

ORDINANCE NO. 456A

Introduced by Commissioner FOR I JOHNSON

AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR AND AUDITOR AND POLICE JUDGE OF THE CITY OF WARRENTON TO MAKE, EXECUTE AND DELIVER A CONTRACT WITH THE CITY OF GEARHART FIXING AND DETERMINING THE RATES FOR THE DELIVERY OF SURPLUS WATER TO THE CITY OF GEARHART, SETTING UP CERTAIN TIMES AND CONDITIONS AND MANNER AND TIME OF PAYMENT AND REVOKING AND RESCINDING AND CANCELLING THE OLD CONTRACT AND WATER AGREEMENT MADE AND ENTERED INTO ON JANUARY 7, 1948 COVERING THE PERIOD OF TIME FROM JUNE 1, 1948 TO JUNE 1, 1964 AND DECLARING AN EMERGENCY:

WHEREAS, the CITY OF WARRENTON has deemed it best for its public interest to sell surplus water to the City of Gearhart, and

WHEREAS, it is necessary that a new written agreement be entered into between said respective cities and that the old agreement be cancelled and rescinded,

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 new 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 Water Agreement a copy of which is attached hereto and by reference thereto is hereby made a part of this Ordinance and that said Mayor and Auditor and Police Judge of the City of Warrenton be and they are further hereby ordered and directed to cancel and rescind as of July 1, 1964 the old Water Agreement with the City of Gearhart which has a term of twenty years, running from June 1, 1948 to June 1, 1968.

Section 2. That inasmuch as this Ordinance is necessary for the immediate preservation and the health, peace and safety of the people of the City of Warrenton in that a new written Contract between the City of Warrenton and the City of Gearhart for the delivery of surplus water supply to said City of Gearhart is

needed and the additional rates needed for the maintenance of the City of Warrenton's water system, 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 City Commission of the City of Warrenton this 18 day of May, 1964.

Approved by the Mayor of the City of Warrenton this 18 day of May, 1964.

Harold Gramson

Harold Gramson
Mayor

ATTEST:
E. R. Baldwin

E. R. Baldwin
Auditor and Police Judge.

WATER AGREEMENT

THIS AGREEMENT Made and entered into this _____ day of _____, 1964, by and between the CITY OF WARRINGTON, a municipal corporation, hereinafter designated as first party, and the CITY OF GEARHART, a municipal corporation, hereinafter designated as second party.

W I T N E S S E T H :

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

WHEREAS, party of the second part desires to use the surplus water of first party and first party desires to deliver to 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 party of the first part shall furnish to party of the second part all of the water requirements of said second party from the surplus water supply of first party through the supply pipes now existing of 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 has installed its own pipe line to connect with supply line of first party without necessitating first party's building any additional supply lines to the City of Gearhart.

First party hereby allows second party to do so. Second party will maintain, reconstruct or replace its connecting pipe line, when needed.

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 first party's water supply pipes and second party's connecting pipe line. That 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 second party, and said first party shall not be liable in any manner whatsoever for
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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 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 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 first party any, and/or all sums then found to be due and owing first party from 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

Same as Ordinance No. 398-A, effective July 1, 1959
which is as follows:

<u>U. S. Gallons</u>	<u>Total</u>	<u>City</u>	<u>Total</u>
first unit 2000 or part		\$2.25	\$2.25
second 2000 or part 4,000		.75	3.00
third 2000 or part 6,000		.60	3.60

per thousand:

next 4000	10,000	.55	5.50
next 30,000	40,000	.50	20.00
next 20,000	60,000	.45	27.00
next 15,000	75,000	.40	30.00
next 10,000	85,000	.35	29.75
next 5,000	90,000	.30	27.00
next 5,000	95,000	.25	23.75
next 5,000	100,000	.20	20.00

Over 100,000 within city .11 per thousand

which upon payment thereof by said second party to first party shall be in full settlement, satisfaction and accord of any obligation of second party to first party as of the date of the reading of said meter. In any event, second party shall pay only the "in city" rates and if these rates are changed by the City Commission of the City of Warrenton which both parties agree it shall have the right to do, these changed rates shall apply to the City of Geerhart, a municipal corporation, the second party, whether these rates are higher or lower.

Fifth: That 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.

Sixth: That it is understood and agreed that party of the first part shall supply party of the second part with such water

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only so long as party of the first part shall have a surplus over and above the necessary consumption of party of the first part, and said second party shall comply with any, and/or all ordinances of first party, or rules and regulations of the water committee of 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 first party, and that said second party agree to forthwith enforce by ordinance, or otherwise, any such rules and regulations upon any, and/or all parties, including persons and corporations, who 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 first party or its water committee and that said first party will make no such rules or regulations excepting in case of an emergency, or in case of a shortage of water, but that the action of the Commission of first party shall be conclusive as to the necessity of the enforcement of such rules and regulations.

SEVENTH: That it is further agreed between the parties hereto that in the event water cannot be supplied to party of the second part as herein contemplated and provided for, then in that event no liability whatsoever shall accrue against 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 first party, but that said first party shall only be required to make a reasonable effort to maintain reasonable pressure to the pipe lines of 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 July, 1964.

That in the event 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, party of the first part shall have the right to discontinue the delivery of water to

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 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 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 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 second party by said first party, then immediately upon such claimed breach by said first party, it shall notify second party thereof, and if such breach shall continue for a period of twenty (20) days after such notice, then party of the first part may thereupon forthwith discontinue the delivery of water to party of the second part without any further notice whatsoever.

XXXXX 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.

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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.

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
Harold Gramson

ATTEST:
E. R. Baldwin

J. R. Baldwin
Auditor and Police Judge

BY: Harold Gramson
Mayor
Party of the First Part

CITY OF GEARHART, A MUNICIPAL CORPORATION
T. Rex Baldwin

ATTEST:
Edythe Hagerman

Edythe Hagerman
Auditor and Police Judge

BY: _____
Mayor
Party of the Second Part