

## AN ORDINANCE

Concerning Water Works by The Foreign Company.

Be it ordained by the Common Council of the City of Kansas:

SECTION 1. The City of Kansas and the Kansas City Water Distributing Company make an agreement on the terms and conditions contained in the following sections of this ordinance.

Sec. 2. There is hereby granted to said Kansas City Distributing Water Works Company the right to erect Water Works, to take and convey into and throughout the City of Kansas, water as hereinafter mentioned for the use of the city and the inhabitants thereof, and to that end the right to lay pipes, construct reservoirs and aqueducts and erect buildings and machinery proper and convenient for such Water Works, and for receiving, taking, purifying, storing, conducting and distributing water in and throughout the city, and to enter upon and dig up any street, road, railroad or ground held for public use and under the control of the city, for the purpose of laying pipes beneath the surface and for repairing the same.

The City of Kansas shall also furnish said Kansas City Water Distributing Company free of cost the real estate, not occupied by others in extent, no carry for rent, grain, in buildings and machinery for such works, and also right of way for laying pipes in or over property not owned by or under the control of the City or property dedicated or held for public use, so far as necessary for the construction and successful operation of the works.

Sec. 3. Said Kansas City Water Distributing Company shall construct such water works at its own cost and the whole thereof, in a substantial and workmanlike manner, with a view to stability of operation and durability, and on the most approved and scientific principles. The reservoir for receiving and distributing water shall be constructed where the city may direct and furnish land for the purpose, and be of capacity to contain twenty million five gallons, and be built with compartments in such manner as to serve as settling reservoirs, by allowing the water to stand in a quiescent state at least thirty-six hours before being drawn off for use, and so constructed for use each twenty-four hours two million gallons of water settled as aforesaid, and be provided with proper means and appliances for cleaning out the reservoirs at frequent intervals without preventing or interfering with the supply for use each twenty-four hours of three million gallons of water settled as before provided. Water shall be taken and received from the Kaw river, or the Missouri river, at such point as the city may direct if on the right bank of the Kaw river, but if the point selected be on the Missouri River, no point shall be selected further from the reservoir than the mouth of the Kaw river.

The water works shall have two direct acting low pressure condensing pumping engines, of capacity sufficient to deliver each twenty-four hours to the settling and distributing reservoir at an elevation of two hundred and fifty feet above the city street or the Missouri river, five million gallons of water. The works shall have eighteen miles of pumping main and distributing pipes, provided with proper gates for regulating and controlling the supply of water; said distributing pipes to be laid wherever the city may by ordinance direct, and there shall be connected with the distributing pipe two hundred fire hydrants each with two outlets.

The works and pipe thereto shall be constructed of such dimensions and on such plan that water from the reservoir may be conducted through and delivered by one hundred and four miles of distributing pipe, in an efficient manner, when it becomes necessary or convenient to extend the distributing pipe to that point to supply the wants of the city and the inhabitants thereof, whether the city limits enlarged or not, provided that this shall not be construed to require pumping engines or reservoirs of greater capacity than before mentioned.

The building for and connected with the pumping engine shall be substantially constructed of brick or stone, with solid stone foundation, and the conduit in the river to receive the water shall be on and well secured by solid masonry.

Said Kansas City Water Distributing Company \_\_\_\_\_ shall not be required or be bound to lay any distributing pipes on any streets not fully graded to the established grade of the same.

Sec. 4. Said Kansas City Water Distributing Company \_\_\_\_\_ shall, before beginning to construct the water works stipulated for in the preceding section, submit to the Common Council of the city, full detailed plans and specifications therefor.

The contract evidenced by this ordinance shall not be performed, nor any water works be constructed pursuant thereto, unless full detailed plans and specifications therefor be first approved by the city by ordinance before the construction of the works on the ground is actually commenced, which approval shall be a condition precedent to the construction of any water works. After approval of plans and specifications as aforesaid, the works shall be constructed throughout in conformity therewith, to the satisfaction of the Common Council of the city or Water Commissioners appointed by it, and the City Engineer of the city, or any other engineer selected by it, shall at all times during the progress of the work have every reasonable facility and opportunity to examine and inspect the work, to enable him to determine whether or not the plans and specifications agreed on are conformed to in the doing of the work. Plans and specifications shall be submitted within thirty days after approval of the ordinance of an election as hereinafter provided, and if plans and specifications for the works be not approved by the city within thirty days after the same are submitted, the agreement evidenced hereby shall be determined and both parties be released therefrom and all liability by virtue thereof.

Sec. 5. The two hundred fire hydrants shall be placed where the city may direct, and such additional fire hydrants as the city may require shall from time to time be put in at its cost, where it may direct. Said Kansas City Water Distributing Company shall, without cost to the city, construct all permanent extensions and enlargements of the works and keep permanent, full and accurate accounts of the actual cost thereof, which shall, in no case, exceed a reasonable price therefor, but no such extension or enlargement shall be made without the consent of the city thereto, and all extensions of distributing pipe shall be placed where the city may direct, and be provided without cost to the city in the first instance, and from time to time thereafter, with the requisite fire hydrants, the number and location thereof to be determined by the city.

Before and after any permanent extension or enlargement of the works, the city may, from time to time, by ordinance, determine the prices or rents to be paid by all consumers other than the city, for water used from the works, but shall not fix a lower rate than the average of the rates at the time charged for water used by private consumers, or consumers other than municipal corporations, in any four other cities of the United States, each having water works on the reservoir system of as great or greater capacity, and distributing on the average, each twenty-four hours, as much or more water, as the works herein provided for at the time have and distribute; and in case of dissatisfaction on the part of said Kansas City Water Distributing Company with the rates prescribed by any ordinance and written notice thereof to the city or its Common Council, the parties shall, within twenty days after the giving of such notice, select a third party to select two cities and a man, for the purpose herein-after mentioned, and notify the other thereto in writing, within the time limited for selection, or if either party fails to make such selection and give notice thereof within the time so limited, the other party may, within five days next after the twenty days, (having within the last mentioned time selected two cities and a man and given notice thereof,) select the other two cities and another man and notify the other party thereof. The two men so selected shall, as soon as practicable, ascertain and determine the rates charged in the four cities selected and to be considered, and the average of such rates, and their decision as to the average rate, made in writing in duplicate, one copy to be delivered to each party, shall be final and conclusive on the parties; but if the two men cannot decide, they shall jointly choose a third man, or a judge, for the time being, of the Circuit Court of Jackson county, Missouri, may, at the request of the two, choose a third man, and the decision of such third man, so chosen, as to the average rates of said four cities, made in writing in duplicate, one copy to be delivered to each party, shall be final and conclusive on the parties.

A city shall be deemed to have water works within the meaning of the next preceding stipulations, whether it does or does not own and operate works supplying it and its inhabitants with water. If neither party selects two cities and a man within twenty days after the giving of notice of dissatisfaction with rates prescribed by any ordinance, nothing shall be done as to determining the average rate of other cities, but a new notice may be given for the purpose of having such average rate determined. The cost of determining the average rate of other cities shall be equally divided between the parties, and such average rate shall be binding on the parties for two years after any decision on the matter may be reached, but not longer, and if no decision be made and rendered within sixty days after the selection of the two men by them, or a third man duly chosen, the proceedings shall be determined and no decision to make, but another notice of dissatisfaction may at any time thereafter be given and proceeded on to obtain a decision. If the average rate ascertained and determined as aforesaid exceed the rate prescribed by ordinance the city shall amend its ordinance to conform thereto or said Kansas City Water Distributing Company may without such amendment charge and collect prices and rents for water used other than by the city, not exceeding such average rate for the term that the same is to be binding on the parties. Said Kansas City Water Distributing Company shall at all times provide all reasonable and proper facilities for enabling parties desiring to do so to use water from the works, and furnish the city and all inhabitants thereof, along the line of distributing pipe, all the water they may desire to use, and no prices or rents shall be charged or collected therefor (except in the case of water consumed by the city) higher than ordinances may prescribe or the average rates of other cities ascertained as aforesaid.

Sec. 6. The said Kansas City Water Distributing Company \_\_\_\_\_ shall not in constructing or repairing or operating such water works unnecessarily obstruct any street, avenue, alley or public ground, or unnecessarily interfere with any railroad, gas pipe, or improvement in or on the same, and shall restore such street, avenue, alley or public ground as soon as practicable to as good a state and condition as the same may be in prior to the digging up thereof, or interfering therewith, for constructing or repairing the water works, and at all times use reasonable and proper precautions to avoid and prevent injury to persons and property from work, excavations or obstructions connected with or resulting from the construction, repairing or operation of the works, and be liable for any injury to person or property resulting from the negligence or fault of said Kansas City Water Distributing Company or any of its employees.

Sec. 7. All fire hydrants shall be under the control of the city as to the use thereof, or water therefrom, but there shall be no unnecessary consumption of water or waste thereof, and the city shall make reasonable and proper rules and regulations to prevent waste of water and injury to the works, and provide, as far as it can reasonably be expected to do, for punishing violations of such rules and regulations, but shall not be liable for waste or injury without its fault. Said Kansas City Water Distributing Company \_\_\_\_\_ shall keep the water works and all parts thereof in good repair, and so that the same will at all times operate efficiently.

Sec. 8. The city shall pay said Kansas City Water Distributing Company \_\_\_\_\_ thirty thousand dollars annually, before and after any extension or enlargement of the works, for all water it may use for all purposes, including water used by the city in constructing all city improvements, and in public buildings and offices and for extinguishing fires, the city to have the right to use water for all purposes that would be deemed reasonable and proper use thereof on account of the city and likely to be made on such account, if the city owned and operated the works, and derived income from charging other consumers for water taken therefrom. Said thirty thousand dollars shall be paid in semi-annual installments of fifteen thousand dollars each, at such times as the parties may hereafter agree on, the time paid for to count from the completion of the works and setting the same in operation.

Sec. 9. The City of Kansas agrees that said water works shall, if constructed and operated in conformity with this ordinance, earn annually from the time the same are completed and set in operation, for the stockholders or owners thereof, eighty thousand dollars clear, above all taxes and assessments and current expenses of operating the same, and to pay said Kansas City Water Distributing Company \_\_\_\_\_ each year all that such earnings (including what the city is to pay for water) may fall short of eighty thousand dollars clear, after completion of the works in conformity herewith.

Said Kansas City Water Distributing Company agrees that the current expenses of operating the works shall not exceed twelve thousand dollars per year for the first five years after the works are completed and set in operation, and that thereafter current expenses shall not exceed one thousand dollars over twelve thousand dollars each year for every five thousand dollars clear of the city may at the time exceed fifty thousand, and that at all times current expenses shall be subject to approval of water commissioners on the part of the city, and that no item disapproved of by them shall be included as part of current expenses in determining what the city shall pay under the guarantee aforesaid. Current expenses of operating the works shall include salaries and compensation of engineers, clerks, laborers and employees, but shall not include salaries or compensation of President and Director of said Kansas City Water Distributing Company, nor the cost of any permanent extension or enlargement of the works, nor the cost of laying pipes.

If in any year current expenses exceed the limit fixed as aforesaid, all excess over such limit shall be considered as part of the clear earnings of the works in determining what the city shall pay under the guarantee aforesaid.

The earnings of all extensions and enlargements of the works shall be considered in determining how much, if any, the city shall pay under its guarantee aforesaid. Said Kansas City Water Distributing Company shall keep full, detailed and accurate accounts of all receipts and expenditures of the works, or on account thereof, and at all times their works and accounts shall be open to the inspection and examination of the water commissioners of the city.

Sec. 10. The parties further agree that the city may at any time at its option, become sole owner of the whole works, including all extensions and enlargements thereof, with every thing belonging thereto, either by purchase of all the stock of Kansas City Water Distributing Company and paying for eight hundred thousand dollars of stock representing the investment in constructing works stipulated for in section three and four of this ordinance, eight hundred thousand dollars and the intrinsic value, if any, of such stock over that sum, and paying for all stock, or eight hundred thousand dollars, issued by said Kansas City Water Distributing Company, the amount actually expended by it in cash in extending and enlarging the works, the investment in extensions and enlargements of the works to be measured by stock issued over eight hundred thousand dollars, and it being understood that said Water Distributing Company shall not issue any stock over eight hundred thousand dollars to exceed in amount the actual cash outlay in extending or enlarging the works, or by purchasing from said Water Distributing Company, the whole Water Works, including all extensions and enlargements thereof and everything belonging thereto or constituting part thereof, of every kind, character and description, and paying said Kansas City Water Distributing Company therefor a fair and equitable valuation thereof; and in case the parties cannot agree as to such fair and equitable valuation, then such valuation shall be made by two disinterested

men to be chosen, two by the city, two by said Water Distributing Company and one by the four chosen so aforesaid, and the decision of the first or a majority of them as to such valuation shall be conclusive on the parties, provided, however, that in no event shall said Water Distributing Company be compelled to dispose of the works to the city for less than eight hundred thousand dollars, and the actual amount of cash expended in extending and enlarging the works, and also, one-tenth of such actual amount; and provided, further that in case the city becomes owner of the whole works in either of the modes mentioned, it shall not be required to pay anything for the real estate and right of way furnished by it according to this ordinance. In case of purchase of the whole works, as before provided for, said Water Distributing Company shall, on payment of the price as before stipulated, transfer to the city the subject matter of the purchase and give it proper assurance of title thereto.

If the works be encumbered when the city becomes owner thereof, the amount due on any encumbrance shall be deducted from the price the city is to pay and the city shall pay the encumbrance, but in no event shall the city be required to pay a greater price than herein stipulated for, and on payment thereof shall have the water works free and clear of all liens and encumbrances.

Sec. 11. The city shall, as soon as practicable after the approval of this ordinance, at an election to be held as hereinafter provided, acquire and furnish real estate for use for reservoirs and pumping engines and buildings connected therewith, as before provided, and for no other purpose or use, and give said Water Distributing Company notice in writing thereof, whereupon said Water Distributing Company shall, within sixty days after such notice, actually commence on the ground the construction of the works and fully complete and set in operation the same within twenty months from the giving of such notice, and if said Water Distributing Company shall not, within sixty days from the giving of such notice, in good faith actually commence on the ground the construction of the works, the city may, by ordinance, at any time after the tenth day, declare the contract evidenced hereby broken, and thereby this contract shall be annulled and determined and all right and liability by virtue of this ordinance shall cease, provided that such declaration shall be made before the work of actual construction of the works on the ground begins. After the construction of the works shall be actually commenced, the same shall be prosecuted vigorously and efficiently, and if said Kansas City Water Distributing Company fails to complete and set in operation the works, as provided, within twenty months from the giving of the notice in this section provided for, all work done on the works and everything belonging thereto and connected therewith shall become the property of the city, without cost to it, and all rights of said Water Distributing Company under this ordinance shall cease and determine, provided that the city shall not delay the prosecution of the work in any manner whatever, or the work be interfered with by epidemics or by some prohibited or unavoidable cause, nor thereby delaying the completion of the works.

Any real estate which the city may have to condemn for public use for water works to furnish the same to said Water Distributing Company, as stipulated for, shall be regarded as furnished on the contract, and possession thereof being delivered or tendered and received, to said Water Distributing Company adequately to enable it to use the same for water works purposes during the time it may need the same for such purposes, under the terms of this ordinance.

Any real estate which the city owns or may require in fee simple, and furnish for use according to this ordinance, shall be deemed to be furnished when the city shall execute to said Water Distributing Company a good and sufficient conveyance of such land and deposit the same with \_\_\_\_\_ in escrow, to be delivered on the completion of the water works, as herein provided, and tender or deliver the possession of such land to the city to all lands furnished by the city to be good and perfect as the same can be made, but this not to be construed to require the city to give the said company a fee simple in lands condemned, discharged from trust for public use for water works purposes.

In case the city does not furnish the necessary real estate as provided in section two of this ordinance, and give notice thereof on or before within twenty days after approval of plans and specifications, said Water Distributing Company shall not be bound to comply with the terms of this ordinance.

Sec. 12. The grants and rights made and given by the second section hereof shall continue for twenty years, and neither, from the time this ordinance may be approved at the election hereinbefore provided for, and the right of said company to operate waterworks pursuant to this ordinance, in the part of said Water Distributing Company shall, in no event continue beyond the twenty years before mentioned, and may be determined within that period by purchase, as hereinafore provided for.

If the works be not purchased before the expiration of said twenty years, the city shall, if the grant made in the second section hereof be not renewed, purchase the entire works, with all extensions and enlargements thereto, and everything belonging thereto for a fair and equitable valuation thereof, agreed on by the parties, or if they cannot agree, made as provided in section two of this ordinance.

Sec. 13. The grant hereby made and the contract hereby evidenced shall not be valid unless a majority of the qualified electors of said city, voting at an election shall approve the same, at which election those voting to approve the same shall cast ballots on which shall be printed or written "Water Works approved," and those voting to the contrary shall cast ballots, on which shall be printed or written "Water Works disapproved." And said Water Distributing Company shall become a party to the contract evidenced hereby, and be bound thereby subject to the provision of record on giving the Common Council of the city notice in writing of acceptance thereof, but such acceptance must be made within thirty days after this ordinance takes effect, subject to approval at an election as aforesaid.

Approved April 1st, 1870. R. H. MINT, Mayor.