

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

A RESOLUTION AUTHORIZING THE ADMINISTRATOR FOR THE DEPARTMENT OF PUBLIC WORKS TO ENTER INTO A WATER STATION CONTRACT WITH THE TENNESSEE CLEAN WATER NETWORK FOR THE PROVISION, INSTALLATION, AND MAINTENANCE OF WATER STATIONS IN THE CITY OF CHATTANOOGA.

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BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, it is hereby authorizing the Administrator for the Department of Public Works to enter into a Water Station Contract with the Tennessee Clean Water Network for the provision, installation, and maintenance of water stations in the City of Chattanooga.

ADOPTED: \_\_\_\_\_, 2015

/mem

**WATER STATION CONTRACT**  
**BY**  
**TENNESSEE CLEAN WATER NETWORK**  
**AND**  
**The City of Chattanooga**

This Agreement is made this \_\_\_\_ day of March, 2015 by and between the Tennessee Clean Water Network, a Tennessee nonprofit corporation, whose mailing address is P.O. Box 1521, Knoxville, TN 37901 ("TCWN") and The City of Chattanooga, a Tennessee municipality, whose mailing address is 101 E. 11th Street Chattanooga, TN 37402 ("Water Station Partner").

1. Purpose

The purpose of this Water Station Contract is to facilitate the provision, installation, and maintenance of Water Stations in the City of Chattanooga. TCWN is providing the Water Stations to the Water Station Partner to promote consumption of tap water instead of bottled water or sugar-sweetened beverages, with the ultimate goal of helping to improve health outcomes and reduce diabetes in the City of Chattanooga. This project is funded under an agreement with the State of Tennessee.

2. Definitions

The "Cleaning Protocol" is the schedule and method for cleaning described in Attachment Number 1 hereto.

The "Locations" are:

1. East Lake Fitness Zone
2. Carver Fitness Zone
3. South Chattanooga Fitness Zone
4. Eastdale Youth & Family Development Center
5. Warner Park
6. Walnut Street Bridge (south side)
7. Avondale Youth & Family Development Center
8. Brainerd Youth & Family Development Center

The "Maintenance Period" is a period of five (5) years, commencing on the date of installation of the Water Stations.

The "Water Stations" are the water bottle refill stations and/or drinking fountain more particularly described in Attachment Number 2 hereto.

3. Responsibilities of the Parties

- a. TCWN's Duties and Responsibilities:

- i. TCWN will provide the Water Stations within ninety (90) days of the effective date of this Water Station Contract.
  - ii. TCWN will transfer applicable warranty documents to Water Station Partner, if any.
- b. Water Station Partner's Duties and Responsibilities:
  - i. The Water Station Partner shall provide the Locations for installation of the Water Stations. The Water Station Partner warrants that it is the owner and holder of all right, title and interest in the land upon which the installation work is to be performed and materials installed. The Water Station Partner agrees that it shall defend, indemnify and hold harmless the TCWN from and against any and all claims that may arise out of this warranty of ownership.
  - ii. The Water Station Partner shall obtain and pay for any and all building or other permits as may be required to perform the installation.
  - iii. The Water Station Partner shall cause the Water Stations to be installed at the Locations within one hundred twenty (120) days of receiving them from TCWN. Installation will be at the sole expense of the Water Station Partner.
  - iv. The Water Station Partner shall cause the Water Stations to be installed by a plumber who is properly licensed in Tennessee and in the City of Chattanooga.
  - v. If practicable, the Water Stations shall be installed with the spout facing south. If the Water Station Partner believes such installation is impracticable, it will communicate the reasons in writing to TCWN and obtain TCWN's prior written consent for an alternative installation, which consent will not unreasonably be withheld.
  - vi. Upon installation, the Water Stations shall become the property of the Water Station Partner. In the event the Water Stations are damaged, stolen, or otherwise incapacitated during the Maintenance Period, the Water Station Partner shall notify TCWN in writing within 30 days and repair or replace the Water Stations within 180 days. The Water Station Partner agrees to defend, indemnify and hold harmless the TCWN from and against any and all claims, actions, causes of action, judgments, liabilities, injuries or damages to persons or property arising from the installation, use, or maintenance of the Water Stations.

vii. Maintenance

- a. The Water Station Partner is solely responsible for maintaining the Water Stations during the Maintenance Period.
- b. At all times, the Water Stations shall be maintained in a functioning, clean, and hygienic condition, except in the case of a water supply interruption outside the control of the Water Stations or short-term maintenance. The Water Stations are designed to operate year-round, and shall not be taken out of service due to freezing temperatures. The Water Station Partner shall comply with the Cleaning Protocol.

viii. Logo & Decal

- a. TCWN's logo and mention of the State of Tennessee will be displayed in a visible location on the Water Stations. The Water Station Partner's logo may additionally be placed on the Water Stations, in a similar size and location as TCWN's logo.
- b. In addition, a decal provided by TCWN will be placed on the Water Stations in a prominent location and maintained throughout the Maintenance Period. The decal will include health messaging, TCWN's logo, a statement that "This project is funded under an agreement with the State of Tennessee" or other mention of the State of Tennessee, and may include the Water Station Partner's logo and the logo of any additional sponsor.

- vii. The Water Station Partner hereby agrees, warrants, and assures that no person shall be excluded from use or enjoyment of the Water Stations on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law.

4. Return of Water Stations if Not Timely Installed

If the Water Station Partner fails to install the Water Stations within 120 days of receipt, it shall return the Water Stations to TCWN within 30 days after receiving a written demand thereof. In the event TCWN is required to undertake legal action or retain counsel to enforce its rights hereunder, Water Station Partner agrees to pay TCWN's reasonable attorneys' fees and other reasonable and necessary costs.

5. Assignment

The parties' respective obligations under this Water Station Contract may not be assigned or transferred to another person or party without the prior written consent of the other party, which consent shall not be unreasonably withheld.

6. Entire Agreement/Modification

This Water Station Contract and attachments hereto constitute the entire agreement between the parties. This Water Station Contract supersedes any prior oral or written agreement or proposal between the parties hereto and may be modified only by a written agreement signed by the Water Station Partner and an authorized representative of TCWN.

7. Severability

If any provision of this Water Station Contract shall be held invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court of competent jurisdiction finds that any provision of this Water Station Contract is invalid or unenforceable, but that by limiting such provision it would become legal and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.

8. Waiver of Contractual Right

The failure of either party to enforce any provision of this Water Station Contract shall not be construed as a waiver or limitation of that party's right to subsequently enforce and/or compel strict compliance with any provision of this Contract.

9. Applicable Law

This Water Station Contract shall be governed and construed in accordance with the laws of the State of Tennessee.

10. Compliance with Laws

TCWN and the Water Station Partner shall comply with all laws applicable to this agreement.

11. Correspondence

Any correspondence required or permitted hereunder shall be given to the appropriate party at the addresses specified in the opening paragraph of this Water Station Contract or to such other address as the party shall specify in writing. Such correspondence shall be

deemed given upon personal delivery to the appropriate address or three (3) days after sent by certified or registered mail or overnight delivery service.

12. Audit

The City or its assign may audit all financial and related records (including digital) associated with the terms of the agreement including materials, goods, and equipment claimed by TCWN. The City may further audit any TCWN records associated with the terms of the agreement to conduct performance audits (to identify waste and abuse or to determine efficiency and effectiveness of the contract or agreement) or to identify conflicts of interest. TCWN shall at all times during the Maintenance Period, keep and maintain records of the work performed pursuant to this agreement. The records required to be kept and maintained shall include proper records of quotations, contracts, correspondence, invoices, vouchers, and other financial documents that support actions taken by the TCWN associated with the terms of this contract. Documents shall be maintained by the TCWN necessary to clearly reflect all work and actions taken. All such records shall be maintained in accordance with generally accepted accounting principles. TCWN shall at its own expense make such records available for inspection and audit (including copies and extracts of records as required) by the City at all reasonable times and without prior notice.

13. Termination

Either party may terminate this agreement at any time with two (2) weeks written notice. The City agrees to maintain installed water stations if this agreement is terminated.

Water Station Partner

By: \_\_\_\_\_

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

TCWN

By: Renée V Hoyos  
Renée V. Hoyos, Executive Director

Date: 3/11/15