

RESOLUTION NO. _____

A RESOLUTION TO AMEND RESOLUTION NO. 27352, AS ADOPTED ON DECEMBER 18, 2012, TO AUTHORIZE THE MAYOR TO EXECUTE ALL DOCUMENTS, INCLUDING THE INTERLOCAL AGREEMENT, FOR THE PURCHASE OF FRAWLEY ROAD #2 PUMP STATION AND EQUIPMENT THEREIN, FOR A PURCHASE PRICE OF ONE HUNDRED FIFTEEN THOUSAND DOLLARS (\$115,000.00) AND SHALL INCLUDE ALL CLOSING COSTS NECESSARY TO CONSUMMATE TRANSACTION.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, it is hereby amending Resolution No. 27352, as adopted on December 18, 2012, to authorize the Mayor to execute all documents, including the Interlocal Agreement, for the purchase of Frawley Road #2 Pump Station and equipment therein, for a purchase price of \$115,000.00 and shall include all closing costs necessary to consummate transaction.

ADOPTED: _____, 2014

/mms

City of Chattanooga



Resolution/Ordinance Request Form

Date Prepared: February 14, 2014

Preparer: Dennis Malone *[Signature]*

Department: Public Works

Brief Description of Purpose for Resolution/Ordinance: _____ Res./Ord. # _____ Council District # 4 & 6

A City Council resolution is requested to amend Resolution 27352, so as to authorize the Mayor to execute all documents, including the Interlocal Agreement, for the purchase of Frawley Road #2 Pump Station located at 15 Frawley Road in East Ridge, Tennessee, and equipment therein, for a purchase price of \$115,000.00 and shall include all closing costs necessary to consummate transaction.

Name of Vendor/Contractor/Grant, etc.	<u>Hamilton Co. WWTA</u>	New Contract/Project? (Yes or No)	<u>No</u>
Total project cost	\$ <u>115,000.00</u> +	Funds Budgeted? (YES or NO)	<u>Yes</u>
Total City of Chattanooga Portion	\$ <u>115,000.00</u> +	Provide Fund	<u>6012</u>
City Amount Funded	\$ <u>115,000.00</u> +	Provide Cost Center	<u>K37113</u>
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)
\$ <u>115,000.00</u> +	<u>SRF 2012-307</u>

Agency Grant Number _____

CFDA Number if known _____

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

Funding from SRF 2012-307 in Previous ISS Capital Funds

Approved by: *[Signature]*

Reviewed by: FINANCE OFFICE

DESIGNATED OFFICIAL/ADMINISTRATOR

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

Revised: 1/26/09

RESOLUTION NO. 27352

A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PUBLIC WORKS TO ENTER INTO CONTRACT(S) FOR THE PURCHASE OF FRAWLEY ROAD #2 PUMP STATION LOCATED AT 15 FRAWLEY ROAD IN EAST RIDGE, TENNESSEE, AND EQUIPMENT THEREIN, FOR A PURCHASE PRICE OF ONE HUNDRED FIFTEEN THOUSAND DOLLARS (\$115,000.00).

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, that the Administrator of the Department of Public Works is hereby authorized to enter into contract(s) for the purchase of Frawley Road #2 Pump Station located at 15 Frawley Road in East Ridge, Tennessee, and equipment therein, for a purchase price of \$115,000.00.

ADOPTED: December 18, 2012

/mms

CONTRACT FOR SALE AND PURCHASE

This Contract for Sale and Purchase of Real Estate ("Contract") is made and entered into this 27th day of January, 2014, ("Effective Date") by and between HAMILTON COUNTY WATER AND WASTEWATER TREATMENT AUTHORITY, ("Seller"), and the CITY OF CHATTANOOGA, TENNESSEE, a municipal corporation referred to herein as ("Buyer").

WITNESSETH:

WHEREAS, the Seller wishes to sell and the Buyer wishes to purchase certain property located in Hamilton County, Tennessee as more specifically described below.

NOW THEREFORE, in consideration of the respective covenants, agreements, conditions, and terms stated herein and at the time and in the manner provided herein, the parties covenant as follows:

1. Seller agrees to sell and Buyer agrees to purchase the following:

(a) **Real Property.** That certain tract or parcel of real estate in Hamilton County, Tennessee, described in **Exhibit A** attached hereto and incorporated herein by reference, together with all improvements located thereon, including, without limitation, surrounding grounds, driveways, parking areas, and related facilities, and including all appurtenances, rights, privileges, easements, and advantages thereto belonging (the "WWTA Real Property" or "Real Property").

(b) **Personal Property.** All equipment, furniture, fixtures, signs, and articles of personal property owned by Seller now or hereafter attached to or used in connection with the operation and maintenance of the Real Property, and all manufacturers and vendors' warranties relating thereto (the "WWTA Personal Property").

(c) **Records.** All financial, operating, and any other records pertaining to the use and operation of the WWTA Real Property (the "WWTA Records").

(d) **Supplies.** All supplies and equipment located at the WWTA Real Property on the Closing Date, including, without limitation, power equipment, tools, and cleaning and other supplies for the maintenance and operation of the WWTA Real Property and all manufacturers' and vendors' warranties relating thereto, if any. (the "WWTA Supplies").

(e) **Plans.** All building and site plans, construction specifications, prior surveys, permits, licenses, and similar items pertaining to the WWTA Real Property within Seller's possession and/or control (the "WWTA Plans").

All of the foregoing, the WWTA Real Property, the WWTA Personal Property, the WWTA Records, the WWTA Supplies, and the WWTA Plans shall be collectively referred to herein as the "WWTA Property."

2. **Effective Date of Contract.** The Effective Date of this Contract, as the term shall be used herein, shall be the date first set forth above.

3. **Consideration; Payment; Real Estate Taxes.** Subject to the terms, conditions, and provisions herein, Buyer agrees to pay, and Seller agrees to accept as full consideration for the conveyance of the WWTa Property, the purchase price as set forth below:

a. **Purchase Price.** Buyer agrees to pay, and Seller agrees to accept as full consideration for the conveyance of the WWTa Property, the sum of ONE HUNDRED FIFTEEN THOUSAND AND NO/100 DOLLARS (\$115,000.00) (the "Purchase Price"). The Purchase Price shall be paid by Buyer at closing.

b. **Method of Payment.** At closing, the Purchase Price shall be paid by the Buyer to the Seller in cash.

c. **Real Estate Taxes.** Real estate taxes upon the Real Property for 2013 shall be prorated as of the Closing Date. If the amount of such taxes for the current year cannot reasonably be determined, the apportionment shall be based at Closing upon the amount of such taxes for the prior tax year and shall be readjusted when the amount of such taxes is finally determined. From and after the Closing Date, the Real Property will be exempt from payment of real property taxes for the time period in which Buyer owns the Real Property. Water quality fees assessed for the year 2013 (regardless of when due and payable) shall be prorated as of the Closing Date. Special assessments levied prior to the Closing shall be the responsibility of Seller. The provisions contained in this subparagraph shall survive the Closing and shall not be merged into the deed.

4. **Survey and Title Approval.**

a. Buyer may, at Buyer's expense, obtain a survey and surveyor's certificate, in form sufficient to remove the survey exception from the title insurance commitment, prepared by a licensed surveyor selected by Buyer. Such survey shall incorporate an exact description of the Real Property to be conveyed, shall be dated not more than thirty (30) days prior to the Closing Date, shall show the total area of the Real Property in square feet, easements, if any, dimensions and locations of improvements, driveways, location of adjoining streets and rights of way, building setback lines, zoning requirements and such other details as may be required by Buyer. Once prepared, the survey description will replace Exhibit A and will become a part of this Contract identified as Exhibit A-1, and such survey description shall be insurable by the title company.

b. **Title Commitment.** Buyer may, at Buyer's expense and direction, obtain from a title insurance company, a title insurance commitment in the amount of the Purchase Price, which shall constitute the commitment of such company to insure the title to the Real Property in the name of the Buyer with an ALTA 2012 owner's title insurance policy. Buyer shall pay for all costs associated with the issuance of the title insurance commitment and title policy.

c. **Environmental Assessment.** At Buyer's expense and direction, Buyer may obtain a Phase I Environmental Site Assessment of the Real Property prepared in accordance with ASTM 1527-06 (the "Phase I"). If any matters objectionable to Buyer are disclosed by the Phase I, Buyer shall give Seller written notice within ten (10) days of receipt of Phase I.

d. **Review of Due Diligence Documents.** Buyer shall have twenty (20) business days from its receipt (the "Due Diligence Period") of all of (i) the title insurance commitment, (ii) legible copies of all documents referenced in title exceptions disclosed therein, (iii) the survey, and (iv) the Phase I ((i) through (iv)), together, the "Due Diligence Documents"), to review same. If any title or survey defects or other matters objectionable to Buyer are disclosed by any of the Due Diligence Documents, Buyer shall give Seller written notice of same prior to the expiration of the Due Diligence Period. Seller shall be allowed a reasonable time, not in excess of twenty-one (21) calendar days, within which to cure such defects; provided, however, that in no event shall Seller's cure period extend beyond the Closing Date without the express written consent of Buyer. If the defects are not timely cured to Buyer's satisfaction, Buyer may waive such defects and proceed to close, or Buyer may terminate this Contract by written notice to Seller, in which event the parties shall be released from further liability to the other.

e. **Title at Closing.** At Closing, such title insurance commitment, as approved in form and substance by Buyer, shall be modified to remove any ALTA Standard Exceptions and any other matters to which Buyer has objected, to show title to the Property vested in Buyer, and to update the effective date of such title insurance commitment to the Closing Date.

5. **Closing Costs.**

a. Seller shall be responsible for all fees, costs, and expenses incurred by Seller in connection with or relating to Seller's satisfying the terms and conditions hereof.

b. Buyer shall be responsible for all fees, costs and expenses incurred by Buyer in connection with or relating to Buyer's satisfying the terms and conditions hereof.

c. Buyer and Seller shall be responsible for their own attorney's fees.

d. All other costs shall be allocated as follows:

<u>Cost</u>	<u>Party Responsible</u>	
	<u>Seller</u>	<u>Buyer</u>
Title Insurance & Title Examination	_____	X
Preparation of Deed	_____	X
Survey	_____	X
Recording Fees and Tax on Deed	_____	X

Phase I Environmental Assessment		X
Water Quality Fees (prorate current year)	X	X

6. **Adjustments.** At Closing, the following adjustments between the parties shall be made as of 12:01 a.m. on the Closing Date of the transaction:

a. Real estate taxes upon the Real Property for 2013 shall be paid by Buyer. From and after the Closing Date, the Property will be exempt from the payment of real property taxes. Water quality fees assessed for the year 2013 (regardless of when due and payable) shall be paid by Buyer. Special assessments levied prior to the Closing shall be the responsibility of Seller. The provisions contained in this subparagraph shall survive the Closing and shall not be merged into the deed.

b. All other expenses of operating or owning the Real Property, including without limitation, utilities and any assessments or fees, shall be apportioned as of the Closing Date, those accruing through the Closing Date being Seller's responsibility, those accruing after the Closing Date being Buyer's responsibility.

7. **Casualty; Risk of Loss and Rights of Termination.** Seller assumes the risk of loss from fire or other casualty, including, without limitation, flood, earthquake, tornado, and vandalism until the Closing Date. In the event of a fire or other casualty occurring prior to the Closing Date so that the cost of fully repairing and restoring such damage exceeds \$20,000.00, as determined by Buyer in its reasonable judgment, then Buyer may terminate this Contract by giving written notice to Seller. In the event the WWTA Property is damaged by any fire or other casualty prior to the Closing Date and this Contract is not terminated, Seller shall, at Buyer's option, either (i) validly and properly transfer all insurance proceeds paid or payable as a result of such damage, plus an amount equal to the deductible thereunder, to Buyer at Closing, or (ii) fully restore the damaged portions of the WWTA Property, continuously and diligently to its condition immediately prior to the occurrence of such fire or other casualty. Buyer shall have the right to postpone the Closing until any restoration work that Seller is required to perform under the preceding sentence is completed, or Buyer may proceed with the Closing at any point during the same; provided, however, if Buyer elects to proceed with the Closing prior to the completion of such repairs and restoration, Seller's obligations under this section shall survive the Closing and the delivery of the deed.

8. **Condemnation.**

a. If all or any part of the Real Property shall be condemned or otherwise taken through any power of eminent domain prior to Closing, Seller shall give notice to Buyer of such action upon receipt of formal notice of such proceedings, and Buyer may elect to:

- (i) terminate the Contract and completely void the Contract, relieving both Buyer and Seller of all duties and/or obligations hereunder, or

- (ii) take the Real Property under the terms of this Contract and require Seller to assign to Buyer all of Seller's interest in and to any such condemnation award.

b. Buyer's election under the preceding Paragraph a. shall be made by notice in writing to Seller and be made at any time within ten (10) days of delivery of Seller's written notice of any such taking to Buyer.

9. Conveyances.

a. Deed. At Closing, Seller shall convey the Real Property to Buyer by Warranty Deed. Title to the Real Property shall be good and marketable subject only to easements, zoning, covenants, restrictions, and reservations of record and other matters reflected on the title commitment or otherwise acceptable to Buyer.

b. Bill of Sale. Title to the WWTA Personal Property, WWTA Records, WWTA Supplies, and WWTA Plans shall be conveyed by Seller's execution of a Bill of Sale at closing.

10. Conditions. The duties and obligations of Buyer under the terms and provisions of this Contract are and shall be expressly conditioned upon:

a. Buyer, and Buyer's agents, may inspect and have access to the Real Property up to and through the Closing Date.

b. Approval by Buyer of a satisfactory report of title insurance as specified in Paragraph 4b hereof.

c. Approval by Buyer of a satisfactory survey as specified in Paragraph 4a hereof.

d. Approval by Buyer of a satisfactory Phase I Environmental Site Assessment as specified in Paragraph 4c hereof.

e. Approval from the Chattanooga-Hamilton County Regional Planning Commission and the Chattanooga City Council.

f. Approval by Buyer and Seller of Interlocal Agreement outlining the obligations of the parties concerning the operation of the pump station located on the Real Property.

g. If any construction has occurred or improvements completed on the Real Property within twelve (12) months prior to Closing, the recording of a proper and valid Notice of Completion prior to Closing and receipt of no claims thereunder.

In the event of the failure of conditions set forth herein to be met to the reasonable satisfaction of Buyer, Buyer may give notice to Seller of Buyer's decision to terminate the Contract and completely void the Contract, relieving both parties of any further duties and/or obligations hereunder.

11. **Representations and Warranties.** Seller warrants and represents that:

a. With respect to the use and ownership of the WWTA Property, to Seller's knowledge there are no existing or threatened defaults or disputes with or by any person, including Seller, under the terms of any agreement, contract, or lease, including, but not limited to, any service, utility, or maintenance agreements.

b. To Seller's knowledge, there are no encumbrances, liens, or charges of any kind upon the WWTA Property which will not be satisfied and discharged in full by Seller and released, at or before the Closing, in form satisfactory to Buyer and Buyer's counsel, except as reflected in the title commitment or otherwise acceptable to Buyer.

c. All the representations, covenants, and warranties of the Seller made herein are and shall be continuous and continuing in all of the same shall remain true and correct in all respects through the Closing Date.

12. **Contract Default.**

a. **Seller's Default.** If Seller fails to comply with this Contract within the time specified or if Seller breaches any covenant contained herein, Buyer may pursue any remedies available to it at law or in equity. An election by Buyer to pursue any one or more of its available remedies at law or in equity shall in no way limit or be deemed a waiver of its rights to pursue any other remedies available.

b. **Buyer's Default.** If Buyer fails to comply with this Contract within the time specified and Seller does not waive such default, Seller may pursue any remedies available to them at law or in equity. An election by Seller to pursue any one or more of their available remedies at law or in equity shall in no way limit or be deemed a waiver of their rights to pursue any other remedies available.

13. **Closing Date and Location.**

a. The Closing shall be held on or before March 1, 2014, or at such other date as shall be mutually agreeable to Buyer and Seller.

b. The Closing shall be held at the offices of Buyer's title company, or at such other location as is mutually satisfactory to Buyer and Seller.

c. At Closing, all documents herein contemplated for the conveyance of the Property and all other necessary documents and instruments shall be executed and/or delivered.

14. **Possession.** Possession of the Property shall be transferred to Buyer at Closing.

15. **Notices.**

a. **Written Notices; Addresses.** All notices required herein must be written and shall be deemed to have been validly given when deposited postage prepared in the United States Mail, Certified, Return Receipt Requested, addressed to the parties as identified and set forth below:

Seller: Hamilton County Water and
Wastewater Treatment Authority
1250 Market Street
Chattanooga, TN 37415

Buyer: City of Chattanooga
c/o General Services
100 East 11th Street, Suite 101
Chattanooga, TN 37402

With a copy to: City Attorney
100 East 11th Street, Suite 200
Chattanooga, TN 37402

b. **Attorneys.** The respective attorney for each party shall have the right, but not the obligation, to give any notice on behalf of such attorney's client. Any notice so given by such attorney shall be deemed to have been given by such attorney's client.

c. **Facsimile.** A facsimile copy of any signed notice is deemed to be a valid notice if it is followed by mailing of the signed original of such notice pursuant to Paragraph 16a.

16. **Real Estate Commissions.** Each party hereto represents to the other that it has not authorized any broker to act on its behalf in connection with the sale and purchase hereunder and that it has not dealt with any broker purporting to act on behalf of any party. Seller agrees to indemnify, defend, and hold harmless Buyer from and against any and all losses, liens, claims, judgments, liabilities, costs, expenses or damages (including reasonable attorneys' fees and court costs) of any kind or character arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by such parties or on its behalf with any broker in connection with this Contract. Notwithstanding anything to the contrary contained herein, this paragraph shall survive the Closing or any termination of this Contract.

17. **Entire Agreement.** This Contract constitutes the sole and entire agreement between Buyer and Seller and no modification hereof shall be binding unless signed by both Buyer and Seller. Representations, promises, or inducements not included in this Contract shall not be binding upon either of the parties.

18. **Successors and Assigns.** This Contract shall be binding upon and shall inure to the benefit of each of the parties hereto, their respective heirs, successors, assigns, beneficial owners and representatives.

19. **Assignment.** Seller understands and agrees that Buyer shall have the right to assign its interest and duties in this Contract.

20. **Waiver of Breach.** The failure of either party to insist upon strict performance of any of the terms or conditions and covenants contained herein shall not be deemed to constitute a waiver of any rights or remedies by either party that they may have and shall not be deemed to constitute a waiver of any subsequent breach or default.

21. **Performance. Time is of the essence** in the performance and satisfaction of the obligations and conditions of this Contract.

22. **Miscellaneous.**

a. **Choice of Law; Severability.** The validity, construction, interpretation and performance of this Contract shall, in all ways be governed and determined in accordance with the laws of the State of Tennessee. Should there be any provision thereof to be declared invalid, illegal or unenforceable by a court of competent jurisdiction, the legality, validity, and enforcement of the remaining provisions shall not be affected, but shall continue in full force and effect.

b. **Captions.** The captions used in this Contract have been inserted only for purposes of convenience and the same shall not be construed or interpreted so as to limit or define the intent or the scope of any part of this Contract.

c. **Gender and Number.** Within this Contract, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.

d. **Exhibits.** All exhibits described herein and attached hereto are fully incorporated into this Contract by this reference for all purposes.

e. **Counterparts/Effective Date.** This Contract may be executed by the parties independently in any number of identical counterparts as if the parties had executed one and the same counterpart, and all of such counterparts when taken together shall constitute one and the same instrument.

f. **No Assumption.** Buyer's acquisition of the Property shall in no way be construed as an assumption of any liability, debt or obligation related thereto, known or unknown, which is allocable to periods prior to the Closing Date. Seller's sale of the Property shall in no way be construed as an assumption of any liability, debt or obligation related thereto, known or unknown, which is allocable to periods on or after the Closing Date.

g. **Attorneys' Fees.** In any action or proceeding between Seller and/or its assignee(s), on the one hand, and either or both of the Buyer, on the other hand, arising from or related to this Contract, the prevailing party or parties shall be entitled to reasonable attorneys' fees and costs incurred in connection with such action or proceeding in addition to any other remedy to which such prevailing party may be entitled.

h. **Survival.** The following provisions of this Contract shall survive the Closing: Paragraphs 3, 5, 6, 11, 14, 16, 17, 18, 19, 20, and 21.

IN WITNESS WHEREOF, this Contract has been executed by the Buyer and Seller on the dates set out below their respective signatures hereto.

SELLER:

HAMILTON COUNTY WATER AND
WASTEWATER TREATMENT AUTHORITY

By: Cherie Jewell
Cherie Jewell, *WWTAA Chair*

Date: January 27, 2014

BUYER:

CITY OF CHATTANOOGA

By: _____

Its: _____

Date: _____

WWTAA

EXHIBIT A

Lot 1, Frawley Road Pump Station, as shown on Plat of Record in Plat Book 96, Page 82,
Register's Office of Hamilton County, Tennessee.

EXHIBIT A



FRAWLEY ROAD 2 SERVICE AREA

INTERLOCAL AGREEMENT

This Interlocal Agreement (“Agreement”) dated January 27, 2014 (the “Effective Date”) is made and entered into by and between the City of Chattanooga, Tennessee, a municipality organized under the laws of the State of Tennessee (“City”) and the Hamilton County Water and Wastewater Treatment Authority (the “WWTA”).

WITNESSETH:

WHEREAS, the parties entered into that certain Contract for Sale and Purchase dated January 27, 2014 (the “Contract”) regarding property located at 15 Frawley Road, Chattanooga, Tennessee, bearing tax Map No. 1580 A 022.47 (the “Property”);

WHEREAS, the parties desire to enter into this Agreement for the purpose of setting forth their respective rights and obligations relating to the operation of the wastewater pump station located on the Property (the “Frawley Road No. 2 Pump Station”) after fee simple title has transferred from WWTA to City; and

WHEREAS, the parties are authorized to enter into this agreement pursuant to T.C.A. § 5-1-113, T.C.A. § 12-9-101, *et seq.*, cited as the “Interlocal Cooperation Act”; and T.C.A. § 7-53-302; and

WHEREAS, City desires to upgrade its interceptor sewer system (“ISS”) by constructing a new pump station located on property owned by City and identified as Tax Map No. 1580.A-022.44, (the “New Pump Station”);

NOW, THEREFORE, in consideration of the faithful performance of the terms, covenants, and conditions of the parties as set forth herein, the parties agree as follows:

SECTION I. Authority to Execute.

The parties each represent, warrant and covenant that they have full power and authority to enter into this Agreement and that execution of this Agreement has been duly authorized by all necessary authority.

SECTION II. Costs.

1. **WWTA’s Costs.** After City has acquired title to the Property, WWTA shall be responsible for the operation and maintenance of the Frawley Pump Station at WWTA’s sole cost and expense until construction of the New Pump Station has been completed.

2. **City’s Costs.** City shall be responsible for all of the City’s costs related to construction of the New Pump Station. Additionally, City shall pay all costs of connecting the WWTA gravity sewers located on the Property to the New Pump Station, including the addition and installation of new billing meters.

SECTION III. Connection of System.

1. Within 720 days after the Effective Date, the City shall construct and complete the New Pump Station. WWTa shall be connected to the New Pump Station by the City as part of the construction of the New Pump Station. The City will provide the WWTa a copy of certification from any applicable regulatory authority having jurisdiction over the New Pump Station that it is complete and ready for use within 30 days from its receipt of a said approval. WWTa will be connected to the New Pump Station through two (2) new billing flow meters that will be identified as ER 03 and ER 04. These new flow meters will be located in the vicinity of the New Pump Station and will be connected as influent to the New Pump Station.

2. Each Party shall exercise due diligence to meet the time deadlines in this Agreement, However, the parties agree that these deadlines shall be extended if delay is caused by reasons beyond a party's reasonable control, such as governmental inaction in the permitting process or other event of force majeure.

3. Once the new pump station is operational, the City will provide all capacity necessary to service the Frawley Road 2 service area as indicated in Exhibit A. The new pump station will provide 715 gallons per minute (gpm) of pumpage sufficient to serve the Frawley Road 2 service area as indicated in Exhibit A.

SECTION IV. Commencement of Service. The transmission of wastewater from the Frawley Pump Station to the New Pump Station shall not commence until City provides final inspection and written approval of the connection.

SECTION V. Plans and Specifications; Other Documentation. The WWTa shall provide City with copies of any and all available drawings, site plans, construction specifications, and prior surveys of the Property and the Frawley Road 2 Pump Station. .

SECTION VI. Sanitary Sewer Overflows; Billing Rates.

1. **Sanitary Sewer Overflows.** The WWTa shall be responsible for all sanitary sewer overflows upstream of the new sewer connection following completion of construction of the New Pump Station.

2. **Billing Rate.** The billing rate and billing process for both pre-construction and post-construction of the New Pump Station will be the same as contained in the existing Agreement between the City of East Ridge and the City of Chattanooga (the "East Ridge Agreement") or until a new mutually agreed upon agreement is authorized. During the demolition of the Frawley Road No. 2 Pump Station as part of the construction of the New Pump Station, it will be necessary for City to temporarily by-pass the flow from Frawley Road No. 2 Pump Station, and the flow will be unmetered. For this temporary time period, City will bill the

WETA pursuant to the same 30-month rolling average method contained in the East Ridge Agreement, but will use the averages from the same period for the previous year until City installs the new flow meters. Once installed, the rolling 30-month average will start from where it left off in the current year.

SECTION VII. Term. The term of this Agreement shall begin on the Effective Date and shall continue through the same term in the existing East Ridge Agreement, from City of Chattanooga Resolution 17650 or until a new mutually agreed upon agreement is authorized.

SECTION VIII. Liability. The parties to this Agreement are governmental entities and as such are governed by the provisions of the Tennessee Governmental Tort Liability Act, T.C.A. §§ 29-20-101 *et seq.* for causes of action sounding in tort. Further, no contract provision requiring a political entity to indemnify or hold harmless the State or any other governmental entity beyond the liability imposed by law is enforceable because it appropriates public money and mollifies governmental immunity without the authorization of the General Assembly. Subject to these limitations, each party shall assume full responsibility for all acts undertaken by it pursuant to this Agreement and shall defend and indemnify the other party to the fullest extent permitted by law.

SECTION IX. Records. The parties agree to maintain books, records, and documents generated by themselves or as reported by any contractor to them, insofar as they relate to work performed or money received under this Interlocal Agreement, for a period of seven (7) full years from the date the date of final payment for any obligation pursuant hereto which shall be subject to audit at any reasonable time and upon reasonable notice by any party hereto. Accounting records shall be prepared in accordance with generally accepted accounting principles.

SECTION X. Nondiscrimination. The parties hereby agree, warrant, and assure that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Agreement or in the employment practices of the parties on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by federal,, Tennessee State constitutional, or statutory law.

SECTION XI. Governing Law. The governing law of this Agreement shall be the law of the State of Tennessee, without regard to conflicts of law provisions.

SECTION XII. Severability. In case any one or more of the provisions contained herein should be invalid, illegal or unenforceable in any respect and for any reason whatsoever, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, and in the event any such provision is held to be invalid, illegal or unenforceable, those Parties affected by such event shall exercise their best efforts to agree

upon a provision in substitution for such invalid, illegal or unenforceable provision that is as near in economic benefit as possible to the provision found to be invalid, illegal or unenforceable.

SECTION XIII. Notices. Any notice, request, demand, claim, or other communication hereunder shall be in writing and shall be deemed duly given or made (i) when personally delivered to the intended recipient (or an officer of the intended recipient), (ii) six (6) days after it is sent by certified first class mail, return receipt requested, postage prepaid, (iii) three (3) days after it is sent by recognized overnight courier service, or (iv) when sent by facsimile service (with such facsimile to be confirmed promptly in writing sent by mail or overnight courier as aforesaid), to the following addresses and recipients:

CITY OF CHATTANOOGA

City of Chattanooga
100 East 11th Street
Chattanooga, Tennessee 37402
Telephone: 423-425-7800
Attention: Travis McDonough, Chief of Staff
Copy to City Attorney

Hamilton County Water and Wastewater
Treatment Authority

J. Christopher Clem
SAMPLES, JENNINGS, RAY & CLEM
130 Jordan Drive
Chattanooga, TN 37421

or to such other address as the receiving Party shall have most recently forwarded to the sending Party pursuant to the provisions of this Section.

SECTION XIV. Assignment. This Interlocal Agreement or any portion thereof is not assignable without the prior written consent of City.

SECTION XV. Binding Nature. It is the intention of the parties that the commitments and obligations set forth herein shall be binding upon the parties hereto and their respective successors and permitted assigns.

SECTION XVI. Article and Section Titles and Headings. The article and section titles and headings are for convenience only and do not define, modify or limit any of the terms and provisions hereof.

SECTION XVII. Incorporation of Exhibits, Annexes, and Schedules. Any exhibits and schedules identified in this Agreement and annexed hereto are incorporated herein by reference and made a part hereof.

SECTION XVIII. Amendments and Waivers. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and duly signed by an authorized representative of each of the parties. No waiver by any party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent occurrence.

SECTION XIX. Construction. In this Agreement, unless the context indicates otherwise, the singular includes the plural and the plural the singular, references to statutes, sections or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending, replacing, succeeding or supplementing the statute, section or regulation referred to; references to "writing" includes printing, typing, lithography, facsimile reproduction and other means of reproducing words in a tangible visible form; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation" or "but not limited to" or words of similar import; references to articles, sections (or subdivisions of sections), exhibits, appendices, annexes or schedules are to those of this Agreement unless otherwise indicated; references to agreements and other contractual instruments shall be deemed to include all exhibits, schedules and appendices attached thereto and all subsequent amendments and other modifications to such instrument; references to days shall mean calendar days unless otherwise specified; and references to Parties include their respective successors and permitted assigns.

SECTION XX. Force Majeure. Neither party shall be liable for its failure to perform under this Agreement or for any loss, injury, damage or delay of any nature whatsoever resulting therefrom caused by any act of God, fire, flood, accident, strike, labor dispute, riot, insurrection, terrorism, or any other cause beyond the party's reasonable control.

SECTION XXI. No Waiver; Remedies. Waiver of breach of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement. This Agreement shall not limit the right of any party to remedies at law or to damages. The rights and remedies, with respect to any of the terms and conditions of this Agreement, shall be cumulative and not exclusive, and shall be in addition to all other rights and remedies.

SECTION XXII. Survival of Representations and Warranties. The covenants, representations and warranties made by the parties hereto and contained herein shall survive the performance of any obligations to which such covenants, representations and warranties relate.

SECTION XXIII. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

SECTION XXIV. Entire Agreement. This Agreement constitutes the entire agreement among the Parties hereto and supersedes any prior understandings, agreements or representations by or among the Parties hereto, whether written or oral to the extent they relate to the subject matter herein.

Executed as of the dates set forth below.

CITY OF CHATTANOOGA, TENNESSEE

Attest

By: _____
Printed Name: _____
Title: _____

HAMILTON COUNTY WATER AND
WASTEWATER TREATMENT AUTHORITY

M. C. H. H.

Attest

By: *Cherie D. Jewell*
Printed Name: *Cherie D. Jewell*
Title: *Chair WWTA*

UCM