

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE APPROVAL AND EXECUTION OF AN AGREEMENT WITH THE ELECTRIC POWER BOARD OF CHATTANOOGA (EPB) AND THE CITY OF CHATTANOOGA MOCCASIN BEND WASTEWATER TREATMENT PLANT RELATIVE TO AN AGREEMENT FOR POWER DISTRIBUTION SYSTEM UPGRADE DESIGN AND CONSTRUCTION, FOR A TOTAL PROJECT COST NOT TO EXCEED FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00), WITH TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) TO BE PAID UPON EPB'S RECEIPT OF THREE (3) SWITCHGEARS.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, it is hereby authorizing the approval and execution of an agreement with the Electric Power Board of Chattanooga (EPB) and the City of Chattanooga Moccasin Bend Wastewater Treatment Plant relative to an agreement for power distribution system upgrade design and construction, for a total project cost not to exceed \$500,000.00, with \$250,000.00 to be paid upon EPB's receipt of three (3) switchgears.

ADOPTED: _____, 2015

/mem

City of Chattanooga



Resolution/Ordinance Request Form

Date Prepared: June 22, 2015

Preparer: Michael C. Patrick, P.E., Director

Department: Public Works/Waste Resources Division

Brief Description of Purpose for Resolution/Ordinance: _____ Res./Ord. # _____ Council District # 1

A City Council Resolution is requested to approve an agreement with the Electric Power Board of Chattanooga (EPB) and the City of Chattanooga Moccasin Bend Wastewater Treatment Plant relative to an agreement for power distribution system upgrade design and construction. The total project cost is not to exceed \$500,000.00, with \$250,000.00 to be paid upon EPB's receipt of three (3) switchgears.

Name of Vendor/Contractor/Grant, etc. EPB
Total project cost \$ 500,000.00
Total City of Chattanooga Portion \$ 500,000.00
City Amount Funded \$ 500,000.00
New City Funding Required \$ _____
City's Match Percentage % _____

New Contract/Project? (Yes or No) Yes
Funds Budgeted? (YES or NO) Yes
Provide Fund 6011
Provide Cost Center K40167
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 _____

Funding is from FY-15 Capital Budget.

Approved by: _____

Reviewed by: FINANCE OFFICE

DESIGNATED OFFICIAL/ADMINISTRATOR

PLEASE SUBMIT COMPLETED FORM TO: DAISY MADISON, @BUDGET, WADE HINTON, AND MARIA MANALLA

Revised: March 17, 2015

AGREEMENT FOR SUBSTATION CONSTRUCTION
ELECTRIC POWER BOARD OF CHATTANOOGA
&
CITY OF CHATTANOOGA MOCCASIN BEND WASTEWATER TREATMENT PLANT

This Agreement is entered this ____ day of June, 2015 ("Effective Date") by and between the Electric Power Board of Chattanooga, an independent board of the City of Chattanooga, Tennessee ("EPB") with its principal place of business located at 10 West Martin Luther King Blvd. Chattanooga, Tennessee 37402 and the City of Chattanooga Moccasin Bend Wastewater Treatment Plant ("City"), with its principal place of business located at 455 Moccasin Bend Rd, Chattanooga, Tennessee 37405.

WHEREAS, the City is upgrading its Power Distribution System ("PDS") located at 455 Moccasin Bend Rd, Chattanooga, Tennessee 37405 and desires for EPB to design and construct the upgrade to the PDS (hereinafter "Work"); and

WHEREAS, EPB performs the essential public service of distributing electric power and communication services and skilled in the design and construction of power distribution systems; and

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, EPB and City hereby agree to be legally bound as follows:

1. DOCUMENTS

The Documents which comprise the entire agreement between EPB and City regarding the Work consist of the following:

- 1.1. This Agreement and all Exhibits referenced herein;
- 1.2. The Statement of Work attached hereto as Exhibit 1.
- 1.3. EPB shall provide "as built" drawings for the design of the PDS as determined by the progress of the Work.

There are no other Documents than those listed above. The Documents may only be amended, modified or supplemented as provided for in this Agreement.

2. WORK

EPB shall complete all Work as specified in Exhibit 1 and as generally described in the Documents.

3. COMPLETION OF WORK AND PROJECT

- 3.1. EPB shall coordinate the Work with the City and any subcontractors to minimize any disruption to the operations of the Waste Water Treatment Plant during the construction of the PDS.
- 3.2. The construction of the PDS is projected to be complete by September 2015.

- 3.3. Before undertaking the Work, EPB shall study and compare the Documents and check and verify pertinent figures shown thereon and all applicable field measurements. EPB shall promptly report in writing to City any conflict, error, discrepancy, or ambiguity which EPB may discover and shall obtain a written interpretation or clarification from City before proceeding with any Work affected thereby.

4. COST OF WORK

- 4.1. In total, the City shall pay EPB the actual cost of the Work not to exceed Five Hundred Thousand Dollars (\$500,000) and in accordance with the Documents and this Agreement.
- 4.2. City shall pay \$250,000 upon EPB's receipt of three (3) switchgear. This is projected to occur in early August 2015.
- 4.3. City shall pay the remaining balance due after Substantial Completion, as defined below, of the Work.

5. SUBSTANTIAL COMPLETION

- 5.1. Substantial Completion of the Work shall mean that the PDS is complete, ready to energize, and to provide electric service to the City.

6. CITY'S REPRESENTATIONS AND RESPONSIBILITIES

In order to induce EPB to enter into this Agreement and perform the Work, City makes the following representations:

- 6.1. City has familiarized itself with the nature and extent of the Documents, the Work, construction of the PDS, the Work site, routes, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance, or construction of the PDS.
- 6.2. City has carefully studied all reports of explorations and tests of surface and subsurface conditions at and contiguous to the site for the Work and all physical conditions in or relating to existing surface or subsurface structures at and contiguous to the site for the Work.
- 6.3. City agrees that under no circumstances will pesticides, herbicides, toxic chemicals, hazardous substances, hazardous wastes, or containers therefore be used, applied, transported, stored, or disposed except in strict compliance with label requirements and with all applicable federal, state, and local ordinances, laws, regulations, and licensing requirements. No hazardous substances or hazardous wastes shall be stored, used, deposited, spilled, or disposed on the Work site, rights-of-way, or on the contiguous property. For the purpose of this Agreement, the terms "pesticides", "herbicides", "hazardous substances" and "hazardous wastes" shall have the meanings set forth in the Resource Conservation and Recovery Act 41 U.S.C. § 9601, et seq., the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, and the Federal Insecticide, Fungicide, and Rodenticide Act, and shall also include petroleum.

- 6.4. City shall comply with all federal, state, and local laws, ordinances, regulations and permitting requirements applicable to the performance of the Work.
- 6.5. City represents that any construction material generated at the Work site, whether existing at the site or brought to the site during construction, shall be properly disposed of according to federal, state and local law and the City will assume all liability for the generation and disposal of any construction material.
- 6.6. City has given EPB's Authorized Representative written notice of all conflicts, errors or discrepancies in the Documents and provided written resolutions acceptable to EPB.
- 6.7. City has committed to construction of the PDS and to operate the PDS in a commercially reasonable manner.
- 6.8. City is responsible for complying with all of its obligations as described in this Agreement.
- 6.9. City shall comply with all EPB rate schedules and security deposit requirements according to the type of electric service.

City shall have the following responsibilities:

- 6.10. City shall pay EPB the actual cost of the Work completed to date if the construction of the PDS is not completed or is not completed according to the terms of this Agreement.
- 6.11. City is responsible for complying with all of its obligations as described in this Agreement.
- 6.12. City shall observe all applicable safety rules, laws, regulations, and methods to prevent injury to EPB's employees, agents, contractors and other persons and to prevent damage to EPB property.
- 6.13. City shall observe all ordinances, laws, and regulations applicable to its operations, including, without limitation, state and federal occupational safety and health requirements; local, state, and federal environmental ordinances, laws and regulations; Tennessee Department of Transportation requirements; Tennessee Department of Agriculture requirements; and any permit and licensing requirements.
- 6.14. City shall designate a duly authorized manager or superintendent (the "Authorized Representative") who shall be available during all periods of Work undertaken by EPB. The Authorized Representative, Jimmy Spence (Operations Supervisor Waste Resources Division) will be and shall be fully authorized to act for City, to receive whatever instructions may be given by EPB.

- 6.15. Except for equipment or materials provided by EPB, EPB does not have or hereby assume any duty or responsibility to any person or persons whomsoever for the selection and compatibility of equipment, or for examining, testing or inspecting any equipment used by City for its suitability, condition, or for any other reason.
- 6.16. City shall furnish the lands upon which the Work is to be performed, rights-of-way, and easements for access thereto, and such other lands which are designated for EPB's use in connection with the Work performed under this Agreement.
- 6.17. City shall be responsible for the physical conditions of the Work Site, including the surface and subsurface conditions. City shall be solely responsible for the mitigation, remediation, and cleanup of any existing toxic or hazardous substance or condition located at the Work Site. EPB shall not begin work until the Work Site conditions are safe and in an acceptable condition according to federal, state and local environmental laws.

7. EPB'S REPRESENTATIONS AND RESPONSIBILITIES

EPB makes the following representations:

- 7.1. EPB has familiarized itself with the nature and extent of the Documents, the Work, construction of the PDS, the Work site, routes, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance, or construction of the PDS.
- 7.2. EPB is capable and skilled in the construction of power distribution systems.

EPB shall have the following responsibilities:

- 7.3. EPB shall complete the construction of the PDS according to the terms of this Agreement.
- 7.4. EPB will furnish all supervision, materials, labor, supplies, tools, equipment, and transportation necessary to perform the Work in accordance with the Documents.
- 7.5. EPB is solely responsible for ensuring that its employees, agents, and subcontractors shall have the necessary skill, knowledge, training, and experience to protect themselves, their fellow employees, employees of the City, and third parties, including the general public, from personal injury or property damage while performing the Work. EPB hereby agrees to furnish EPB's employees, agents, and subcontractors with competent supervision and safe, sufficient, and adequate tools and equipment for the Work to be performed in a safe manner.
- 7.6. EPB is responsible for complying with all of its obligations as described in this Agreement.
- 7.7. EPB shall observe all applicable safety rules, laws, regulations, and methods to prevent injury to City's employees, agents, contractors and other persons and to prevent damage to City property. EPB shall observe all ordinances, laws, and regulations applicable to its operations, including, without limitation, state and federal occupational safety and health requirements; local, state, and federal environmental ordinances, laws and regulations; Tennessee Department of Transportation requirements; Tennessee Department of Agriculture requirements; and licensing requirements. EPB shall provide a safety plan if one exists to Joe Miller at the City or if a safety plan does not exist EPB shall coordinate with Joe Miller to discuss a safety plan.
- 7.8. EPB shall use skilled workers who are normally employed in the specialty of substation and underground construction work, and all Work performed shall be of good quality and

craftsmanship according to industry standards. Any right of inspection hereby given to the City does not give the City the right to control the method or manner in which the Work shall be performed and gives the City no control over EPB's employees, agents, or subcontractors in the performance of the Work.

- 7.9. EPB shall designate a duly authorized manager or superintendent (the "Authorized Representative") who shall be available during all periods of Work. The Authorized Representative shall be fully authorized to act for EPB, to receive whatever instructions may be given by City, and to ensure compliance by all of EPB's forces.
- 7.10. EPB shall immediately report to City any spills of dielectric fluid from electrical equipment or any damage to electrical equipment that could result in a spill of dielectric fluid.
- 7.11. EPB shall provide a copy of the "as built" drawings of the PDS to the City after Substantial Completion.

8. CHANGE ORDERS

- 8.1. City may order additions, deletions, or revisions to the Work at any time prior to Substantial Completion. Such additions, deletions, or revisions will be authorized by a written document known as a Change Order. EPB shall review the requested Change Order and provide written notice to the City for the increase or decrease in the cost of the Work and the adjustment to the Substantial Completion date according to the requested Change Orders. The City must agree to the Change Order in writing prior to EPB proceeding with the Work requested in the Change Order.
- 8.2. The cost of the Work and the time required for Substantial Completion shall be adjusted as agreed in the Change Order.
- 8.3. All Change Orders increasing the cost to of the Work shall also increase in direct proportion the not to exceed cap, initially set in this Agreement at Five Hundred Thousand Dollars (\$500,000), that is included with the cost of the Work.
- 8.4. If EPB or City is prevented from completing any part of their obligations within the time to complete the Work due to delay beyond the reasonable control of EPB or City, the time of Substantial Completion shall be extended in an amount equal to the time lost due to such delay. Delays beyond the control of a party shall include, but shall not be limited to, acts of negligence, fires, floods, epidemics, abnormal weather conditions or acts of God. In no event shall EPB be liable to City or any other person or organization from damages arising out of or resulting from a delay beyond the reasonable control of EPB to complete the Work. A Change Order is not required to extend the time of Substantial Completion for such a delay.
- 8.5. EPB's Authorized Representative may authorize minor variations in the Work from the requirements in the Documents which do not involve an adjustment in the Cost of the Work or the date for Substantial Completion and are compatible with the design concept of the completed PDS as a functioning whole as indicated by the Documents. Minor variations in the Work shall not include any excavation, digging or sub-surface work that is not contained or required in the Documents.

9. TESTS AND INSPECTIONS

- 9.1. Prompt notice of all defective Work of which City has actual knowledge will be given to EPB. All defective Work may be rejected, corrected, or accepted as provided in this Section.
- 9.2. The City, independent testing laboratories, and governmental agencies with jurisdiction shall have access to the Work at reasonable times for their observation, inspection, and testing. The City and EPB shall provide them with proper and safe conditions for such access and shall advise them of the City and EPB's safety procedures and programs so that they may comply therewith as applicable.
- 9.3. EPB shall give the City's Authorized Representative timely notice of readiness of the Work for all required inspections, tests, or approvals, and shall coordinate with inspection and testing personnel to facilitate required inspections or tests.
- 9.4. If laws or regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved, EPB shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish City's Authorized Representative the required certificates of inspection or approval. EPB shall also be responsible for arranging, obtaining, and shall pay all costs in connection with any inspections, test or approvals required for the City.
- 9.5. If the Work is defective, or EPB fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Documents, the City may order EPB to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of City shall not give rise to any duty on the part of City to exercise this right for the benefit of EPB or any other party.
- 9.6. If required by City's Authorized Representative, EPB shall either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by City's Authorized Representative, remove it from the site and replace it with Work that is not defective.
- 9.7. Instead of requiring correction, removal, or replacement of defective Work, City may choose to accept it. If such acceptance occurs before City's Authorized Representative's recommendation of final payment, a Change Order will be issued noting the necessary revisions in the Documents with respect to the defective Work; and City shall be entitled to an appropriate decrease in the Cost of the Work. If the acceptance occurs after such recommendation of final payment, an appropriate amount will be paid by EPB to the City.

- 9.8. If EPB fails within a reasonable time after written notice from City's Authorized Representative to correct defective Work or if EPB fails to perform the Work in accordance with the Documents, or if EPB fails to comply with any other provision of this Agreement, City may, after fourteen (14) days' written notice to EPB, correct and remedy any such deficiency. All claims, losses and damages incurred or sustained by City in exercising such remedies will be charged against EPB, and a Change Order will be issued incorporating the necessary revisions with respect to the Work; and City shall be entitled to an appropriate decrease in the Cost of the Work. Such claims, costs, losses and damages will be limited to the cost of repair or replacement of Work. EPB shall not be allowed an extension of the time because of any delay in the performance of the Work attributable to the City exercising this right.

10. SUSPENSION OF WORK AND TERMINATION

- 10.1. At any time for reasons beyond the reasonable control of City, the Work or any portion thereof may be suspended by providing notice in writing to EPB and City will fix the date on which Work will be resumed if reasonably possible in the sole judgment of the City.
- 10.2. City shall consider the following actions to be an event of material default by EPB:
- 10.2.1. Failure or refusal to proceed with the construction of the PDS;
 - 10.2.2. Abandonment of the construction of the PDS to be done under this Agreement for any reason;
 - 10.2.3. Failure to fulfill any provisions of this Agreement including the attached Exhibits; or
 - 10.2.4. Failure or refusal to fully complete the construction of the PDS within the time specified or the extension of such time as granted by this Agreement.
- 10.3. Upon the occurrence of any of the events of material default by EPB, City may terminate this Agreement at which time the City shall immediately pay EPB for the Cost of the Work as completed by EPB and City may pursue any other available legal or equitable remedies.

11. MISCELLANEOUS PROVISIONS

- 11.1. This Agreement and any rights or interests in this Agreement may be assigned only with the written consent by the other party which shall not be unreasonably withheld or delayed. EPB shall not assign the obligation to complete the PDS and the City shall not assign the obligation to pay EPB for the Cost of the Work.
- 11.2. This Agreement shall be governed by and interpreted and enforced under the laws of the State of Tennessee, without regard to conflicts of law provisions.
- 11.3. The parties hereby submit to the personal jurisdiction of the courts of Hamilton County, Tennessee and agree that they shall be the exclusive venue for resolution of any disputes that may arise out of this Agreement.
- 11.4. Headings provided in this Agreement are provided solely for the convenience of the parties and shall not in any manner affect the meaning or interpretation of this Agreement.

- 11.5. Any notices required to be provided hereunder shall be provided in writing, unless verbal communications is expressly permitted or verbal communication is appropriate because of exigencies of time, in which case such verbal communication shall be confirmed in writing at the earliest possible time. All notices shall be delivered or mailed to the addresses set forth below or to such other address as the parties may from time to time designate in writing. All notices shall be delivered or mailed. If mailed, the notices shall be deemed given when deposited, postage prepaid, with the Unites States Postal Service.

Notice Address for EPB

Electric Power Board of Chattanooga
Attn: VP, Technical Operations
Copy to: Legal Services Division
P.O. Box 182255
Chattanooga, TN 37422

Notice Address for City

City of Chattanooga
Moccasin Bend Wastewater Treatment Plant
455 Moccasin Bend Rd.
Chattanooga, TN 37405

- 11.6. This Agreement constitutes the final, complete, and entire understanding of the parties and supersedes all previous communications, representations, agreements, promises, statements, proposals, and specifications, whether written or oral, by or between the parties, except as expressly referenced and adopted herein. This Agreement may only be modified in writing signed by each of the parties to this Agreement.
- 11.7. No delay or failure of EPB in exercising any right or power under this Agreement shall operate as a waiver of such right or power to prevent the future exercise of such right or power.
- 11.8. EPB and City hereby certify that they are independent parties acting as independent contractors. Nothing herein shall be construed to create a partnership, joint venture, or agency relationship between EPB and City, and neither party shall have the authority to bind the other party in any respect.
- 11.9. Nothing contained in this Agreement shall be construed as creating rights in third parties, and the parties hereby express their intent that this Agreement is not intended to benefit third parties in any manner.
- 11.10. Nothing contained in this Agreement or in any bond or in any certificate or policy of insurance or in any provision of indemnity shall be construed to constitute a waiver by EPB of any provision, substantive or procedural, of the Tennessee Governmental Tort Liability Act, as amended, Tenn. Code Ann. § 29-20-101 et seq., or of any other provision of federal, state, or local law affording EPB protection from or limitation of tort or other liability.
- 11.11. Neither City nor its employees shall offer any gifts, favors, tips, gratuities, or any other item of service of value to any employee, director, or officer of EPB.
- 11.12. Each party agrees that it will treat as confidential all information which may be disclosed to it by the other under this Agreement. Confidential Information shall not include any information that the receiving party can demonstrate by written records the information (i) is or becomes generally available to the public without breach of this Agreement, (ii) was in the possession or known by the receiving party prior to receipt from the disclosing party, (iii) was rightfully disclosed to the receiving party by a third party not under an obligation of confidentiality, or (iv) was independently developed without reference to or use of any confidential information of the disclosing party. Each party agrees not to disclose confidential information to third parties, except as deemed necessary to attorneys, employees, bankers, contractors, consultants, and partners; and agrees to make no use thereof except as necessary for the proper performance of this

Agreement. Each party shall afford confidential information the same security and care in handling and storage as each party provides for its own confidential information. All confidential information shall remain the property of the disclosing party and the original and copies thereof, in whatever form, shall be returned to the disclosing party within ten days upon request. Each party agrees that any breach of the obligations of this Section will cause irreparable harm to the disclosing party for which money damages will not be an adequate remedy. Therefore, the disclosing party shall, in addition to any other legal or equitable remedies, be entitled to seek an injunction or similar equitable relief against such breach or threatened breach of this Section without the necessity of posting any bond. The parties' obligations hereunder shall not extend to information which is required to be disclosed by operation of law, the Tennessee Open Records Act, court order, or pursuant to the lawful requirement of a government agency. The parties' obligations under this Section shall continue after the termination or expiration of this agreement.

- 11.13. It is expressly agreed and understood by the parties that if any provision of this Agreement is held to be unconscionable or invalid under any applicable statute or rule of law then that provision shall be omitted and the remaining provisions of this Agreement shall remain in full force and effect and shall be interpreted to the fullest extent as intended by the parties.
- 11.14. In no event will EPB, its directors, officers, employees, contractors or agents be liable for consequential, incidental, indirect, punitive, or special damages, or loss of profits, business or goodwill whether such liability is based on breach of contract, tort, strict liability, breach of warranties, failure or essential purpose, delays, or otherwise and even if advised of the likelihood of such damages.
- 11.15. With the exception that this Section shall not be construed to require EPB to indemnify City to the greater extent than permitted under public policy or Tennessee law, each party shall indemnify and defend the other party and its directors, officers, employees, and agents and hold it harmless from any and all claims, losses, liability, and expense including actual attorneys' fees arising out of or in connection with the indemnifying party's performance under this Agreement. However, a party shall not provide indemnity for loss of life or injury or damage to any person or property due to the sole negligence of the other party or its agents or employees. This provision shall survive the termination or expiration of this Agreement.

IN WITNESS WHEREOF, the parties hereto have agreed to be bound by and executed this Agreement by signature below on the Effective Date.

CITY OF CHATTANOOGA
MOCCASIN BEND WASTEWATER
TREATMENT PLANT

By: _____

Name: _____

Title: _____

ELECTRIC POWER BOARD OF
CHATTANOOGA

By:  _____

Name: Ryan Keel

Title: Vice President, Technical Operations