

INST NO **075694**
POLK COUNTY, IOWA
FILED FOR RECORD

See Memo

P-D/A
5681/289

JUN 15 1987

No Fee

AT *1:14*
TIMOTHY J. BRIEN, Recorder
By *T. Carnwell*, Deputy

5-5-87

TOTAL SERVICE CONTRACT

THIS AGREEMENT, made and entered into as of the 1st day of June, 1987, by and between POLK COUNTY, acting by and through its BOARD OF SUPERVISORS, hereinafter sometimes called "County", and DES MOINES WATER WORKS, acting by and through its BOARD OF WATER WORKS TRUSTEES, hereinafter sometimes called "Water Works".

WITNESSETH:

THIS CONTRACT IS MADE UNDER AND SUBJECT TO THE FOLLOWING CONDITIONS:

A. This agreement is made in furtherance of those certain agreements between Polk County, the City of Des Moines, and Des Moines Water Works; and the City of Des Moines and Des Moines Water Works, recorded, respectively in Book 5681 Page 289 and Book 5681 Page 297 in the office of the Polk County Recorder. This agreement shall be construed consistently with those agreements.

B. This contract involves the use of water outside the territorial limits of the City of Des Moines from the water works system and plant owned and controlled by the Water Works. Water Works has authority to own and operate a water service facility in the control service area.

C. Exhibit "A" attached hereto and made a part hereof describes the territory hereinafter referred to as the "Contract Service Area". The County has the statutory authority to own, construct, acquire, and operate a water system or delegate the same by contract in the contract service area.

D. The County finds that the making of this contract will provide for the most satisfactory and dependable water supply and service available to furnish water for current use and continued development within the contract service area.

E. The securing of an adequate water supply for the future growth of the Des Moines metropolitan area is necessary and of mutual advantage to the parties hereto and the users they serve. The County recognizes that users have a responsibility to participate in the development and funding of water projects required for provision of water service within the County's service area and within the Des Moines metropolitan area. It is further recognized no improvements made in the contract service area will be funded by revenues generated from Water Works customers outside the service area.

NOW, THEREFORE, for and in consideration of the premises and the covenants and agreements to be kept and performed by the parties hereto as hereinafter set forth, it is agreed by and between the Water Works and the County as follows:

1. The Water Works agrees to furnish water within the contract service area for all uses and purposes in accordance with a Water Facility Plan, Construction Schedule, Rate Schedule Methodology, and other items including but not limited to those in Section 19 all of which shall be called the "Plan". The Plan shall be developed cooperatively between the Water Works and the County. The Plan may be amended from time to time so as to provide water service of a quality, and in quantities similar to that furnished inside Des Moines, without any discrimination against users in the contract service area as against the water service furnished users inside Des Moines, except as specifically identified by the terms of this contract. Except as herein permitted, the water service so rendered by the Water Works shall be pursuant to the same policies and standards as if the contract service area were inside

Des Moines. It is agreed that all water service provided under this contract shall be in conformance with the ICA 208/201 sewer plan and any growth management plan jointly developed and adopted by both the County and the City of Des Moines. The Water Works agrees to at least annually, or at such other time as may be requested, furnish to the County a status report on total system capacity, consumption and remaining capacities of water within the contract service area.

2. The County and Board of Supervisors acting as Trustees of Benefited Water District #78, grants to the Water Works the title and right to use, connect, disconnect, modify, renew, extend, enlarge, replace, convey, abandon or otherwise dispose of any and all of the pipes and other devices including fire hydrants for distributing water to users within the contract service area, now owned, or hereafter acquired by the County; providing such performance by Water Works is in conformance with Section 1 through and including 14. For purposes of this contract all pipes and other devices including fire hydrants used for distributing water to users within the contract service area shall hereinafter be referred to as "water service facilities". The County agrees to provide the Water Works with a written inventory showing original plant value and accumulated depreciation for purpose of determining cost of service of all said water service facilities it now owns or controls prior to the date of assumption of rights and duties of service by the Water Works as set forth herein. The County agrees that it will not, during the term of this contract, interfere with the exercise or performance by the Water Works of its rights and obligations hereunder. The County grants subject to the Water Works obtaining necessary County permits the right to occupy any place, public or private, which the County might occupy for the pur-

pose of fulfilling the obligations of the Water Works as set forth in paragraph one hereof. Emergency repair constituting a safety or health hazard shall be allowed without previously obtaining a permit, so long as the Water Works provides immediate notification of such emergency to the County. The County agrees to assist the Water Works in the acquisition of such easements as may be required in such instances where the facilities are situated on private property or the easement is not of sufficient size to allow operation of the facility. To implement the purposes of this contract the County agrees to exercise such authority, and to do such acts as may be requested by the Water Works from time to time and subsequently ratified by the County to implement the plan, provided that any legal, engineering, technical or other services required for the performance of this obligation shall be performed by a person or persons in the employment of and paid by the Water Works.

3. Subject to receipt by the Water Works of appropriate rates, charges, fees, tolls, or combinations thereof, as set forth in paragraph four below, the Water Works agrees to maintain all water service facilities it owns or which come under its dominion hereunder with reasonable and normal care to the extent that such maintenance is necessary to the furnishing of the water service provided for hereunder and to construct, operate, maintain and keep a complete inventory of such additional physical facilities as are necessary or desirable to accomplish the obligations it has undertaken for the County, as set forth in paragraph one hereof. The concept "maintain" is intended, for practical purposes, to include the concept of required replacement. However, the Water Works is not a guarantor of water supply or water availability.

4. The Water Works may establish, revise, impose and collect charges for the water service it provides users in the contract service area hereunder, which charges shall be referred to as "water service charges". In addition, the Water Works may at any time impose or discontinue system participation charges, and such other rates, fees, tolls, charges or combinations thereof, which are utilized for any purpose, including granting a water user the right to take water through the water system the Water Works owns or controls in the contract service area which charges shall be referred to as "water connection charges". Water Works is obligated to grant a water user the right to take water through the system for any user lawfully permitted in the contract service area as long as such use does not violate service standards developed in Section 19. Water service charges and water connection charges are separate charges and one does not include the other or any part thereof. Water connection charges shall be uniform among members of each class of users within the contract service area for the type of service being provided. Methods of collection and water connection charges for the right to take water in the contract service area outside Des Moines shall be determined by the Water Works from time to time as circumstances require, and based upon cost of service. The County agrees to exercise all of its power and authority necessary to implement the plan for imposition and collection of charges for water service and water connections within the contract service area to the extent necessary to enable the Water Works to impose and collect its charges for water connections and water service hereunder in the contract service area.

5. It is mutually agreed that the duration of this contract is such that the passage of time will require changes in the charges to be made for the water service to be rendered hereunder in the contract service area, and that the most feasible way to insure fairness will be to determine rates based upon the cost of service for the area served; provided, however, the Water Works shall be obligated to exercise this right uniformly and by the same methods of calculation among all areas served by the Water Works. It is therefore agreed that the Water Works may modify the schedule of charges for water service provided hereunder, from time to time, in its discretion, provided:

- a. Such modification or changes are consistent with the Plan.
- b. Such modification or changes will become effective not earlier than three (3) months after any changed schedule of charges shall be adopted by the Water Works.

6. All the general rules and regulations and amendments thereto placed in force by the Water Works from time to time, concerning the operation of the Des Moines Water Works System and conditions of service from that system shall be as fully enforceable in the contract service area as inside Des Moines.

7. Both parties to this agreement recognize that the water supply for the Des Moines metropolitan area is dependent upon natural resources from which the supply is variable in quantity and beyond the control of the Water Works. No liability shall attach to the Water Works hereunder on account of any failure to accurately anticipate availability of the water

supply or because of an actual failure of the water supply due to inadequate runoff or occurrence beyond the reasonable control of the Water Works. If conditions develop such that it becomes apparent to the Water Works that all areas for which a water supply has been committed cannot be supplied adequately pursuant to this and similar contracts, the Water Works reserves the right to discontinue the granting of additional taps hereunder; provided, however, the Water Works shall be obligated to exercise this right of discontinuance uniformly to all water customers in all service areas or jurisdictions with water supplied solely by Water Works.

8. The parties agree that the Water Works may, in times of shortage, limit the delivery of water and restrict its use provided, however, the Water Works shall be obligated to exercise this right uniformly among all areas served solely by the Water Works.

- a. Restriction of uses (such as irrigation) which can be accomplished without serious injury to person or property and prohibition of non-essential uses.
- b. Prohibition of irrigation except for commercial greenhouses.
- c. Prohibition of every use except for domestic use and for essential commercial enterprises, and industry.
- d. Prohibition of all use except domestic uses.

9. In order to reduce the likelihood of the limitation of delivery or restriction of use of water in the metropolitan area dependent upon Water Works for a water supply, the Water Works may suspend the making of new main extensions and taps; provided, however that the Water Works shall be obligated to exercise this right of suspension uniformly among all areas

supplied solely by the Water Works. The Water Works agrees to give six months written notice to the County of such suspension, unless circumstances require a shorter period.

10. All water furnished by the Water Works in providing water service hereunder is on a leasehold basis for the use of water users in the contract service area for all the various purposes for which the Water Works has the right to appropriate water. Such right to use water by said water users does not include any right to make a succession of uses of such water and upon completion of the primary use by the water users all dominion over the water so leased reverts completely to the Water Works. Except as herein specifically otherwise provided, all property rights to the water to be furnished by the Water Works hereunder are reserved in the Water Works, provided, however, that nothing herein shall be deemed or construed as creating an obligation on the Water Works to separate said water from any material added to it in use by the water users or as creating any obligation on the Water Works regarding purification of the total mass after use by the water users. Nothing contained herein shall be deemed to impose on the County or the water users any obligation by virtue of this contract for the purification of water after use by the water users, any such obligation, if it exists, being such as may arise without respect to anything contained in this contract. It is mutually agreed that there is no obligation on the County or on the water users with respect to creating any particular volume of return flow from water delivered hereunder.

11. Public fire hydrants shall be installed by the Water Works at its expense in the due course of business in the contract service area, according to standards of the associated fire departments. Private fire hydrants may be installed at locations other than those dictated by said standards of effectiveness. All fire hydrants shall be installed pursuant to the Water Works' rules, regulations, and standards.

12. All water service facilities installed or replaced by the Water Works in the contract service area shall be installed pursuant to its rules, regulations, and standards. Said facilities shall be the property of the Water Works.

13. Water Works and the County will consider amendments to the Plan annually or at such other intervals as from time to time may be necessary encompassing but necessarily limited to the following:

- a. Any changes in Capital improvements for water service facilities, construction schedule, cost estimate and method of financing.
- b. Any changes in the method of calculation of user charges.
- c. Changes to the general rules and regulations.
- d. Specific requests for the County to use its police powers and its power of eminent domain.
- e. Inclusion of any surcharges or user fees requested by the County such as but not limited to ICA Sewer Charges, Solid Waste fees, Economic Development fee, etc.
- f. Any changes to design and construction standards.

14. The County agrees that notwithstanding any other provisions of this Agreement, there shall be no extension made, taps permitted or expansions of the service area which would cause a violation of the ICA 208/201 sewer plan or any growth management plan jointly developed and adopted by

both the County and City of Des Moines. County covenants that any request to the Water Works for a tap, main extension or other expansion of service shall, whether expressed or not, be considered a certification by the County that such expansion of service does conform with any such plans. Until such time as it shall be ordered otherwise by a court of competent jurisdiction Water Works shall act in accordance with such certification.

Nothing herein contained shall be taken or construed as giving to the Water Works any control over growth or development within the contract service area which is certified by the County as consistent with the plan and which does not lower service below the standards established in Section 19 (f) of this Agreement.

15. The County agrees that it will neither directly nor indirectly furnish, nor authorize the furnishing, of any water service within the contract service area or through use of any of its facilities except as herein provided.

16. This contract shall remain in force until January 1, 2007 and thereafter extended as may be mutually agreed, unless terminated in accordance with Section 17.

17. Default. It shall be an event of default hereunder should either party substantially fail to keep and perform the covenants herein assumed by it and should such failure remain uncorrected, or should the parties so failing not have taken affirmative steps to correct such failure, within a period of 30 days after notice of such failure. It is recognized that the party not in default may have no adequate remedy at law in the event of default, and it is, therefore, agreed that the party not in default may, if it so elects,

proceed by action in equity for such remedies as may be available to it, including, without limitation, specific performance, mandatory injunction, or prohibitory injunction.

Additionally, and should it be the Water Works in default, the County may recover the water facilities transferred or constructed pursuant to this contract within the contract service area at no cost other than the assumption by it of any outstanding indebtedness that might have been incurred for the construction of such facilities and any unrecovered costs of such facilities on the books of the Water Works should the Water Works have financed their construction in whole or in part with its own funds. Further in that event, Water Works agrees that the County may, for a period of not to exceed five years, purchase water for use in the contract service area at the wholesale rate in force from time to time for Water Works' similarly situated customers.

18. This agreement supersedes any other former water supply contract existing between the parties hereto or water districts now under the control of the County within the Contract Service Area.

19. The County's obligations pursuant hereto, including the transfer of all water facilities currently owned by the County to the Water Works shall not take effect and this agreement shall be null and void unless prior to October 1, 1987, the Water Works shall have:

- a. Provided Polk County with a construction schedule for all improvements outlined in the adopted SayDel Water Facility Plan or amendments as negotiated by the Water Works and the County.
- b. Provided evidence to the County as to the financing methods to be utilized in the construction of said Water Facility Improve-

- ments in the service area for approval by the County.
- c. Provided the methodology of calculation of rate schedule for water service connection and water charges for approval by the County.
 - d. Provided in writing, specific requests for the County to exercise its power and authority necessary for the imposition and collection of charges for water service and water connections or other acts the Water Works considers essential to the operation of the system for the County's consideration and approval.
 - e. Provided to the County copies of all rules, regulations and standards which would be utilized in the service area by the Water Works.
 - f. Provided to the County, interim design and service standards to be utilized in the contract service area by the Water Works for the County's consideration and approval.

IN WITNESS WHEREOF, the parties have executed this agreement.

POLK COUNTY BOARD OF SUPERVISORS

By Martin Whittits
Chairman

ATTEST:

Mary Reese
Deputy Auditor

Address _____

Telephone _____

DES MOINES WATER WORKS,
ACTING BY AND THROUGH ITS
BOARD OF WATER WORKS TRUSTEES

ATTEST:

A.D. McMullen
General Manager

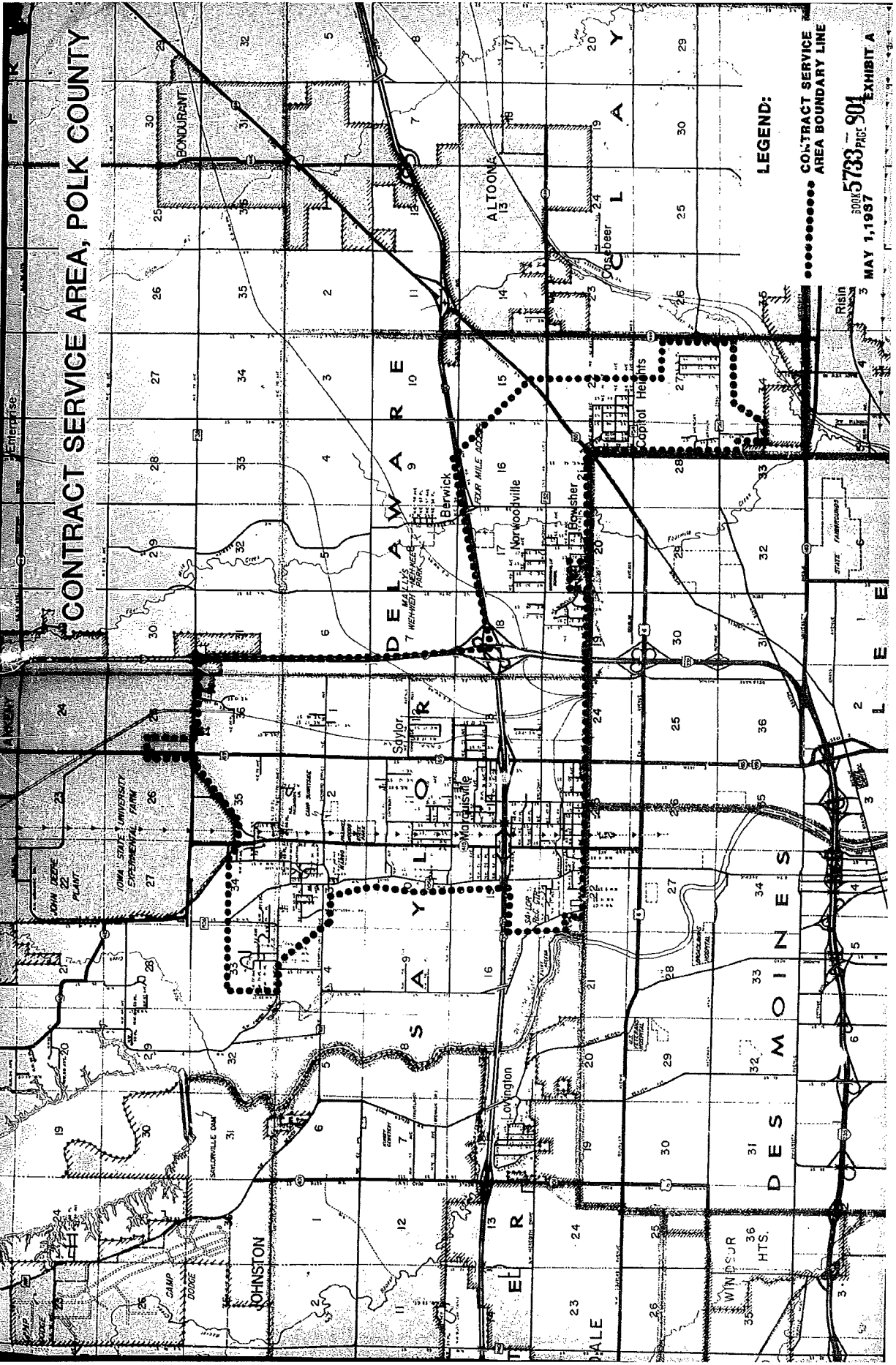
By Bob Gouge
Chairperson

POLK COUNTY WATER DISTRICT #78

Martin Whittits

ATTEST:

Mary Reese
Deputy Auditor



CONTRACT SERVICE AREA, POLK COUNTY

LEGEND:

..... CONTRACT SERVICE AREA BOUNDARY LINE

30015733-901
MAY 1, 1987

EXHIBIT A