

WATER WORKS.

AN ORDINANCE to provide for the improvement, maintenance and operation of the system of water works now existing in the City of Burlington, Iowa.

Be it ordained by the City Council of the City of Burlington, Iowa:

Sec. 1. In consideration of the benefits to accrue to said city and to the inhabitants thereof, there is hereby granted to the Citizens' Water Company, a corporation organized and existing under and by virtue of the laws of Iowa, the exclusive right and privilege to acquire, operate, improve, extend and maintain the system of water works now constructed and established in said city, for a period of twenty years, subject to the terms and conditions set forth in this ordinance.

Sec. 2. Said company must signify its acceptance of the terms and conditions of this ordinance, in writing, to said city, within five days from the approval of this ordinance by the Mayor, and thereupon the same shall be by said city submitted to a vote of the qualified electors of said city. If the same is approved by the electors, the contract shall date from the time when the vote is canvassed, and the result of such election declared by the City Council.

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 operating their mains and other appurtenances, as now located and laid down, and also for the purpose of making such extensions and improvements as may be required and be made under this ordinance. But in the doing of such work, gas and steam heating pipes as now laid, and sewers as now constructed, must not be materially interfered with, without the express consent of the City Council, and whenever any street, alley or other public place is disturbed by said company, it must restore the same to its proper condition, with the least delay practicable, and at the cost of said 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 may require said company to lay and extend its mains on and along streets that are not on grade, provided that when such street is brought to grade, the expense of relaying such water pipes or mains shall be paid by said city. Provided further, that no such extension shall be ordered unless the receipts from consumers along said extension will pay not less than 6 per cent on the cost of such extension, except by mutual consent and in order to improve the fire service; and provided further, that when pipes are laid on any graded street, should the city afterwards change the grade of such street, it shall pay the expense incurred, in adjusting the water pipes to the new grade. The laying of all mains or pipes to be under the direction of the City Engineer.

Sec. 5. Said company shall have the right to acquire such other and additional property as may be needed for its legitimate purposes, and for the purpose, if deemed best, in order to obtain a supply of satisfactory water, of changing the location of its plant and pumping station, and to these ends, it may condemn any property that may be needed for any such purpose, and which it cannot otherwise acquire on satisfactory terms, but subject to the rules prescribed by law in such cases. And it is further provided and understood, that said company is not restricted or limited to the Mississippi river as its source of water supply, but may obtain the same from any source whatever open to it, provided only, that the water so obtained shall be fit and suitable for domestic and mechanical purposes, and shall be reasonably pure.

Sec. 6. Any person who shall willfully, carelessly or negligently disturb, misplace or injure any of the mains, hydrants or other appendages provided or used by said company under this ordinance, or who shall pollute or injure the water, in, flowing into, or out of, 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 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 stopcock 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 the costs of prosecution, shall be paid. Nor shall the payment of any such penalty exempt the offender from liability to the said company for the private injury caused by his said wrongful act.

Sec. 7. The City Council will hereafter pass all ordinances that may be needful 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 these rights.

Sec. 8. There shall be a fire hydrant placed at each street crossing on the line of every main that shall be placed by said company, not more than one such main to be placed in any one street, but temporary small mains may be laid to supply private consumers only without placing hydrants thereon.

The company shall not be required to lay more than three miles of extensions of street mains during each of the first and second years after this contract becomes effective, or more than two miles during each of the succeeding years, without the consent of the company.

Sec. 9. All that portion of the city which lies within the limits of the benefits or protection of the 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 5 mills on the dollar shall be annually levied upon all real estate and upon all 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. 10. The capital stock of said company shall be three hundred and thirty thousand (\$330,000) dollars, of which one hundred and fifty thousand (\$150,000) dollars shall be common stock carrying a dividend of 6 per cent per annum, payable semi-annually, and of which the City of Burlington shall have fifty thousand (\$50,000) dollars, and one hundred thousand (\$100,000) dollars of the same shall be taken by the subscribers therefor, payable in cash at par. One hundred and eighty thousand (\$180,000) dollars of the capital stock payable in cash at par shall be preferred stock, carrying a dividend of 5 per cent per annum, payable semi-annually. The dividends upon both classes of stock shall be cumulative, and in the event of final distribution among the stockholders, the two classes of stock shall share pro rata per share. The preferred stock shall be subject to retirement out of the surplus earnings in the water fund, as the city may direct, sixty days' notice in writing to be given

by the city to the company, of the amount so to be retired, and sixty days' notice in writing to be given by the company to the stockholder whose stock is to be thus retired.

Sec. 11. The company may issue its bonds in the sum of two hundred and twenty thousand (\$220,000) dollars at not less than par, which shall be secured by a first mortgage upon the works and plant. These bonds shall bear 4 per cent interest per annum, payable semi-annually, shall run for twenty years from their date, and shall not be sold for less than par, without the express consent of the city. The interest upon these bonds shall be a preferred claim upon that part of the water fund, to be raised by taxation as in this ordinance provided, and shall be paid by the city directly to the bondholders or their agents, without ever being under the control of the company. These bonds shall be sold from time to time in such lots as will produce the funds which may be required from time to time, in extending and improving the water works system and the water supply, as may be agreed upon between the city and the company. Said company having first submitted to the City Council the plans for such new work, improvements or betterments for its approval. After retaining from the tax herein provided for, a sufficient amount semi-annually to pay the interest maturing during the succeeding six months, upon the outstanding bonds, the balance of said tax shall be paid over to the company from time to time, as it is received by the City Treasurer.

Sec. 12. From the said water fund, there shall next be paid the current expenses of the company, including necessary repairs on 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 expenses shall ever be incurred by said company, and no salary shall ever be paid to any one, except to the superintendent, the secretary, and the necessary assistants, and to those connected with the operating department of the works. After the payment of all these amounts, there shall next be paid to the preferred stockholders their dividend, and next, to the holders of the common stock, their dividend, as hereinbefore provided, these dividends to be due and payable on the first day of February and August of each year.

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 water fund be more than sufficient for all the purposes aforesaid, the surplus, after setting aside one thousand dollars for contingencies, may be used in making extensions and improvements of the water works, or in retiring 5 per cent stock, or in creating a sinking fund, either, as the city may determine and direct.

Sec. 14. The City of Burlington shall have the right, at the end of five years from the beginning of this contract, upon one year's previous written notice, or on the first Monday of January of any year thereafter, upon one year's previous written notice, to take the full and complete possession, ownership and control of said system of water works, upon them assuming all the duties and liabilities devolving upon said company, and repaying to its stockholders, par for all the then outstanding capital stock, with all accrued and unpaid dividends, and with interest at the specified dividend rate, on the par value of said stock, from the date when the last dividend accrued, down to the time when such payment is made. And upon the termination of the franchise hereby created, unless the city itself or some other party, with its consent, shall be able and willing to take the said works, upon the terms and conditions above specified, then this franchise, and the rights and duties of both parties under it, shall continue as hereinbefore provided, until the said company shall be thus relieved; provided, however, that said company shall have the first right to a new charter or contract with said city, upon as favorable terms as are offered by any such third party.

Sec. 15. One year's notice in writing must be given of the taking of said works either before, at, or after the expiration of this contract, and no such notice shall be given oftener than once in each year.

Sec. 16. The Board of Directors of said corporation shall consist of five, of whom the mayor of the city, with the approval of the City Council, shall name two, and who shall hold for the term as provided for directors in the Articles of Incorporation of said company. No expenditure exceeding one thousand dollars, for any purpose whatever except for current expenses, or in case of emergency shall be made against the objection of the two directors chosen by the city, unless the proposed expenditure is first submitted to and approved by arbitrators, as provided in Section 18 hereof, and any such difference arising as to any proposed expenditure, shall be considered and treated as a controversy between the city and the company, but all expenditures for extensions or improvements, the cost of which will

exceed five hundred dollars, shall be let on public advertisement to the lowest responsible bidder, but the company may reject any or all bids.

Sec. 17. The city hereby accepts as correct, the accounts of the Burlington Water Company as shown by its books and the semi-annual reports filed by it, and the company agrees to take up the stock of the Burlington Water Company at par, with dividends to be paid at the contract rate, up to and including July 1, 1902, and interest on the par value of said stock, at 6 per cent from July 1, 1902, until this contract is fully and legally consummated.

Sec. 18. Should any controversy arise between the city and said company, as to the rights, duties or obligations of either, and which they are unable to reconcile, the same shall be submitted to five arbitrators, two of whom shall be chosen by the city, and two by the company, and these four shall choose the fifth, and the moving party shall be required to name its two arbitrators first. These five arbitrators shall proceed to hear, adjust, and determine the matter in controversy, shall decide by a majority, and their finding and decision shall be binding and conclusive upon both parties to the controversy. Neither party hereto shall be allowed to maintain any action because of any such controversy, without showing, as a condition precedent to so doing, an effort to have the controversy settled by arbitration, as herein provided, and which the other party refused or failed to do.

Sec. 19. Said company shall keep proper books, setting forth in minute detail every item of income it shall receive and expense it shall incur, which books shall at any time during business hours be open to the inspection of any committee or other agent of said city, and at the end of every six months, beginning with the first Monday in January, 1903, said company shall make a report to the city, 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. 20. 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 said city, within the water limits aforesaid, or extension of said limits, and shall be prepared to furnish water to the extent of its 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 the water that may be needed in any of the city offices. It shall also supply all the water that may be needed for private use at rates not exceeding those fixed in the following section, it being understood that any party using the water aforesaid shall be at the expense of supplying the apparatus necessary for conducting the water from the curbstone opposite the street mains of the company to the point where it is to be used. All water admitted into said mains must be properly filtered, except when used in the extinguishment of fires.

Water may be used by the city for flushing sewers, but under the control and direction of the superintendent of the water works.

Sec. 21. 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 special authority of the City Council, no such charges shall be greater than shall be found prevailing in some of the cities of Des Moines, Davenport, Muscatine, Clinton or Cedar Rapids, in this state.

Sec. 22. It is intended by this ordinance that said company shall make an annual net dividend at the rates hereinbefore specified, upon all cash actually paid in upon its stock, and no more. But it must rely for the means of making such dividends, entirely upon the water fund aforesaid. Nothing for this purpose or for defraying any of the other expenses connected with said works, shall ever be payable out of the proceeds of the general revenues of said city. But the special tax hereinbefore provided for, shall never be so far diminished as to prevent the annual dividends by said company, upon the cash payments on its stock, as hereinbefore provided, and a certificate shall be endorsed upon each of the bonds to be issued, as hereinbefore provided, stating the present assessed value of all property upon which said special tax is to be annually levied, together with a stipulation that from said water tax, the city will pay the semi-annual interest upon said bonds before any money shall be taken therefrom, for any other purpose. This endorsement shall be subscribed by the Mayor of the city, and be authenticated by the seal of said city, and thus create an irrevocable obligation in favor of the holders of those bonds respectively.

Sec. 23. This ordinance is granted upon the condition that the said Citizens' Water Company shall acquire all the property of the Burlington Water Company on or before the 1st day of January,

1903, and failing to so purchase or acquire the property of the said Burlington Water Company, this ordinance shall be null and void and of no effect, and shall stand repealed without any further action being taken.

Sec. 24. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

Approved October 10, 1902.

(Seal.)

H. G. MARQUARDT,

Mayor.

Attest:

F. P. BULGER, City Clerk.

We hereby accept the above ordinance this 10th day of October, A. D. 1902.

CITIZENS' WATER COMPANY,

By order of its Board of Directors.

CHRIS MATHES,

Attest:

President Pro Tem.

T. G. FOSTER, Secretary Pro Tem.

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