

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA.

.....
In the matter of the application of :
FULLERTON DOMESTIC WATER COMPANY, a :
corporation, for permission to sell : Application No. 596
its entire system to the City of :
Fullerton, Orange County, California. :
.....

S. M. Haskins for the Fullerton Domestic Water Company.
E. J. Marks for the City of Fullerton.

GORDON, Commissioner:

O P I N I O N .

This is an application by the Fullerton Domestic Water Company to sell its entire water system to the City of Fullerton. The City of Fullerton has joined in the application.

The application alleges that the City of Fullerton has undertaken to construct and acquire a municipal water plant and system, and that the City has voted to incur a bonded indebtedness of \$80,000 for this purpose; that the proposed municipal plant is intended to supply the entire city, including the portion thereof now served by the Fullerton Domestic Water Company; that on April 4, 1913, the City of Fullerton and the Fullerton Domestic Water Company entered into a contract of sale by the terms of which the city is to purchase from the Fullerton Domestic Water Company, for the sum of \$12,500, the entire water system of the latter, exclusive of bills receivable, free and clear of all incumbrances. A copy of this contract is attached to this opinion and order and marked "Exhibit A."

I am of the opinion that public convenience will be subserved by the granting of this application, and submit herewith the following form of order:

O R D E R.

FULLERTON DOMESTIC WATER COMPANY having applied to this Commission for permission to sell its entire water system to the City of Fullerton upon the terms and conditions contained in a certain contract of sale, executed on April 4, 1913, and a copy of which is attached to this order and marked "Exhibit A," and the City of Fullerton having joined in this application, and a public hearing having been held thereon,

IT IS HEREBY ORDERED That Fullerton Domestic Water Company be and it hereby is authorized to sell to the City of Fullerton, its entire water system in said city upon the terms and conditions set forth in that certain contract of sale entered into between the City of Fullerton and the Fullerton Domestic Water Company on April 4, 1913, a copy of which contract is attached to this order.

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 15th day of August, 1913.

H. S. Howard

Mr. Gordon

Max Thelen

Edwin O. Edgerton

Commissioners.

EXHIBIT "A."

A G R E E M E N T .

THIS MEMORANDUM OF AGREEMENT made and entered into this 4th day of April, 1913, by and between the CITY OF FULLERTON, a municipal corporation of the Sixth Class, of Orange County, California, acting by and through its duly authorized officers, the party of the first part, and the FULLERTON DOMESTIC WATER COMPANY, a corporation organized and existing under and by virtue of the laws of the State of California, acting by and through its duly authorized officers, the party of the second part:

W I T N E S S E T H .

That for and in consideration of the promises, payments and covenants to be paid, kept and performed by the party of the first part, the party of the second part does hereby agree to sell and convey unto the party of the first part, and the party of the first part agrees to buy all that certain real and personal property in the City of Fullerton, County of Orange, State of California, described as follows, to-wit: Lots 13, 14 and 15 in Block 2 of the "Townsite of Fullerton," as appears on a map thereof recorded in Book 2 at pages 3 et seq., of the Miscellaneous Records of Los Angeles County, California, together with the buildings, machinery, tanks, appurtenances and fixtures thereto; and also all the pumps, tanks, motors, transformers, belting, electric equipment, air compressors, distributing mains and pipes; service mains, meters, hydrants, tools, fittings, supplies, pipe and all other tools, machinery and personal property, exclusive of bills receivable, belonging to the party of the second part and used by it in its domestic water company, pumping station and distributing system in the City of Ful-

lerton, County of Orange, State of California, together with its right to operate a water system in said City of Fullerton for the sum of Twelve Thousand Five Hundred Dollars (\$12,500.00), which the party of the first part promises and agrees to pay to the party of the second part as follows, to-wit: The sum of Five Hundred Dollars (\$500) on or before May 1, 1913; the sum of Three Thousand Dollars (\$3000) on or before January 1, 1914; the sum of Five Thousand Dollars (\$5000) on or before January 1, 1915, and the balance of Four Thousand Dollars (\$4000) on or before January 1, 1916. All deferred payments shall bear interest at the rate of six per cent (6%) per annum from May 1, 1913, interest to be computed on each January first during the life of this contract, and to be paid on or before the final payment made on January 1, 1916.

It is further agreed that the party of the first part shall take possession of the said property hereinbefore described, and of the water works pumping and distributing system of the party of the second part on the First day of May, 1913, and shall operate said system until the Municipal Water Works System of the City of Fullerton is in operation; it being expressly understood, however, that title to said property shall not vest in the party of the first part until the delivery of conveyances of such property by the party of the second part to the party of the first part as hereinafter provided.

It is further agreed, that all bills, accounts, debts of the party of the second part, up to the first day of May, 1913, shall be paid and discharged by the party of the second part, and the party of the second part shall hold the party of the first part harmless by reason of the existence of any such obligations; and the party of the second part further agrees to pay and cause to be released and cancelled of record, its bonded indebtedness and the deed of trust securing the same, on or before

the first day of August, 1913, it being understood that the principal and interest already accrued and hereafter to accrue on said bonded indebtedness, shall be fully paid and discharged by the party of the second part.

It is further agreed, that from and after the first day of May, 1913, the City of Fullerton does hereby release the party of the second part from all obligations to furnish water to it and its citizens for fire protection, under the provisions of a certain agreement between the parties hereto, and the party of the second part does hereby release the party of the first part from any obligation to pay the rental or charges for said fire protection service from and after the date last aforesaid;

It is further agreed, that all unpaid bills for water sold and furnished by the party of the second part to its consumers up to the first day of May, 1913, shall be and remain the property of the party of the second part, and that the party of the second part shall deliver to the party of the first part an itemized and exact statement of the said bills and accounts, and that the party of the first part shall, where possible, collect the same for the party of the second part, and shall render to the party of the second part a monthly account any payment of said collections made during the prior month, the party of the first part using the same diligence to collect said bills as it may hereafter use in collecting the bills for water sold and supplied by it.

The party of the first part shall have the right and privilege to take up any or all hydrants and pipe lines hereinbefore described, and to remove the motors, pumps, electric equipment, tanks, buildings and pumping machinery from the real property hereinbefore mentioned, and to take up and remove any of the other property agreed to be sold hereunder, and to sell or otherwise dispose of the same at such prices as to it may seem just

and reasonable, its officers being the sole judges of the reasonable value and selling price of any or all of said property. It shall also have the privilege of selling any part or all of the real property hereinbefore described, it being understood and agreed, however, that the net receipts received by the party of the first part for the sale of any or all of the property hereinbefore mentioned, after first deducting the cost of putting the same into a condition to be marketed, and any necessary expenses of sale, shall be paid to the party of the second part. The first One Thousand Dollars (\$1,000.00) realized from any such sales shall be applied on the payment due January 1st, 1914; the balance of the money so realized shall be credited on the last payment due hereunder. When payments are made on account of the said purchase price, interest on the amounts of such payments shall cease.

It is expressly understood and agreed, however, that no part of such property, either real or personal, shall be sold without giving the party of the second part an opportunity to purchase the same. Whenever it is proposed by the party of the first part to sell any of said property, it shall give notice in writing to the party of the second part, delivered at the office of Torrance, Marshall & Co., Los Angeles, Cal., giving the term of such sale, a brief description of the property proposed to be sold and of the purchase price to be received therefor. Within twenty-four hours after the receipt of such notice, the said party of the second part shall have the right and option to purchase such property for the sum specified in such notice.

It is further agreed that should the party of the first part so sell or dispose of any of the property hereinbefore mentioned, that the party of the second part, at the time of such sale, will make, execute and deliver to the party of the

first part, or to its vendee a good and sufficient bill of sale to any of the personal property hereinbefore mentioned, and a good and sufficient deed to the real property hereinbefore described, and will cause to be executed a good and sufficient certificate of title, showing the title of said real property to be in the party of the second part, free and clear of all incumbrances, excepting the taxes and assessment hereinafter mentioned, and saving and excepting anything done or suffered to be done by the party of the first part.

It is further agreed, that the party of the first part shall pay all taxes and assessment of every name, kind and nature levied upon said property that may become a lien thereon after the first day of May, 1913, including taxes for the fiscal year 1913-1914 not yet payable, and including the assessment on the said real estate hereinbefore mentioned which was levied by the City of Fullerton under the provisions of the "Local Improvements of 1901" for the construction of the sewer system in the City of Fullerton.

This sale shall be subject to the approval of the Railroad Commission of the State of California, and the party of the first part agrees to assist the party of the second part in presenting the facts of the sale to the Railroad Commission so that it may fully and fairly understand the same.

It is further agreed that after the payments aforesaid shall be made by the party of the first part to the party of the second part, according to the terms and conditions hereof, that the party of the second part will execute and deliver to the party of the first part a good and sufficient conveyance of the property hereinbefore described which has not been theretofore sold, conveying the title of said property to the party of the first part, free and clear of incumbrances, except as hereinbefore provided, but if the party of the first part shall fail to make

any of said payments at the time and in the manner herein specified, the party of the second part shall be released from all obligations, either in law or in equity, to convey said property, and the party of the first part shall forfeit all interest in the said property and to all money paid hereunder.

It is further agreed that should the party of the first part fail to make any of said payments at the time and in the manner herein specified, and to perform all of the conditions of this contract on its part to be performed, and if this contract be forfeited by the party of the second part according to the provisions hereof, that the party of the second part shall then and there have the right and privilege to re-enter the streets, alleys and public places of the City of Fullerton, now used and occupied by its distributing system, and to re-lay and re-construct its distributing system where the same has been taken up by the party of the second part, and to operate the system for the distribution of water for domestic purposes in the City of Fullerton, under the same conditions and with the same rights and privileges that it would have had under the provisions of the Constitution of the State of California had these presents not been executed, and it may in such an event re-take possession of any of the property hereinbefore described, to be sold to the party of the first part hereunder (except such property as may have been sold by the first party as hereinbefore provided), and such property shall thereupon automatically become the property of the party of the second part. The failure of the party of the first part to operate said water system before the same shall have again come into the possession of the party of the second part, shall not be considered as a forfeiture of the right and privilege of the party of the second part to resume the operation of said system, and thereafter to furnish said City and its inhabitants with water.

It is further agreed that if the party of the second part shall again acquire said water plant and system as hereinbefore provided, the party of the first part, if permitted by law, shall grant to the party of the second part a franchise to lay and construct, and for a period of fifty years to operate and maintain, a system of water pipes in all of the streets and other public places of said City for the purpose of supplying said City and its inhabitants with water for municipal and domestic purposes. If the party of the first part is not empowered by law to grant such franchise directly to the party of the second part, said party of the first part shall, upon application for such franchise by the party of the second part, advertise for sale such franchise, and shall sell the same to the party of the second part if it is the highest bidder therefor.

It is further agreed that should the party of the first part use any of the property hereinbefore described in its municipal water system, that it shall furnish to the party of the second part an itemized account showing the amount of such property used and the exact location in the streets and alleys in which and where said property is used, and the party of the first part agrees to furnish to the party of the second part a detailed statement showing any property hereinbefore described that it takes up or removes from its present location when the same is so taken up and removed.

IN WITNESS WHEREOF, the party of the first part has caused these presents to be executed by the President of its Board of Trustees, and its City Clerk, and its corporate seal to be attached by a motion of its Board of Trustees duly passed on the 7th day of April, 1913, and the party of the second part has caused these presents to be executed by its president and its secretary, and its corporate seal to be attached

by a motion of its Board of Directors duly passed on the 7th
day of April, 1913.

CITY OF FULLERTON

By E. S. Rickman,
President of its Board of Trustees.

By C. A. Giles
Its City Clerk.

FULLERTON DOMESTIC WATER COMPANY

By E. C. Sterling
Its President

By D. H. Armstrong
Its Secretary.