

ORDINANCE NO 261a

Introduced by Commissioner Harold Gramson

AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR AND AUDITOR AND POLICE JUDGE OF THE CITY OF WARRENTON TO EXECUTE AND DELIVER A CONTRACT WITH THE CITY OF GEARHART FIXING AND DETERMINING THE RATES FOR THE DELIVERY OF WATER TO THE CITY OF GEARHART, SETTING UP CERTAIN TERMS AND CONDITIONS, MANNER AND TIME OF PAYMENT, AND DECLARING AN EMERGENCY:

WHEREAS, the City of Warrenton has deemed it best for its public interests to sell its surplus water to the City of Gearhart, and

WHEREAS, it is necessary that a written agreement be entered into between said respective cities;

NOW, THEREFORE, THE CITY OF WARRENTON DOES ORDAIN AS FOLLOWS:

SECTION 1. That the Mayor and Auditor and Police Judge of the City of Warrenton be and they are hereby ordered and directed to execute a written contract with the City of Gearhart fixing and determining the rates to be paid by the City of Gearhart for the delivery of surplus water to said city, setting up certain terms and conditions for the delivery of said water and the time and manner of payment thereof, in accordance with a certain contract, a copy of which is attached hereto, and by reference thereto is hereby made a part of the ordinance.

SECTION 2. That in as much as this ordinance is necessary for the immediate preservation of the health, peace and safety of the people of the City of Warrenton in that there is no written contract between the City of Warrenton and the City of Gearhart for the delivery of the surplus water supply to said City of Gearhart, an emergency is hereby declared to exist and this ordinance shall be deemed in full force and effect from and after its passage by the Commission and approval by the Mayor.

Passed by the Commission of the City of Warrenton this 5 day of January, 1948.

Approved by the Mayor of the City of Warrenton this 5 day of January, 1948.

F. M. Wilson

ATTEST:
Emerson R. Baldwin

F. M. Wilson
Mayor

E. R. Baldwin
Auditor and Police Judge

WATER AGREEMENT

THIS AGREEMENT Made and entered into this _____ day of January, 1948, by and between the City of Warrenton, a municipal corporation, hereinafter designated as the first party, and the City of Gearhart, a municipal corporation, hereinafter designated as the second party, WITNESSETH:

WHEREAS, the party of the first part is desirous of furnishing the party of the second part with all of second party's necessary water supply from the surplus water of the first party, and

WHEREAS, the party of the second part desires to use the surplus water of the first party and the first party desires to deliver to the second party water from first party's surplus supply;

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND AGREEMENTS BY AND BETWEEN THE PARTIES HERETO, IT IS AGREED:

First: That the party of the first part shall furnish to the party of the second part all of the water requirements of said second party from the surplus water supply of the first party through the supply pipes now existing of the party of the first part, excepting as hereinafter set forth for the period of time and in the manner hereinafter set forth.

Second: That second party agrees to install its own pipe line to connect with the supply line of first party without necessitating first party building any additional supply lines to the City of Gearhart. First party agrees to allow second party to do so.

Third: That second party shall install, at its own expense, a master meter which said master meter shall be installed at the connecting point between the first party's water supply pipes and second party's connecting pipe line. That the party of the second part shall install and maintain any pipe necessary to carry said water from said master meter to and through the distributing system of the second party and said first party shall not be liable in any manner whatsoever for any construction, reconstruction or maintenance of any pipe line or part of said distributing system from said master meter, but that the sole liability and responsibility therefor shall rest upon the second party.

That both first and second parties shall equally pay all repair, maintenance and cleaning expense of said master meter. That both parties shall have the right to examine and insist that said meter shall be in continual good running order. That second party is allowed to, at its own expense, build a by-pass water line around the above described meter to connect with first party's water supply line and to be used only in case of emergencies and generally when the meter is being repaired or is out of order in order to insure second party its water supply. That in the event of the use by second party of this by-pass water line, second party shall pay for the use of said water as estimated between both parties hereto, a reasonable amount based on second party's prior water bills.

That said master meter shall be read by the first party at least once each month and a statement, in writing, submitted to the second party, whereupon said second party shall, on or before the 10th day of the month following the reading of said meter, pay to the first party any, and/or all sums then found to be due and owing to the first party from the second party, in full.

Fourth: That second party shall pay to first party for all water delivered through the master meter such sums as are set forth in the following schedule of water meter rates:

SCHEDULE OF WATER METER RATES

First 1,000 gal. or any part thereof per month		\$1.00
Next 2,000 gal. per one thousand gal.	"	.50 2.00
Next 2,000 gal. per one thousand gal.	"	.40 2.80
Next 5,000 gal. per one thousand gal.	"	.35 4.55
Next 20,000 gal. per one thousand gal.	"	.30 10.55
Next 20,000 gal. per one thousand gal.	"	.25 15.55
Next 20,000 gal. per one thousand gal.	"	.20 19.55
Next 30,000 gal. per one thousand gal.	"	.15 24.05
Next--All over 100,000 gal. per thous. gal.		.10

which upon payment thereof by said second party to the first party shall be in full settlement, satisfaction and accord of any obligation of the second party to the first party as of the date of the reading of said meter.

Fifth: That the party of the second part shall have the right to resell said water to any person, firm or corporation applying to said second party therefor, and any such resale by said second party shall be independent and separate from this agreement, and any revenue received therefrom shall be and remain the exclusive property of the second party. Provided, however, that the City of Warrenton will not sell surplus water to any city or water district other than the City of Gearhart, save and except the present cities and water districts and other customers now supplied as of the date of this agreement by the City of Warrenton, with the further exception that in case of military necessity or national emergency, the City of Warrenton reserves the right to sell surplus water to the United States government or any of its military branches.

Sixth: It is understood and agreed that the party of the first part shall supply the party of the second part with such water only so long as the party of the first part shall have a surplus over and above the necessary consumption of the party of the first part and said second party shall comply with any, and/or all ordinances of the first party or rules and regulations of the water committee of the first party governing the regulation and control of the use of said water which may be made effective to the users of said water within the corporate limits of the first party, and that said second party agrees to forthwith enforce by ordinance, or otherwise, any such rules and regulations upon any, and/or all rules and regulations, which may receive such water from said second party. It is contemplated by this provision and understood and agreed that no unreasonable and unnecessary rules and regulations will be promulgated by the first party or its water committee and that said first party will make no such rules or regulations excepting in the case of an emergency, or in case of a shortage of water, but that the action of the Commission of the first party shall be conclusive as to the necessity of the enforcement of such rules and regulations.

Seventh: It is further agreed between the parties hereto that in the event water cannot be supplied to the party of the second part as herein contemplated and provided for, then in that event no liability whatsoever shall accrue against the party of the first part and said first party shall not be liable to said second party or any other person, firm or corporation receiving water by, from or through said second party by reason of a non delivery of water hereunder. Provided further, that no specific pressure is warranted, specified or agreed to be maintained by the first party, but that said first party shall only be required to make a reasonable effort to maintain serviceable pressure to the pipe lines of the party of the second part at all times.

Eighth: That this agreement shall be and remain in full force and effect for the full period of Twenty (20) years from and after the 1st day of June, 1948 but in the event that the City of Gearhart is connected with the City of Warrenton's water system and has installed the master meter and complied with the conditions of this contract and received water from the City of Warrenton at an earlier date, then and in that event, said contract shall run Twenty (20) years from the date first party first supplies water to second party. Provided, however,

that in case Section 48 (1) of the City of Warrenton's Charter shall limit first party's ability to make a contract for continuous service for a longer period than five (5) years then, and in that event, this contract shall have a term of five (5) years only from the date first party first supplies water to second party.

That in the event the party of the second part shall fail, refuse or neglect to make any of the payments herein provided at the time when the same shall be due and payable as herein set forth, or it shall fail to perform any of the covenants herein provided by it to be kept and performed, then and in that event the party of the first part shall have the right to discontinue the delivery of water to the party of the second part as in this paragraph hereinafter further provided, and the party of the second part does hereby waive any, and/or all rights of action for damages, or otherwise, against the party of the first part by reason of said discontinuance of delivery; and provided further that in the event of a breach of any of the covenants herein set forth to be kept and performed by the party of the second part, said party of the second part shall be liable to the party of the first part for any unpaid balance due under the terms of this agreement.

It is further stipulated and agreed between the parties hereto, that in the event of the failure or refusal of the second party to make any of the payments of money as herein provided for, or a claimed breach of any of the conditions of this contract on the part of the second party by said first party, then immediately upon such claimed breach by said first party it shall notify the second party thereof, and if such breach shall continue for a period of twenty (20) days after such notice then the party of the first part may thereupon forthwith discontinue the delivery of water to the party of the second part without any further notice whatsoever.

Ninth: It is further understood and agreed that the second party shall have the right to flush hydrants of second party as often as shall be reasonably necessary to keep said hydrants clean. Provided further, that said flushing of hydrants shall be done without the use of hose connections and only from the open hydrants, but that said second party shall not use said water for the sluicing of sand or cleaning of streets. Provided further, that in the event said second party shall notify said first party of its desire to flush said hydrants upon the regular day of meter reading, then said first party shall read said meter, permit such flushing, and again read said meter at the conclusion of said flushing and deduct the amount used from the monthly statement to said second party.

Tenth: Provided further that in the event of a break in the pipe line of second party connecting with first party's supply line and connecting with the City of Gearhart's distribution system within its corporate limits, first party agrees to make an amicable adjustment of the water so lost on account of such break, the same to be determined upon average meter readings of the preceding twelve months period. Second party agrees to repair said break as soon as reasonably possible.

Eleventh: Provided further, and it is agreed between the parties hereto, that this water contract shall become null and void in case the City of Gearhart's water line connecting with the City of Warrenton's supply line is not installed and connected and said water line in operation and supplying the residents and customers of the City of Gearhart's water system.

IN WITNESS WHEREOF, the parties hereto have hereunto caused this agreement to be executed by their respective Mayors and attested by their respective Auditors and Police Judges, by authority in them vested by ordinances duly and regularly passed by the respective Commission and Common Council of the parties

hereto, directing and authorizing the execution hereof, copies of said ordinances being attached hereto and made a part hereof.

CITY OF WARRENTON, A MUNICIPAL CORPORATION
F. M. Wilson

ATTEST:
Emerson R. Baldwin

E. R. Baldwin
Auditor and Police Judge

BY: *F. M. Wilson*
Mayor
Party of the First Part

CITY OF GEARHART, A MUNICIPAL CORPORATION
Edgar N. Washbond

ATTEST:
G. C. Lindner

Auditor and Police Judge

BY: _____
Mayor
Party of the Second Part