

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PUBLIC WORKS TO ENTER INTO AN AGREEMENT WITH TENNESSEE AMERICAN WATER COMPANY RELATIVE TO WATER USAGE DATA FOR THE PURPOSE OF SEWER BILLING AND SHUT-OFF SERVICES FOR NON-PAYMENT.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, it is hereby authorizing the Administrator of the Department of Public Works to enter into an agreement with Tennessee American Water Company relative to water usage data for the purpose of sewer billing and shut-off services for non-payment.

ADOPTED: _____, 2012.

/mms

City of Chattanooga



Resolution/Ordinance Request Form

Date Prepared: 9-19-2012

Preparer: Jerry W. Stewart, P.E.

Department: Public Works

Brief Description of Purpose for Resolution/Ordinance:

Res./Ord. # _____ Council District # _____

A City Council resolution is requested to authorize the Administrator of Public Works to enter into an agreement with Tennessee American Water Company relative to water usage data for the purpose of sewer billing and shut-off services for non-payment.

Name of Vendor/Contractor/Grant, etc. _____
Annually Estimated Total project cost \$ _____
Total City of Chattanooga Portion \$ _____
Annually Estimated City Amount Funded \$ _____
New City Funding Required \$ _____
City's Match Percentage % _____

New Contract/Project? (Yes or No) _____
Funds Budgeted? (YES or NO) _____
Provide Fund _____
Provide Cost Center _____
Proposed Funding Source if not budgeted _____
Grant Period (if applicable) _____

List all other funding sources and amount for each contributor.

| Amount(s) | Grantor(s) |
|-----------|------------|
| \$ _____ | _____ |
| _____ | _____ |
| _____ | _____ |

Agency Grant Number _____

CFDA Number if known _____

Other comments: (Include contingency amount, contractor, and other information useful in preparing resolution)

Jerry W. Stewart 9/19/2012

Approved by: _____
DESIGNATED OFFICIAL/ADMINISTRATOR

Reviewed by: FINANCE OFFICE

Please submit completed form to @budget, City Attorney and City Finance Officer

Revised: 1/26/09

WATER USAGE DATA AND SHUT-OFF AGREEMENT

THIS WATER USAGE DATA AND SHUT-OFF AGREEMENT (the "Agreement") is made effective as of the ____ day of _____, 2012 (the "Effective Date"), by and between **Tennessee-American Water Company**, a Tennessee corporation, with offices located at 1101 Broad Street, Chattanooga, Tennessee 37401 ("TAWC" or "Company"), and the City of Chattanooga, Tennessee, a municipal corporation with offices at 100 E. 11th Street, Chattanooga, Tennessee 37402 ("Municipality"). The Agreement also contains an Addendum, which shall be effective for the period commencing November 1, 2012, and ending December 31, 2012. Hereinafter, the Company and the Municipality may be referred to individually as a "Party," and collectively as the "Parties."

WHEREAS, the Municipality is the operator of the sanitary sewer system and appurtenances thereto serving areas inside Hamilton County, Tennessee and Northwest Georgia; and

WHEREAS, the Municipality establishes rates and charges for its sanitary sewer services customers ("Municipal Customers") based upon water usage and bills such charges on a periodic basis to its Municipal Customers so served; and

WHEREAS, Tenn. Code Ann. §§7-35-201 and 68-221-208, and Ga. Code Ann. § 12-5-179(h), as applicable, permit Municipality to enforce collection of lawful rates and charges for the use of sewer facilities by requiring that water service be discontinued until payment is made or some satisfactory arrangement is reached; and

WHEREAS, Company is engaged in the business of providing water service to substantially the same area and customers as are served by Municipality and Company is in a position to supply to the Municipality the water usage data Municipality requires to compute the billing and collection of its sanitary sewer service charges; and

WHEREAS, Company is authorized, pursuant to tariffs on file with, and approved by, the Tennessee Regulatory Authority ("TRA"), to furnish Municipality with Water Usage Records, which is defined in Section (III) of this Agreement; and

WHEREAS, Municipality has requested Company to provide Water Usage Data to Municipality for TAWC Customers who are also Municipal Customers, which will enable the Municipality to compute and bill Municipal Customers charges for sanitary sewer services; and

WHEREAS, Company is authorized, pursuant to tariffs on file with, and approved by, the TRA, to enter into an agreement with Municipality for the termination of water service to a TAWC Customer who is also a Municipal Customer for reason of delinquency in the payment of Municipality's sanitary sewer services charges; and

WHEREAS, Municipality desires Company to terminate water service to a TAWC Customer who is also a Municipal Customer for reason of delinquency in the payment of a Municipal Customer's sanitary sewer services charges and to reconnect such water service upon repayment of all charges, including reconnect charges; and



WHEREAS, the Company is willing to furnish the requested Water Usage Data to the Municipality and to terminate and reconnect such service pursuant to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

I. Definitions. Capitalized terms used herein shall have the following meanings:

“Municipal Customer” or “Municipal Customers” means any person(s), entity(s) or premise that discharges wastewater into the Municipality’s sewer collection and treatment system and is a customer of the Company.

“Sewer Collection and Treatment Charges” means the charges, including applicable penalties, as permitted by law and the rules and regulations of the TRA, and taxes, billed by Municipality to a Municipal Customer for the use of the Municipality’s sewer collection and treatment system.

“TAWC Customer” or “TAWC Customers” means any person(s), entity(s) or premise that receives water services from, and is a customer of, the Company.

“Term” shall mean each Renewal Term, if any, together with the Initial Term, as further defined herein.

“Unit” means the specific current meter readings for each Municipal Customer.

II. Term.

1. The Effective Date of this Agreement shall be the date first written above. The initial term of this Agreement shall begin upon the Effective Date and shall end on the third anniversary thereof (the “Initial Term”), unless terminated earlier pursuant to Section VII. Unless terminated earlier, this Agreement shall automatically renew for a period of twelve months at the end of the Initial Term (“Renewal Term”), and thereafter at the end of each twelve-month Renewal Term upon the same terms and conditions contained in this Agreement or applicable revised version of this Agreement.

2. Except as otherwise provided in Section VII, if either Party desires the Agreement to expire, without renewal, at the expiration of the Initial Term, such Party shall provide a one year notice consistent with the Effective Date to the other Party of the same.

III. Municipal Customer Water Usage Data

1. On and after January 1, 2013, the Municipality shall be responsible for sanitary sewer billing, accounting and collecting payments for those Municipal Customers referenced in Section III (2) of this Agreement.

2. In preparation for the afore-referenced January 1, 2013, date, and for proceeding thereafter, on and after September 1, 2012, Company shall identify Municipal Customers and make such information available electronically to Municipality. The Company shall provide the Municipality with on-line access, via a website, to the name, mailing address, service address, and account number of each Municipal Customer. Municipality shall review and verify this information for accuracy and promptly notify Company of any inaccurate information.

3. In preparation for the afore-referenced January 1, 2013, date, and for proceeding thereafter, on and after September 15, 2012, the Company shall weekly or monthly, as preferred by the Municipality, furnish Municipality the following information with respect to each TAWC Customer who is also a Municipal Customer:

- a) Account number and premise number;
- b) Date of most recent water meter readings;
- c) Water usage for the billing period stated in the units of measure used by the Company;
- d) Number of water meters at each premise and the size of the water meters at each premise;
- e) Water meter numbers;
- f) Beginning and ending water meter readings;
- g) Accounts will be identified as residential, commercial, industrial or public authority;
- h) Residential accounts with a garden meter or lawn watering meter will be identified; and
- i) Company and Municipality may agree to the provisioning of additional relevant information.

4. In preparation for the afore-referenced January 1, 2013, date, and for proceeding thereafter, on and after September 15, 2012, the Company shall provide the Municipality with on-line access, via a website, to the following: (a) the information listed in Section III (3) of this Agreement for all period bills; and (b) any subsequent adjustments that the Company makes in its bills regarding the information listed in Section III (3) of this Agreement. The water usage data listed in Sections III (2), (3) and (4) of this Agreement shall be referred to herein as ("Water Usage Records").

5. Commencing January 1, 2013, for any month in which Municipality obtains Water Usage Records from Company, Municipality agrees to pay the Company pursuant to the then applicable TRA-approved tariff, which tariff, at the time of the execution of this Agreement, establishes a per meter read rate of \$0.020. This per meter read rate entitles Municipality to Water Usage Records.

6. Payments due from the Municipality shall be due thirty (30) days from the date of the Company's invoice.

7. The tariffed-based rates hereunder may be amended from time to time as approved by the TRA.

8. In computing and furnishing the information requested by Municipality, Company agrees to observe the same diligence, policy and procedure as is used by it in computing its water service accounts.

9. All financial and related information (including digital) utilized in the calculation of tariff charges associated with this Agreement shall be maintained in conformity with generally accepted accounting practices and shall be available to Municipality or its duly appointed representatives at mutually convenient times.

IV. Shut-off Services

1. On and after January 1, 2013, when Municipality determines, in accordance with applicable state law, that a Municipal Customer's properly billed charges for sanitary sewer services and applicable taxes are delinquent, Municipality may make a specific written request, via electronic means, to the Company to terminate water service to the TAWC Customer who is also a Municipal Customer. The Municipality shall, by written certification signed by an authorized representative, certify to Company the following via electronic means:

- a) the name of Municipal Customer that is in arrears in payment of Sewer Collection and Treatment Charges;
- b) the address of the premises where such sewer services are received;
- c) the premise number where such sewer services are received or the account number of Municipal Customer to be disconnected;
- d) that Municipality has complied with its policies and procedures regarding the billing and shut-off notification process; among other things, the written notice to Municipal Customer from Municipality should detail the delinquent amount and the date that service will be disconnected;
- e) that Municipal Customer's arrearage in payment of Sewer Collection and Treatment Charges is not less than the minimum amount established by the Company from time to time; and
- f) that Municipality has complied with the requirements of applicable state law regarding the billing and notification process to terminate water service.

2. Upon receipt of the written request and certification as set out above, Company shall, within eleven (11) days, send an employee of Company to the premises as identified by Municipality and terminate the water service to such premises. The door knob notification used

in this process shall contain the Municipality's name, logo and telephone number. This door knob notification must be supplied to the Company in advance by the Municipality.

3. Municipality's written request and certification for disconnection, as set out above, received after 3:00 p.m. on a business day may not be worked by the Company until the next regular business day after receipt of such request. Any Municipality's written request and certification for disconnection received on the weekend, or on a Holiday, may not be worked until the next regular business day after receipt of such request.

4. Any Municipality written request and certification for disconnection that has not been completed within eleven (11) days will cancel automatically and no additional efforts to terminate such services will be undertaken by Company, absent a new written request and certification for disconnection. Company will notify the Municipality of any such automatic cancellations.

5. If a Municipal Customer properly scheduled for disconnection makes a sufficient payment, as determined by the Municipality, for Sewer Collection and Treatment Charges such that the scheduled disconnection should be cancelled, it is the sole responsibility of the Municipality to take the necessary action to timely and effectively notify the Company. In such an event, the Municipality should, at a minimum, contact the Company's Special Accounts Department at 1-866-772-2228 or via electronic means.

6. Notwithstanding anything to the contrary herein stated, and consistent with applicable state law, company reserves the exclusive right, at its sole discretion, to process the Municipality's written request and certification for termination of water service on such schedules and at such times as is convenient to Company and are consistent with Company's normal business practice and procedure.

7. Company's actions required under this Agreement shall be excused if, due to matters beyond its control, including, but not limited to, employee work stoppages, strikes, inclement weather and emergencies requiring utilization of manpower or resources elsewhere. Termination will not be completed if the TRA, a local board of health, municipality, fire district, court of competent jurisdiction or other governmental entity having jurisdiction issues an instruction to Company so stating. At such time, Company will relay such conflicting instructions to Municipality and Company will not knowingly take further actions toward termination until the appropriate governmental entity or Municipality notifies Company in writing that the conflict with the termination(s) has been resolved and provides written evidence thereof. Thereafter, Municipality shall, to the extent permissible by law, indemnify, hold harmless and defend Company, its directors, officers, employees, contractors and/or successors-in-interest from and against all liabilities, claims, damages, penalties, causes of action, costs and expenses, including attorneys fees, imposed or incurred by or asserted against Company by reason of any act or omission associated with Company's obligation to terminate water service pursuant to this Agreement.

8. If Company wrongfully fails or refuses to terminate water service in accordance with this Agreement and continues such failure or refusal for a period of sixty (60) days after receipt of Municipality's written request and certification to do so, the Company shall only be

liable to Municipality for any amount due from the Municipal Customer for the period of time when the Municipal Customer service should have been disconnected but for Company's failure to perform. The Parties agree that this is the exclusive remedy for the Company's failure or refusal to terminate water service pursuant to this Agreement.

9. In no event shall the Company be required to disconnect a fire line service.

V. Shut-off Services Fee.

1. Shut-off services requested by the Municipality pursuant to this Agreement and tariffs on file with, and approved by, the TRA, will be provided by the Company at the applicable tariffed rates. At the time of the execution of this Agreement, the applicable tariffed rate for disconnection, and subsequent reconnection, of Municipal Customers' sanitary sewer services for non-payment of Sewer Collection and Treatment Charges is \$15.00 per disconnection/reconnection.

2. Municipality shall pay to Company, within thirty (30) days of receipt of the date of a monthly invoice from the Company, the total amount due for disconnection and reconnection services.

3. The tariffed-based fees hereunder may be amended from time to time as approved by the TRA.

4. In the event the Company and the Municipality both have pending shut-off orders for the same Municipal Customer during the same relevant cycle, such that only a single visit to the premise is made for both disconnection and reconnection, there will be no charge to the Municipality for disconnection or reconnection services.

VI. Covenants of Municipality.

Municipality hereby covenants and agrees:

1. Should Municipality enact or pass any ordinance or law inconsistent with the terms of this Agreement, Company reserves the right, at its sole discretion, to terminate this Agreement upon ninety (90) days written notice to the Municipality.

2. Notwithstanding anything herein to the contrary, Company shall not be liable for any loss, damage, or other claim asserted by the Municipality's Municipal Customers, the owner and/or tenant of the premises, the City, Municipality, or any other person, corporation or entity based upon or arising out of the termination of water service at the request of the Municipality. The Municipality agrees, to the extent permissible by law, to indemnify, defend and hold harmless the Company, and its employees and agents, from and against any and all claims (including attorney's fees), complaints or causes of action (whether judicial, administrative, or otherwise) arising out of the termination of water service at the request of the Municipality. This paragraph is only applicable if the Municipality is charged by the Company for the particular disconnection and/or reconnection that is at issue.

Chattanooga, TN 37401

With a copy to: Tennessee-American Water Company
Attn: Corporate Counsel
2300 Richmond Road
Lexington, KY 40502

or to such other address with respect to a party as such party shall notify the other in writing as above provided. Except as otherwise provided in this Agreement, any such notice shall be deemed to be given on the day personally delivered, one (1) day after the date on which the same was deposited with a nationally recognized overnight delivery service, or five (5) business days after the date on which the same was deposited in a regularly maintained receptacle for the deposit of United States mail, in each case addressed and sent as aforesaid.

IX. Applicable Law. This Agreement shall be construed and its performance shall be determined in accordance with the laws of the State of Tennessee, without regard to its conflict of laws rules.

X. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns, but shall not be assignable by any third party hereto without the prior written consent of the other Party. Any attempted assignment shall be void.

XI. Severability. The invalidity of any provision or part of this Agreement shall not be deemed to affect the validity of any other provision. In the event that any provision or part hereof is held illegal, unenforceable or invalid, both Parties agree that the remaining provisions shall be and remain valid and enforceable to the fullest extent permitted by law.

XII. Complete Agreement. This Agreement contains the entire agreement between the Parties hereto with respect to the obligations contained herein and supersedes all prior agreements and understandings between the Parties with respect to the subject matter thereof.

XIII. Amendment. This Agreement may be amended at any time by mutual agreement of the Parties that is reduced to writing and signed by all Parties.

XIV. Captions. The captions in this Agreement are included for purposes of convenience only and shall not be considered a part of this Agreement in construing or interpreting any provision hereof or herein contained.

XV. Waiver and Other Action. The failure of any Party to exercise any right, power or option given it hereunder, or to insist upon strict compliance with the provisions hereof, shall not constitute a waiver of the terms and conditions of this Agreement with respect to any other or subsequent breach thereof, nor a waiver by such Party of its rights at any time to require exact and strict compliance with all the terms hereof. The rights and remedies under this Agreement are cumulative to any other rights or remedies which may be warranted by law.

XVI. Warranties as to Authority; No Conflict. The individuals executing this Agreement hereby warrant that they have the proper authority to enter into this Agreement on behalf of the Party for whom they are signing and that any and all necessary corporate actions or resolutions, if any, necessary to that Party's entry into this Agreement have been duly adopted. Neither the execution of this Agreement, nor the consummation or performance of any of the transactions contemplated hereby will, directly or indirectly (a) contravene, conflict with, or result in a violation of any resolution, ordinance or other law adopted by the Government, or (b) give any person the right to challenge any of the transactions contemplated hereby or to exercise any remedy or obtain any relief under any such resolution, ordinance or law.

XVII. Interpretation of Agreement. Both parties having participated in the drafting of this Agreement, and both parties having had ample opportunity to review the provisions of this Agreement, agree that its provisions are not ambiguous and shall not be construed against any drafter of the Agreement.

XVIII. Discrepancies with Addendum. The parties agree that any discrepancy between the provisions of the Agreement and the provisions of the Addendum, during the term of the Addendum commencing on November 1, 2012, and ending on December 31, 2012, shall be resolved in favor of the Addendum.

XIX. Counterpart Execution. This Agreement may be executed in one or more counterparts, all of which taken together will constitute one and the same instrument, and this Agreement shall not be binding on the signatories hereto until all such parties have executed this Agreement.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement effective as of the day and year first above written.

The Company

TENNESSEE-AMERICAN
WATER COMPANY, INC.

By: _____
_____, _____

The Municipality

CITY OF CHATTANOOGA, TENNESSEE

By: _____
_____, _____

CONTACT INFORMATION

CITY OF CHATTANOOGA, TENNESSEE

100 E. 11th Street
Chattanooga, TN 37402

PHONE _____
FAX _____

TENNESSEE AMERICAN WATER COMPANY

1101 Broad Street
Chattanooga, TN 37401

PHONE _____
FAX _____

TENNESSEE-AMERICAN WATER'S SPECIAL ACCOUNTS DEPARTMENT

PHONE _____
FAX _____