

Scheme and Plan Under Which They Were Constructed.

The Ordinance, Contract, Certificate of City Clerk and copy of Bond and Mortgage.

AN ORDINANCE TO PROVIDE FOR THE BURLINGTON WATER WORKS IN THE CITY OF BURLINGTON.

Be it ordained by the City Council of the City of Burlington, as follows:

Section 1. In consideration of the benefits to the city of Burlington hereinafter specified and provided for, there is hereby granted to the Burlington Water Company the exclusive privilege of laying water mains and pipes in any portion of said city for the term of twenty-five years, subject to the terms and conditions set forth in this ordinance.

Sec. 2. Said company must signify its acceptance of said terms and conditions within five days from this date, and as soon as the contract with said company is ratified as required by law, and the plans and specifications for building said works, the cost of which is not to exceed \$200,000, shall have been approved by said council, the mayor shall issue his proclamation announcing that fact, which shall fix the date of the franchise thereby created. Within one year thereafter, the said company must have its water works in full operation, with two miles of water mains, or a sufficient length of water mains to require the planting of one hundred and fifty hydrants in the manner hereinafter prescribed, and in each case the pumps and other appendages must be in complete order, and ready for use.

Sec. 3. Said company shall have the right of way along, upon and under the streets, alleys and public grounds of said city for the purpose of placing and operating their mains and other appurtenances—the location of none of which must interfere with the gas pipes previously laid, or do any other unnecessary injury. And whenever the streets, alleys or grounds shall be disturbed by said company, they must be restored to their proper condition with the least delay practicable at the cost of said water company.

Sec. 4. The city may require said company to extend its mains along any graded street which can be reached through a continuous line of other graded streets, and further to require said company to lay its mains on streets that are not on grade, provided that when such street is brought to grade, that the expense of relaying such pipes or mains shall be paid by the city; and to furnish the inhabitants of any street through which any main shall pass with water at the regular rates. And a refusal or neglect of the company to comply with either of such requirements, or a failure to keep the whole apparatus in working order for an unreasonable length of time, shall cause a forfeiture of the exclusive privileges hereby granted.

Sec. 5. The said company must construct fire-proof all buildings or other structures necessary for their machinery, or any other apparatus which may be needed for their legitimate purposes, and at such points as shall be selected by them with the approval of the city council. And for this or any other legitimate end they may condemn any property of private individuals that may be needed for such use, subject to the rules prescribed by law in such cases.

Sec. 6. The works established by said company must be capable of delivering 3,000,000 gallons of water daily. They must supply all the water that is needed for public and private use, and must be so constructed and arranged as to furnish sufficient means for extinguishing fires without the aid of fire engines, within such water districts as may be established by the city council as hereinafter contemplated. And to this end their apparatus must be capable of throwing six one-inch streams at one and the same time on any portion of the high ground, to the height of seventy-five feet above the surface, or eight such streams to the height of one hundred feet on any portion of the low grounds in said district, and to continue such streams for one hour or more, if necessary.

Sec. 7. Any person who shall willfully, carelessly or negligently disturb, misplace or injure any of the mains, hydrants or other appendages provided by said company under this ordinance, or who shall pollute or injure the water in flowing into, out of, or any of said mains or other appendages of said water works, or who (unless acting under proper authority) shall open any of said hydrants, or attempt to draw water therefrom, or in any other manner interfere with any of said hydrants, or other appurtenances of said water works, or who shall disturb or obstruct the access to any hydrant or stop-cock connected with any of the works herein contemplated, shall be deemed guilty of a misdemeanor, and shall be fined not less than five nor more than fifty dollars for every such offense, and shall stand committed until such fine, as well as costs of prosecution, shall be paid. Nor shall the payment of any such penalty exempt the offender from liability to said company for the private injury caused by his said wrongful act.

Sec. 8. The city council will hereafter pass all ordinances that may be needed to enable said company to enjoy all the rights intended to be conferred upon it by this ordinance, and for more fully protecting the said company in all those rights.

Sec. 9. There shall be a hydrant placed at each street crossing along the line of every water main that shall be placed by said company, but not more than one such main shall be placed in any one street. Nor shall said water works be extended to require more than one hundred and fifty such hydrants so placed, without the express authority of the city council.

Sec. 10. All that portion of the city which lies within the limits of the benefit of protection of said water works shall be known as the water district; and the city council, from time to time, will by ordinance, more specifically designate the boundaries or extent of said district. And except as hereinafter provided, a special tax of five mills on the dollar shall be annually levied upon all real estate, upon all tangible personal property which is properly taxable within such district for other purposes. This tax shall not be diminished until a surplus as hereinafter contemplated is found to exist, and shall, in conjunction with the earnings of said company, constitute what shall be known as the water fund.

Sec. 11. The said company, whenever

the law and the circumstances will permit, may lease their bonds, not exceeding two hundred thousand dollars in amount, which shall be secured by a first mortgage upon their works, these bonds shall bear six per cent. interest per annum, which shall run not more than fifty years from their date. This interest shall have a preferred claim upon the water fund, and shall be paid by the city directly to the bondholders or their agents, without ever being under the control of the said company. And the sum of two thousand dollars per annum shall next be taken from this water fund and appropriated to the purchase of some of the bonds aforesaid for cancellation, or to constitute a sinking fund in some other appropriate manner; said bonds shall not be sold at less than par without the consent of the city council; and when their proceeds shall not be needed for immediate use, they shall be placed in the hands of a trustee, to be appointed by the city council with the assent of said company. The capital stock of said company shall be three hundred thousand dollars, of which amount the company may pay up in cash ten per cent. thereof, and no more unless in pursuance of other provisions of this ordinance, or in obedience to the order of some court of competent jurisdiction.

Sec. 12. From the said water fund there shall next be paid the current expenses of the said company, including the necessary repairs and improvements of said water works, and including, also, all taxes that may be levied upon said water works, or upon the stock held by the stockholders in said company; provided, that no extravagant or unreasonable expense shall ever be incurred by said company, and after the payment of all such amounts aforesaid, the remainder of said water fund, as far as prudent and proper, be divided among the stockholders of said company to the extent of twelve per cent. per annum of the amount actually advanced by them respectively, provided there shall be no dividend declared exceeding eight per cent. per annum upon any greater sum than said thirty thousand dollars.

Sec. 13. Should the said water fund prove inadequate in any one year to meet all the foregoing claims upon it for that year, the deficit shall be made good out of any surplus that may remain in any subsequent year after the payment of the claims enumerated in the two preceding sections; and should the said fund be more than sufficient for all the purposes aforesaid, the surplus, or so much thereof as can prudently be spared, may be added to the sinking fund aforesaid; or the rate of the special tax as well as that of the water rents may be diminished, or such surplus may be applied to the extension of the water district or the improvement of the works—all as the city council shall determine.

Sec. 14. Whenever it is found expedient so to extend said water district as to require more means than are on hand for that purpose, the needful amount of new bonds may be issued. These bonds may be secured by a second mortgage upon said works, but shall, in all other respects be regulated upon the same principles as are herebefore prescribed in the case of the first mortgage bonds, and the additional stock that may be needed to that purpose shall be disposed of in such manner as the board of directors of the said company shall determine.

Sec. 15. As soon as the financial condition of the said city shall permit it to purchase and operate said water works, the city council, upon giving one year's previous notice, shall have the right to take possession of and control the same upon assuming all the duties and liabilities then devolving upon said company, and upon the termination of the franchise hereby created, unless the city itself or some other person, firm or company, shall be able and willing to take the said works by relieving the said company of all its then existing duties and liabilities, then said franchise and the rights and duties of both parties under it, shall continue as heretofore provided until the said company shall be thus relieved from all such duties and liabilities, including the capital stock actually paid in.

Sec. 16. Should the current expenses of the said company, including the pay of its officers or agents, be deemed unreasonable by the city council, or should said council refuse to pass any ordinance which the said company may claim to be entitled to by the eighth section of this ordinance, or should there be a disagreement between the said council and the said company for any other reason, the subject matter of such controversy, shall be submitted to arbitration, and unless otherwise mutually agreed upon, the arbitrators in such case shall consist of five disinterested members, two of whom shall be selected by the city council, two by the said company, and the fifth member by the four thus selected. This tribunal shall proceed to adjust the matters in controversy in accordance with equity, and with the true spirit and intent of this ordinance, and its decision shall be binding and conclusive upon both parties to the said controversy.

Sec. 17. The said company shall keep books setting forth in minute detail every item of income and expense, and shall receive or incur, which books shall at any time be open to the inspection of any committee or other agent of the said city council, and at the end of every six months a report shall be made to the said council setting forth in the aggregate the amounts received from each separate source, and the amounts expended under the several heads of general or special expenditures, and an intentional failure to perform its substantial duty in this respect shall work a forfeiture of the franchise hereby created.

Sec. 18. For the compensation above specified the said company shall furnish at the several hydrants all the water needed for the extinguishment of fires in any portion of the said city, within the limits aforesaid, and shall be prepared to furnish water to the extent of their power if needed at any fire that shall occur within said limits within ten minutes after being notified of the breaking out of such fire. It shall also furnish all water that may be needed in any of the city offices, and also all that may be needed for sprinkling the streets of the city to the extent of thirty thousand gallons per day along each mile of all the water mains in said city. It shall also supply all the water that may be needed for private use at rates not exceeding those fixed by the following section, it being understood that any party using the water as aforesaid shall be at the expense of supplying the apparatus necessary for conducting the water from the outside line of sidewalk to the point where it is to be used. And all the water admitted into the said mains must be properly filtered, except when used in the extinguishment of fires.

Sec. 19. The said company may fix its own rates of charges for water furnished to individuals or corporations; but, unless by a previous agreement of the parties or by the special authority of the city council, no such charges shall be greater than shall be found prevailing in some one of the cities of Des Moines, Davenport, Muscatine, Clinton, or Cedar Rapids, in this State.

Sec. 20. It is intended by this ordinance that the said company shall make an annual dividend of twelve per cent. upon all the cash actually paid in upon their stock, and no more, as heretofore provided. But they must rely for the means of making such dividend entirely upon the water fund aforesaid; nothing for this purpose or for defraying any of the other expenses connected with said water works shall ever be payable out of the proceeds of the general taxation of said city. But the special tax heretofore provided for shall never be so far diminished as to prevent the annual dividend of twelve per cent. by said company upon the cash payments on their stock as heretofore contemplated, and a certificate shall be endorsed upon each of the bonds issued as aforesaid, stating to present assessed value of all the property upon which said special tax is to be annually levied, together with a stipulation that from the said water fund the city will pay the semi-annual interest upon said bonds, and also the sum of two thousand dollars annually into the sinking fund before any money shall be taken out of the said water fund for any other purpose. This endorsement shall be subscribed by the mayor of the city and authenticated by the seal of said city, and thus create an irrevocable obligation in favor of the holders of those bonds respectively.

Sec. 21. That all ordinances or amendments of ordinances in conflict herewith are hereby repealed.

Adopted July 17, 1877.

Attest: T. G. CATLETT, Mayor.

Wm. A. W. Parsons, Mayor of the City of Burlington.

Res. The board of directors of the Burlington Water company have this day adopted the following resolution:

Resolved, That the president of this board be and is hereby authorized to notify the city council of the city of Burlington, through the mayor, that the Burlington Water company accepts the ordinance for the erection of water works, passed July 17, 1877.

In pursuance of the authority given by the foregoing resolution, I hereby give the notice contemplated therein and required by the terms of said ordinance.

Dated at Burlington this 19th day of July, 1877. CHARLES MASON, President.

COPY OF MORTGAGE.

This instrument, executed November 1st, 1877, by and between the Burlington Water Company, a corporation duly organized under the general incorporation law of the State of Iowa, of the first part, and Lyman Cook and George C. Lauman, of the city of Burlington, Iowa, parties of the second part, witnesseth:

That in consideration of the sum of five dollars paid by the party of the second part and of the premises herein contained, the said party of the first part, hereby conveys to the said party of the second part, and to their successors, in trust for the purposes hereinafter contained, the following described property, situated in the said City of Burlington, and known as the Burlington Water Works, now in process of construction, to-wit:

Lot number nine hundred and ninety-six (906), situated in the City of Burlington, Des Moines county, State of Iowa, according to the official plat of said city, with all their appurtenances, including all franchises, water rents, income, and all other property, real and personal of said company, of every name and nature, and wheresoever situate, now owned or possessed, and which may hereafter be acquired by said party of the first part.

This conveyance is, however, made for the purposes, and upon the trust and subject to the following conditions: That, whereas, the said party of the first part is about to create a debt of two hundred thousand dollars, to be secured by two thousand dollars each, all bearing even date herewith, and being numbered in consecutive order from one to two hundred inclusive, made payable at the Importers and Traders National Bank, in the City of New York, in the State of New York, twenty-five years after their said date, with interest at the rate of six per cent. per annum; payable semi-annually at the same place in said city, and which said interest is secured by fifty coupons attached to each of said bonds, and will fall due on the first days of May and November respectively, in each successive year hereafter, and which bonds are in following form substantially, that is to say:

(Here follows the copy of the Bond, excepting number and signature.)

Now, if the said party of the first part shall well and truly perform its obligations as above set forth, and make all the said payments so specified as the same shall fall due, then this conveyance is to be void, otherwise to remain in full force and effect.

It is understood and agreed that should the said party of the first part fail to provide for the prompt payment of interest at the time stipulated in any of said coupons, the same shall bear interest at the rate of six per cent. per annum until paid, and should such default continue for ninety days, the entire amount of the bond to which such coupon shall have been attached, shall become due, and the holder may proceed to enforce his rights relative thereto, by foreclosure or otherwise; but until a default in such payment shall occur, and a foreclosure or other mortgage shall be commenced, the said party of the first part is to remain in full possession of the property hereby mortgaged, and may collect and appropriate all water rents accruing previously thereto.

And the said Lyman Cook and George C. Lauman, trustees as aforesaid, hereby accept the said trust, and engage to perform their duty thereunder as contemplated in the foregoing instrument, and as may be required by law.

It is hereby further covenanted and agreed by the party of the first part to and with the said party of the second part, his successors and assigns, that if, the said party of the first part, will hereafter at any time make, execute and deliver all such further assents and instruments and conveyances as shall from time to time be necessary; and that the party of the second part, his successor or successors, or his or their counsel learned in law, shall deem advisable and proper for the better carrying into effect the purposes of these pres-

ents, to make the lien hereby created and intended to be created, more effectual and secure, and to embrace the said water works and the future construction thereof, and the franchises and privileges thereof, and the property and appurtenances thereof, expressed part of the mortgage conveyed or set over, or so intended to be, and to be hereafter acquired.

And it is further mutually covenanted and agreed that a trustee or trustees may, at any time and from time to time, be substituted in the place and stead of the party of the second part of his or their successor or successors, upon application to and order from the district court of Des Moines county, State of Iowa, made by a majority in interest of the holders of the bonds which shall at the time of such application have been issued as aforesaid, and shall then be outstanding and unpaid, which application shall be forth sufficient cause for such change, and shall be upon at least ten days previous notice to the party of the second part, his or their successor or successors, except in case of the death of either or both of said trustees, when said application may be made without notice.

In witness whereof, the said parties to this instrument have hereunto subscribed their names, and the seal of said water company is hereto affixed this first day of November, 1877. (Signed)

[Seal.] THE BURLINGTON WATER CO., By CHARLES MASON, Pres.

(Signed) J. O. McKEL, Sec'y.

CONTRACT BETWEEN THE CITY OF BURLINGTON AND THE BURLINGTON WATER COMPANY.

This agreement made this fourth day of October, 1877, between the City of Burlington, in the State of Iowa, of the first part, and the Burlington Water Company of the second part:

WHEREAS, in pursuance of the provisions of chapter ten, title four, of the first part of the code of the State of Iowa, passed in 1873, and of the law in such cases made and provided, the said city of Burlington did, in and by an ordinance duly passed and adopted on the 17th day of July, 1877, grant to the said party of the second part the right to build and operate water works in said city of Burlington, upon certain terms and conditions, all of which were by said party of the second part accepted on the 19th day of July, 1877, a copy of which ordinance and notice of acceptance is hereto annexed, and hereby referred to as forming the basis of this agreement. And WHEREAS, also, the said city of Burlington has agreed with said party of the second part to supply said city with water for fire and other purposes, and to pay said party of the second part therefor as water rent the sum as hereinafter specified.

Now, THEREFORE, in consideration of the premises, and of one dollar by each of the said parties to the other paid, and for the purpose of carrying said agreement into effect, and in pursuance of the law in such case made and provided, it is hereby agreed by and between said parties as follows:

First. Said party of the second part shall, within the time in said ordinance specified, place the said water works in condition to, and shall thereafter and so long as it shall have the right to enjoy the privileges granted it by said ordinance, supply said city of Burlington with water for fire and other purposes, and in the manner and to the extent provided in and contemplated by said ordinance.

Second. For the water so supplied said party of the first part shall pay as water rent, from year to year, and each year, during the period aforesaid, a sum equal to the amount specified in and by said ordinance, and therein contemplated to be levied and collected by special tax, and which shall in no case exceed five mills on the dollar for any one year, and which sum shall be paid from and out of, and shall be raised for that purpose by a special tax as authorized and provided by section 475 of chapter ten, of title four of the first part of the Code of the State of Iowa of 1873, and by the statutes in such case made and provided; and which shall be so paid from year to year and in each year to the persons and parties, and as and in the manner in said ordinance specified, and the amount from time to time levied and collected by said special tax shall never be applied or appropriated for any use whatever by said city, except to the payments from said water fund, as specified and contemplated in said ordinance, and to the purchasing and retiring of the said bonds as therein specified, and the contribution to the said sinking fund as therein specified; and which sinking fund shall in no case be applied or appropriated for any purpose whatever, save and excepting the retiring of said bonds.

In witness whereof said party of the first part hath caused its corporate seal to be hereto affixed, and this instrument to be signed by H. H. Scott, chairman finance committee, and the party of the second part hath caused the same to be signed by its President, the day and year first above written.

(Signed.) The City of Burlington, by Henry H. Scott, Chairman Finance Committee. The Burlington Water Co., by Charles Mason, President.

Attest: T. G. Catlett, City Clerk.

[Seal.] There being a vacancy in the office of mayor, the following resolution was adopted by the council, October 14th, 1877:

WHEREAS, in and by the ordinance passed and adopted July 17th, 1877, entitled "An ordinance to provide for the establishment of Water Works in the City of Burlington," it was contemplated that a contract should be entered into between the City of Burlington and the Burlington Water Company for the supply of water for fire and other purposes, and the said city and company having agreed in relation thereto, therefore, for the purpose of carrying said agreement into effect, it is

Resolved, That the City of Burlington execute with said water company, in duplicate, the contract, and for that purpose that H. H. Scott, Esq., the chairman of the finance committee of said city council, be, and he hereby is directed to sign and affix thereto the corporate seal of the city.

Copy of the Bond and Mortgage.

UNITED STATES OF AMERICA. BOND OF THE No. 1. BURLINGTON WATER COMPANY, CITY OF BURLINGTON, STATE OF IOWA. THE BURLINGTON WATER COMPANY is indebted to LYMAN COOK and GEORGE C. LAUMAN, of Burlington, Iowa, in the sum of ONE THOUSAND DOLLARS, lawful money of the United States, which it promises to pay to the bearer hereof, on the first day of November, one

THOUSAND NINE HUNDRED AND TWO, with interest thereon from date until paid, at the rate of six per cent. per annum, payable semi-annually, on the first days of May and November respectively, in each year hereafter, upon presentation and surrender of the proper coupons which are hereto annexed, and in accordance with their provisions respectively. Such payments of both principal and interest, are to be made as the counter of the Importers and Traders National Bank, in the city of New York, on demand as the several times above mentioned. Should any out of said coupons fail to be paid on such presentation, the principal of the bond shall become due and payable, and the holder may at once proceed to enforce his remedy, by foreclosure, or otherwise.

This bond is one of a series of two hundred bonds of like tenor and effect, numbered from one to two hundred, inclusive, amounting in all to two hundred thousand dollars, the payment of which principal and interest is secured by a first mortgage, bearing even date herewith, upon all the property, real and personal, franchises, water rents and income of the Burlington Water Company, now owned and possessed and which may hereafter be acquired. Made, executed and delivered by said Company to Lyman Cook and George C. Lauman, in trust for the benefit of the holders of said bonds.

In Witness Whereof, the said Company has caused this instrument to be subscribed by its President and Secretary, and its corporate seal to be affixed hereto, this first day of November, one thousand eight hundred and seventy-seven.

(Signed) ..... Sec'y. .... Pres't.

COPY OF COUPON NO. 2.

\$30. BURLINGTON, IOWA, Nov. 1st, 1877. \$13 On the first day of May, 1878, THE BURLINGTON WATER COMPANY will pay to the bearer hereof, at the Importers and Traders National Bank, in the city of New York, the sum of THREE DOLLARS, it being for six months interest, which falls due upon this day, upon this bond.

No. 1. .... Treasurer.