

# City of Cincinnati

AY

AWB

## An Ordinance No. \_\_\_\_\_ - 2021

**AUTHORIZING** the City Manager to execute a *Second Amendment to Water Service Agreement* and a *First Amendment to Interlocal Cooperative Agreement*, each among the City of Cincinnati, Boone-Florence Water Commission, the Boone County Water District, and the City of Florence, Kentucky, to extend the terms of the existing agreements by five years to 2033.

WHEREAS, Boone-Florence Water Commission (“BFWC”), the Boone County Water District, and the City of Florence, Kentucky (collectively, the “Kentucky Parties”) and the City of Cincinnati (the “City”), are parties to the following agreements as to the construction and operation, and maintenance of water transmission facilities to deliver treated water from the City’s water works under the Ohio River and for the City to provide wholesale water service to the Kentucky Parties: (i) a *Water Service Agreement* dated March 2, 1999, as subsequently amended by a *First Amendment to the Water Service Agreement* dated August 1, 2008 (as amended, the “Water Agreement”) and (ii) an *Interlocal Cooperative Agreement* dated effective March 2, 1999 (“Interlocal Agreement”); and

WHEREAS, the Interlocal Agreement and the Water Agreement each currently provide for an expiration date of March 2, 2028; and

WHEREAS, the parties desire to amend the Interlocal Agreement and the Water Agreement in order to extend their terms by five years to expire in 2033 in order to allow for BFWC to complete a long-term water visioning planning process to address and plan for the long-term water needs of its constituents and to determine any longer term water infrastructure needs that may need to be incorporated into future water service arrangements; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That the City Manager is hereby authorized to execute a *Second Amendment to Water Service Agreement* and a *First Amendment to Interlocal Cooperative Agreement* among the City of Cincinnati, Boone-Florence Water Commission, the Boone County Water District, and the City of Florence, Kentucky in substantially the form of the documents attached as Exhibit A hereto (the “Amendments”) to extend the terms of the existing *Water Service Agreement* and *Interlocal Cooperative Agreement* by five years to 2033.

Section 2. That the proper City officials are hereby authorized to do all things necessary and proper to carry out the terms of the *Water Service Agreement* and *Interlocal Cooperative Agreement* as amended.

Section 3. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: \_\_\_\_\_, 2021

\_\_\_\_\_  
John Cranley, Mayor

Attest: \_\_\_\_\_  
Clerk

**EXHIBIT A**

**FIRST AMENDMENT  
to INTERLOCAL COOPERATIVE AGREEMENT**  
(Cooperation for water service to City of Florence and Boone County)

This *First Amendment to Interlocal Cooperative Agreement* (“**Amendment**”) is made by and between the CITY OF CINCINNATI, OHIO (“**Cincinnati**”), the BOONE-FLORENCE WATER COMMISSION (“**Water Commission**”), the BOONE COUNTY WATER DISTRICT (“**Boone**”), and the CITY OF FLORENCE, KENTUCKY (“**Florence**”) effective on the First Amendment Effective Date as defined on the signature page hereof.

**RECITALS:**

- A. Cincinnati, Water Commission, Boone and Florence are parties to a certain *Interlocal Cooperative Agreement* dated effective March 2, 1999 (“**Interlocal Agreement**”) to establish the terms for cooperation to plan, design, and construct a major water transmission system for efficient, cost-effective delivery of treated water from the Cincinnati water system under the Ohio River to a reservoir and master meter site in Boone County, with water then pumped into the water distribution lines of Florence and Boone.
- B. The parties also previously entered into a *Water Service Agreement* dated March 2, 1999, subsequently amended by a *First Amendment to the Water Service Agreement* dated August 1, 2008 (as amended, the “**Water Agreement**”) for Cincinnati to provide wholesale water service to Boone, Florence and the Water Commission.
- C. The Interlocal Agreement and the Water Agreement each currently provide for an expiration date of March 2, 2028.
- D. The parties desire to amend the Interlocal Agreement and the Water Agreement in order to extend their terms by five years to expire in 2033 in order to allow for BFWC to complete a water visioning planning process with regional stakeholders to address and plan for the water security and the long-term water needs of their constituents and to determine any longer term water infrastructure needs that may need to be incorporated into future water service arrangements.
- E. Capitalized terms in this Amendment shall have the meaning defined in the Interlocal Agreement unless another definition is provided herein.

**NOW, THEREFORE**, in consideration of the promises, covenants and agreements contained herein, the parties hereby amend the Interlocal Agreement as follows:

- 1) **Duration of Agreement.** Section 2 (*Duration of Agreement*) shall be amended and restated in its entirety as follows:

“This Interlocal Agreement shall be in force for a period of thirty-four (34) years commencing on March 2, 1999. After twenty-nine (29) years, or at such earlier time as the parties agree, the parties shall commence good faith discussions concerning an extension of this Agreement beyond its initial thirty-four (34) year term. The parties acknowledge that the Water Commission, as authorized by KRS 74.490, may enter contracts to supply water for periods up to fifty (50) years. In the event the parties terminate the Water Service Agreement, said termination will operate to terminate this Interlocal Agreement.”

- 2) **Ratification.** All terms of the Interlocal Agreement not amended hereby or not inconsistent herewith shall remain in full force and effect and by this reference are incorporated herein as if fully rewritten herein, and the Agreement, as amended hereby, is hereby ratified by the parties.
- 3) This Amendment may be executed in counterparts; and a facsimile, PDF or electronic signature shall be deemed to be, and shall have the same force and effect as, an original signature.

[SIGNATURE PAGES FOLLOWS]

**IN WITNESS WHEREOF**, the parties have executed this Amendment on the dates indicated below the signatures, effective on the latest of such dates (the "**Amendment Effective Date**").

**BOONE COUNTY WATER DISTRICT**

By: \_\_\_\_\_  
\_\_\_\_\_, Chairperson  
Date: \_\_\_\_\_, 2021

**BOONE-FLORENCE WATER COMMISSION**

By: \_\_\_\_\_  
\_\_\_\_\_, Chairperson  
Date: \_\_\_\_\_, 2021

**CITY OF FLORENCE**

By: \_\_\_\_\_  
Diane E. Whalen, Mayor  
Date: \_\_\_\_\_, 2021

[CINCINNATI SIGNATURE PAGE FOLLOWS]

Execution of this First Amendment is authorized by Ordinance No. \_\_\_\_-2021, dated \_\_\_\_2021.

**CITY OF CINCINNATI**

By: \_\_\_\_\_  
Paula Boggs-Muething, City Manager

Date: \_\_\_\_\_, 2021

**Recommended by:**

\_\_\_\_\_  
Cathy B. Bailey, Director  
Greater Cincinnati Water Works

**Approved as to form by:**

\_\_\_\_\_  
Assistant City Solicitor

**Certification of Funds:**

Date: \_\_\_\_\_  
Funding: \_\_\_\_\_  
Amount: \_\_\_\_\_  
By: \_\_\_\_\_  
Karen Alder, Finance Director

**SECOND AMENDMENT  
to WATER SERVICE AGREEMENT  
(GCWW service to Boone-Florence Water Commission)**

This *Second Amendment to Water Service Agreement* ("**Second Amendment**") is made by and between the CITY OF CINCINNATI, OHIO ( "**Cincinnati**"), the BOONE-FLORENCE WATER COMMISSION ("**Water Commission**"), the BOONE COUNTY WATER DISTRICT ("**Boone**"), and the CITY OF FLORENCE, KENTUCKY ("**Florence**") effective on the Second Amendment Effective Date as defined on the signature page hereof.

**RECITALS:**

- A. Cincinnati, Water Commission, Boone and Florence are parties to a certain *Water Service Agreement* dated March 2, 1999, subsequently amended by a *First Amendment to the Water Service Agreement* dated August 1, 2008 (as amended, the "**Agreement**") for Cincinnati to provide efficient and cost-effective wholesale water service to Boone, Florence and the Water Commission.
- B. The Agreement has been approved pursuant to KRS 65.260 by the Attorney General of the Commonwealth of Kentucky as an Interlocal Cooperative Agreement authorized by KRS Chapter 65.210 through 65.300 and the parties acknowledge they may enter into such agreements or contracts for a period not exceeding (50) years under KRS 74.490.
- C. BFWC plans to initiate a water visioning process with other regional water stakeholders to understand, plan for and address such issues as water security and meeting the long-term water needs of their constituents.
- D. The Agreement provides for a term of 29 years with a current expiration date of March 2, 2028, and the parties desire to extend the term by five years to expire in 2033 in order to allow for the visioning planning process and any longer term water infrastructure planning needs. The terms *Water System Infrastructure Maintenance Agreement* dated March 9, 2006 between the Boone-Florence Water Commission and the City of Cincinnati is also being amended by a separate instrument to reflect a similar expiration date.
- E. Capitalized terms in this Amendment shall have the meaning defined in the Agreement, unless another definition is provided in this Amendment.

**NOW, THEREFORE**, in consideration of the promises, covenants and agreements contained herein, the parties hereby amend the Agreement as follows:

- 1) **Term.** The first sentence of Section 2 (*Agreement Duration, Termination, and Default*) shall be amended and restated as follows:

"This Agreement shall be in force for a period of 34 years commencing on March 2, 1999."

- 2) **Ratification.** All terms of the Agreement not amended hereby or not inconsistent herewith shall remain in full force and effect and by this reference are incorporated herein as if fully rewritten herein, and the Agreement, as amended hereby, is hereby ratified by the parties.



3) This Amendment may be executed in counterparts; and a facsimile, PDF or electronic signature shall be deemed to be, and shall have the same force and effect as, an original signature.

[SIGNATURE PAGES FOLLOWS]

**IN WITNESS WHEREOF**, the parties have executed this Amendment on the dates indicated below the signatures, effective on the latest of such dates (the "**Second Amendment Effective Date**").

**BOONE COUNTY WATER DISTRICT**

By: \_\_\_\_\_  
\_\_\_\_\_, Chairperson

Date: \_\_\_\_\_, 2021

**BOONE-FLORENCE WATER COMMISSION**

By: \_\_\_\_\_  
\_\_\_\_\_, Chairperson

Date: \_\_\_\_\_, 2021

**CITY OF FLORENCE**

By: \_\_\_\_\_  
Diane E. Whalen, Mayor

Date: \_\_\_\_\_, 2021

[CINCINNATI SIGNATURE PAGE FOLLOWS]

Execution of this Second Amendment is authorized by Ordinance No. \_\_\_\_-2021, dated \_\_\_\_2021.

**CITY OF CINCINNATI**

By: \_\_\_\_\_  
Paula Boggs-Muething, City Manager

Date: \_\_\_\_\_, 2021

**Recommended by:**

\_\_\_\_\_  
Cathy B. Bailey, Director  
Greater Cincinnati Water Works

**Approved as to form by:**

\_\_\_\_\_  
Assistant City Solicitor

**Certification of Funds:**

Date: \_\_\_\_\_  
Funding: \_\_\_\_\_  
Amount: \_\_\_\_\_  
By: \_\_\_\_\_  
Karen Alder, Finance Director