp. Members present were: Councilmen Rush Long, Don Nida, Jack Ross, and William Guthrie.

This special meeting was called for the purpose of considering a proposed contract for the purchase of Brookings Water System.

Agreement between Brookings Utilities Company, seller, and the City of Brookings, buyer, was read in full, and is made a part of these minutes.

Discussion then followed. Inquiry was made asking if there could be any negotiations on the price of \$975,000. They were informed that this was a set price, no negotiations. Final closure of the sale is to be completed within six months and during the interim period the city is to pay the water company \$5,000 per month beginning August 25, 1973. If at the end of six months the city is unable to sell bonds to purchase this water system it will be reverted back to the seller as nearly as possible in the same condition of operation as the same now is. City is to receive all revenue after July 25, 1973.

MOTION was made by Councilman Long, seconded by Councilman Ross and carried unanimously that the agreement be accepted and the Mayor and City Recorder be authorized to execute the agreement.

City Engineer Roy Erichsen was given authorization to contact the Oregon State Health Division to get a written list of needs for improvement of the system. Upon receiving this list, to prepare a preliminary comprehensive plan outlining the existing system needs, cost estimates, priority, and construction schedule.

Mayor Kemp then declared the meeting adjourned at 7:00 p.m.

Wilma M. Kemp
MAYOR

ATTEST:

Marjorie B. McKernan
RECORDER - TREASURER

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT, Made and entered into this 20th day of July, 1973, by and between BROOKINGS UTILITIES COMPANY, an Oregon Corporation, hereinafter called Seller, and The CITY OF BROOKINGS, a Municipal Corporation, hereinafter called Buyer,

WITNESSETH, That:

RECITALS:

1. Seller is the owner and operator of a water system serving the City of Brookings and surrounding areas, duly licensed and authorized by the Public Utility Commission of the State of Oregon.

2. Buyer desires to buy and operate such water system and a bond issue for such purpose has been duly passed by the voters of the City of Brookings.

3. Buyer wishes to take immediate possession and to commence operation of such system as hereinafter more fully stated in the body of the agreement, pending the sale of such bonds and the approval of such sale by the Public Utility Commission, at which time the sale will be finally closed.

4. It is the desire of both parties that the transfer to buyer and the subsequent change of the operation shall be accomplished as rapidly as possible and with as little interruption to the service as possible.

AGREEMENTS:

Seller hereby agrees to sell and buyer hereby agrees to purchase the water system, as hereinafter more fully described, subject to the following terms, conditions and agreements:

1. SELLING PRICE

(1) The selling price, and the true and actual consideration, is the

amount of NINE HUNDRED SEVENTY-FIVE THOUSAND Dollars (\$975,000.)

to be paid in manner and form as follows:

The amount of Two Thousand Dollars (\$2,000.) already paid, the receipt whereof is hereby acknowledged, with the balance, to-wit Nine Hundred Seventy Three Thousand (\$973,000.), to carry interest at the rate of 6% per annum from and after the date hereof, and to be paid as follows:

\$5,000.00 on August 25, 1973, and \$5,000.00 on the 25th day of each month thereafter until the final closing of this sale. At such time the entire balance of \$973,000.00 plus interest shall be paid in full less the amount of monthly payments made.

(2) The purchase price of the inventory shall also be paid at that time and shall be determined as hereinafter in paragraph 3, more fully stated.

2. PROPERTY SOLD

The property sold and purchased hereunder is the complete water system which includes the following:

- (1) All necessary easements for any water lines already built over property owned individually by Elmer Bankus or by the Brookings Land and Townsite Company.
- (2) All water rights, easements and rights of way owned or held by seller.
- (3) All real property of record owned by seller.
- (4) All water lines, pumps, mains, services, hydrants, and connections of every sort connected to and being a part of said water system.
- (5) The airport site of approximately 1 to 3 acres presently owned by Brookings Land and Townsite Company but which seller agrees to transfer.
- (6) The large reservoir currently connected to the system.
- (7) All maps and records of the system, excluding financial records, and all maintenance or installation records necessary to the continued operation of the system.
- (8) Any rolling stock, licensed or unlicensed, in the name of the water company.

(9) All revenue after July 25, 1973.

(10) The new well and site thereof on the Chetco River.

3. INVENTORY

Seller has on hand a considerable inventory of pipe, valves and other equipment relating to said water system. Seller has the right to reserve such portions of this as it desires. Buyer has the right, but is not required, to take such of the inventory not so reserved by Seller as it desires, prior to the final closing of this sale at a price to be established and determined by an appraisal by a recognized wholesaler in such business. Such price shall be established by and paid at the time of final closing in addition to the purchase price hereinabove mentioned.

4. FINAL CLOSING

This sale shall be finally closed at such time as the bonds have been sold and the proceeds thereof available to the buyer and the permission of the Public Utility Commission has been received, but in no event later than six months from date. The sale shall be concluded by the execution and delivery by seller to buyer of warranty deeds in the usual form to the real property, a bill of sale to the personal property and appropriate assignments of all easements, water rights and rights-of-way, and by the payment from seller to buyer of the balance of the purchase price aforesaid, to-wit NINE HUNDRED SEVENTY THREE THOUSAND Dollars (\$973,000.), together with the interest accruing to such date and the purchase price for the inventory as aforesaid. Seller will furnish buyer a preliminary title report showing good title to the real property at the time of closing and upon the recording of the deeds to such real property shall order and deliver to buyer at sellers cost and expense a policy of title insurance in an amount equal to the total assessed valuations of such real property as currently shown by the assessors records of Curry County. The place of closing shall be the Law Offices of Frederic H. Starkweather, Jr., 400-410 Colvin

Court, Gold Beach, Oregon and all money shall be deposited in and disbursed through his trust account.

5. TAXES

All taxes for the current taxable year shall be prorated as of the 25th day of July 1973. Any taxes which may accrue after such date shall be the responsibility of buyer.

6. INTERIM OPERATION PRIOR TO FINAL CLOSING

(1) At all times until the final closing of this sale buyer is to operate under the present Public Utility Commission tariffs and is to use and maintain the present billing and deposit systems. It is the intention of both parties that in the event that final closure is not made and seller is forced to take back the water system that it will be as nearly as possible in the same condition of operation as the same now is.

(2) During the interim period of operation and until final closure buyer will hire as its employees Jean Pyne and Don Behee at the same salary as they respectively now are drawing until the time of final closure.

(3) During such interim period buyer agrees that such employees shall be adequately covered by insurance and that all phases of its operations of business shall be covered by public liability insurance and they agree and guarantee to save and hold seller harmless from any claims, actions, liens, causes of actions or suits arising out of or because of its operation of said water company or its use, occupation or possession of any of the property of said business.

(4) Seller has deposits from its customers which it holds until such time as the customer ceases service. If during the interim operation any customer shall terminate his service the city shall deduct his final bill from the amount of the deposit and pay the balance to said customer and seller will immediately refund the city the amount of such deposit. Any deposits

remaining in the hands of seller at the time of final closure will be turned over to the city and city at such time will hold seller harmless from any claims by any persons for any of such deposits as so turned over.

(5) Seller retains any accounts receivable as of July 25, 1973.

7. FAILURE TO COMPLETE SALE

In the event that this sale is not completed within the time stated due to the inability of the seller to obtain the necessary permission from the Public Utility Commission or of the buyer to market its bonds, it being agreed by both parties that they will make every effort to accomplish such purposes, then any transfer contemplated by this instrument shall be null and void and all right and title and interest in and to the property and operations described herein shall revert to and revest in seller without any other act or duty on its part to be performed. Buyer shall have no responsibility for the payment of the purchase price as aforesaid, the interest thereon or any part of the inventory actually taken and used in the system, or any accounting or return of revenues received by them during such period of operation, but shall, as rental and in lieu of damages relinquish the amount of \$5,000.00 per month (as in paragraph 1 aforesaid), to seller and buyer shall also forfeit the \$2,000.00 down payment as liquidated damages to apply on title reports, costs of preparation of documents, etc. Buyer hereby agrees in such event to pay forthwith any such rental currently owing and to turn over all books and records and operation to seller and to cooperate in every way in the transfer back so as to avoid so far as possible all costs, expense and inconvenience to seller and to the customers of the water system. Any additions to system shall become the property of seller.

8. SERVICE

Buyer agrees that it will honor all commitments presently existing for service and further will furnish service to all users including subdivisions

whether inside or outside of the city limits within a reasonable distance of the city of Brookings upon the owners properly installing the necessary lines on his property. This provision is to remain binding after the final closing of the sale.

9. LEGAL ACTION

In the event suit or action is instituted by either party to this agreement to enforce any of the terms hereof or for a judicial interpretation of any of the terms hereof by a declaratory judgment, suit or action, the prevailing party in such suit, action, or proceeding shall be entitled to such attorneys fees, including fees in any appellate court, as the appropriate court deems reasonable.

IN WITNESS WHEREOF, Said seller and said buyer, pursuant to resolutions duly passed by its board of directors and by its City Council respectively, have caused these presents to be executed in sextuplicate the day and year first hereinabove written.

BROOKINGS UTILITIES COMPANY,
an Oregon Corporation

By: _____

(Title)

By: _____

(Title)

SELLER

CITY OF BROOKINGS

By: _____

(Title)

By: _____

(Title)

By: _____

(Title)