

ORDINANCE NO. 830.7-3-2010

AN ORDINANCE BETWEEN THE CITY OF FRANKLIN, KENTUCKY,  
COUNTY OF SIMPSON, KENTUCKY AND THE FRANKLIN-SIMPSON INDUSTRIAL AUTHORITY  
APPROVING AN INTERLOCAL AGREEMENT FOR FUNDING OF ECONOMIC AND/OR  
INDUSTRIAL DEVELOPMENT AND AUTHORIZING THE MAYOR TO SIGN

WHEREAS, the City of Franklin, County of Simpson and the Franklin-Simpson Industrial Authority have reached an agreement with regard to the funding of an economic and/or industrial development project for property to be obtained, a structure to be constructed, and the property and structure to be leased and used by a local industrial expansion, with the powers and duties as set forth in an interlocal agreement entitled "Interlocal Agreement Regarding Industrial Development," a copy of which is attached hereto and incorporated herein by reference; and,

WHEREAS, the City of Franklin and County of Simpson require the passage of an Ordinance approving said interlocal agreement and authorizing the Mayor for the City of Franklin and the County Judge Executive for the County of Simpson to execute said interlocal agreement; and,

WHEREAS, it is in the best interest of the citizens of the City of Franklin and County of Simpson that the City and County adopt this Ordinance;

NOW, THEREFORE, be it ordained by the City of Franklin, Kentucky, acting by and through its City Commission, and the County of Simpson, acting by and through the Simpson Fiscal Court, as follows:

1. The City Commission of the City of Franklin, Kentucky and the Simpson Fiscal Court for the County of Simpson hereby approve the terms and conditions of the Interlocal Agreement Regarding Industrial Development between the County of Simpson, the City of Franklin, and the Franklin-Simpson Industrial Authority, a copy of which is attached hereto and incorporated herein by reference.
2. The Mayor of the City of Franklin, Herbert S. Williams, and the County Judge Executive for the County, Jim Henderson, are hereby authorized to execute any and all documents necessary and appropriate to effectuate the intent of this Ordinance and the Interlocal Agreement including, but not limited to the Interlocal Agreement.

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.

March 4, 2010 FIRST READING

March 8, 2010 SECOND READING

At a meeting held on March 8, 2010, on motion made by Commissioner Wendell Stewart and seconded by Commissioner Jamie Powell, the foregoing ordinance was adopted, after full discussion, by the following vote:

YES COMMISSIONER JAMIE POWELL

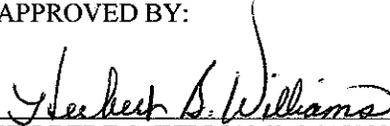
YES COMMISSIONER MIKE SIMPSON

YES COMMISSIONER WENDELL STEWART

YES COMMISSIONER HENRY STONE

YES MAYOR HERBERT S. WILLIAMS

APPROVED BY:

  
HERBERT S. WILLIAMS, MAYOR  
CITY OF FRANKLIN, KENTUCKY

ATTEST:

  
KATHY STRADTNER, CITY CLERK  
CITY OF FRANKLIN, KENTUCKY

## INTERLOCAL AGREEMENT REGARDING INDUSTRIAL DEVELOPMENT

THIS INTERLOCAL AGREEMENT is made and entered into on this 8<sup>th</sup> day of March, 2010, by and among the County of Simpson, Kentucky (hereinafter referred to as "County"), P. O. Box 242, Franklin, Kentucky 42135; the City of Franklin, Kentucky (hereinafter referred to as "City"), P. O. Box 2805, Franklin, Kentucky 42135; and the Franklin-Simpson Industrial Authority (hereinafter referred to as "Industrial Authority"), 201 South Main Street, Franklin, Kentucky 42134.

WHEREAS, the above-referenced entities desire to enter into an interlocal agreement pursuant to KRS 61.210 et seq. and/or other applicable provisions of the Kentucky Revised Statutes for the purpose of the funding of economic and/or industrial development in and around the development area and project, more particularly described in Exhibit 1 attached hereto and incorporated herein by reference (hereinafter referred to as "Project");

WHEREAS, this agreement shall be duly adopted and/or authorized by and through a ~~City or County ordinance or Industrial Authority resolution pursuant to the aforementioned~~ statute(s);

WHEREAS, the purpose of this interlocal agreement shall be to set forth the terms and conditions agreed to by the parties with regard to the financing and construction of the project by and between the parties hereto, and the leasing/use of the project to World Color (USA), LLC (hereinafter referred to as "World Color") by and through a lease between the Industrial Authority and World Color.

NOW, THEREFORE, the parties set forth above, acting by and through their duly authorized representatives, agree as follows:

**IDENTIFICATION OF PARTIES AND  
DUTIES AND RESPONSIBILITIES OF EACH PARTY**

1.1 Identification of Parties. The parties listed above shall be the only parties to this agreement.

1.2 City's Duties and Responsibilities.

A. The City shall take any and all actions necessary to secure financing for the project in the original principal sum of up to Four Million Dollars (\$4,000,000.00) initially through Regions Bank under such terms and conditions as are most favorable to the project. During the life of the project and/or at any time any indebtedness is owed on the project, the City may refinance the indebtedness, with the approval of the County, under such terms and conditions as are deemed to be most favorable for the project and the citizens and residents of Franklin and Simpson County. It is specifically understood and agreed that the lease being entered into by and between World Color and the Industrial Board is for a term of \_\_\_ years, and the original financing package offered by Regions Bank, and deemed most favorable for the project is for an initial term of five (5) years, making the necessity of refinancing inevitable.

B. The City shall pay to the Industrial Board from the loan proceeds, as soon as practicable after receipt of a purchase order or other indicia of an outstanding bill(s) or invoice(s) attributable to the project, said amounts due and owing for or on behalf of the project as set forth in said document(s). The City, County and Industrial Authority shall have oversight authority on the funds spent for or on behalf of the project. The City shall have both oversight authority and signature power over said loan proceeds. All expenditures from said loan proceeds shall be approved by the City and the Industrial Authority, with it being specifically understood

and agreed that any and all purchase order(s) or bill(s) submitted to the City for payment are presumed by the City to have been approved by the Industrial Authority.

C. The City shall retain any and all excess monies generated by and through the project for administrative costs, with said excess monies being categorized as General Fund revenues. For purposes of this Agreement, "excess monies" shall mean the monthly rentals or revenues generated by and through the project during its useful life minus the monthly payment due on said indebtedness (including principal and interest). In the event that a refinancing occurs so that payments are due and payable at an interval greater than monthly, the monthly rentals or revenues shall be multiplied by the number of months contained in said interval and the payment amount shall be deducted therefrom in calculating the "excess monies."

D. The City and County shall, at least annually, analyze and review the financial aspects of the project.

E. The City and County agree to pledge, annually, all amounts as are necessary to pay the monthly (or other payment period) payment for the construction of the project, up to and including the entire amount of annual principal and interest payments in the event no monies are generated as revenue by or through the project.

F. The City Manager and County Judge Executive, or their designee, shall be the administrators over the terms and conditions of this Agreement and the funds created pursuant hereto.

G. The City shall take any and all other actions necessary or appropriate to fully effectuate the terms and conditions of this Agreement and/or any applicable provisions of the Kentucky Revised Statutes.

1.3 County's Duties and Responsibilities.

A. In order to assist the City in securing the financing of the project as stated herein, and to assist with the punctual payment of the principal and interest on said debt, including interest or principal due and payable during construction of the project, the County covenants with the City, in each of its fiscal years, to appropriate and pay to the City from the County Funds for deposit into an account or Sinking Fund created pursuant to the Ordinance creating the indebtedness on behalf of the City, an amount equal to one-half of any deficits required to be paid by the City or held in deposit in the Sinking Fund under the provisions of the Ordinance creating the indebtedness in the following manner:

(1) If the parties know that a deficit shall exist prior to the start of a fiscal year, the County shall include in its next annual budget an appropriation from the County Funds in the aggregate amount of one-half of any and all deficits, to the extent the deficits are known at the time of the creation of the budget, and shall pay over the amount of appropriation to the City for deposit in an account or the Sinking Fund used for the payment of the indebtedness in monthly installments, payable on or before the \_\_\_\_ day of each month during the term of this Agreement, in amounts needed to prevent deficits from occurring. If a deficit or deficits occur during a fiscal year, the County shall revise its budget as necessary to reflect one-half of the actual deficits existing in the Sinking Fund or on said indebtedness, and shall appropriate and pay to the City for deposit into the account or Sinking Fund used to pay the indebtedness the amounts necessary to cure one-half of any deficits within five (5) days of the date the payment on said indebtedness is due and owing by the City.

(2) For purposes of this Agreement, the term "deficit" means, as of any period of calculation, the difference obtained by subtracting (a) the sum of any rentals or

revenues generated from the project payable from the Industrial Authority to the City available for payment of the Debt Service Requirement on the indebtedness during the period, from (b) the actual Debt Service Requirement on the indebtedness for the period.

B. The County, prior to making any budget appropriation for payments or payments under the provisions of this Section, or at any other time upon request, shall be entitled to examine all books and records of the City relating to the indebtedness, funds, accounts and other revenues relating to the Project.

C. The County covenants that this Agreement is deemed to have been entered into for the benefit of the City and the County, and that the provisions of the Agreement and the obligation of the County to include in each of its annual budgets and to pay the City, in each fiscal year, an amount equal to one-half of any deficits in the amounts required to be on deposit in the Sinking Fund or account or required to be paid on said indebtedness under the provisions of the Ordinance creating the indebtedness may be enforced in any court of competent jurisdiction by the City.

D. Nothing contained in this agreement nor any action taken under it shall be construed as creating a lien of any kind upon any property, funds, income, or revenues now existing or hereafter held by or available to the County or as preventing the County at any time from pledging, obligating or creating specific liens upon the funds, income or revenues to or for the payment of any bonds, notes or certificates of the County or for any other purpose.

E. The County makes the following covenants regarding the County Funds:

(1) Collection of County Funds. The County has full power to incur the obligation to make the payments from the County Funds, and the obligation to make the payment in the manner provided shall not be subject to repeal or impairment by any subsequent

ordinance, resolution or other proceedings of the governing body of the County. The County shall be unconditionally and irrevocably obligated, so long as this Agreement is in effect, to the extent necessary, to make the payments in the amounts and at the times required under this Agreement.

(2) Survival of Obligation. The County covenants that its obligation to make the payments required shall be an obligation of the County payable from legally available sources of funds, and may be made from any funds of the County.

F. The County and City shall be responsible for the oversight, administration, and implementation of the local development ordinance and the fund created by and through this Agreement.

G. The City and County shall, at least annually, analyze and review the financial aspects of the project.

H. The City and County agree to pledge, annually, all amounts as are necessary to pay the monthly (or other payment period) payment for the construction of the project, up to and including the entire amount of annual principal and interest payments in the event no monies are generated as revenue by or through the project.

I. The City Manager and County Judge Executive, or their designee, shall be the administrators over the terms and conditions of this Agreement and the funds created pursuant hereto.

J. The County shall take any and all other actions necessary or appropriate to fully effectuate the terms and conditions of this Agreement and/or any applicable provisions of the Kentucky Revised Statutes.

1.4 Industrial Authority's Duties and Responsibilities.

A. The Industrial Authority shall acquire such land as is necessary and appropriate to effectuate the intent of this Agreement, including, but not limited to, any and all such land necessary and appropriate for the construction of the project.

B. The Industrial Authority agrees to oversee the construction of the project and the expenditure of funds for the construction of the project in order to fulfill the intent of this Agreement.

C. The Industrial Authority shall enter into a Lease Agreement with World Color, upon terms and conditions agreed to by the City and County, as soon as practicable after the execution of this Agreement, with said Lease being for a term of \_\_\_\_ years, with the monthly rental amount not to be less than the debt service on the indebtedness. The Industrial Authority shall pay to the City, within five (5) days of receipt thereof, all amounts received from World Color for rent from the project. The Lease Agreement with World Color shall be incorporated herein as if set forth in its entirety. Further, if at any time World Color defaults on the Lease and is no longer paying rent, the Industrial Authority shall use every effort to re-let the project or cause it to generate revenue sufficient to pay the debt service on the indebtedness set forth herein. All monies generated from the project shall be paid to the City as soon as practicable upon receipt by the Industrial Authority and used by the City toward the retirement of said indebtedness.

D. The Industrial Authority shall be responsible to generally manage the project and shall, at least annually, report to the City and County as to financial status of the project.

E. The Industrial Authority agrees to make an accounting to the Simpson Fiscal Court and Franklin City Commission, no less frequently than annually, of the monies generated and the expenditures incurred with regard to the project.

F. The Industrial Authority shall take any and all other actions necessary or appropriate to fully effectuate the terms and conditions of this Agreement and/or any applicable provisions of the Kentucky Revised Statutes.

## II

### TERM

The term of this agreement shall be the lesser of the following:

- 2.1 Thirty (30) years from the date the indebtedness which is a subject of this Agreement is commenced;
- 2.2 At such time as all indebtedness attributable to the project is paid in full;
- 2.3 Until such time as the City or County terminate this Agreement.

## III

### TERMS OF DEFAULT AND REMEDIES BY AND BETWEEN THE GOVERNMENTAL ENTITIES AND AGENCY

Any party failing to perform any of the terms and conditions required by this Agreement shall be deemed to be in default and the remaining parties may seek any and all recourses available to them at law or in equity.

## IV

### MISCELLANEOUS

- 4.1 Notice. All notices, certificates, requests or other communications hereunder will be sufficiently given and will be in writing and mailed (postage prepaid, and

certified or registered with return receipt requested) or delivered (including delivery by courier services) as follows:

**CITY:** City of Franklin  
Attn: Mayor or City Manager  
117 West Cedar Street  
P. O. Box 2805  
Franklin, Kentucky 42135-2805

**COUNTY:** County of Simpson  
Attn: County Judge Executive  
Simpson County Courthouse  
P. O. Box 242  
Franklin, Kentucky 42135-0242

**INDUSTRIAL  
AUTHORITY:** Franklin-Simpson Industrial Authority  
Attn: Industrial Authority Chairman/Director  
201 South Main Street  
P. O. Box 876  
Franklin, Kentucky 42135-0876

Any of the foregoing may, by notice given hereunder to the other, designate any further or different addresses to which subsequent notices, certificates, requests or other communications will be sent hereunder. All notices, certificates, requests and other communications pursuant to this Agreement will be effective when received (if given by mail) or when delivered (if given by delivery). Further, in the event of a change in personnel to any party/officer hereto, the presumption shall be that, unless the other parties are notified, in writing, the successor to that position shall be the authorized representative and shall be bound by this Agreement.

4.2 Amendments, Changes and Modifications. Except as specifically provided in this Agreement, this Agreement may not be amended, changed, modified or altered, or any provision hereof waived, without the written consent of all parties hereto.

4.3 Severability. In the event that any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

4.4 Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which will be an original and all of which will constitute but one and the same instrument.

4.5 Applicable Law. This Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

4.6 Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

4.7 Binding Effect. This Agreement will inure to the benefit of and will be binding upon the parties hereto and their respective successors and assigns (including, without limitation, security assigns), subject, however, to the limitations contained in this Agreement.

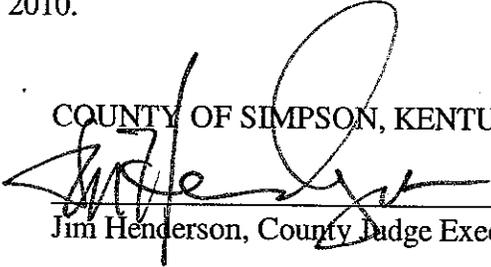
4.8 Entire Agreement. This Agreement and all exhibits attached hereto shall constitute the entire agreement of the parties hereto and any prior agreement of the parties hereto relating to the Project, whether written or oral, is merged herein and shall be of no separate force and effect.

4.9 Mutual Negotiation. This Agreement and the language contained herein have been arrived at by the mutual negotiation of the parties. Accordingly, no provision hereof shall be construed against one party in favor of another party merely by reason of draftsmanship.

4.10 Waiver. No action or failure to act by one or more of the parties hereto shall constitute a waiver of a right or duty afforded it/him under the contract, nor shall such action or failure to act constitute approval or acquiescence of or in a breach hereunder.

This 8<sup>th</sup> day of March, 2010.

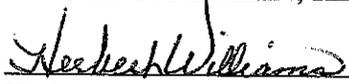
COUNTY OF SIMPSON, KENTUCKY

  
Jim Henderson, County Judge Executive

ATTESTED BY:

  
Pam Rohrs, Fiscal Court Clerk

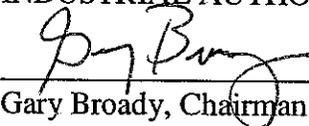
CITY OF FRANKLIN, KENTUCKY

  
Herbert Williams, Mayor

ATTESTED BY:

  
Kathy Stradtner, City Clerk

FRANKLIN-SIMPSON  
INDUSTRIAL AUTHORITY

  
Gary Broady, Chairman

COMMONWEALTH OF KENTUCKY

COUNTY OF SIMPSON

Subscribed and sworn to before me by Jim Henderson, the County Judge Executive of Simpson County, Kentucky on this 6<sup>th</sup> day of April, 2010.

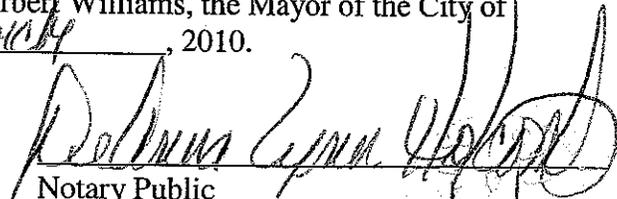
  
Notary Public

My commission expires: 8/20/13

COMMONWEALTH OF KENTUCKY

COUNTY OF SIMPSON

Subscribed and sworn to before me by Herbert Williams, the Mayor of the City of Franklin, Kentucky on this 9<sup>th</sup> day of March, 2010.

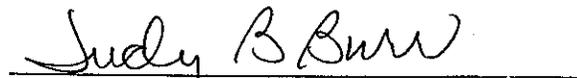
  
Notary Public

My commission expires: 8/31/2010

COMMONWEALTH OF KENTUCKY

COUNTY OF SIMPSON

Subscribed and sworn to before me by Gary Broady, the Chairman of the Franklin-Simpson Industrial Authority on this 10 day of March, 2010.

  
Notary Public

My commission expires: May 26, 2010

HAVE SEEN AND CONSENT TO FORM  
AND APPROVE FOR EXECUTION:

By: \_\_\_\_\_, Representative  
GOVERNOR'S OFFICE FOR LOCAL DEVELOPMENT

Date executed: \_\_\_\_\_

CITY/AGREEMENTS/INTERLOCAL/INTERLOCAL AGREEMENT RE WORLD COLOR