

CONTRACT

THIS CONTRACT made and entered into this 6th day of June 1957, by and between THE CITY OF NEWPORT, KENTUCKY, a municipal corporation and city of the second class operating under the City Manager form of government, hereinafter referred to as "NEWPORT", and THE CAMPBELL COUNTY WATER DISTRICT OF CAMPBELL COUNTY, KENTUCKY, organized and existing under and by virtue of the laws of Kentucky, and pursuant to orders of the Campbell County Court, its successors and assigns, hereinafter referred to as "DISTRICT";

WITNESSETH:

1. FINISHED WATER

a) Newport agrees to sell all of the finished water required by the District, to the District.

b) The district agrees to purchase all the finished water required by the District solely and exclusively from Newport.

2. RATE

The rate for finished water shall be thirteen (13¢) cents per thousand (1,000) gallons, or as same may be hereinafter adjusted.

3. MINIMUM DAILY PURCHASE

The District agrees to purchase and pay for a minimum of one million eight hundred thousand (1,800,000) gallons of water per day, whether or not such amount of water shall be required or used by the District per day, subject to the limitation set forth in paragraph sixteen (16) herein.

4. COMPUTATION OF MINIMUM

At the end of each calendar year hereafter, Newport shall compute the total water purchased by the District. In the event the water purchased averages below the minimum of one million, eight hundred thousand (1,800,000) gallons of water per day, then the difference between the yearly average minimum and the amount actually delivered to the District and paid for by it shall be paid for by the District to Newport at the aforesaid agreed rate of thirteen (13¢) cents per thousand (1,000) gallons, or as may be adjusted hereinafter, so that the minimum average of one million, eight hundred thousand (1,800,000) gallons of water per day shall be maintained. Such yearly computation shall be made by Newport and Newport shall send a written statement to District of the difference, if any, due Newport. District shall, within ten (10) days after receipt of such a statement from Newport, pay to Newport the difference, if any, which is due to Newport.

5. MONTHLY PAYMENTS

On or before the tenth (10th) day of each month hereafter, Newport shall compute the water supplied to District during the preceding calendar month and shall render a written statement therefor to District. District shall pay to Newport the sum stated on said statement on or before the twentieth (20) day of said month in which the statement was rendered by Newport.

6. METERS

Newport shall furnish to District, at Newport's own expense, recording type meter or meters necessary to compute the finished water delivered by Newport to District.

7.

PLACING OF METERS

a) The District shall, at its own expense, locate and install the said master meter or meters at such place or places as the District elects in order to tap into the Newport facilities, provided, however, that said locations shall be approved by Newport's waterworks consulting engineer.

b) The District shall bear the entire cost of tapping or connecting into the Newport facilities and shall bear the entire cost of any additional pumping that may be required beyond the point of delivery of water into the District facilities.

c) In the event the District requires land for its pumping facilities, and if Newport has land available and suitable for that purpose, Newport will grant to the District an easement in so much of the land as is available and as may be reasonably necessary for the erection and maintenance of the District's pumping station and facilities, together with the right of ingress and egress at all times to said facilities. Any building or buildings erected by the District on said land shall be of a design approved by Newport's waterworks consulting engineer. Said easement and right of way will be granted without cost to the District, and will be for the duration of this contract or any renewal or extension thereof. At the expiration of this contract and/or any extensions or renewals thereof, the District will permit any building or buildings erected by it to remain and same shall become the property of Newport. The mains, machinery, pumping and electrical equipment of every kind and description provided and used by the District shall belong to and remain the property of the District; and same may be removed by the District on its own accord, and must be removed by the District at the written request of Newport. The cost of removing such mains, machinery, pumping and electrical equipment shall be borne and paid for by the District, and the land and buildings shall be restored to their former condition.

8. METER TESTS

a) Newport shall test or cause to be tested the accuracy of all master meter or meters placed by District every six (6) months hereafter, said test to be made by personnel approved by or designated by the manufacturer of the meter to be tested. Newport shall maintain said master meter or meters to an accuracy of plus or minus one (1%) per cent.

b) If at any time the said master meter or meters are found to be registering improperly, either plus or minus, the monthly statements shall be adjusted for half (1/2) the time which has elapsed since the previous tests. The adjustment shall appear in the next immediate monthly statement issued by Newport to District.

c) In the Event the District shall request, at any time, that the master meter or meters be tested, except as required by Newport herein, the costs of said tests shall be paid for by the District should the tests indicate that said master meter or meters are operating properly. Should the tests indicate that said master meter or meters are not operating properly, then, and in that event, Newport shall pay the costs of said tests.

d) Newport shall furnish to the District a written copy of all meter tests made by Newport.

9. BACKGROUND FOR ESTABLISHING RATE OF 13¢ PER 1000 GALLONS

Newport and District agree that the rate of thirteen (13¢) cents per one thousand (1,000) gallons, or as same may be hereinafter adjusted, as set forth in this contract, is a negotiated rate mutually arrived at for the mutual advantage of the respective parties and the individual user of water in both the District and the City of Newport. The said rate is based upon factors duly considered by each of the parties, and which were in addition to the factor and consideration of actual cost, which other factors are, in the opinion of each of the parties

hereto, equal to or greater in importance than the sole factor of cost and both parties acknowledge that said rate is fair, equitable and in the best interest of both the District and the City of Newport.

10. ELEMENTS TO BE USED IN DETERMINING ADJUSTMENT OF 13¢ RATE PER 1000 GALLONS OF FINISHED WATER

The District and Newport understand and agree that the following elements shall be used by the parties hereto to determine the adjustments of the rate of 13¢ per 1000 gallons of finished water, To-wit:

1A. STATED BASIC COSTS shall consist of the following in the Newport pumping and purification departments only:

1) Power costs per 1000 gallons of finished water-----	1.97¢
2) Purification chemical costs per 1000 gallons of finished water-----	1.12¢
3) Salary costs per 1000 gallons of finished water-----	3.08¢
TOTAL-----	6.17¢

B. STATED BASIC COST of 6.17¢ per 1000 gallons of water shall not be subject to review, change or adjustment by either of the parties during the term of this contract.

C. As used in this contract, power costs include only electrical energy used at Newport's river pumping facility and electrical energy used at Newport's filtration plant. Purification chemical costs include only chemicals used in the purification treatment of water.

D. The salary costs used in this computation consists presently of the following; however this classification shall be subject to change in accordance with good operating practices and procedures.

PUMP HOUSE

1 Chief Operator
2 Assistant Operators
3 Operator Helpers
1 Operator Helper - Part Time

FILTRATION PLANT

- 1 Foreman
- 3 Filter Operators
- 3 Utility Men

2. ACTUAL BASIC COST, which is determined by computing the power, purification chemicals, and salaries in the pumping and purification department, only, during the preceding calendar year.

3A. TOTAL STATED VARIABLE ANNUAL COSTS, which is, at the time of execution and delivery of this Contract, estimated to be 8.32¢ per 1000 gallons of finished water produced by the new plant after the completion of the modernization and expansion program. This figure is composed of the following costs and shall not be subject to change for the duration of the contract;

Operation & Maintenance-----	7.29¢
Waterworks administration-----	0.29¢
City Services-----	0.74¢
TOTAL-----	8.32¢

4. FINANCING DEBT SERVICE COST, which is the total cost of the reconstruction, modernization and expansion of the waterworks production facilities, including the financing thereof, and which is, at the time of the execution and delivery of this contract estimated to be 6.72¢ per 1000 gallons of finished water based on a thirty (30) year bond issue in the amount of \$2,275,000.00 at 4 1/2% and 2,066,762,000 gallons of finished water per year. This actual cost will be determined and adjusted in accordance with Section 11 herein, and, as so adjusted, shall remain throughout this Contract.

5. CONTRACT PRICE TO DISTRICT, which is fixed at 13¢ per 1000 gallons of water, or as same may be adjusted hereinafter.

11. INITIAL ADJUSTMENT OF RATE (13¢) AND FINANCING (DEBT SERVICE) COSTS (6.72¢) PER 1000 GALLONS OF FINISHED WATER

Immediately upon the completion of the reconstruction, modernization, and expansion of the Newport Water Works production facilities and the payment of all bills in connection therewith, the parties hereto agree, by written supplemental contracts, to correct and adjust the rate and figures of 13¢ and 6.72¢ as stated hereinabove, so as to reflect any change between the estimated FINANCING (DEBT SERVICE) COST of 6.72¢ and the actual, true, and correct final amount. The new rate and figures, if any, shall be substituted in lieu of the rate and figures as same presently exists in this contract.

EXAMPLE:

GIVEN

Suppose, for example, that the interest rate on the bonds for financing the modernization and expansion of the water production facilities was only 4% (Annual Debt Service per \$1000 of \$57.83) instead of the anticipated 4 1/8% (Annual Debt Service per \$1000 of \$61.39); that the cost upon completion of the modernization and expansion was found to be \$2,300,000 instead of the anticipated \$2,276,000; and that the volume at that time was 1,950,000,000 gallons annually.

TO FIND:

- (1) The adjusted debt service cost.
- (2) The initially adjusted rate to the District.

COMPUTATION:

$\frac{\$2,300,000}{\$1,800} \times \frac{\$57.83}{1}$ equals \$133,009 Annual Debt Service.

\$133,009 divided by 2,066,762 M equals 6.44¢ per 1000 gallons adjusted debt service cost.

13.00¢ - (6.72 - 6.44) equals 12.72¢ per 1000 gallons - the initially adjusted rate to the District.

12. ADJUSTMENTS OF RATE GENERALLY

A. Any adjustment of rates provided for in this Contract shall be computed to the nearest one-tenth (1/10) mill.

B. District and Newport agree that after the initial adjustment of rate as provided in section eleven hereinabove, has been made, if same was necessary to have been made, there shall be no further adjustment of rates until Newport's expansion and modernization of its production plant has been completed for a minimum period of two (2) full calendar years plus the remaining portion of the calendar year in which said modernization was completed.

C. District and Newport agree that after the said period of two (2) years has elapsed the rate of 13¢ per 1000 gallons of finished water (or as same be when initially adjusted under section 11 hereinabove) shall be subject to further review

and change once each calendar year, but only where there is an actual change of plus or minus two (2) mills per one thousand (1000) gallons of finished water on a calendar year basis, as shown by the ACTUAL BASIC COST hereinabove set out as same is compared to the STATED BASIC COSTS of six point seventeen (6.17¢) cents per thousand (1000) gallons of finished water hereinabove.

D. Newport agrees that after the said period of two (2) years has elapsed, Newport shall, on or before March 1st of each year, furnish to the District, in writing, Newport's latest available ACTUAL BASIC COSTS for the last calendar year, for the purpose of determining any rate adjustment. Said ACTUAL BASIC COSTS shall be expressed in terms of cents, or fractions thereof per one thousand (1000) gallons of finished water. Any adjustment shall be retroactive to January 1st of the year in which the said adjustment is made.

E. The District and Newport agree that after said period of two (2) years has elapsed, as provided in Section 12 (Twelve) hereinabove, all further and future adjustments in rates shall be made in accordance with the following formula, To-wit:

(Actual Basic Costs divided by Stated Basic Costs)

X Total Stated Variable Annual Costs equals the Adjusted Variable Annual Cost.

1. The difference between the Total Stated Variable Annual Costs and the Adjusted Variable Annual Costs shall in case same shows an increase, be added to the 13¢ rate, (or as same may have been adjusted after the correct financing (Debt Service) cost is ascertained), and, in the case same shows a decrease, it shall be subtracted therefrom; provided however, that any adjusted variable Annual Cost Change between the Stated Variable Annual Cost of 8.32¢ and an Adjusted Variable Annual Cost of 5.66¢ shall not result in any change in the 13¢ (or as same may have been adjusted after the financing (Debt Service) Cost is ascertained) District rate.

EXAMPLES:

GIVEN:

- (1) Suppose, for example, that after the debt service adjustment and the initial district rate adjustment as shown in example under Section 11, that, at the completion of two (2) full years operation in the new plant it is found that the volume is 2,000,000,000 gallons per year and that the basic costs as defined are:

Salaries per year	
Pumping-----	\$28,000
Purification-----	30,000
Power Costs per year	
Pumping-----	\$29,000
Purification-----	9,000
Chemical Costs per year	
Purification-----	\$18,000
TOTAL	\$114,000.00

TO FIND:

- (1) If a rate adjustment to the District were in order.
(2) If so, what the adjustment would be.

COMPUTATION:

\$114,000. divided by 2,000,000 M equals 5.70 cents per 1000 gal. Actual Basic Costs.

$\frac{5.70 \times 8.3}{6.17} = 7.69$ equals 7.69 cents per 1000 gal. - Adjusted Variable Annual Cost.

Although the Adjusted Variable Annual Costs shows a decrease from the stated Total Variable Annual Cost no reduction in rate is in order because the Adjusted Variable Annual Cost has not reduced below 5.66¢.

GIVEN:

- (2) Suppose, for example, that 20 years after the debt service adjustment and the initial district rate adjustments were made as shown in the example under Section 11 that the volume of finished water has increased to 3,000,000,000 gallons per year and that the Actual Basic Costs as defined are as follows:

Salaries per year
 Pumping-----\$27,000
 Purification----- 30,000

Power costs per year
 Pumping-----\$27,000
 Purification----- 9,000

Chemical cost per year
 Purification-----\$27,000

TOTAL-----\$120,000.

TO FIND:

- (1) If a rate Adjustment is in order.
- (2) If so, what the adjusted rate would be.

COMPUTATION:

\$120,000 divided by 3,000,000 M equals 4.00¢ per 1000 gal. Actual Basic Costs.

$\frac{4.00}{6.17} \times \frac{8.32}{1}$ equals 5.39¢ per 1000 gal. Adjusted Variable Annual Costs.

Since the Adjusted Variable Annual Costs have decreased below 5.66¢ as Adjustment in the District Rate is in order as follows:

12.72 - (5.66 - 5.39) equals 12.45¢ per 1000 gal. Adjusted District Rate.

GIVEN:

- (3) Suppose, for example, that 10 or 12 years after the Debt Service Adjustment and the Initial District Rate Adjustment as shown in example under Section 11, that it is found that the volume of finished water is 2,500,000,000 gallons and that the Actual Basic Costs as defined are as follows:

Salaries per year
 Pumping-----\$45,000
 Purification----- 42,500

Power costs per year
 Pumping-----\$45,000
 Purification----- 12,500

Chemical costs per year
 Purification-----\$30,000

TOTAL \$175,000.00

TO FIND:

- (1) If a rate adjustment to the District is in order.
- (2) If so, what the adjusted rate would be.

COMPUTATION

\$175,000 divided by 2,500,000 H equals 7.00¢ per 1000 gal. Actual Basic Costs.

$\frac{7.00}{6.17} \times \frac{8.32}{1}$ equals 9.44 cents per 1000 gal. Adjusted Variable Annual Costs.

Since the Adjusted Variable Annual Cost has increased above the stated Total Variable Annual Cost (8.32¢) a rate adjustment is in order as follows:

12.72 plus (9.44 - 8.32) equals 13.84¢ per 1000 gal. Adjusted District Rate.

13. ARBITRATION

a) Should the District or Newport, or both of them not agree to the accuracy of price adjustments as same be calculated by either of them or both, then, and in that event, the party disagreeing shall inform the other in writing immediately after said disagreement shall occur and shall state in said writing the exact nature of the disagreement and shall set a time and place for the disagreement to be arbitrated as hereinafter set forth.

b) The facts shall be submitted to a three member Committee for review and determination. The committee shall consist of one person to be appointed by the Board of Commissioners of the City of Newport, one person to be appointed by the Commissioners of the District, and the third member shall be mutually agreed upon by the said two members. Costs and salary of the third member shall be shared equally by Newport and the District. The District member and the Newport member shall be appointed by the respective parties within twenty (20) days after notification that the parties are not in agreement. The third member shall be selected and appointed by the two (2) members within twenty (20) days after the last appointment of such two (2) members. They shall have access to all records. They shall,

in writing, within thirty (30) days after the full board is constituted render their decision.

c) In the event that said District member and the said Newport member are unable to agree in the selection of the third (3rd) member within the said twenty (20) days, the District and the City shall make application to the American Arbitration Association for the appointment of the said third (3rd) member.

d) Each of the parties agree that the decision of the committee appointed pursuant to this section will be binding upon the parties.

14. RETROACTIVITY OF ADJUSTED RATE

District and Newport agree that all rate changes arrived at in any of the procedures set forth in Section 13 herein shall be retroactive to the date of the request for adjustment as provided in Section 13, paragraph (a).

15. EXPANSION AND MODERNIZATION OF NEWPORT WATER WORKS PRODUCTION FACILITIES

Newport agrees to fully complete the expansion and modernization of its waterworks production facilities within two (2) years from the date this contract is approved by Public Service Commission or The Public Service Commission finds that it lacks jurisdiction to approve or disapprove same. Said expansion and modernization is to be in conformity with Plan "C" as recommended in the J. S. Watkins Report dated October 1, 1956, and which will provide a surplus or excess of finished water over and above the requirements of the City of Newport and its water consumers, and which surplus or excess will be sufficient to supply the normal requirements of the District. Said expansion and modernization program by Newport of its waterworks production facilities shall be in compliance with the requirements of the Department of Health of the Commonwealth of Kentucky, and the Kentucky Inspection Bureau, unless prevented from so doing by acts of God, war, insurrection, strikes, failure to deliver material and equipment, or other conditions beyond the control of

Newport or the contractor to whom the contract for construction is awarded; in which event the time for completion shall be extended by an equivalent length of time to that lost as a result of any of the foregoing.

16. SUPPLY AND RATE DURING EXPANSION AND MODERNIZATION OF NEW WATER WORKS PRODUCTION FACILITIES

a) District and Newport each recognize, understand and agree that at the time of the execution and delivery of this contract, Newport is unable to supply all of the present demands and requirements of the District, estimated by the District to be one million, eight hundred thousand (1,800,000) gallons per day, averaged over a yearly period. During the period of modernization and expansion of its waterworks pumping and purification facilities, Newport agrees to furnish to the District, and the District agrees to purchase all of the water that Newport can supply or that the District is physically able to use, whichever is the lesser, at the rate of thirteen (13½) cents per one thousand (1000) gallons, with no minimum guarantee.

b) Upon the completion of the expansion and modernization of the waterworks production facilities, the District will take all of its water needs from Newport in accordance with all other provisions of this contract.

17. COST FOR IMPROVEMENTS TO NEWPORT PLANT AFTER COMPLETION OF PRESENT EXPANSION AND MODERNIZATION

A) If, after the completion of the expansion and modernization of the Newport Waterworks production facilities as contemplated in Section 15 herein is completed, the facilities shall, at some future date, prove inadequate for the combined needs of Newport and District, then and in that event Newport and District agree to additional expansion of said facilities, with the cost thereof to be determined in accordance with this section.

B) It is recognized that the present consumption of Newport is 1,309,133,290 gallons of water per year and that the present consumption of District is 670,795,900 gallons of water per year.

C) The cost of additional expansion, if required, shall be pro-rated between the District and Newport in proportion to the increase in consumption by Newport and the District at the time said additional expansion is needed as compared with the consumption set forth in Paragraph B herein, it being understood that if the consumption of either party, at said time, is the same or less than that set forth in Paragraph B, then said party shall bear no part of the expense of said additional expansion.

Examples where both parties increase usage:

(1) GIVEN:

Suppose, for example, that at some future date, Newport usage has increased 396,700,000 gallons and District usage has increased 203,300,000 gallons and that plant expansion is required, the annual Debt Service (one time coverage) of which is \$18,417.00.

TO FIND:

The increase cost to the District in cents per 1000 gallons.

COMPUTATION:

396,700,000 plus 203,300,000 equals 600,000,000 total increase in usage.

$\frac{203,300,000}{600,000,000} \times 100$ equals 33.88% of increase to District.

33.88% of \$18,417. equals \$6239.69 Districts share of cost.

\$6239.68 divided by $\frac{(670,795,900 \text{ plus } 203,300,000)}{1000}$ equals .70¢ per 1000 gal. increased cost to District.

(2) GIVEN:

Suppose, for example, that at some future date, Newport usage has increased 203,300,000 gallons and District usage has increased 396,700,000 gallons and that plant expansion is required the annual debt service (one time coverage) of which is \$18,417.

CONCLUSION:

The increase in rate to the District in cents per 1000 gallons.

COMPUTATION:

396,700,000 plus 203,300,000 equals 600,000,000 total increase in usage.

$\frac{396,700,000}{600,000,000} \times 100$ equals 66.12% of the increase to District.

66.12% of \$18,417 equals \$12,177.32 District's share of cost.

\$12,177.32 divided by $\frac{(670,725,000 \text{ plus } 396,700,000)}{1000}$ equals 1.14¢ per 1000 gallons rate increase to District.

19. GUARANTEE OF WATER RATE OR CHARGE BY DISTRICT AND NEWPORT

The maintenance of sound rate structure sufficient, safe and adequate to insure the safe, sound and continued operation of the water production facilities, and the payment of the Financing (Debt Service) Cost as such payments become due and payable, is a responsibility of the parties. It is therefore, agreed that in accordance with the terms of this Contract:

a) The District covenants and agrees to continuously fix, charge, collect and account for sufficient revenues from the operation of its waterworks facilities to make all the payments required to be made by it under this Contract to Newport, and that all such payments will be made solely from revenues derived by and available to the District from the operation of its waterworks facilities and distribution system and which shall be an operating charge against same.

b) Newport covenants and agrees to continuously fix, charge, collect and account for sufficient revenues from the operation of its waterworks facilities to adequately and properly operate and maintain same, and to provide sufficient revenues for the payment of the Financing (Debt Service) Cost and any required reserve, and that all payments required to be made by Newport will be made solely from revenues derived and available by Newport from the operation of its waterworks facilities and distribution

system and which shall be an operating charge against same.

19. EFFECTIVE DATE AND TERM OF CONTRACT

District and Newport agree that the terms and conditions of this contract shall take effect when same has been approved by the Public Service Commission of the Commonwealth of Kentucky (or such other governmental agency as may be required), or when said Commission or agency determines that it lacks jurisdiction to approve or disapprove said contract. This contract shall remain in full force and effect and shall be binding upon each of the parties hereto, their successors and assigns, for a full and complete term of thirty (30) years from the date of the execution and delivery of this contract.

20. APPROVAL OF THIS CONTRACT

a) District and Newport agree that they will make joint application to the Public Service Commission of the Commonwealth of Kentucky, or such other governmental agency as may be required, seeking the approval of this contract, if said Commission has jurisdiction or, alternatively, a finding by said Commission that it lacks jurisdiction to approve or disapprove this contract.

b) District and Newport agree that each shall bear the costs of the action contemplated in Section twenty (20) hereinabove, excluding attorneys' fees.

c) The failure of Public Service Commission to approve ^{or} all or any part of this contract, other than for the lack of jurisdiction, shall render this contract null and void and of no force and effect. In such event, however, it is the intent of the parties hereto to make every possible and reasonable effort to resolve any and all parts of the contract which the Public Service Commission fails to approve, other than for lack of jurisdiction, and if same can be resolved to the satisfaction of the parties hereto; this contract containing such amendments shall then be submitted to the Public Service Commission for approval.

21. DEFENSE OF CONTRACT

The parties agree that each shall be bound by this contract and uphold its terms and conditions, without resorting to any governmental agency or court except for the purpose of obtaining approval of this contract, or, alternately, a finding by Public Service Commission that it lacks jurisdiction, as provided in paragraph twenty (20). Should any person or persons challenge the validity of this contract or any of its terms or provisions, before any governmental agency or court, the parties shall jointly resist any such attempt, and shall equally bear the cost thereof, excluding attorneys' fees.

IN WITNESS WHEREOF, the City of Newport, Kentucky, a municipal corporation, by and through its City Manager, authority and approval having been given by Commissioner's Ordinance No. 1006, duly passed by the Board of Commissioners of the City of Newport, Kentucky, on the 4th day of June, 1957, and the Campbell County Water District of Campbell County, Kentucky, by and through its Chairman and Secretary, authority having been given by a ^{Motion and} Resolution of the District duly passed by the District on the 3^d day of June, 1957, have set their hands and respective seals this the 6th day of June, 1957. "

THE CITY OF NEWPORT, KENTUCKY

BY Ralph Messinger
City Manager

ATTEST:

Robert J. Schenck
Clerk, City of Newport, Kentucky

THE CAMPBELL COUNTY WATER DISTRICT
OF CAMPBELL COUNTY, KENTUCKY

BY Arthur E. Winkler
Chairman

Charles L. Partin
Secretary