

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PUBLIC WORKS TO ENTER INTO AN AGREEMENT WITH TENNESSEE AMERICAN WATER COMPANY (TAWC) FOR A UTILITY FORCE ACCOUNT CONTRACT RELATIVE TO PIN # 112011.00, SR-27, ROSSVILLE BOULEVARD PEDESTRIAN AND BIKE FACILITY IMPROVEMENTS, CONTRACT NO. E-09-019-801, FOR AN AMOUNT OF THIRTY-ONE THOUSAND FIVE HUNDRED FIFTY-FOUR DOLLARS (\$31,554.00).

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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 (TAWC) for a Utility Force Account Contract relative to PIN #112011.00, SR-27, Rossville Boulevard Pedestrian and Bike Facility Improvements, Contract No. E-09-019-801, for an amount of \$31,554.00.

ADOPTED: \_\_\_\_\_, 2013.

/mms

# City of Chattanooga



## Resolution/Ordinance Request Form

Date Prepared: 5/20/13

Preparer: Dennis Malone

Department: Public Works

Brief Description of Purpose for Resolution/Ordinance:

Res./Ord. # \_\_\_\_\_ Council District # 7

A Council Action is requested to authorize the Administrator of Public Works to enter into an agreement with Tennessee American Water Company, for a Utility Force Account Contract, relative to PIN# 112011.00, SR-27, Rossville Boulevard Pedestrian and Bike Facility Improvements, Contract No. E-09-019-801, for an amount of \$31,554.00.

Name of Vendor/Contractor/Grant, etc.	<b>Tennessee American Water Company</b>	New Contract/Project? (Yes or No)	No
Total project cost	\$ 31,554.00	Funds Budgeted? (YES or NO)	Yes
Total City of Chattanooga Portion	\$ 31,554.00	Provide Fund	4016
City Amount Funded	\$ 31,554.00	Provide Cost Center	K16107
New City Funding Required	\$ _____	Proposed Funding Source if not budgeted	_____
City's Match Percentage	% _____	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)

Approved by: *Dennis Malone*

Reviewed by: FINANCE OFFICE

DESIGNATED OFFICIAL/ADMINISTRATOR

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

Revised: 1/26/09



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ENGINEERING DIVISION  
1250 MARKET STREET, SUITE 2100  
Chattanooga, Tennessee 37402-2713

FORCE ACCOUNT Rev 02-29-2012  
PIN# 112011.00

City Contract No. E-09-019

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**UTILITY FORCE ACCOUNT CONTRACT**

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THIS CONTRACT made and entered into by and between the City of Chattanooga acting through its Department of Public Works, and Tennessee American Water Company, hereinafter called the "Utility".

**WITNESSETH:**

WHEREAS, The Tennessee American Water Company wishes to have installed water service lines on Project Number PIN# 112011.00 SR-27, located in Hamilton County, Tennessee (hereinafter called the "Project"), and the Utility has agreed to make said installation on the basis of reimbursement of the actual cost thereof, which is estimated to be \$31,554; and

NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein, it is agreed by and between the parties as follows:

1. The Utility shall construct its facilities in accordance with the estimate of cost, schedule of work and plan as approved by THE CITY OF CHATTANOOGA, incorporated herein by reference, and as otherwise contemplated by this Contract. The approved estimate of cost and schedule of work are attached hereto as Exhibit "A".
2. To the extent that facilities are being located within public highway right-of-way, the Utility's construction work shall comply with the State of Tennessee Rules and Regulations for Accommodating Utilities With-in Highway Rights-of-Way and 23 CFR 635B and 645B, which are incorporated herein by reference. The Utility acknowledges possession of each.
3. The Utility agrees to provide engineering, erosion control, traffic control, clearing and grubbing of the proposed construction site, and all survey staking for the purpose of the utility construction, and the estimated cost thereof is included in the estimate described above.



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4. The Utility agrees to leave two lanes open at all times.
5. The Utility shall have the responsibility to inspect all items of utility construction work to be performed by the Utility to ensure that the construction is completed in accordance with this Contract and all applicable specifications and safety codes. THE CITY OF CHATTANOOGA agrees that it will reimburse the Utility for the inspection of utility facilities when the utility construction is completed in accordance with the approved construction plans.
  - (a) The Utility agrees that it will perform the construction work provided for in this Contract by force account with-in the timeframe given. Failure to do so may result in the loss of THE CITY OF CHATTANOOGA participation in the cost of construction.
  - (b) There will be no revision in the method of performing the work or additional undisclosed work. Failure to do so may result in the loss of THE CITY OF CHATTANOOGA participation in the cost of construction.
6. The Utility agrees to comply with all current, applicable provisions of 23 CFR 635B and 645A, which are incorporated herein by reference; provided, however, that provisions for review, approval, authorization and participation by the Federal Highway Administration set forth in 23 CFR 635B and 645A shall not apply to the extent that the Project is not a federal-aid project. The Utility acknowledges possession of 23 CFR 635B and 645A.
7. Subject to the provisions of this paragraph and as otherwise provided in this Contract, THE CITY OF CHATTANOOGA agrees to reimburse the Utility for the cost of constructing the Utility's facilities in accordance with the approved plan, as follows:
  - (a) THE CITY OF CHATTANOOGA shall reimburse the Utility for such direct and indirect costs as are allowable under the current provisions of 23 CFR 635B. Any claim for costs that would be ineligible for Federal reimbursement under 23 CFR 635B on a federal-aid project shall be ineligible for reimbursement by THE CITY OF CHATTANOOGA on this Project, whether it is or is not a federal-aid project.
  - (b) The Utility shall develop and record construction costs in a manner consistent with the current provisions of 23 CFR 645.117 as of the effective date of this Contract and as approved by THE CITY OF CHATTANOOGA.
  - (c) Unless a lump-sum payment has been approved by THE CITY OF CHATTANOOGA, the Utility shall submit all requests for payment by invoice, in form and substance



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acceptable to THE CITY OF CHATTANOOGA, with all necessary supporting documentation, prior to any reimbursement of allowable costs. Such invoices shall indicate, at a minimum, the amount charged by allowable cost line-item for the period invoiced, the amount charged by line-item to date, the total amount charged for the period invoiced, and the total amount charged under the Contract to date.

- (d)** The Utility may submit invoices for interim payments during the progress of the work; provided, however, that such interim payments may be approved only up to a maximum of eighty percent (80%) of the approved estimate of reimbursable costs for the total construction project, as described in Exhibit "A" of this Contract, and any remaining reimbursable costs must be submitted on the final bill. Such invoices for interim payments shall be submitted no more often than monthly.
- (e)** THE CITY OF CHATTANOOGA shall, unless it has good faith and reasonable objections to the Utility's invoice for interim payment, use its best efforts to issue payment based on the Utility's invoice within forty-five (45) days after receipt. If, however, THE CITY OF CHATTANOOGA has good faith and reasonable objections to the Utility's invoice(s) or any part thereof, THE CITY OF CHATTANOOGA shall specifically identify those objections in writing to the Utility so as to allow the parties to address them in a prompt manner. If the invoice is otherwise acceptable, THE CITY OF CHATTANOOGA shall only withhold payment(s) as to those cost items it has specified in its written notice of objections to the Utility. All other reimbursable cost items set out in the Utility's invoice shall be paid by THE CITY OF CHATTANOOGA.
- (f)** Subject to the Utility's right to bill on an interim basis as described above, the Utility shall by invoice provide one final and complete billing of all costs incurred, or of the agreed-to lump sum, within one year following the completion of the Utility construction work in its entirety. Otherwise, any previous payments to the Utility shall be considered final, and the Utility shall be deemed to have waived any claim for additional payments, except as THE CITY OF CHATTANOOGA and Utility may have agreed otherwise in writing before the end of that year.
- (g)** The Utility's invoice(s) shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by THE CITY OF CHATTANOOGA, on the basis of audits or monitoring conducted in accordance with the terms of this Contract, not to constitute allowable costs. The payment of an invoice shall not prejudice THE CITY OF CHATTANOOGA's right to object to or question any invoice or matter in relation thereto. Such payment by THE CITY OF



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CHATTANOOGA shall neither be construed as acceptance of the work nor as final approval of any of the costs invoiced therein.

8. THE CITY OF CHATTANOOGA shall have the right to inspect the work and to confirm the financial information made available by the Utility to THE CITY OF CHATTANOOGA in support of the Utility's invoiced amounts. The Utility shall notify THE CITY OF CHATTANOOGA of the date that the first work will be performed in order that adequate inspection can be arranged and proper records kept. Any costs billed by the Utility that cannot be verified by THE CITY OF CHATTANOOGA will not be reimbursed.
9. The Utility agrees that its cost records will be subject to inspection at any reasonable time by representatives of THE CITY OF CHATTANOOGA before or after final payment for reimbursable work. In the event any costs are determined not to be allowable under provisions of this Contract, the Utility agrees to repay THE CITY OF CHATTANOOGA such amount of ineligible costs included within payments made by THE CITY OF CHATTANOOGA.
10. The Utility shall keep and maintain accurate records by which all invoices can be verified. The books, records, and documents of the Utility, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years after final payment has been received by the Utility and shall be subject to audit at any reasonable time and upon reasonable notice by THE CITY OF CHATTANOOGA, the Comptroller of the Treasury, or their duly appointed representatives during this three year period. The financial statements shall be prepared in accordance with generally accepted accounting principles.
11. This Contract is subject to the appropriation and availability of THE CITY OF CHATTANOOGA funds. In the event that the funds are not appropriated or are otherwise unavailable, THE CITY OF CHATTANOOGA reserves the right to terminate this Contract upon written notice to the Utility. Said termination shall not be deemed a breach of Contract by THE CITY OF CHATTANOOGA. Upon receipt of the written notice, the Utility shall cease all work associated with the Contract, except as may be reasonably necessary to return the Utility's facilities to safe operation. Should such an event occur, the Utility shall be entitled to compensation for all costs of construction reimbursable for work completed as of the termination date or in accordance with this provision. Upon such termination, the Utility shall have no right to recover from THE CITY OF CHATTANOOGA any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.



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- 12.** The Utility agrees to indemnify and hold harmless THE CITY OF CHATTANOOGA as well as its employees, officers and agents from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Utility, its employees, its contractors, or any person acting for or on its or their behalf in the performance of the Utility's construction work relating to this Contract. The Utility further agrees it shall be liable for the reasonable cost of attorneys for THE CITY OF CHATTANOOGA in the event such services are necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Utility to THE CITY OF CHATTANOOGA.

In the event of any such suit or claim, the Utility shall give THE CITY OF CHATTANOOGA immediate notice thereof and shall provide all assistance required by THE CITY OF CHATTANOOGA in THE CITY OF CHATTANOOGA's defense. THE CITY OF CHATTANOOGA shall give the Utility written notice of any such claim or suit, and the Utility shall have full right and obligation to conduct the Utility's own defense thereof. Nothing contained herein shall be deemed to accord to the Utility, through its attorney(s), the right to represent THE CITY OF CHATTANOOGA in any legal matter, such rights being governed by Tennessee Code Annotated, Section 8-6-106.

- 13.** THE CITY OF CHATTANOOGA and THE CITY OF CHATTANOOGA shall have no liability except as specifically provided in this Contract.
- 14.** This Contract may be modified only by a written amendment executed by the parties hereto.
- 15.** Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term, covenant, condition or provision of this Contract shall be held to be waived, modified, or deleted except by written amendment signed by the parties hereto.
- 16.** The Utility hereby agrees, warrants and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Utility on the grounds of disability, age, race, color, religion, sex, national origin, or any classification protected by the Constitution or statutes of the United States or the City of Chattanooga. The Utility



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shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

- 17.** The Utility shall comply with all applicable federal and state laws and regulations in the performance of its duties under this Contract. The parties agree that failure of the Utility to comply with this provision shall constitute a material breach of this Contract and subject the Utility to the repayment of all State funds expended, or expenses incurred, under this Contract.
- 18.** This Contract shall be binding upon and shall inure to the benefit of the parties hereto, their respective heirs, legal representatives, successors and assigns. Time is of the essence of this Contract.
- 19.** This Contract shall be governed by and construed in accordance with the laws of the City of Chattanooga. The Utility acknowledges and agrees that any rights or claims against the City of Chattanooga or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Sections 9-8-101 through 9-8-407.
- 20.** If any terms, covenants, conditions or provisions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms, covenants, conditions and provisions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- 21.** THE CITY OF CHATTANOOGA and the Utility agree that any notice provided for in this Contract or concerning this Contract shall be in writing and shall be made by personal delivery, by certified mail (return receipt requested), by nationally recognized overnight delivery service (such as FedEx or UPS), or by hand delivery (provided that notice shall also be given in one of the other methods prescribed herein) addressed to the respective party at the appropriate address as set forth below or to such other party, or address as may be hereafter specified by written notice.



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To the City of Chattanooga:

City of Chattanooga  
1250 Market Street  
Suite 2100  
Chattanooga, TN  
37402

Attention:

Tony Madewell  
Phone Number: (423) 643-6163

To the Utility:

Tennessee American Water  
Company

Attention:

Grady Stout  
1101 Broad Street  
Chattanooga, TN 37402  
daron.allen@amwater.com  
Facsimile Number: 423-267-9384  
Phone Number: (423) 771-4703

**IN WITNESS WHEREOF, the parties have executed this agreement**

UTILITY

Tennessee American Water Company

CITY OF CHATTANOOGA  
DEPARTMENT OF PUBLIC WORKS

BY: \_\_\_\_\_

BY: \_\_\_\_\_  
Donald L. Norris  
Administrator, Public Works

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

APPROVED AS TO FORM:

BY: \_\_\_\_\_  
City Attorney