

ORDINANCE No. 1655

A BILL FOR:

An Ordinance authorizing the Mayor and Recorder of the City of Albany, Oregon, to enter into a contract with Duncan Meter Corporation authorizing the installation of Miller Multiple-Coin Parking Meters on the streets of the City of Albany on a trial lease arrangement to regulate and control motor traffic in said City.

THE PEOPLE OF THE CITY OF ALBANY DO ORAIN AS FOLLOWS:

Section 1. The Mayor and Recorder of the City of Albany are hereby authorized and instructed to enter into a contract with Duncan Meter Corporation, a corporation providing for the installation by said corporation of Miller Multiple-Coin parking meters within the City of Albany on a trial lease arrangement, which said contract shall be in the form hereinafter set forth, to-wit:

THIS AGREEMENT, made and entered into and executed in triplicate this 24 day of October, 1945, by and between the City of Albany, of the State of Oregon (hereinafter called "The City") and the DUNCAN METER CORPORATION, a corporation organized and existing under and by virtue of the laws of the State of Illinois (hereinafter called "The Meter Company"), WISNESSETH:

For and in consideration of the premises and the mutual covenants and agreements hereinafter contained, the parties agree as follows:

1. The City hereby agrees to lease from The Meter Company and The Meter Company hereby agrees to lease to The City, subject to the terms and conditions hereinafter set forth 375 Miller Multiple-Coin Parking Meters (hereinafter called "meters"). The agreed value of the meters shall be seventy-five (\$75.00) Dollars per meter plus actual advances made by The Meter Company as hereinafter provided. The City at any time shall have the option to purchase the meters by applying the rentals which have been paid in by The City to The Meter Company against the agreed value of the meters and paying the balance then due.
2. The Meter Company shall advance all freight and handling costs in connection with the delivery of said meters. The meters shall be promptly installed and The Meter Company shall upon request provide without charge the services of an experienced man to supervise the installation and to instruct the employees of The City in the proper maintenance of the meters.
3. The Meter Company agrees to allow The City to hire one or more qualified men for maintaining the said meters in first-class operating condition and to deduct their salary from the gross receipts to be derived from the operation of said meters before the net revenue is computed for the purpose of paragraph five (5) hereof. Such deductions for maintenance, however, shall not in any event exceed the sum of Twenty-five (25%) Cents per meter per month.
4. The Meter Company does hereby warrant and guarantee said meters against defects in workmanship, construction and materials for a period of one year from date of installation. The liability hereunder is limited to the obligation of The Meter Company hereby assumed to replace any parts proving to have such defects on the return thereof to it within said period. It is understood and agreed that The Meter Company shall not be obliged to replace any part or parts of said meters which may be damaged as a result of tampering, maliciousness, accident, acts of God, or any other external force or means.
5. Payments by The City to The Meter Company shall be solely from the receipts, funds and revenues obtained from the operation thereof and there shall be no obligation on the part of The City to pay for the same from any other source. The manner of payment of rental for said meters shall be as follows: The City shall deduct from the first receipts from the operation of said meters the actual cost of installation and freight and handling charges, and reimburse The Meter Company therefor. After the aforesaid deductions and after allowance for accrued cost of maintenance at the rate and to the extent provided in paragraph three (3) hereof, all remaining receipts, funds and revenues from the operation of said meters shall be considered net revenue. Upon the fifteenth (15) day after the installation of said meters and each and every thirtieth (30) day thereafter The City shall pay as rental to The Meter Company seventy-five (75%) per-cent of the net revenue from all meters so installed until The City exercises its option to purchase the meters and or The Meter Company has received rentals and reimbursements for advances in the aggregate amount of the agreed value of the meters or until or unless this agreement is terminated or cancelled under the provisions of paragraph six (6) and seven (7) hereof.
6. The Meter Company extends and grants unto The City the option to terminate this agreement at the expiration of six months from the date of the completion of installation of such meters by giving The Meter Company written notice thirty (30) days prior to the expiration of said period; but in that event, The Meter Company shall nevertheless be entitled to receive from The City and to retain as rental for the use of the meters seventy-five (75%) per cent of the net revenue from said meters, as aforesaid, which shall have accrued during that entire period, and until the meters are removed; and in the event of such cancellation or if The Meter Company shall exercise its right to cancel as provided in paragraph seven (7) hereof, The Meter Company will, at the expiration of said period, at its own cost and expense, promptly proceed to remove said meters and repair any damage to the places in the pavements or other premises in which said meters were installed, and all obligation

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under the terms of this agreement shall cease and terminate, except as herein otherwise provided.

7. If at any time prior to the payment in full to The Meter Company of the agreed value, as aforesaid, of all said meters, rentals to The Meter Company since the installation of said meters, shall have averaged less than three (\$3.00) Dollars per month, per meter, or if The City shall violate this agreement or default in the full and faithful performance of this agreement, then The Meter Company may at its option cancel this agreement by giving to The City written notice of its intention to do so, and at any time after the tenth (10th) day following the giving of such notice, The Meter Company shall have the right, at its option with or without legal process or further notice of any kind, to enter upon the premises where said meters may be installed or kept and remove and retake the same for its own use, and to receive from The City as rental for the use of the meters the seventy-five (75%) per cent of net revenue from said meters as aforesaid which shall have accrued up to the time said meters are removed. Nothing herein contained shall be construed in any way limiting or affecting The Meter Company's right to pursue or enforce any remedy provided by law in the event of a breach of this agreement by The City.

8. If at any time prior to the payment in full to The Meter Company of the agreed value, as aforesaid, of all said meters any taxes are levied on meters installed such as personal property tax, sales tax or use tax, such taxes will be advanced by The Meter Company, and The City shall reimburse The Meter Company in full from the gross receipts of the meters, before the net revenue is computed for the purpose of paragraph five (5) hereof.

9. It is understood and agreed that the title to all said meters shall be and remain in The Meter Company until and unless the full agreed value thereof, as aforesaid, shall have been paid in cash to the Meter Company, including the rentals aforesaid.

10. The Meter Company agrees that if The City pays it as rentals the full agreed value of said meters, as aforesaid, it will deliver to The City a bill of sale therefor, free and clear of all encumbrances.

11. The Meter Company further covenants and agrees that it is the lawful owner of said meters and that the same are free and clear of all liens, contracts of conditional sales, chattel mortgages, and other encumbrances, and that The Meter Company has a lawful right to lease, dispose of, and sell the same, and that it will warrant and defend its title thereto against all claims whatsoever.

12. The Meter Company agrees to furnish the said meters with a mechanism regulated as to time as shall be mutually agreed to between The City and The Meter Company, and equipped with two slots, if so ordered by The City to receive coins of the denomination of 1¢ and 5¢, and will be set to allow:

12 minutes for 1 cent	60 minutes for 1 nickel
24 minutes for 2 cents	120 minutes for 2 nickels

or at any other available rate combination which may be mutually agreed upon.

13. It is understood and agreed that in case The Meter Company is delayed in the delivery of said meters on account of any strikes, lockouts or other labor trouble, or any fire, tornado, flood, embargo, shortage of transportation, material or labor, war, insurrection, civil commotion, or other cause beyond the direct and immediate and sole control of The Meter Company which may interfere with or delay the manufacture or delivery of said meters or any parts thereof, The Meter Company shall not be liable for any failure or delay to furnish said meters, and the time for furnishing same may be postponed accordingly.

14. It is agreed that The Meter Company may assign this agreement, or the benefits thereunder, in whole or in part, PROVIDED HOWEVER, that such assignment shall not release The Meter Company from its primary obligation to perform and keep all agreements and conditions of The Meter Company hereunder. When so assigned, it shall inure to the benefit of the assignee.

15. The City warrants that all necessary and proper steps have been taken by the duly constituted Governmental and Municipal authorities authorizing the execution of this agreement, and that all necessary or proper ordinances and or resolutions have been adopted authorizing and providing for the installation of said meters and the operation thereof, and agrees that it will police the said meters after installation, and shall properly enforce all ordinances and resolutions pertaining thereto.

16. The City agrees to set up a special parking meter fund into which all receipts from all meters furnished hereunder shall be placed and kept. No withdrawals from said special parking meter fund shall be made until The Meter Company has been paid the cost of freight, handling and installation, and the seventy-five per cent of the net revenue has been paid to The Meter Company as hereinbefore provided, after which The City shall have the right to the remaining twenty-five (25%) per cent of the net revenue to use as they see fit.

17. No agent of The Meter Company shall have the power or authority to alter the terms and conditions of this agreement except its President, Vice-President, Secretary or Treasurer. This agreement shall not be binding on The Meter Company until accepted and affirmed at its Chicago office. No other representations or agreement, written or oral, express or implied, have been made by either party.

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Passed by the Council, October 24, 1945.

Approved by the Mayor, October 24, 1945.

G. C. KNOXELL, Mayor

Attest:
C. R. ASHTON,
Recorder

I, C. R. Ashton, Recorder of the City of Albany, Linn County, Oregon do hereby certify that the above copy of Ordinance No. 1655 has been by me carefully compared with the original Ordinance Bill No. 1770, was passed by the Council, October 24, 1945, and approved by the Mayor on the 24th day of October, 1945.

Witness my hand and official signature and seal of the City of Albany, Oregon, on this 25, day of October, 1945.

C. R. Ashton
Recorder of the City of Albany, Ore.