

ORDINANCE NO. 429

AN ORDINANCE APPROVING THE TERMS AND CONDITIONS OF AN AGREEMENT PROPOSED TO BE MADE BETWEEN THE CITY OF CANBY AND JOHN W. BECK FOR THE PURPOSE OF SUPPLYING ADDITIONAL WATER TO THE CITY; AUTHORIZING THE EXECUTION OF SAID AGREEMENT; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Canby owns and operates a municipal water system which is now inadequate to supply the needs of the City and its residents; and a constant endeavor has been made during the past several months by the City's officials to determine the best and most economical method of correcting the problem which is becoming more serious as the City's population increases, and

WHEREAS, JOHN W. BECK, a resident of the City, and a licensed well driller, has made a written proposal to the City of Canby to supply additional water, and which said proposal has been carefully and thoroughly examined and considered by the City Council and the Council's water committee, and it is deemed by the Council as being a fair and workable plan for relieving the City's water shortage and a plan that can be executed without delay and with a substantial savings in costs to the City,  
NOW THEREFORE,

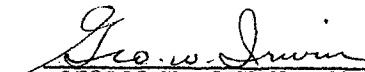
THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1: That the proposal of JOHN W. BECK, a licensed well driller of Canby, Oregon, as made to the City of Canby and set forth in a written agreement, a true and complete copy of which is annexed hereto marked "Exhibit A" for identification purposes, and which is by this reference and its annexation expressly made a part of this Ordinance, is hereby ratified and approved by the Canby City Council in all particulars; and the Mayor and City Recorder for the City of Canby are hereby authorized and directed to execute said Agreement in behalf of the City of Canby by signing their respective names thereto and by affixing the corporate seal of the City.

Section 2: It being deemed by the Canby City Council that an emergency exists, this Ordinance shall take effect immediately upon its final passage and approval by the Mayor.

Passed on its first reading at a regular meeting of the Canby City Council this 5th day of October, 1959.

Ordered published at full length for a period of two (2) consecutive weeks as provided by the Canby City Charter, and to come up for final reading and action at a regular meeting of said Council to be held on the 2nd day of November, 1959 at 8:00 o'clock P.M., Oregon Standard Time, in the Canby City Hall.

  
\_\_\_\_\_  
GEORGE W. IRWIN - Mayor

ATTEST:

  
\_\_\_\_\_  
City Recorder

FIRST PUBLICATION: October 8th, 1959  
LAST PUBLICATION: October 15th, 1959

A regular meeting of the Canby City Council was called to Order by the Mayor, George W. Irwin, at 8:00 o'clock P.M., Oregon Standard Time at the Canby City Hall in Canby, Oregon on November 2nd, 1959, and it being determined on roll call that there was not a quorum present, it was moved, seconded and passed that the Council meeting be adjourned to reconvene in special meeting at 8:00 o'clock P.M., Oregon Standard Time at the Canby City Hall on November 9th, 1959.

A special meeting of the Canby City Council was called to Order by the Mayor at 8:00 o'clock P.M., Oregon Standard Time, Monday, November 9th, 1959 and after consideration by the Council of the foregoing Ordinance #429 it was moved, seconded and passed that the second and final reading of said Ordinance be postponed until the next regular meeting of the Council.

A regular meeting of the Canby City Council was called to Order by the Mayor at 8:00 o'clock P.M. Oregon Standard Time at the Canby City Hall on Monday, November 16th, 1959, at which said meeting

it was moved, seconded and adopted that the second and final reading of Ordinance 429 be again postponed until the next regular meeting of the Council.

A regular meeting of the Canby City Council was called to order by the Mayor at 8:00 o'clock P.M., Oregon Standard Time, at the Canby City Hall on December 7th, 1959 at which meeting the question of amending Ordinance 429 and the agreement annexed hereto as "Exhibit A" was considered, and upon a report to the Council being made of the concurrence of John W. Beck to an amendment to the agreement annexed to this Ordinance as "Exhibit A" it was moved, seconded and passed that said Ordinance No. 429 and the annexed agreement marked "Exhibit A" which is a part thereof be amended as to the terms and conditions of said agreement appearing on page 4 thereof and to provide as follows:

"The term "operating expense" does not include any salaries or wages or expenses of the Contractor or his employees in connection with his responsibility and duties as to his said well, nor any personal income taxes of Contractor, nor ad valorem taxes assessed against the well site, the well, the water right, nor any other facilities and equipment belonging to Contractor and used in connection with the performance of this agreement, but the said term does include all business and occupation taxes or license fees assessed against Contractor by any governmental agency (including the City) arising out of this agreement."

Ordinance No. 429 as amended passed on the first reading of the amended Ordinance at a regular meeting of the Canby City Council this 7th day of December, 1959.

Ordered posted in three public and conspicuous places in the City of Canby for a period of two full calendar weeks as provided by the Canby City Charter and to come up for final reading and action of the Council at a regular meeting thereof to be held on the 4th day of January, 1960 at 8:00 o'clock P.M., Oregon Standard Time, in

the Canby City Hall.

Geo. W. Irwin  
GEORGE W. IRWIN - Mayor

ATTEST:

A. S. Markee  
A. S. Markee - City Recorder

Passed on final reading this 4th day of January 1960 by  
the following vote: Yeas 5, Nays 1.

Submitted to the Mayor this 4th day of January, 1960 and  
approved by the Mayor this 4th day of January, 1960.

Geo. W. Irwin  
GEORGE W. IRWIN - Mayor

ATTEST:

A. S. Markee  
A. S. Markee - City Recorder

**A S S E S S M E N T**

THIS AGREEMENT, made and entered into in duplicate this \_\_\_\_\_ day of \_\_\_\_\_, 1959, by and between CITY OF CANBY, a municipal corporation of the State of Oregon, hereinafter called "City", and JOHN W. BECK of the City of Canby, State of Oregon, hereinafter called "Contractor",

**W I T N E S S E T H:**

RECITALS:

City owns and operates a municipal water system furnishing its inhabitants with water and supplying the municipal requirements of the City. The present available supplies are inadequate, and City desires to augment said supply in the manner and under the terms and conditions set forth in this agreement.

Contractor is a duly licensed well driller authorized to practice the profession of well drilling under the laws of Oregon. He owns a triangular parcel of real property having a frontage of 420 feet more or less on Ivy Street in the City of Canby and is willing to appropriate and set aside the southerly 120 feet thereof as a well site for the benefit of the City; said well site being located in Section 4, Township 4, South Range 1, East W. M. and is described as follows, to wit:

Beginning at a point in the center line of Market Road No. 10 which is 220.18 feet southerly from the intersection of said center line with the north boundary line of said SW $\frac{1}{4}$  of NE $\frac{1}{4}$  of said Section 4; thence following said center line South 26° 45' East 120 feet to its intersection with the east boundary line of said SW $\frac{1}{4}$  of NE $\frac{1}{4}$  of said Section 4; thence following said east boundary line North 0° 30' East to a point due east from the place of beginning; thence due west to the place of beginning; subject to the rights of the public in and to all portions thereof lying within said Market Road No. 10.

Said above described 120-foot frontage is hereinafter called "the well site." Contractor at his own and sole expense has

heretofore drilled a well upon and within the well site 220 feet in depth and holds a permit from the State Engineer of Oregon under the provisions of the Ground Water Act of 1955 authorizing him to appropriate and divert through said well up to, but not to exceed, 500 gallons of ground water per minute for municipal use within the city limits of the City of Canby.

Upon the execution of this agreement by the City, Contractor will proceed promptly to install the equipment hereinafter described and is willing to give certain guaranties concerning the quality and quantity of water to be made available to the City from said well as hereinafter set forth.

City desires and requires said supply of water and the Common Council of the City has duly adopted Ordinance No. \_\_\_\_\_ authorizing the execution of this agreement.

AGREEMENT:

For and in consideration of the facts set forth in the foregoing recitals, which recitals are hereby incorporated into and made a part of this agreement, and in further consideration of the mutual and reciprocal covenants and agreements of the parties hereinafter contained, the City and the Contractor agree as follows:

1. Contractor, at his own cost and expense, will promptly purchase, install and interconnect with his said well a pump equipped with a submersible electric motor capable of discharging 500 gallons of water per minute from said well and a minimum of 500,000 gallons per 24 hours at 220 feet total dynamic head. He will also supply and deliver at the well site, at his own expense, a chlorinator capable of treating the water from said well in accordance with the standards presently prescribed by the State Board of Health of Oregon. Contractor will install said equipment upon the well site fully equipped and ready for operation.

All of said property and equipment shall at all times be the sole and exclusive property of the Contractor, subject only to certain options, rights and privileges in favor of the City as hereinafter provided.

And Contractor guarantees to maintain, develop and (when necessary) deepen said well and make available therein for pumping and use by the City a minimum of 500,000 gallons per 24 hours of potable water which, when properly chlorinated by the City, will meet the standards presently prescribed by said Board of Health for human consumption.

Said guarantee is subject to the full, faithful and complete performance by the City of its covenants hereinafter contained and to the terms and provisions of paragraphs 7 and 10 hereof.

It is understood and agreed by the City that said well must be overhauled annually in order to maintain its efficiency, and the Contractor may shut down deliveries of water from said well for a period of not to exceed 14 continuous days in each calendar year hereafter. Contractor agrees to do said overhauling in the period of low demand in the spring of each year and to give City at least two weeks' advance notice thereof. Any water produced by him during said overhaul period may be wasted by him into City's sewer system without charge.

In the performance of the obligations imposed upon the Contractor concerning the said well, Contractor agrees that he will at all times comply with the applicable laws of the State of Oregon and all lawful rules and regulations prescribed by any agency of the State of Oregon having jurisdiction of the subject matter.

2. City will furnish, install, maintain and repair, at its sole expense, the necessary pipe and other equipment for trans-

mitting said water from the pump discharge to City's water mains; and will also furnish and install all necessary electrical equipment and wiring between the power line and the pump motor. All of said property and equipment shall be and remain the sole and exclusive property of the City.

City will also maintain and keep in repair all of Contractor's said equipment and facilities (except the well) and will be solely responsible for the operation of the same and will pay all operating expenses incurred in connection therewith, including power bills and the cost of chlorine, or other chemicals necessary for maintenance of water purity. City agrees to employ none but skillful persons in the operation, maintenance and repair of said equipment and facilities and to maintain, operate and repair the same strictly in accordance with the best methods practiced in Oregon in such matters.

The term "operating expense" does not include any salaries or wages or expenses of the Contractor or his employees in connection with his responsibility and duties as to his said well, nor any personal income taxes of Contractor, nor ad valorem taxes assessed against the well site, the well, the water right, or any other facilities and equipment belonging to Contractor and used in connection with the performance of this agreement, but the said term does include all business and occupation taxes or license fees assessed against Contractor by any governmental agency (including the City) arising out of this agreement.

The obligation of the City to "maintain and keep in repair" does not include replacement of entire units of Contractor's property or equipment which may be required in order to enable Contractor to comply with the minimum daily requirements of water hereinbefore described nor the replacement of any entire unit arising out of ordinary wear and tear, act of the elements or any other causes beyond the control of the City.



3. Subject to the provisions of paragraph 13 hereof and the obligations assumed by him under this agreement, Contractor shall have exclusive possession and control of the well and its appurtenances and of his said water right. City shall have exclusive possession and control of all of the other facilities and equipment of the Contractor upon the well site except during the annual overhaul period; but the surface of the well site shall be in the common possession and control of both parties in accordance with the needs and requirements of each of them in the performance of their respective duties and obligations hereunder. And each party hereby gives and grants to the other all necessary licenses and rights of ingress and egress required by the other upon, over and in connection with the property of each as may be necessary for the performance of their respective obligations.

4. The term of this agreement is 10 years beginning on the first day of September, 1959, and terminating on the 31st day of August, 1969, and thereafter until terminated by either party on six months' prior written notice.

5. As rental for the use of said well, well site, equipment and facilities and in full and complete payment for and in satisfaction of Contractor's services rendered hereunder, City shall pay, and Contractor agrees to accept rental as follows: \$150.00 on the date of execution of this agreement and like rental payments of \$150.00 each on the first day of each succeeding calendar month so long as this agreement is in force. Five days' grace is allowed, but all delinquent installments shall thereafter bear interest at 6% per annum until paid. If two or more monthly installments shall be delinquent at any time, Contractor may, at his option, suspend further delivery of water to the City hereunder until the delinquencies, with interest as aforesaid, are paid in full.

6. This agreement shall not be deemed or construed as creating a general obligation of the City nor as pledging the general credit of the City in any manner. Contractor agrees to look exclusively to the revenues of the City's water department derived from rates and charges made to the public for water service and other services of a proprietary nature, if any, for satisfaction of the financial obligations of the City created hereby. City expressly covenants, however, that the financial obligations assumed and incurred by it hereunder shall be and are hereby declared to be a first and primary lien upon the gross revenues derived from water service or other proprietary services furnished to the public by its municipal water department and covenants and agrees that it will at all times maintain schedules of rates and charges for such services as will supply sufficient funds to meet all financial obligations incurred by the City hereunder.

7. City may install a suitable meter upon or immediately adjacent to the well site for measuring the amount of water delivered hereunder. If at any time over a continuous period of 10 days during which the City has continuously pumped and accepted water from the well the required minimum amount of 500,000 gallons per 24 hours has not been made available from said well or the standards of purity are less than the minimum required by said Board of Health and said lowered volume or standards of purity are chargeable solely to the Contractor and the City is not in anywise in default hereunder, the City may, at its option, serve notice in writing upon Contractor requiring him within not less than 30 days to remedy said defects. Upon receipt of such notice, the Contractor may suspend delivery of any water to the City while making the necessary repairs or improvements to his well, and if said defects are not remedied within said 30-day period, City may terminate this agreement and

thereafter be relieved of any further obligations hereunder, all with prejudice, however, as to any claim, demand or cause of action against Contractor for breach of guarantee.

9. Contractor hereby gives and grants unto the City the sole and exclusive right, privilege and option at any time prior to September 1, 1964, to purchase said well site, said water right, said well, together with the pump motor and all other facilities and equipment of Contractor used by him in carrying out the terms of this agreement for the price of \$20,875 payable in cash.

If the City does not exercise said above described option within said 5-year period, as aforesaid, City shall have and is hereby granted the further right, privilege and option at any time between September 1, 1964 and August 31, 1969, to purchase Contractor's said property for cash in an amount to be determined as follows: to the then market value of the well site shall be added the reproduction cost new of said well and all casing and other appurtenances thereto and the reproduction cost new in place of all other items of equipment and facilities belonging to Contractor less the actual observed depreciation of said well and said items of equipment and facilities computed on a percentage basis. If City and Contractor are unable to agree on the amount of said purchase price under the foregoing formula, the said price shall be determined under said formula by arbitration as follows: Contractor shall appoint one arbitrator and City shall appoint another arbitrator, and the two thus appointed shall select a third. Each of said three arbitrators shall be skilled in such matters, and the decision of the majority of the arbitrators shall be final, binding and conclusive upon City and the Contractor. The costs and expenses of said arbitration shall be borne equally by the parties hereto, and City agrees to pay said purchase price in cash within 30 days after the decision

of the arbitrators is rendered in writing.

9. Contractor agrees to make available for pumping by the City such quantity of water above the agreed minimum of 500,000 gallons per day as, in the sole opinion of the Contractor, can be safely withdrawn without violation of his permit or certificate of water right and without endangering his ability to produce constantly the said minimum quantity or without endangering safe ground water levels or violating sound principles of well management or applicable laws, rules and regulations. And City agrees that at all times and under all conditions it will abide by Contractor's instructions concerning volume and rate of pumping from said well.

10. It is understood and agreed that the right of the Contractor to appropriate the water necessary to supply the City's requirements under the terms of this agreement is based upon a certain permit issued to him by the State Engineer of Oregon under the terms and provisions of the Ground Water Act of 1955, now codified as ORS 537.505 to 537.790. It is also understood and agreed that the State Water Resources Board, acting under the terms and provisions of Chapter 707, Oregon Laws 1955, as amended, (now codified as ORS 536.210 to 536.560) has jurisdiction over the appropriation, diversion and use of all water resources of the State of Oregon. It is also understood and agreed that the State of Oregon, acting by and through said state agencies, now has the power and will continue to have the power throughout the term of this agreement to substantially modify, control, restrict, limit and even wholly prevent Contractor's ability to deliver the minimum daily requirements hereunder even though said well and ground water reservoir are capable of making such deliveries. It is also understood and agreed that ground water levels beneath the well site may become lowered

or unstable from causes entirely beyond the control of Contractor which may limit full performance or interrupt the continuity of the performance by Contractor under this agreement and that in times of water shortage relative dates of priority may operate so as to make it impossible for the Contractor to constantly supply the required amounts of water under this agreement.

It is expressly understood and agreed between the parties that said risks of interruption of performance are such as are to be shared mutually by the parties and that upon the happening of any of said events the parties shall fully cooperate in attempting to remove or alleviate them; provided, however, that if for any of said reasons Contractor is wholly prevented for a continuous period of 3 months from making any deliveries of water and the circumstances reasonably indicate that such inability to deliver any substantial percentage of the water as required hereunder is permanent, the City may, at its option, terminate this agreement by written notice and neither party shall thereafter have any further liability or duty hereunder. If the impairment is not substantially below 500,000 gallons per 24 hours, the monthly rentals shall be reduced pro rata and this agreement shall continue in effect.

11. It is mutually understood and agreed between the parties that the Contractor and certain employees, agents and representatives of each party will from time to time be upon and about the well site performing certain duties and doing certain work in connection with and as a part of this agreement and that each of the parties will have machinery, equipment and other property upon or in proximity to the well site, and that the Contractor and his employees and certain employees, agents, officers and representatives of the City and third persons will be upon or in proximity thereto from time to time in connection with the carrying out of this agreement. It is also agreed in that connection that at all

times there exists more or less danger of injury to persons or damage to and destruction of property under the facts aforesaid, and each of the parties hereto accepts the mutual licenses and privileges accorded hereunder and the obligations imposed hereby subject to such dangers. Contractor agrees that he assumes all risk of personal injury to himself, his employees, agents and representatives while on or about or in the proximity of the well site and assumes all risk of damage to and destruction of his well and the casing therein without regard to whether such loss, damage, injury or destruction be occasioned by known or unknown, hidden or undisclosed defects in or upon or under the well site, or any part thereof, or in any structure or equipment located thereon or in proximity thereto, or of negligence or misconduct of any person in the employ or service of City. And City agrees that it assumes all risk of personal injury to its officers, officials, employees, agents and representatives and to third persons while on or about or in the proximity of the well site and all risk of damage to or destruction of any and all machinery, equipment or other property (except the well and the casing therein) or in proximity thereto, or of negligence or misconduct of Contractor or of any person in his employ or service. And each party hereby agrees to protect, defend, indemnify and save the other party harmless from and against all loss, cost, damage or expense caused by or resulting from any such injury, damage, death or destruction.

12. It is expressly understood and agreed that despite anything to the contrary herein contained, Contractor may freely use water from his said well for any and every lawful purpose and in any lawful amount upon the tracts of land belonging to him immediately north of the well site and fronting 300 feet more or

less on Ivy Street so long as said tracts or either of them belong to him or to any member of his immediate family.

13. If Contractor shall wilfully and without just cause or provocation fail, neglect or refuse to substantially perform his obligations hereunder and a public emergency exists as a result thereof, City may, without declaring this agreement terminated, take possession of the well site, the well, the water right and all of Contractor's equipment and machinery situated thereon and used in connection therewith and may operate said well and said equipment under the terms and conditions of this agreement for the remainder of the term of 10 years, as provided herein, or until Contractor resumes performance of his obligations hereunder, whichever occurs the sooner; the City in the meantime yielding and paying to Contractor the monthly rentals hereinafore specified and otherwise performing such and every of its obligations herein undertaken; and in such event City may use and enjoy said property and the ground water right appurtenant to said well as the licensee of Contractor.

14. All of the terms and conditions hereof shall be binding upon and shall inure to the benefit of Contractor's heirs, successors, assigns and personal representatives and shall likewise be binding upon and inure to the benefit of any municipal corporation organized under Oregon law which may succeed City as the owner, lessee or operator of City's municipal water system. But nothing herein contained shall be construed as to empower City or any successor municipal corporation of City, as aforesaid, to assign its rights hereunder to any private person or persons, firms or associations or to any private corporation whatever without the prior written consent of the Contractor.

IN WITNESS WHEREOF, City has caused these presents to be executed by its Mayor and its corporate seal to be affixed

hereto by its \_\_\_\_\_, all as provided by and in accordance with Ordinance No. \_\_\_\_\_ of the City of Canby, duly adopted on \_\_\_\_\_, 1959, and Contractor has hereunto set his hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 1959.

CITY OF CANBY, a Municipal Corporation

By \_\_\_\_\_

(Official Seal)

\_\_\_\_\_, Mayor

Attest: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Contractor (SEAL)



# WELL DRILLING

J. W. BECK



CANBY, OREGON

*Ordinance  
#429*

March 19, 1960

Mayer & City Counsel  
City of Canby  
Canby, Oregon

Dear Sirs:

In regards to a recent conversation with your consulting Engineer, Carl Green, and Councilman Oliver, I am enclosing the data on the pump, Chlorinator and Well Pit that has not shown in the proposed contract with the City of Canby.

The pump will be a Peerless Submersible with a 40 H.P., 1760 RPM - U.S. Motor, having 6 stages of 10 M A Bowls - T84232-E, Impellers - T 84363 on Peerless curve " 2811835 R. Test "27584 - 6" Riser Column set at 80 ft.

The Chlorinator will be a low pressure A 741 with a Solinoid valve for automatic operation. Chlorine to enter at pump intake.

Well pit to be of cement construction with a ramp entrance and scavaging fan (squirrel cage type) capable of 240 Cu. ft. per min.. Cover of ramp to open hydraulically. Pit size - 6' X8' X 7' exclusive of entrance ramp.

Yours truly,

*John W Beck*  
John W. Beck

*X*