

John M. Redmond as mayor attached thereto, and from publishing any subsequent ordinances which may be passed by the defendants as the council of the said city of Cedar Rapids, which may violate plaintiff's rights in any of the matters complained of and set forth, and from in any manner attempting to put such ordinance  
 15 in force or to enforce the same, either by legal process, writ or otherwise, and restraining and enjoining the defendant, John D. Blain, as recorder of said city from recording any such ordinance in the ordinance book or books of said city, and from making any entry in said books showing publication of any such ordinances. And that the said ordinance passed June 8th, 1900, may be set aside by the decree of this court and declared null and void. That upon final hearing the temporary injunction above prayed for may be made perpetual, and that the plaintiff may have such other, further and different relief as is consistent with equity and good conscience, together with judgment against defendants for the cost of this suit.

CHAS. A. CLARK & SON,  
 WM. G. CLARK,  
 HUBBARD, DAWLEY AND WHEELER,  
*Attorneys for Plaintiff.*

(Duly verified.)

EXHIBIT "A" OF PETITION.

*Ordinance of the City of Cedar Rapids Granting Franchise to the Cedar Rapids Water Company.*

An ordinance to provide for a supply of water for the inhabitants of Cedar Rapids, Iowa, for domestic use and fire protection.

SEC. 1. Be it ordained by the city council of the city of Cedar Rapids Iowa, that there is hereby granted to

Wm. Greene,	Geo. Douglas,	W. W. Walker,
T. M. Sinclair,	John F. Ely,	E. S. Hill,
J. L. Bever,	Chas. Weare,	D. W. C. Rowley,
Wm. Buchanan,	L. Daniels,	R. B. Tomlinson,
A. Jackson,	G. Carpenter,	J. J. Snouffer,
	S. P. Wisner,	

16 and to their associates and assigns who shall as a corporation under the laws of Iowa, under the name and style of the Cedar Rapids Water Company, to successors and assigns the exclusive privilege for 25 years, and an equal right thereafter with all others, of supplying the city of Cedar Rapids with water, to be taken from the Cedar river at such points as will best suit the objects and purposes of the company to which this franchise is granted.

SEC. 2. That the said Cedar Rapids Water Company, its successors and assigns, shall have during said term of 25 years, the right to use any street, avenue, lane, alley, square or sidewalk for the purpose of laying down pipes or other fixtures for the conveyance of water and distributing of the same to the citizens of said city.

SEC. 3. That during the laying down, placing or replacing at any time of said pipe and other fixtures through said streets, avenues, lanes, alleys, squares or sidewalks, no unnecessary obstruction shall be permitted by said city or by said company, and in laying said street mains and connection pipes, all pipes shall be laid below the frost and conform to the grade established by said city, so that on the completion of said work no obstruction of pipes or other material shall prevent the free use of any street, avenue, lane, alley, square or sidewalk, but said company shall have the right for the purpose of repairing said pipes, at any time when necessary, to disturb any street, avenue, lane, alley, square or sidewalk, but said company shall with diligence repair the same with the material so disturbed, making the same in as good condition as before the pipe was laid or repaired.

SEC. 4. That in case said company refuses or neglects to repair said streets, avenues, lanes, alleys, squares or sidewalks, within a reasonable time after said work is completed, and having been duly notified of such neglect by the proper officer or officers of said city, the city council of said city, may direct the necessary repairs of said streets, avenues, lanes, alleys, squares or sidewalks to be made at the cost of said company, and the said company shall be responsible for all damages sustained by any person or persons, by reason of negligence of its servants or employees while constructing and repairing said work as above stated.

SEC. 5. That said company shall, upon its acceptance of the franchise granted by this ordinance in writing, proceed without delay to make suitable arrangements for carrying out the purpose of this franchise, and shall lay down before the first day of December, A. D. 1875, not less than three miles of main pipes of sufficient dimensions to deliver the requisite amount of water for domestic supply and fire protection, and the said pipes shall be so arranged as to secure the best results both as to the present and future want and requirements; and it is hereby provided, that said three miles of main pipe, laid as required by the terms and conditions of this ordinance, shall be laid from the pumping works in and along such streets as the city council may by ordinance or resolution designate, but such streets shall be so located as to permit the main pipes to be constructed in such a manner as to give a continuous circuit to the flow of water throughout the system of main pipes, but in case the city council should decline or neglect to designate the streets through which any of the main pipes shall be laid as aforesaid, then said company may designate them. And these conditions shall apply to any extension of the pipes beyond the three miles above mentioned.

18 And there shall be located on said three miles of main line of pipe, as aforesaid, forty hydrants for which the city agrees to pay an annual rental of one hundred dollars for each of said forty hydrants, said hydrants to be located at such points as the city council may designate, with double discharge hose attachment of approved make; which connections shall be considered main pipes, and in said main pipes suitable valves, stop cocks, or other arrangements shall be placed to disconnect the water in the mains from the hydrants; also valves or other arrangements shall be used in the mains at such points as will properly control the distribution of water in districts of suitable sizes.

SEC. 6. That said company shall lay down before the first day of December, A. D., 1876, an additional amount of main pipe of not less than two and one-half miles, to be laid in and along such streets as the city council may designate by ordinance or resolution, as hereinbefore provided.

SEC. 7. And that there shall be located on said line of main pipe as last mentioned, as aforesaid, not less than twenty-five hydrants, for which the city agrees to pay the annual rental of the sum of one hundred dollars each as aforesaid, which hydrants are to be located at such points as the city council may designate; which hydrants and connections are to be provided and maintained by said company and governed by all the restrictions which govern the hydrants heretofore mentioned. And it is hereby further provided that the said city council may, from time to time, require by ordinance or resolution that the said company shall, within a reasonable time not to exceed six months, extend said mains and pipes to other parts of the city provided, that in extending such mains

19 the said city shall pay an annual rental as heretofore provided, for one hydrant for every six hundred feet, and provided further that no such extension shall be required by said city as aforesaid, unless there shall be an average number of not less than four tenement consumers, or an equivalent thereto, on each four hundred feet of main pipe so ordered laid.

It being understood by and between said city of Cedar Rapids and said company, that for any additional hydrants required by said city, the rental for each additional hydrant shall be at a price to be agreed upon between said city and said company at the time said additional hydrants are ordered, but in no case is said price to exceed the price paid for the first sixty-five hydrants provided for in this ordinance.

SEC. 8. That in consideration of the rights, franchises and privileges hereby granted unto said company, and for the further consideration of the annual rental to be paid by said city for the fire hydrants as aforesaid, the company shall give unto the said city at all times the free and unobstructed use for fire purposes, of any and all of the fire hydrants located, owned and maintained by said company as aforesaid, and the city and its proper officers and employees shall have the right at all times for the purpose of extinguishing

fires or filling sprinklers used for sprinkling the streets, and also for the city buildings and the care of the city fire apparatus and horses used by the fire department, to take water from said pipes and hydrants without any cost or charge to said city, over and above the annual rental as aforesaid, except that the city is to pay for any service pipe required for the purposes above mentioned, at cost.

20       SEC. 9. And that at all times, in case of fire alarm at the pumping works, the said company shall cause a sufficient pressure to be kept up at the fire hydrants in use, to throw six streams of water simultaneously out of one and a quarter inch nozzle a distance of one hundred and fifty feet on the general level of the city, and one hundred feet on the highest ground in the city except at a time of unusual and unavoidable casualties. That in the construction of said works the machinery and other fixtures used shall be of such a character and capacity as will furnish the necessary supply of water, excepting in time of unavoidable casualties as aforesaid, for domestic use and fire protection along said lines of main pipe.

SEC. 10. In consideration of said company furnishing free of charge, water for three city fountains, and for the purpose of encouraging the investment of capital in said Cedar Rapids Water Company, and to manifest the interest felt by the citizens in that enterprise, it is hereby declared that no city taxes shall be levied or collected on the works of said company, or on the stock or bonds issued thereby, or capital necessarily invested and employed in constructing and operating the same for seven years from the date hereof.

SEC. 11. Any person, not authorized by said company to turn water on fire hydrants, except said city or its proper officers and employees, for the purpose of extinguishing fire as aforesaid, shall be deemed guilty of a misdemeanor, and on conviction thereof before any court of competent jurisdiction, shall forfeit and pay a fine of not less than one nor more than one hundred dollars, or imprisonment for a length of time of not more than thirty days and cost of prosecution.

21       SEC. 12. Said company or its agents or employees properly authorized by said company, shall have the right to enter upon the premises of any consumer of water furnished by said company, for the purpose of examining the condition of the pipes and fixtures of said consumer, with a view to the prevention of wastage of water, and when found to be improperly used or wasted, on refusal or neglect to repair and remedy the defects causing said wastage, or for failure to use water in a proper manner, the said company shall have the right to shut off water and keep it shut off until satisfactory assurance is made to the company that such defects are remedied and that water shall be properly used. And the said company shall also have the right to shut off water from any person or premises on refusal or neglect to pay the usual water rents due; and the company also shall have the right to shut off water

from mains or distributing pipes for a reasonable length of time, for the purpose of putting down extension pipes or for repairs.

SEC. 13. The city council of said city shall, ~~during the life of the franchise hereby granted,~~ pass and enforce all ordinances, penal or otherwise, that may be necessary to carry out the provisions of this ordinance, and as are usual in such cases to protect the rights and interests of said company, and shall also pass and enforce such ordinances as may reasonably be required to preserve and maintain the purity of the water from whence the supply is taken. And the city council shall have power and authority to pass all necessary ordinances to compel said water company to perform its duties and obligations contained in this ordinance.

SEC. 14. And it is further agreed and understood that said water company shall, whenever the city council shall order, lay all necessary pipes for domestic purposes, whenever there shall be an equivalent of two tenements that will take water for every one hundred feet of pipe laid, and said company shall extend their  
22 mains across the Cedar river into the fourth ward of said city whenever the city council may direct after the first of April, 1876. And said city shall pay said company an annual rental of forty cents per lineal foot for that part of the main pipe laid in the Cedar river to the extent of seven hundred feet, and this seven hundred feet shall be in addition to the five and one-half miles of main pipes provided for in this ordinance, and all pipe laid in said city shall be of sufficient capacity to supply the requisite amount of water at all times for the purpose aforesaid, and the rates to be charged by said company for water furnished to consumers shall not exceed the average rates charged by the cities of Davenport, Clinton, Ottumwa and Des Moines.

SEC. 15. Said city hereby grants to and confers upon the persons named in section 1 of this ordinance and to their associates and assigns, who shall organize as a corporation under the name and style of the Cedar Rapids Water Company as aforesaid, all its rights, powers and privileges under any law of the State of Iowa, to condemn private property for the purpose of erecting thereon, maintaining or operating said water works, said company paying all costs and expenses thereof.

SEC. 16. That a failure to accept the franchise hereby granted in writing, within sixty days from the passage of this ordinance by said company, organized as aforesaid, shall forfeit all rights, privileges and franchises hereby granted, but if accepted by the company as aforesaid, this ordinance shall constitute and be regarded as a contract between the said city of Cedar Rapids and said company, and shall not be subject to amendment or repeal without the consent of both parties.

23 SEC. 17. It is hereby further provided that all the rental herein provided to be paid by the city to said company, shall be paid quarter yearly and rental for any pipe or hydrants shall commence when they are supplied with water ready for use.

SEC. 18. For the purpose of meeting the expenses to be borne by the city under this ordinance and of supplying the city with water as contemplated herein, a tax shall be levied each year so long as the contract contemplated by the ordinance shall continue in force, which tax shall be levied at the time and in the manner that the annual city taxes are levied and shall not exceed the rate of five mills on the dollar of the assessed value of the property to be taxed, and shall be levied upon such property within the city only as lies within the limits of the protection afforded by said water works, which limit, as well as the rate of such tax shall be fixed each year by the city council as the circumstance of the case may require.

SEC. 19. That in consideration of the rights and privileges herein granted unto said company the said city hereby reserves the right, at the expiration of the term of fifteen or of twenty years from the date of the passage of this ordinance, to take from the company the entire works together with its franchises and privileges, at a valuation then to be agreed upon in manner following, to-wit: Said city shall give the company in writing one year's notice of its intention to take said works as aforesaid, whereupon said city shall appoint two appraisers, and said company shall appoint two appraisers, and the four so chosen shall choose a fifth, and the five so selected shall proceed to value all machinery, pipes, franchises, buildings and material then on hand belonging to said company, and a decision of a majority shall be binding upon said city and said  
 24 company, and upon the payment of the amount so determined to said company, it shall at once deliver to said city all of its property; but it is hereby provided, in case the four appraisers chosen as aforesaid, shall refuse or neglect for thirty days after having been appointed, as aforesaid, to select a fifth, then and in that case either party may apply to the judge of the district court of this judicial district, who shall appoint the fifth appraiser, and it is also understood that a failure on the part of said company for thirty days to select the two appraisers as heretofore provided, shall authorize said city to apply to the judge of the district court, of this judicial district, who shall appoint said two appraisers as is provided for the fifth appraiser; and it is also understood that any disagreement between said city and said company shall be settled by arbitration, each party selecting one, and the two so selected to select a third, whose decision shall be final and conclusive between the parties, and said company shall also during the life of this franchise perform each and every condition specified in this ordinance or the same shall be liable to forfeiture.

A. B. HULL, *Mayor.*

Attest:

A. G. PLUMB,  
*City Recorder.*

Adopted February 19, 1875.