

RESOLUTION NO. XVII

A RESOLUTION APPROVING AN AGREEMENT WITH NEAL THOMPSON FOR THE PURCHASE OF WATER AND THE LEASING OF WATER PUMPING FACILITIES; AND AUTHORIZING THE EXECUTION OF A CONTRACT FOR SUCH PURPOSES.

WHEREAS a drought has prevailed for the past several weeks in the Willamette Valley and the present sources of the Canby city water supply are dangerously low and there is no immediate prospect of a change in the weather that would relieve the situation and as a result thereof the City has had to curtail the use of water for all purposes, and

WHEREAS the needs of the City of Canby and the residents thereof warrant the taking of immediate action and emergency measures by the City Council to protect the property and insure the general health and welfare of all, and

WHEREAS individual property owners by the names of Neal Thompson and Rovilla Thompson, husband and wife, are the owners of property adjacent to the south city limits of the City of Canby, and have located thereon a water supply and pumping facilities and transmission line facilities adequate to supplement the city's supply, and that said owners of said water facilities are agreeable to selling the same to the city for a period of three (3) months, and

WHEREAS the City Superintendent has made an extensive examination and tests of said well and the water therein, and the Superintendent's reports thereof indicate that said water is pure and fit for domestic use and human consumption, now therefore,

BE IT RESOLVED

That the Council for the City of Canby, Oregon, has determined and hereby declares the existence of a water shortage in the City's present source of supply and that by reason thereof an emergency now exists.

BE IT FURTHER RESOLVED

That the Mayor of the City of Canby be and she is hereby authorized, empowered and directed to purchase said hereinabove referred to water

supply, pumping facilities and transmission line facilities from said Neal Thompson and Rovilla Thompson, husband and wife, for a period of three (3) months, commencing July 27, 1958 and expiring October 26, 1958, and to pay therefor the sum of One Thousand Five Hundred Sixty and no/100 Dollars (\$1,560.00) for the said three months' use of the pumping facilities and transmission line and water supply, payable Six Hundred (\$600.00) Dollars on or before September 1, 1958, Six Hundred (\$600.00) Dollars on or before October 1, 1958, and ~~Three~~ Three Hundred Sixty and no/100 (\$360.00) Dollars on or before November 1, 1958, together with the further sum of nine cents (9¢) per hundred cubic feet of water pumped, by the City of Canby, from said water supply of Neal Thompson and Rovilla Thompson, with payments to be made on or before the 10th day of the month following the taking of the water. Said transaction on the party of the Mayor is to be deemed an outright purchase and is not to be construed as a lease of facilities or entering into a contract as to future purchase. A clarification of matters between the City of Canby and Neal R. Thompson and Rovilla Thompson, husband and wife, have by separate instrument been set down between the parties, which instrument is hereby approved, ratified and confirmed.

Passed by the Common Council for the City of Canby this 5th day of August, 1958.


Bertha E. Dedman, Mayor


F. G. Lawrence - City Recorder

AGREEMENT

THIS AGREEMENT, made and entered into this day and year as last appears hereunder, by and between NEAL THOMPSON and ROVILLA THOMPSON, husband and wife, hereinafter referred to as FIRST PARTY, and THE CITY OF CANBY, a municipal corporation of Clackamas County, State of Oregon, hereinafter referred to as SECOND PARTY, WITNESSETH:

WHEREAS, the FIRST PARTY are individuals and the owners of real property on which there is a water well complete with pumping facilities, including among other things a Peerless Pump, Serial Number 45565, and 140 feet of 6" column, and

WHEREAS, the SECOND PARTY is the owner and operator of a water system and is engaged in the distribution of water to consumers in the City of Canby, Oregon, and territory adjacent thereto, and

WHEREAS, SECOND PARTY desires to obtain additional water to supplement its present source of supply, and FIRST PARTY is willing to furnish said supplemental requirements of the SECOND PARTY subject to the terms, conditions and limitations as hereinafter set forth. Now therefor, the parties hereto agree as follows:

1. FIRST PARTY does hereby lease, demise and let to SECOND PARTY, for a term of ninety (90) days, commencing with the 27th day of July, 1958, the above described irrigation pump and motor which are now installed in FIRST PARTY'S irrigation well on his farm at Route 1, Box 294, Canby, Oregon, and also a sufficient amount of 6" and 7" aluminum main line irrigation pipe to connect said well in the most direct route available with SECOND PARTY'S water system. The said pump, pipe and motor, and all parts thereof essential to the efficient operation of the same, are hereinafter referred to as the "facilities".

2. In consideration thereof SECOND PARTY agrees to pay to FIRST PARTY as rental therefor the total sum of Fifteen Hundred and Sixty Dollars (\$1560.00) which is to be paid to the order of FIRST

PARTY at the times and in the amounts as follows: \$600.00 on or before September 1st, 1958; \$600.00 on or before October 1st, 1958; and \$360.00 on or before November 1st, 1958.

3. During the term of this lease or any renewal thereof, the SECOND PARTY shall use and operate said facilities for the sole purpose of pumping water and piping the same from FIRST PARTY'S well into the mains of SECOND PARTY'S water system. SECOND PARTY agrees to maintain and repair said facilities at its sole expense and as may be necessary to keep the same in good working condition, and upon the termination of this agreement, SECOND PARTY shall carefully disconnect the pipe and return the same with all parts thereof to FIRST PARTY'S premises, at which time the said parties or their authorized representatives shall examine said facilities for the purpose of determining that it has been restored to a condition comparable to that which it is now in, reasonable use and wear thereof excepted. Any claim by FIRST PARTY for damages caused to said facilities during its use by SECOND PARTY shall be made in writing and delivered to the office of the City Recorder for the City of Canby within forty-eight (48) hours immediately following the return of all the facilities to FIRST PARTY. The failure of FIRST PARTY to notify SECOND PARTY of any damage claim within the time limited therefor, shall be deemed an admission by FIRST PARTY that the facilities are fully returned and restored to an acceptable state of repair.

4. It is understood and agreed between the parties hereto that SECOND PARTY shall have the right to pump and withdraw water from FIRST PARTY'S well to the full capacity of the said facilities and without liability whatsoever to SECOND PARTY for any depletion of the water supply. All pumping costs shall be borne by SECOND PARTY.

5. FIRST PARTY agrees to furnish without additional cost

to SECOND PARTY the necessary rights of way for the installation of water pipe across FIRST PARTY'S land to SECOND PARTY'S water mains. In the installation of the pipe across FIRST PARTY'S property the same shall be so installed as to not interfere with the use and occupancy of the land for reasonable cultivation and agricultural purposes.

6. SECOND PARTY agrees to pay to FIRST PARTY for all water taken by SECOND PARTY during each calendar month, the sum of nine cents (\$.09) per hundred cubic feet, with payments to be made on or before the 10th day of the month following the taking of the water. For the purpose of determining the amount of water withdrawn from the well during the term of this agreement or any renewal thereof it is agreed that the pump in operation delivers 450 gallons per minute, and it is further agreed that SECOND PARTY shall carefully record each and every minute during which the pump is operating and pumping water, and such records shall be available at all times for the inspection of FIRST PARTY, his attorney or lawful representative.

7. It is also agreed between the parties hereto that so long as this agreement continues the stand-by time charge for electricity which is currently being made by SECOND PARTY to FIRST PARTY shall be prorated each month between said parties according to the number of days each party uses the pumping facilities.

8. SECOND PARTY shall indemnify and hold harmless FIRST PARTY, their heirs, executors, administrators, assigns, lessees, sub-lessees, and rentors, for claims for damages to persons or property arising out of SECOND PARTY'S use of said well, well site, power transmission line, water lines, or other operation, thing or act done by SECOND PARTY on FIRST PARTY'S property.

9. It is further understood and agreed between the parties hereto that the water supply is subterranean water subject to the rules, regulations and control of the State of Oregon and that any limitations imposed upon FIRST PARTY upon the use, and/or taking,

of the water shall automatically be imposed upon SECOND PARTY and this agreement shall be modified to the extent thereof and if the rules or regulations imposed upon FIRST PARTY are substantial and to the end that SECOND PARTY can not reasonably secure from the water source the amounts of water consistent with the now condition of the well or if because of natural conditions the water source fails substantially so that SECOND PARTY can not reasonably secure from the well the amounts of water now available or necessary for SECOND PARTY'S use, then and in that event shall this agreement be modified as agreed upon between the parties, or otherwise SECOND PARTY shall have the right to terminate this agreement without further obligation, and in that event only shall the rental charge for the said facilities be prorated according to the number of days they are actually used by SECOND PARTY.

10. It is further agreed between the parties hereto that SECOND PARTY shall have reasonable ingress and egress to, over and across FIRST PARTY'S property by the route or routes heretofore designated by FIRST PARTY, and such right of ingress and egress shall be to SECOND PARTY, its employees, agents and officers for the purpose of conducting said supply of water herewith granted to SECOND PARTY and that such right of ingress and egress shall be at all reasonable hours and times.

11. SECOND PARTY does further undertake and agree to use due care and diligence to avoid damage to the property of FIRST PARTY or crops, livestock or poultry thereon.

12. It is understood and agreed between the parties hereto that FIRST PARTY does not make any warranty whatsoever either express or implied as to the condition, quality or quantity of the water to be purchased by SECOND PARTY under the terms hereof; but FIRST PARTY does covenant and represent that they are the owners of the said facilities and also the owners of the land to which the said well and

water source are appurtenant and that they have a good right to lease or sell the same or any part thereof.

13. Whenever "FIRST PARTY" is used herein, this designation shall include FIRST PARTY, their heirs, administrators, executors, assigns, lessees, sub-lessees, rentors or those acting as agents, employees, or otherwise acting under FIRST PARTY, and wherever said designation is appropriate to the wording herein; and wherever "SECOND PARTY" is used herein the same shall apply to the municipal corporation of Canby as a legal entity, or the Common Council thereof or their successors or assigns, and their employees, agents, or officers where appropriate by the wording herein.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and executed this agreement in duplicate this day of August, 1958.

Neal Thompson
NEAL THOMPSON - First Party
Rovilla Thompson
ROVILLA THOMPSON - FIRST PARTY

CITY OF CANBY, a municipal corporation
of Clackamas County, State of Oregon -
Second Party

By: Bertha E. Dedman
Bertha E. Dedman - Mayor

By: F. G. Lawrence
F. G. Lawrence - City Recorder