

**AGREEMENT BETWEEN THE CITY OF MILWAUKEE
AND THE CITY OF FRANKLIN FOR
THE PURCHASE OF WATER AT WHOLESALE**

This Agreement is made as of the ____ day of _____, 20__ (“Effective Date”) pursuant to Wis. Stat. § 66.0301 by and between the City of Milwaukee, operating as a water public utility (“Milwaukee”) and the City of Franklin, operating as a water public utility (“Franklin”).

Whereas, Franklin desires to purchase water from Milwaukee at wholesale; and

Whereas, Milwaukee wishes to provide adequate water supply to Franklin at rates approved by the Public Service Commission of Wisconsin (“Commission”); and

Whereas, in the absence of a contract, under current law, Milwaukee has a right to establish the terms and conditions of service through the filing of rates with the Commission; and

Whereas, Milwaukee has facilities to ensure that Franklin and other wholesale customers receive an adequate supply of water and continues to incur the obligation to maintain those facilities; and

Whereas, Milwaukee must be assured that purchasers of large quantities of water will continue to obtain their supply from Milwaukee so that it may prudently plan the expansion of its facilities and that the facilities when constructed will not be rendered either functionless or partially functionless; and

Whereas, Franklin desires to be assured that Milwaukee continues to have the facilities necessary to provide Franklin with adequate water service.

Now, therefore, in consideration of the mutual covenants hereinafter expressed, it is agreed as follows:

I. DEFINITIONS

A. Adequate Water Service – Except as otherwise provided in section III.B. of this Agreement, uninterrupted service of Standard Quality Water as set forth in Table 1:

Table 1: Adequate Water Service

Connection	Elevation (NAVD) (Center of Intersection)	Minimum Hydraulic Grade (NAVD)	Annual Average Day Demand (MGD)	Maximum Day Demand (MGD)
In the vicinity of South 35 th Street and West College Avenue	777	844	5.1	11.3

- B. Annual Average Day Demand - The total volume of water delivered to the Franklin system over a year divided by 365 days. The average use in a single day expressed in gallons per day. The Annual Average Day Demand is derived from Franklin's projected water use in 2070.
- C. Ccf – 100 cubic feet of water (748 gallons).
- D. Commencement of Service – The actual date upon which Franklin begins receiving water from Milwaukee. Commencement of Service is anticipated to occur in April, 2024 (“Anticipated Commencement of Service”) unless Franklin is able to secure an early termination of its water service agreement with its current wholesale water supplier, in which case the parties shall determine by mutual agreement a modified Anticipated Commencement of Service. The parties acknowledge that the Anticipated Commencement of Service may be a different date than the Commencement of Service.
- E. Commission – Public Service Commission of Wisconsin.
- F. Commissioner – City of Milwaukee Commissioner of Public Works.
- G. Connection - The physical point, to be located in the vicinity of South 35th Street and West College Avenue, at which the Milwaukee Control Valve meets the Franklin transmission main.
- H. Emergency – An event beyond the reasonable control of Milwaukee and without the fault or negligence of Milwaukee, which prevents Milwaukee from delivering water to Franklin. An Emergency includes, but is not limited to, acts of God (such as, but not limited to, fires, explosions, earthquakes, tornadoes, floods, and extreme cold weather events); labor disputes and disturbances; riots; acts of terrorism; and war, rebellion, revolution, or insurrection, or military or usurped power, or civil war.
- I. Master Meters – The meters at the metering location downstream of the Milwaukee Control Valve where the water is being measured for sale from Milwaukee to Franklin.
- J. Maximum Day Demand - The largest volume of water delivered to the system in a single day expressed in gallons per day. The water supply, treatment plant and transmission lines should be designed to handle the Maximum Day Demand. The Maximum Day Demand is derived from Franklin's projected water use in 2070.
- K. Meter Facilities – All piping, valves and fittings required to facilitate the installation of the Master Meters in a manner as agreed to by Milwaukee.

- L. Milwaukee Control Valve – The valve located on the Milwaukee transmission main in the vicinity of South 35th Street and West College Avenue.
- M. Milwaukee Water Works (MWW) – Milwaukee Water Works.
- N. Projected Annual Volume – A projected volume in gallons per year that Franklin anticipates being delivered to its system from Milwaukee. This volume will be utilized for planning purposes by both parties.
- O. Nonpotable Water – Water that is not safe for drinking, personal or culinary use.
- P. Nonpotable Water System – The provision of nonpotable water for industrial, landscape irrigation, or other demands not requiring potable-quality water, via a dedicated delivery system that is completely separated from the system used to deliver potable water.
- Q. Potable Water – Water that is both: (a) safe for drinking, personal or culinary use and (b) free from impurities present in amounts sufficient to cause disease or harmful physiological effects.
- R. Service Area – Area to be served with water. The Service Area is delineated in the map attached as Exhibit A.
- S. Standard Quality Water - Water that meets the standards of federal and state agencies having authority to establish water quality standards that uniformly apply to Milwaukee and its customers and as those standards may be amended from time to time.
- T. Superintendent – Superintendent of the Milwaukee Water Works.
- U. Two-Step Rate Methodology – The cost of service methodology employed in developing wholesale water service rates that first allocates costs between retail customers and wholesale customers, and then allocates retail costs among retail customer classes and wholesale costs among individual wholesale customers.
- V. Utility Manager – City Engineer and Utility Manager of the City of Franklin.
- W. Volume Charge – Charge for water on a quantity basis.

II. WATER SUPPLY INFRASTRUCTURE

A. Milwaukee Facilities

1. Milwaukee shall design, construct, own, operate, and maintain the transmission main from the vicinity of West Grange Avenue and South Lorene Avenue to West Ramsey Avenue and South 35th Street. This portion of the transmission main is identified on the attached Exhibit B as “Segment 1”. Milwaukee shall consult with Franklin on the plans for Segment 1.
2. Franklin shall design and construct the transmission main from West Ramsey Avenue and South 35th Street to the Milwaukee Control Valve at West College Avenue and South 35th Street. This portion of the transmission main is identified on Exhibit B as “Segment 2.” The Milwaukee Control Valve shall be the property of Milwaukee. Franklin shall dedicate and Milwaukee shall own, operate and maintain Segment 2. Franklin shall design and construct Segment 2 according to Milwaukee’s specifications.
3. Milwaukee reserves the right to use Segments 1 and 2 for purposes other than supplying water to Franklin provided that such use shall not interfere with Milwaukee’s provision of Adequate Water Service to Franklin.

B. Franklin Facilities

1. Franklin Transmission Main. Franklin shall design, construct, own, operate, and maintain the transmission main downstream of the outlet side of the Milwaukee Control Valve. This portion of the transmission main is identified in Exhibit B as “Segment 3.”
2. Meter Facilities.
 - a. Metering Requirement. All water furnished by Milwaukee to Franklin shall be measured by a dual Master Meter configuration. The Master Meters shall be housed in the Franklin pumping station. Milwaukee shall not prohibit Franklin from locating the pumping station within the Franklin municipal boundaries. Final location of the Master Meters within the pumping station will be as determined by the Superintendent and the Utility Manager.
 - b. Franklin Maintenance Responsibilities. Franklin shall design, construct, own, operate, and maintain all Meter Facilities. Should Franklin fail to maintain the Meter Facilities, Milwaukee may take reasonable steps to maintain the Meter Facilities and charge the

reasonable cost of doing so to Franklin. Prior to Milwaukee taking action to maintain the Meter Facilities, Milwaukee shall give Franklin forty days written notice to complete the required maintenance. Notice to Franklin shall not be required if, in Milwaukee's determination, there exists an emergency condition affecting the operation of the water system or if the health, safety and welfare of the general public may be jeopardized.

- c. Master Meters. Milwaukee and Franklin will collaborate on the type, size, and number of Master Meters that will reliably and effectively meter water provided to Franklin. To ensure necessary redundancy during meter maintenance and replacement activities, Franklin shall purchase and install no less than two (2) Master Meters. Milwaukee shall own, operate and maintain the Master Meters pursuant to the provisions of sec. II.D.
3. Franklin shall pay all costs, charges, fees, and all expenses incidental to construction, maintenance, and operation of its own water distribution system located within the Service Area.
 4. Franklin shall notify Milwaukee of all plans and specifications for metering stations, re-pumping stations, storage facilities, and other major improvements to the Franklin distribution system that have the potential to result in increased demands above the Adequate Water Service prior to the time contracts are awarded or materials purchased, to determine whether the improvements would require capital expenditures by Milwaukee and whether cost-sharing for Milwaukee's improvements is appropriate. In such case, the parties will mutually agree on cost-sharing for Milwaukee's improvements or will abide by a decision of the Commission as to cost-sharing. Technical issues will be resolved by the Superintendent and the Utility Manager.
- C. Design and Construction Cooperation. Milwaukee and Franklin, through the Superintendent and the Utility Manager, or their designees, agree to confer on an ongoing basis to facilitate the cooperative working relationship between Milwaukee and Franklin for the design, construction, and on-going operations of the transmission main and Meter Facilities for transmission from Milwaukee to Franklin.
1. Design. The parties shall have the opportunity to review and provide timely feedback on the construction plans for the water supply infrastructure described in sec. II.
 2. Use of Rights-of-Way. Franklin shall obtain all necessary permits for construction in rights-of-way. Milwaukee agrees to assist Franklin to obtain permission to use streets, highways, alleys, and/or easements in

the local governmental units within Milwaukee's water service area to the extent consistent with Milwaukee's existing wholesale and retail water service agreements. Franklin shall give Milwaukee notice of any construction work in Milwaukee's jurisdiction. Franklin shall comply with all Milwaukee ordinances that apply to the construction. Milwaukee shall inform Franklin of the applicable ordinances within Milwaukee's jurisdiction. Milwaukee and Franklin shall meet to review the construction and its impact on their respective operations. Franklin shall restore all existing structures and/or improvements laying in the right-of-way of construction to as good a condition as before the construction took place.

D. Metering and Meter Facilities Operations

1. Master Meter Calibration. Milwaukee shall be responsible for testing, and calibration, if required, of the Master Meters twice per year. Franklin may request that the Master Meters be tested at any time based on a reasonable assumption of need. If a Master Meter is found to be within the manufacturer's standards of accuracy, Franklin shall be responsible for costs associated with testing beyond twice per year. If a Master Meter is found to be outside of the manufacturer's standards for accuracy, the Master Meter will be immediately recalibrated by Milwaukee. Milwaukee will then be responsible for the costs associated with testing and calibration of the Master Meter.
2. Monitoring. SCADA monitoring and metering signals from the Master Meters shall be sent to Milwaukee and Franklin.
3. Master Meter Repair and Replacement. If Milwaukee initiates a Master Meter repair or meter replacement, Milwaukee shall pay the repair or replacement costs. If Franklin requests a Master Meter replacement for reasons other than malfunction or disrepair, Franklin shall pay the cost of the replacement.
4. Access. Milwaukee shall have 24-hour access to the Master Meters.
5. Estimated Billing. If the Master Meters are not accurately recording water usage or are removed from service, Milwaukee shall bill by estimating Franklin's usage based on the best available information including, but not limited to, pressure, duration of flow, and volume of water discharged from the pumping station. Milwaukee shall endeavor to limit the use of estimated billing to no more than 90 days.

E. Taxes and Permits

1. Neither party may tax water utility facilities owned by the other party within the taxing party's jurisdiction.
2. Each party shall grant permits at standard fees within its own boundaries that are necessary to effectuate the other party's construction, maintenance, alteration or operation with respect to service under this Agreement subject to applicable city codes, state statutes and administrative rules.

III. ADEQUATE WATER SERVICE

- A. Milwaukee shall provide Adequate Water Service to Franklin.
- B. Milwaukee may place restrictions upon the use of water by Franklin as a result of an Emergency or DNR-required maintenance activities. Any restriction so placed will be done in a manner consistent with the restrictions placed upon similarly situated customers. Milwaukee shall give Franklin as much prior notice as is reasonably possible of any such restrictions.
- C. Water Quality. Milwaukee warrants that all water purchased or delivered under this Agreement has been treated in accordance with and meets all applicable state and federal regulations and local standards. There are no water quality warranties provided that extend beyond the above description.
 1. Milwaukee shall provide Franklin with notice of changes to the water treatment process or additives that would affect the pH or quality of the water with sufficient time for Franklin to evaluate the impact to Franklin's system.
 2. Contamination. For the protection of the health of all consumers supplied with water from Milwaukee, Franklin agrees to guard carefully against all forms of contamination. Should contamination occur, the area or areas affected shall immediately be shut off and isolated, and shall remain so until such conditions shall have been abated, and the water declared safe and fit for human consumption by the properly constituted governmental health agencies having jurisdiction of the area affected. Franklin shall immediately notify Milwaukee, and Milwaukee shall immediately notify Franklin, of any emergency or condition that may affect the quality of water in either Party's system.
 3. Co-mingling of Water Sources. Except in case of an Emergency, or at any other time Milwaukee does not supply Adequate Water Service, Franklin will not permit water from any other source of supply to be

mixed or mingled with water from Milwaukee without prior written approval from Milwaukee. In such cases, only water from sources other than Milwaukee shall be used and only in such quantities as shall be necessary to relieve the Emergency or until such time as Adequate Water Service is restored. Milwaukee shall accept no responsibility for co-mingling of water sources.

4. Emergency Connections. Franklin is responsible for ensuring that it has sufficient storage or sufficient emergency connection(s) in the event of an Emergency. Whenever Milwaukee does not supply Adequate Water Service, Franklin may obtain emergency water service from any other source, but only until such time as Adequate Water Service is restored. Franklin shall be permitted to immediately make an emergency connection when the connection point to be used has been previously approved for emergency use by Milwaukee in writing, provided that Franklin shall, after making the connection, promptly notify Milwaukee of such event. When Adequate Water Service has been restored, the emergency connection must be severed as soon as practicable. Milwaukee, or its designee, shall approve, in writing, the continuation of any emergency connection that is required for longer than seven calendar days. If an approved emergency connection continues for more than seven calendar days after Adequate Water Service has been restored, Franklin must provide Milwaukee with weekly updates and a schedule for the discontinuation of the emergency connection that must be approved by Milwaukee in writing.
5. Franklin shall properly disconnect all municipal wells within the Service Area prior to Commencement of Service.

IV. SERVICE AREA

- A. Milwaukee agrees to provide Adequate Water Service to the Service Area, which is delineated in the map attached as Exhibit A. The Service Area shall not include Milwaukee's current retail service area within the geographic boundaries of Franklin. The Service Area shall not include the portion of Franklin currently served by Greendale within the geographic boundaries of Franklin. Portions of Franklin are currently not served with municipal water. Nothing in this Agreement requires any property in Franklin to seek or obtain municipal water service.
- B. Milwaukee makes no profession of service beyond the Service Area delineated in Exhibit A, which shall not be adjusted except by an amendment of this Agreement pursuant to sec. VI.A. In the event that Franklin shall be either extended or enlarged in any manner whatsoever as a consequence of any consolidation or merger of Franklin with any other

municipal entity or political subdivision, then, and except as may otherwise be provided by law, there shall be no duty or obligation under this Agreement on the part of Milwaukee to provide water to any area other than that delineated in Exhibit A. Milwaukee reserves the option, however, of providing water service to the enlarged area of Franklin.

- C. Franklin shall obtain all of its water from Milwaukee for distribution in the Service Area, except as provided in secs. III.C. Notwithstanding the foregoing, and notwithstanding any other terms or provisions of this Agreement, Franklin may engage in promoting Potable Water conservation measures, including, but not limited to, the obtaining, processing, sale, and transmission of Nonpotable water to customers within the Service Area through a Nonpotable Water System. However, Milwaukee reserves the right to review the Nonpotable Water System for adverse impacts on MWW's revenue from the sale of water to Franklin under this Agreement and to seek any available remedy to mitigate such impacts.
- D. No water purchased by Franklin under this Agreement may be resold or exchanged by Franklin on a wholesale or retail basis outside the Service Area without the permission of Milwaukee.

V. RATES

- A. The rates or charges for service at wholesale for water supplied to Franklin shall be determined as follows:
 - 1. As of the Anticipated Commencement of Service, the all-inclusive rate for water service shall be \$1.65 per 1,000 gallons (\$1.23 per Ccf) from the Connection until the Commission establishes an adjusted schedule of rates.
 - 2. In the event that Milwaukee, through a conventional rate case, is granted an adjustment of its rates for other customers before sufficient data is available for the Commission to establish a schedule of rates for Franklin, the all-inclusive rate stated in this Agreement shall be adjusted in the same proportion as the average adjustment of volume rates for other wholesale customers of Milwaukee.
 - 3. If, following the Anticipated Commencement of Service, the Commission adjusts Milwaukee's rates as a result of a simplified rate case under Wis. Stat. § 196.193, the all-inclusive rate stated in this Agreement will be adjusted by the same percent adjustment that applies to other wholesale customers of Milwaukee.

4. In the next conventional rate case filed by Milwaukee following the Commencement of Service, Milwaukee and Franklin will mutually support and request that the Commission establish water rates based on a Two-Step Rate Methodology to be negotiated by Milwaukee and its wholesale customers, including Franklin. In the event of a failure to reach agreement upon a Two-Step Rate Methodology between and among Milwaukee and its wholesale customers, including Franklin, the water rates in the next conventional rate case filed by Milwaukee following the Commencement of Service shall be based upon a Commission approved rate methodology.
 5. Except as expressly provided in this Agreement, including sec. IV.C, or the Intergovernmental Agreement executed concurrently with this Agreement, Milwaukee will not impose any other service charge, fee or charge for water service to Franklin, other than that provided in Milwaukee's tariff approved by the Commission.
 6. If during the term of this Agreement, the Commission no longer has jurisdiction over Milwaukee's water rates to wholesale customers, a rate methodology that is consistent with generally accepted rate methodologies will be applied to any subsequent rate request by Milwaukee during the term of this Agreement.
- B. Franklin shall pay to Milwaukee, in accordance with the billings of Milwaukee, the full and correct amount of such billings to be computed upon the prevailing rates and charges as provided in sec. V.A.
 - C. Milwaukee shall notify Franklin of any proposed adjustment of its water rates through a conventional rate case at least 60 days before filing.

VI. GENERAL TERMS

- A. The parties agree that this Agreement is subject to the approval of the Common Councils of Milwaukee and Franklin, and after execution by both parties, Milwaukee shall file a copy of the Agreement with the Commission. Approval of the Common Council of Milwaukee and the Common Council of Franklin shall be evidenced by adoption of appropriate resolutions approving this Agreement. Any modifications to this Agreement must be made in writing subject to the approvals of the Common Councils of Milwaukee and Franklin.
- B. This Agreement shall be governed by, construed, and enforced under and in accordance with the laws of the State of Wisconsin.
- C. This Agreement shall remain in full force and effect for an initial period of forty (40) years from and after the effective date of this Agreement and

shall automatically renew for subsequent ten (10)-year periods. Any party wishing to not renew this Agreement at the conclusion of the initial term, or any ten-year term, must submit a written notice of non-renewal at least 60 months prior to the date the Agreement would otherwise automatically renew. The party to whom a notice of non-renewal is submitted shall acknowledge receipt of the notice in writing within 30 days of the date of the notice. Franklin shall have the right to obtain its water supply from another water supplier upon the conclusion of the term of this Agreement following a timely submission of a written notice of non-renewal as set forth above.

- D. Termination of this Agreement at any time other than renewal requires the mutual consent of both parties. A party shall give or withhold its consent in writing within 90 days of being formally requested to give its consent.
- E. In the event Franklin breaches this Agreement by termination at any time other than at the conclusion of the initial term or a renewal period pursuant to sec. VI.C. without the consent of Milwaukee, Franklin shall reimburse Milwaukee for Milwaukee's undepreciated capital costs to design and construct the transmission main referenced in sec. II.A and shall pay to Milwaukee compensation in an amount equal to the sum of the total revenues from the sale of water to Franklin in the two years of highest total revenues, including volume and general service charges, as reported in Milwaukee's annual report to the Commission. These amounts shall be paid to Milwaukee within 30 days of the termination. Exhibit B lists the infrastructure Milwaukee intends to design and construct referenced in sec. II.A and the depreciation rates used thereon. The compensation provided in this sec. VI.E. shall not apply if the Wisconsin Department of Natural Resources ("DNR") orders Franklin to obtain a permanent alternative water source as the result of Milwaukee's failure to comply with a DNR water quality order within the timeframe prescribed by the DNR order.
- F. The parties agree to act in good faith and use due diligence in meeting their respective obligations under this Agreement.
- G. Each party agrees to defend and hold harmless the other party from any claims or causes of action of whatever nature arising from each party's own negligence, intentional actions, or breach of the expressed warranties and covenants contained in this Agreement or any liabilities which may be incurred by each party arising from the making of this Agreement. The indemnity provisions of this Agreement shall survive its termination and shall continue in full force and effect.
- H. This Agreement may be executed in counterparts, which together shall constitute a single contract.

- I. If the parties are unable to resolve a dispute over the terms and conditions of this Agreement, either party may submit the disputed matter to the Commission, a circuit court of competent jurisdiction or, upon mutual agreement, to an alternative dispute resolution method.
- J. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto, but neither this Agreement nor any of the rights, interest, or obligations hereunder shall be assigned by either of the parties hereto without the prior written consent of the other party. Moreover, it is not intended by the parties hereto that this Agreement in any way inures to the benefit of any third party.
- K. To promote a cooperative working relationship with its wholesale customers, MWW commits to have regular communications with its wholesale customers regarding proposed capital improvements that will be included in Milwaukee's 6-year capital plan and that will likely affect the cost of service for Milwaukee's wholesale customers.
- L. All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested to the following addresses:
 - If to Franklin:
City Engineer and Utility Manager
City of Franklin
9229 W. Loomis Road
Franklin, WI 53132
 - If to Milwaukee:
Superintendent
Milwaukee Water Works
841 N. Broadway
Room 409
Milwaukee, WI 53202
- M. Franklin and Milwaukee agree that they are obligated to assist each other in retaining and producing records relating to the subject matter of this Agreement that are subject to the Public Records Law, to the extent that disclosure of records is required under Wis. Stat. § 19.36(3).

April 6, 2018

- N. The failure of either party to insist on strict performance of any of the terms or conditions of this Agreement shall not be construed as a waiver or relinquishment of any right granted under this Agreement.
- O. In the event that any portion of this Agreement is held invalid or unenforceable, such invalidity or unenforceability shall not affect the other portions of this Agreement.
- P. This Agreement, along with the Intergovernmental Agreement executed concurrently with this Agreement, constitute the entire Agreement between the parties relating to the subject matter of this Agreement. All prior understandings, agreements, correspondence and discussions of the parties are merged into and made a part of this Agreement.
- Q. This Agreement, and all of its terms and provisions, including, but not limited to its Effective Date, is and are subject to and contingent upon the grant of all necessary and required governmental approvals applicable thereto, including, but not limited to as may be necessary and required from the Commission.

April 6, 2018

IN THE PRESENCE OF:

CITY OF MILWAUKEE, operating as a
Water Public Utility

Mayor

City Clerk

COUNTERSIGNED:

City Comptroller

IN THE PRESENCE OF:

CITY OF FRANKLIN, operating
as a Water Public Utility

Mayor

City Clerk

1048-2017-319:247810v3

Director of Finance and Treasurer