

Sponsors:	<u>Commissioner Bennett</u>
	<u>Commissioner Stewart</u>
Second Reading:	<u>February 28, 2022</u>
Publication Date:	<u>March 10, 2022</u>

ORDINANCE NO. 2022-005

AN ORDINANCE OF THE CITY OF FRANKLIN, KENTUCKY APPROVING A WATER PURCHASE CONTRACT WITH THE SIMPSON COUNTY WATER DISTRICT AND AUTHORIZING THE MAYOR TO SIGN

WHEREAS, the City of Franklin and the Simpson County Water District have reached an agreement with regard to the City providing water to the Simpson County Water District for resale to its customers, and the City shall also have the ability to purchase water from the Simpson County Water District, if and when needed; and,

WHEREAS, in order to fully approve the agreement, the City of Franklin requires the passage of an Ordinance approving said Water Purchase Contract and authorizing the Mayor of the City of Franklin to execute said contract; and,

WHEREAS, it is in the best interest of the citizens and residents of the City of Franklin for the City to adopt this Ordinance.

NOW, THEREFORE, be it ordained by the City of Franklin, Kentucky, acting by and through its Board of City Commissioners, as follows:

1. The Board of City Commissioners of the City of Franklin, Kentucky hereby approves the terms and conditions of the Water Purchase Contract by and between the City of Franklin and the Simpson County Water District, a copy of which is attached hereto and incorporated herein by reference.
2. The Board of City Commissioners hereby authorizes Mayor Larry Dixon to execute (or ratify his signature to the extent necessary or required on) any and all documents necessary and appropriate to effectuate the intent of this Ordinance and the Water Purchase Contract including, but not limited to the contract.

If any section, subsection, sentence, clause, or phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate distinct, and independent provision and such holding shall not affect the validity of the remaining portions.

All ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

February 14, 2022

FIRST READING

February 28, 2022

SECOND READING

At a meeting held on February 28, 2022, on motion made by Commissioner Bennett and seconded by Commissioner Stewart, the foregoing ordinance was adopted, after full discussion, by the following vote:

Yes BROWNIE BENNETT

Yes WENDELL STEWART

Yes LARRY DIXON, MAYOR

Yes HERBERT WILLIAMS

Yes JAMIE POWELL

APPROVED BY:

Larry Dixon Mayor
LARRY DIXON, MAYOR
CITY OF FRANKLIN, KENTUCKY

ATTEST:

Cathy Dillard
CATHY DILLARD, CITY CLERK
CITY OF FRANKLIN, KENTUCKY

WATER PURCHASE CONTRACT

This **WATER PURCHASE CONTRACT**, made and entered into this 1st day of MARCH, 2022, by and between **CITY OF FRANKLIN** ("Franklin") and the **SIMPSON COUNTY WATER DISTRICT** ("District").

WITNESSETH:

WHEREAS, Franklin and the District have determined that it is their mutual best interest for Franklin to sell the District water and;

WHEREAS, Franklin desires to have the District provide water in a case of emergency.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and the benefits to be derived by the parties hereto, Franklin and the District agree as follows:

1. **Effective Date of Contract.** The Existing Contract is amended and superseded by this instrument, and this Amended and Restated Water Purchase Contract ("this Contract") will be effective as of the date of approval of this Contract in accordance with Paragraph 16 below.

2. **Term.** This Contract shall extend and be in force and effect for an initial term of forty (40) years from the effective date, and thereafter the District is granted an option to renew or extend this Contract under the same terms and conditions for an additional twenty (20) year period, provided written notice of the District's intention to exercise this option to extend is given to Franklin at least two (2) years before the expiration of the initial term.

3. **Quality and Quantity.** During the term of this Contract and any renewal or extension thereof, Franklin shall without limitation, deliver up to one million gallons per day of water as required by the District, so long as neither party is in default hereunder.

Franklin shall furnish to District at the point of delivery hereinafter described, potable treated water with a minimum free chlorine residual of 0.7 parts per million

(hereinafter “ppm”) meeting all applicable standards for quality imposed by any Federal or Commonwealth of Kentucky agency having jurisdiction over the quality of public drinking water, in amounts sufficient to meet present and expanded future needs of the District. The point of delivery will be the water treatment plant located at 1350 E. Cedar Street, Franklin, KY 42134.

Deliveries of water at the delivery point shall be at no less than 40 pounds per square inch (hereinafter “psi”) unless another minimum pressure is agreed to in writing by the parties. The District agrees to maintain water storage facilities and operate its system in a manner such that its maximum rate of water flow at the point of delivery shall not exceed 1,000 gallons per minute unless agreed to in writing by both parties.

Both Franklin and the District understand the importance of water quality throughout the systems and the emphasis on disinfection byproducts reduction. Franklin agrees to make reasonable efforts to provide the District with water that does not exceed 50% of the established minimum contaminant level (MCL) at the point of delivery for all disinfection byproduct levels set by Federal or Commonwealth of Kentucky agencies having jurisdiction.

4. **Easement and Access to Facilities.** Franklin agrees to provide easement and access to facilities constructed by the District for the purchase of water. The design, permitting, construction, and inspection of facilities, including metering, pumping, and appurtenances for the purchase of water, shall be performed by the District and all costs associated with the construction of facilities shall be borne by the District. As a part of the design of facilities, the District shall include the ability to provide water to Franklin on an emergency basis. Franklin shall be responsible for the cost of construction of any additional piping, controls, valves or other appurtenances required to provide Franklin water. Franklin shall have the right to review and approve connection, metering, and emergency service design and construction.

5. **Initial Rate, Cost Allocation and Rate Design Requirements for Future Rates.** For treated water purchased by the District from Franklin, the District shall pay Franklin an initial rate of \$1.9794 per thousand gallons for water purchased. This rate is comprised of

components for operations, maintenance, and equipment expense as shown on **EXHIBIT A** incorporated herein by reference.

For water supplied by the District to Franklin on an emergency basis, the rate will be established after the completion of the pumping and transmission improvements required for the connection to Franklin anticipated to be in 2024. The rate will be comprised of the current wholesale rate from White House Utility District plus pumping and transmission costs as allocated based on a proportionate inch-feet basis.

Each rate will be recalculated at the end of 2026 and thereafter on a bi-annual basis at the end of every even numbered year during the initial term and any extended term of this Agreement. The recalculation of the rate shall be based on audited financial results prepared in accordance with Accounting Pronouncements as presented by the Government Accounting Standards Board or on the basis of audited financial results prepared in accordance with Generally Accepted Accounting Principles and documented historical water flows from prior agreement years in the manner set forth in **EXHIBIT A**.

6. **Future Bi-annual Rate Adjustment.** Rates for future periods shall be reestablished and redefined on a bi-annual basis at the end of each even-numbered year by each utility. Each utility shall notify in writing the other at least ninety (90) days in advance of any proposed rate adjustment. Should a utility fail to give the required ninety (90) days' advance written notice of a proposed rate adjustment, the rate established and in effect for the previous bi-annum shall remain in effect for the next two-year bi-annum otherwise agreed in writing by both utilities. The written notice given by either utility to make a rate adjustment for the next bi-annum shall be accompanied by the amount of the proposed rate and a copy of the calculations supporting its derivation in the format illustrated in **EXHIBIT A**. Adjustments of District rates shall take effect only at such time as the corresponding "pass through" adjustment of District retail rates and wholesale rate is effective and approved (as required) by the Kentucky Public Service Commission. The District shall exercise due diligence in securing such approval from the Kentucky Public Service Commission.

7. **Metering Equipment.** The District will furnish, install and operate at the point of delivery the necessary metering equipment, including meter houses or pits, and required devices of standard type and appropriate sizes for properly measuring water quantity while minimizing pressure loss through the meter. Meters shall be checked and verified for accuracy at least once every twelve (12) months. All meter tests shall be coordinated and witnessed by representatives of each utility. Whenever it shall be deemed necessary or whenever requested by Franklin (not to exceed two times per year), the District shall test the meter for accuracy. A meter registering not more than two percent (2%) above or below the test result shall be deemed to be accurate. The previous reading of any meter disclosed by the test to be inaccurate shall be corrected for the six (6) months prior to such test in accordance with the percentage of inaccuracy found by such tests. If any meter fails to register for any period, the amount of water furnished during such period shall be deemed to be the amount delivered in the corresponding month(s) of the year immediately prior to the failure unless Franklin and the District agree upon a different amount. An appropriate official of each utility, at all reasonable times, shall have access to the meter for the purpose of verifying its readings and monitoring usage by daily readings or remote telemetering. The cost of remote reading equipment or SCADA access shall be borne by the utility requiring access. Should both utilities require such access, the cost of any common equipment, software, or services shall be divided equally to each utility. The unit of measurement for water delivered shall be gallons of water, U.S. Standard Liquid Measure, and all measuring devices shall, unless the parties agree otherwise, be so calibrated.

8. **Billing Procedure.** Franklin shall furnish the District, not later than the tenth (10th) day of each month, with a bill for the amount of water furnished to the District for the period covered by the last preceding meter reading (normally taken on the last working day of each month). Should Franklin utilize emergency supply services from the District, the billing procedures described above shall be used. Neither utility shall require a monthly minimum bill.

9. **Invoice and Payment Date.** The District shall pay Franklin, not later than the last day of each month, for water billed to the District on the tenth (10th) of the month as

provided above. Payment shall be deemed, for purposes of this Contract, to have been made when mailed or, in the option of the District, when delivered, if delivered in person. Should Franklin utilize emergency supply services from the District, the invoice and payment date described above shall be used.

10. Failure to Deliver Water; Force Majeure; Contract Limitations.

a. Franklin will take such action as may be necessary to furnish the District with such quantities of water as provided herein. Temporary or partial failures to deliver water shall be remedied with all possible dispatch. In the event of a shortage of water or supply of water available to Franklin, except as described in subsection (b) below, the supply of water to the District shall be reduced or diminished in the same ratio or proportion as the supply to all of Franklin's other water consumers is reduced or diminished based on the percentage share of total usage occurring in the most recent consecutive twelve month period prior to the limitation notification.

b. Should Franklin receive notification from any authority having jurisdiction to limit the amount of water Franklin can withdraw from its water supply source, Franklin shall immediately notify the District of receipt of such notification. Should the combined projected demands of the District and Franklin's other customers (as required from each party in Section 23) exceed such limitations, then the withdrawal limitation shall be ratably allocated between the District and all of Franklin's customers on the basis of the percentage share of total usage occurring in the most recent consecutive twelve month period prior to the limitation notification. Any limitation described in this subsection (b) shall be deemed to constitute an Adverse Governmental Action, as described in subsection (d) below.

c. In case Franklin by reason of Force Majeure shall be rendered unable wholly or in part to carry out its obligations under this Contract, then if Franklin shall promptly notify the District, the obligation of Franklin to deliver water, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and Franklin shall be required to resume performance of its obligations under

this Contract upon the termination of the aforementioned Force Majeure; provided, however, Franklin shall use its best efforts and act in good faith to avoid, overcome or minimize the impediment. As used herein, the term “Force Majeure” means an occurrence that is beyond the control of Franklin to predict or prevent and which affects the duty and obligation of Franklin to deliver water to the District hereunder, which duty and obligation shall be suspended while and so long as performance thereof is prevented or impeded. Force Majeure shall include, but not be limited to the following: (i) physical events such as acts of God; (ii) acts of others, such as riots, sabotage, insurrections or wars; and (iii) governmental actions, such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction.

d. The terms and conditions of this Contract and mutual covenants made between the parties are based upon existing law as of the date of this Contract. All terms and conditions contained herein are intended to be absolute conditions hereof and are agreed to by the parties. In the event any governmental or regulatory authority asserting jurisdiction (i) imposes price controls on the sale of water that materially and adversely affect either of the parties rights hereunder (which shall include the failure of the Kentucky Public Service Commission to approve any retail rate adjustment required by a rate adjustment hereunder), or (ii) prohibits or prevents to a material extent (a) the transaction described in this Contract, or (b) the delivery of the water to be delivered hereunder (each of the events described above being referred to herein as an “Adverse Governmental Action”), or if a governmental authority declares that an Adverse Governmental Action shall be effective on a future date, then the party affected by such Adverse Governmental Action (the “Affected Party”) promptly shall notify the other party of such Adverse Governmental Action. Franklin and the District shall then promptly commence negotiations in good faith in order to equitably adjust the rights and obligations of the parties in light of such Adverse Governmental Action. If the parties are unable to reach agreement after one-hundred eighty (180) calendar days from the date of such notice, then the Affected Party may terminate this Agreement at any time on

or after the effective date of such Adverse Governmental Action by at least 360 calendar days prior written notice of termination to the other Party.

e. Any provision herein to the contrary notwithstanding, the Affected Party may suspend the purchase or sale of water under this Contract to the other party if, and only if, such continued performance hereof would cause the Affected Party to be in material violation of any law, enforcement action, rule, order or regulation subsequently enacted that constitutes an Adverse Governmental Action and Franklin and the District shall not have been able in good faith to resolve the relevant Adverse Governmental Action or to equitably adjust the rights and obligations of the parties so as to permit performance to resume under this Contract in compliance with, and not in violation of, any such law, enforcement action, rule, order, or regulation. If the parties are unable to reach agreement within one-hundred eighty (180) calendar days of suspension of performance hereunder, then the Affected Party may terminate this Contract at any time on or after the effective date of such Adverse Governmental Action by at least 360 calendar days prior written notice of termination to the other party.

12. **Failure to Pay.** Notwithstanding the provisions of Section 22, in the event that either utility fails to pay for water by the tenth (10th) day of each month after a bill is received as provided herein, the billing utility shall have the right to pursue any and all remedies provided at law or in equity for breach of contract, including an action for recovery of the amounts owed and any damages incidental thereto including, but not limited to attorneys fees and costs, and after all other legal remedies have been pursued unsuccessfully, termination of the flow of water subject to due notification.

13. **Other Remedies.** Either party shall have the right to enforce this Contract by injunctive or mandamus action or to assert any other remedies provided by applicable law for the failure of the other party to comply with its agreements and covenants set forth herein.

14. **Notification.** The District and Franklin further agree to notify each other as promptly as reasonably possible of any line breaks or emergencies which might affect the operations of either the District or Franklin water systems.

15. **Regulatory Agencies.** This Contract is subject to such rules, regulations or laws as may be applicable to similar agreements in Kentucky, and Franklin and the District will collaborate in obtaining such permits, certificates or the like, as may be required.

16. **Required Administrative Approval.** This Contract, the rates set forth herein and the rate adjustment procedure provided herein shall be subject to the approval of the Kentucky Public Service Commission and the United States Department of Agriculture Rural Development Administration (or successor administrative agency), and the obligations of the parties hereunder shall be of no force and effect until this Contract and said rates and rate adjustment procedures have been so approved. The District covenants to promptly request approval of this Contract from the said agencies. This Contract shall become effective immediately upon its approval by the Kentucky Public Service Commission and the United States Department of Agriculture Rural Development Administration (or successor administrative agency). The rates the District charges its customers for water sold by the District are subject to the approval of the Kentucky Public Service Commission.

17. **Successor to the Parties.** In the event of an occurrence rendering the District incapable of performing under this Contract, any successor of the District, whether the result of legal process, assignment or otherwise, shall succeed to the rights and duties of the District hereunder.

In the event of any occurrence rendering Franklin incapable of performing under this Contract, any successor of Franklin, whether the result of legal process, assignment or otherwise, shall succeed to the rights and duties of Franklin hereunder.

18. **Pledge of Contract.** The District shall have the right to pledge or assign this Contract, and its rights hereunder, to parties lending funds to the District, including the United States of America, Acting through the United States Department of Agriculture Rural Development Administration (or successor administrative agency), as part of the security for a loan or loans from the United States of America. The District shall notify Franklin of any such

pledge or assignment and shall provide Franklin such documentation related thereto as Franklin may reasonably request.

Franklin shall have the right to pledge or assign this Contract, and its rights hereunder including, but not limited to the proceeds received herefrom, to parties lending funds to Franklin including, but not limited to any bond issues, leases, or bank loans necessary as determined by Franklin for upgrades, additions, or renovations, or other changes needed to the system, as part of the security for a bond issue, lease, loan or loans from any source necessary or appropriate as determined by Franklin. Franklin shall notify The District of any such pledge or assignment and shall provide The District such documentation related thereto as The District may reasonably request.

19. **Taxes.** Each utility shall be liable for all taxes or charges in the Commonwealth of Kentucky applicable to this Agreement.

20. **Hold Harmless.** The District hereby indemnifies and holds Franklin harmless from any loss, costs, damages or penalties relating to claims asserted by any customers in connection with the operation of the District's system, except where such loss or damage arises from the willful or negligent misconduct of Franklin or from the failure of Franklin to observe or perform any covenant of this Contract required to be performed by Franklin.

21. **Information for Planning Purposes:** To assist the City of Franklin and Simpson County in serving and recruiting industry, Franklin will provide an annual report of monthly water treatment plant and water quality testing that shall include monthly averages for water temperature, pH, total alkalinity, total hardness, iron, manganese, fluoride, free chlorine, and any other particulates that are routinely tested for. This report shall be provided by January 31st of each year for the preceeding calendar year.

22. **Notice of an Event of Default.** Should either party deem a default to have occurred by the other, the party claiming such default shall give the defaulting party written notice setting forth the particulars of said claimed default and the defaulting party shall have thirty (30)

days (or such longer period if the default cannot reasonably be cured within thirty (30) days and the defaulting party is attempting to cure such default) within which to cure said default prior to any action being taken by the party claiming the default.

23. **Notice.** Any notice to the parties pursuant to the provisions hereof shall be in writing and delivered by either certified mail or via a nationally recognized overnight delivery service such as Federal Express to the parties at their addresses set forth below:

To District:

Simpson County Water District
523 U.S. Highway 31-W Bypass
P.O. Box 10180
Bowling Green, KY 42102
Attention: General Manager

To Franklin:

City of Franklin
117 West Cedar Street
Franklin, KY 42134
Attention: City Manager

24. **Miscellaneous**

a. Should any part, term or provision of this Contract be determined by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining portion or portions shall not be affected thereby.

b. To the extent permitted by applicable law, this Contract shall be subject to all valid rules, regulations and laws applicable hereto passed or promulgated by the United States of America and the Commonwealth of Kentucky or any governmental body or agency having lawful jurisdiction or any authorized representative or agency of them; provided, however, that this clause shall not be construed as waiving the right of either party to challenge the validity of any such rule, regulation or law on any basis, including impairment of this Contract.

c. This Contract may not be modified except in a writing executed by all parties, and all parties shall thereafter be bound by such modification.

d. To the extent permitted by applicable law, this Contract and the respective rights and obligations of the parties hereto shall be construed in accordance with and governed by the laws of the Commonwealth of Kentucky.

e. This Contract contains the entire agreement of the parties pertaining to its subject matter and supersedes all prior written and oral agreements pertaining hereto.

IN WITNESS WHEREOF, the parties hereto, acting under authority of their respective governing bodies, have caused this Contract to be duly executed in counterparts, each of which shall constitute an original.

FRANKLIN:

CITY OF FRANKLIN

BY: Larry Dufon

TITLE: Mayor

ATTEST:

Larry Dufon, City Clerk

DISTRICT:

SIMPSON COUNTY WATER DISTRICT

BY: Stephen B. Snider

TITLE: Vice Chairman

ATTEST:

Joe H. Richards