

AFFIDAVIT OF POSTING ORDINANCE #81

STATE OF OREGON            )  
                                  )  
Counties of Clackamas    )  
and Washington            )  
                                  )  
City of Wilsonville        )

I, the undersigned, City Recorder of the City of Wilsonville, State of Oregon, being first duly sworn on oath depose and say:

On Tuesday, June 14th, 1977, I caused to be posted copies of the attached Ordinance No. 81, an ordinance authorizing a contract with Edwards Industries, Inc. for construction of water well, in the following three public and conspicuous places of the City, to wit:

- 1) Wilsonville Post Office
- 2) Lowries Food Market
- 3) Kopper Kitchen

The notices remained posted for more than five (5) consecutive days prior to the time for final reading and passage of the Ordinance on the 20th day of June, 1977.

Dated at Wilsonville, State of Oregon this 24<sup>th</sup> day of June, 1977.

  
DEANNA J. THOM, City Recorder

Subscribed and sworn to before me this 24<sup>th</sup> day of June, 1977.

  
\_\_\_\_\_  
NOTARY PUBLIC STATE OF OREGON

My Commission Expires: 11-11-1980

ORDINANCE NO. 81

AN ORDINANCE AUTHORIZING A CONTRACT WITH EDWARDS INDUSTRIES, INC. FOR CONSTRUCTION OF WATER WELL.

THE CITY OF WILSONVILLE ORDAINS AS FOLLOWS:

Section 1: A Contract between the City of Wilsonville and Edwards Industries, Inc. is authorized for construction on City property of a water well according to the terms and provisions of a "CONTRACT", a copy of which is attached hereto marked Exhibit "A" for identification purposes and by this reference and attachment is expressly made a part of this Ordinance.

Section 2: The Mayor and City Recorder are authorized to execute and deliver said Contract on behalf of the City of Wilsonville.

Section 3: In view of the shortage of municipal water in and for the City of Wilsonville and the critical need for another source of water, an emergency is hereby declared to exist, and this Ordinance shall take effect immediately upon final reading and enactment by the City Council.

Passed by the Wilsonville City Council at a regular meeting thereof on June 13, 1977; ordered posted in three (3) public and conspicuous places in the City of Wilsonville for a period of five (5) consecutive days as required by the Wilsonville City Charter; and to come up for final reading and action of the Wilsonville City Council at a special meeting thereof to be held on the 20th day of June, 1977, at the hour of 8:00 o'clock p.m. at the Council's temp. meeting place at the Wilsonville I.O.O.F. Hall.

  
WILLIAM G. LOWRIE - Mayor

ATTEST:

  
DEANNA J. THOM City Recorder

Passed on final reading at a special meeting of the Wilsonville City Council this 20th day of June, 1977, by the following vote: Yeas 5.  
Nays 0.

  
WILLIAM G. LOWRIE - Mayor

ATTEST:

  
DEANNA J. THOM City Recorder

AGREEMENT

DATE: June 20, 1977

PARTIES: Edwards Industries, Inc., an Oregon corporation ("Edwards Industries"); and  
The City of Wilsonville, an incorporated municipality in the State of Oregon ("Wilsonville").

RECITALS:

1. On November 23, 1976 Paul E. Doty and Grace E. Doty deeded to Wilsonville the real property described on Exhibit "A" attached hereto and incorporated by this reference herein ("the well site"), for the purpose of drilling a well for supplying water to supplement Wilsonville's requirements.

2. Wilsonville presently lacks funds necessary to drill a well, but needs additional water to meet projected demand.

3. Edwards Industries is willing, at its expense, to drill a well on the well site subject to the terms of this agreement.

The parties therefore agree as follows:

AGREEMENT:

1. Agreement to Drill a Well

Edwards Industries agrees to contract with R. J. Strasser <sup>25-9-77</sup> of the approximate depth of 700 feet Drilling Co. for the drilling of a well/on the well site, in

EXHIBIT "A"

A tract of land in the SW quarter of the SE quarter of Section 2, Township 3S, Range 1W, W.M., Washington County, Oregon, being a portion of that tract of land conveyed to Paul E. Doty and Grace E. Doty, husband and wife, as recorded in Book 397, at Page 679 and 680 of the Washington County Records. Said tract being more particularly described as follows:

Beginning at 5/8" iron rod on the westerly line of the Oregon State Highway Frontage Road at Station "W.S." 428+00, said beginning point bears N 89 28'38" E 25.00 feet; N 80 01'02" E 1178.90 feet; and N 00 05'53" E 134.50 feet from the South quarter corner of Section 2, running thence S 89 38'42" W 50.00 feet; thence N 00 21'27" W 20.00 feet; thence N 89 38'43" E 48.38 feet to the Westerly line of said Frontage Road; thence S 05 00'03" E 20.07 feet to the POINT OF BEGINNING. Contains 984 square feet.

From the well site located S 89 38'42" W 40.00 feet and thence N 00 21'27" W 10.00 feet from said point of beginning, the adjacent property shall be restricted from having thereon a subsurface sewage disposal facility for a distance of 100.00 feet and from having thereon a sewage conveying pipe for a distance of 50.00 feet.

accordance with standards established by the Water Resources Department of the State of Oregon. <sup>WRC</sup> Said well to be cased to the depth of 400 feet with non-perforated casing and to be sealed at that depth.

2. Payment

Edwards Industries shall pay to the well driller the entire costs of drilling, casing and construction of the well, and shall pay all engineering and other costs related to the creation of a well.

3. Reimbursement

3.1 In the event the conditions identified in paragraph 5 below are satisfied, Wilsonville shall repay to Edwards Industries the entire cost expended by Edwards Industries for engineering, drilling, casing and construction of the well, including but not limited to the following costs as actually paid by Edwards Industries: mobilization and demobilization costs, drilling costs, purchase and installation of well casing, screening, development of the well, test pumping and grouting. Such costs shall not include attorney fees expended by Edwards Industries in connection with this agreement.

3.2 In the event the conditions identified in paragraph 5 below are satisfied, Wilsonville shall reimburse Edwards Industries for the costs described in paragraph 3.1, without interest, according to one or a combination of the following methods as determined by Wilsonville:

- a. The amount to be reimbursed to Edwards Industries may be paid in whole or in part in cash (in

lump sum or in installments over a period of time); or

b. The amount to be reimbursed to Edwards Industries may be paid in whole or in part by applying fees due from Edwards Industries to Wilsonville for building permits and water and sewer hook up charges, as payment of such fees and charges becomes due.

3.3 The amount to be reimbursed to Edwards Industries shall be paid as soon as practicable, but in any event shall be paid in full not later than June 30, 1987.

4. Procedure Upon Completion

4.1 Within 30 days after completion of construction and testing of the well, Edwards Industries shall submit to Wilsonville an itemized statement of all costs incurred by Edwards Industries within the meaning of paragraph 3 above, certified by Edwards Industries to be correct and complete.

4.2 Within 60 days of receipt by Wilsonville of the statement described in paragraph 4.1 above, Wilsonville shall review such costs, together with the conditions described in paragraph 5 below, and shall take one of the following actions:

a. Accept the well and the quantity and quality of water produced from it; or

b. Reject the well on the basis of a failure of the well to meet the conditions of paragraph 5 below, and deed the well site to Edwards Industries.

5. Conditions of Acceptance of the Well

Wilsonville shall accept the well and reimburse Edwards

Industries pursuant to paragraphs 3 and 4 above if the following conditions are met:

5.1 The completed well shall produce not less than 350 gallons per minute of water; and

5.2 The completed well shall produce water of sufficient quality to meet standards for potable water established by the Oregon State Health Division and other applicable government agencies.

6. Indemnity

In the event Wilsonville accepts the well, Wilsonville shall indemnify and hold harmless Edwards Industries from and against all claims, damages, losses and expenses including attorney fees arising out of or resulting from the drilling of the well and performance of this agreement other than claims of damages, losses and expenses including attorney fees out of or resulting from the negligence of Edwards Industries and its agents.

7. Title

Wilsonville is vested in ownership of the well site and grants permission to Edwards Industries to drill a well thereon in accordance with this agreement. In the event of acceptance of the well by Wilsonville, Edwards Industries shall promptly convey to Wilsonville all improvements on the well site, and the risk of loss with respect to such improvements shall thereupon pass to Wilsonville. Upon acceptance of the well and conveyance of the improvements to Wilsonville, the obligation of Wilsonville to reimburse Edwards Industries in accordance with this agreement shall become unconditional.

8. Breach

8.1 After execution, this agreement shall not be

terminable by Wilsonville. The parties recognize that Edwards Industries will undergo substantial expense in reliance on the promises of Wilsonville herein.

8.2 In the event, in the judgment of Edwards Industries, the drilling of the well becomes too expensive or unfeasible, Edwards Industries may terminate this agreement without further obligation to Wilsonville. In such case, all permanent improvements on the well site shall become the property of Wilsonville, and Wilsonville shall not be obligated to reimburse Edwards Industries for any costs incurred.

8.3 If suit, action or arbitration is instituted under this agreement, the prevailing party shall be entitled to recover, in addition to its costs and disbursements, such sum as the court or arbitrator may adjudge reasonable as attorney fees at trial and on any appeal.

#### 9. Failure of Conditions

In the event either of the conditions described in paragraph 5 above is not satisfied, Wilsonville shall promptly convey the well site to Edwards Industries and shall have no further claim upon the well site, the well or any water therefrom. In such case, Edwards Industries shall be entitled to make such use of the well, and the water produced from it, as is allowed by law.

#### 10. Miscellaneous

10.1 In the event of any dispute between the parties to

this agreement, the matter shall be settled by arbitration in accordance with the rules then obtaining of the American Arbitration Association.

10.2 Neither party may assign this agreement, or any right or obligation in this agreement, without the prior written consent of the other party.

10.3 This document contains the entire agreement of the parties, and may not be modified except in writing.

EDWARDS INDUSTRIES, INC.

By: *Allen Edwards*

By: \_\_\_\_\_

THE CITY OF WILSONVILLE

By: *William H. Lourie*

By: *Deanna Howard*