

RESOLUTION NO. 30995

A RESOLUTION AUTHORIZING THE ADMINISTRATOR FOR THE DEPARTMENT OF PUBLIC WORKS TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH THE INDUSTRIAL DEVELOPMENT BOARD FOR THE CITY OF CHATTANOOGA FOR THE DESIGN AND CONSTRUCTION OF THE MULTIPLE WET-WEATHER STORAGE FACILITIES IN ORDER TO REDUCE WET WEATHER SEWER OVERFLOWS WITHIN THE REGIONAL SANITARY SEWER COLLECTION SYSTEMS RELATIVE TO A PROJECT CALLED THE ENVIRONMENTAL AND ECONOMIC INFRASTRUCTURE IMPROVEMENT PROJECT (E2I2), IN THE AMOUNT OF ONE HUNDRED TWENTY-FIVE MILLION DOLLARS (\$125,000,000.00).

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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 Memorandum of Understanding with the Industrial Development Board for the City of Chattanooga for the design and construction of the multiple wet-weather storage facilities in order to reduce wet weather sewer overflows within the regional sanitary sewer collection systems relative to a project called the Environmental and Economic Infrastructure Improvement Project (e2i2), in the amount of \$125 million.

ADOPTED: December 21, 2021

/mem

## MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this "Agreement") is hereby made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_ (the "Effective Date"), by and between the City of Chattanooga, through its Department of Public Works, Waste Resource Division, City of Chattanooga, Tennessee, (the "Owner") and the Industrial Development Board for the City of Chattanooga, Tennessee (the "Development Authority") (the Owner and the Development Authority, collectively, the "Parties").

### RECITALS

**WHEREAS**, the Environmental and Economic Infrastructure Improvements Project (e2i2) is an interlocal agreement with the City of Chattanooga and the Hamilton County Water and Wastewater Treatment Authority and the e2i2 Agreement (the "Project") was approved by the Chattanooga City Council on November 5, 2019, as Resolution No. 30123; the First Amendment was approved by Chattanooga City Council on March 9, 2021, as Resolution No. 30684; and the Second Amendment will be presented to Chattanooga City Council on January 11, 2022, for approval; and

**WHEREAS**, the Owner's proposed wet weather equalization stations (the "Facilities") are located at three parcels in Chattanooga, Tennessee (the "Project Sites"):

- West Chickamauga (Hwy I-75, Chattanooga, TN, 37421)
- South Lee Hwy (7148 Lee Hwy, Chattanooga, TN, 37421)
- Pineville (Hudson Road, Chattanooga, TN, 37405); and

**WHEREAS**, the Project will require the Owner to make a total capital investment of approximately \$125,000,000 to the regional wastewater collection system of Chattanooga. The City of Chattanooga will be responsible for sixty (60%) percent of the total capital costs of the Project and the HCWWTA will be responsible for forty (40%) percent of the total capital costs of the Project; and

**WHEREAS**, the Project will be awarded through the Development Authority. The Owner was approved to apply for loan funding from the EPA Water Infrastructure Finance and Innovation Act of 2014 (WIFIA) and will apply for TDEC State Revolving Fund (SRF) loans. For any amounts not approved for SRF funding, the Owner will issue a General Obligations Bond; and

**WHEREAS**, the Project will be delivered by the Progressive Design-Build method. The Development Authority will be the Industrial Development Board for the City of Chattanooga, Tennessee, as described in Tennessee Code Annotated § 7-53-101, and pursuant to Tennessee Code Annotated § 12-10-124, as a public corporation, to engage in a request-for-proposal process or other public process for the construction of this Project; and

**WHEREAS**, the Parties are desirous of setting forth the proposals and respective commitments of the Development Authority, and the Owner in a valid, binding, and enforceable agreement, as more fully described herein, which shall, on the Effective Date, become legally binding obligations of the Parties; and

**WHEREAS**, the City presented to the Development Authority in a public meeting on November 1, 2021, that a failure to construct the e2i2 Project could result in development moratoriums where sewer capacity would be exceeded; and

**NOW, THEREFORE**, upon and in consideration of the respective promises and covenants contained herein and for other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

### **ARTICLE I - CONDITIONS PRECEDENT**

The obligations of the Owner and the Development Authority are subject to the approval of this Agreement by both parties.

### **ARTICLE II - TERMS**

This Agreement shall remain effective until all requirements of the Owner's Consent Decree with the United States Environmental Protection Agency have been satisfied as they relate to the e2i2 Project.

### **ARTICLE III - CAPITALIZED TERMS**

Capitalized terms utilized herein shall have the meanings ascribed thereto in this Article II of the Agreement, unless the meanings of such terms have been otherwise specified in a different context. For purposes of this Agreement:

- 2.1. "Agreement" has the meaning assigned to such term in the preamble hereto.
- 2.2. "Development Authority" has the meaning assigned to such term in the preamble hereto.
- 2.3. "Effective Date" has the meaning assigned to such term in the preamble hereto.
- 2.4. "Facility" has the meaning assigned to such term in the recitals hereto.
- 2.5. "Force Majeure" means any of the following events that directly impact the Owner's ability to meet the Performance Requirement: flood, earthquake, storm, lightning, fire, or other Acts of God; sabotage or terrorism; pandemic or epidemic.
- 2.6. "Owner" has the meaning assigned to such term in the preamble hereto.
- 2.7. "Parties" has the meaning assigned to such term in the preamble hereto.
- 2.8. "Project Sites" has the meaning assigned to such term in the recitals hereto.
- 2.9. "Start Date" means the Effective Date of this Agreement.

#### **ARTICLE IV - OWNER COMMITMENTS**

- 3.1. **Owner Commitment.** The Waste Resource Division of the City of Chattanooga's Public Works Department will obtain ownership of all the infrastructure constructed in the Project.
- 3.2. The Owner will procure the professional services of a consultant to act as an Owner's Agent to manage the Design-Build of the project.
- 3.3. The Owner and Owner's Agent will be responsible for the following tasks:
  - (a) Planning and preliminary engineering of the Project;
  - (b) Development of a request for proposals, receive and review the submitted proposals, and development a selection committee for the procurement of the design-builder;
  - (c) Development of the design-build agreement for the Project. The design-build agreement will be developed to implement the project in accordance with Exhibit B – Progressive Design-Build Process.
  - (d) Submission of resolutions to the City Council of Chattanooga for authorization;
  - (e) Submission of applications for project funding and coordination with the financing agencies; and
  - (f) Management of the selected Design-Builder including schedule management, progress reporting, workshop attendance, budget management, and approvals of invoices.

#### **ARTICLE V – DEVELOPMENT AUTHORITY COMMITMENTS**

- 4.1. **Development Authority Commitments.** The Industrial Development Board for the City of Chattanooga, Tennessee, will act as the authority described in Tennessee Code Annotated § 12-10-124.
- 4.2. The Development Authority will be responsible for the following tasks:
  - (a) Awarding the design-build contract to the selected design-builder; and
  - (b) Receiving the funds from the Owner and distributing funds to the Project as described in Exhibit C – Project Funds Transfer.

## **ARTICLE VI - MISCELLANEOUS**

- 5.1. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. The Parties agree that they are subject to the exclusive jurisdiction of the courts of Hamilton County, Tennessee, and the Eastern District of Tennessee, in actions that may arise under this Agreement. The Parties acknowledge and agree that the Development Authority is authorized to contract for all services, including construction management services and design-build services for this project by a request-for-proposal process or other public process in accordance with *Tennessee Code Annotated*, § 12-10-124.
- 5.2. **Exhibits.** The Exhibits and attached hereto will be construed to be a part of this Agreement by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each Exhibit and Attachment were set forth in full and at length every time it is referred to or otherwise mentioned. In the event of a discrepancy or ambiguity regarding the funds from WIFIA and SRF to the Owner under the loan agreements, the terms of the loan agreements shall govern.
- 5.3. **Severability.** If any one or more of the provisions contained herein will for any reason be held by any court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision hereof, and this Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- 5.4. **Authorized Signatures.** Each of the individuals executing this Agreement represents that they are authorized to execute this Agreement on behalf of their respective entities.
- 5.5. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts and by-different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same Agreement.

[Signature Page Follows]

**IN WITNESS WHEREOF**, the Parties have hereunto set their signatures the day and year first written above.

**City of Chattanooga, Tennessee**

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

Title: \_\_\_\_\_

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

**The Industrial Development Board  
for the City of Chattanooga, Tennessee**

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

Title: \_\_\_\_\_

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

**EXHIBIT A**

**Proposed Project Schedule**

## **EXHIBIT B**

### **Progressive Design-Build Process**

#### **Procure Design-Builder**

The Owner will establish criteria to solicit a design-build team for the project. Such criteria will be published on the Owner's procurement website and will include such items as the prospective bidder's:

- licensure/bonding amount
- work history including size of recent projects completed as well as experience
- qualifications of the design-build organization(s)
- collaborative delivery approach
- past performance
- small business enterprise and local preference
- project understanding and delivery
- personnel qualifications and team approach
- oral communication
- costs of design professional services to the Guaranteed Maximum Price (GMP)

The list of items above is not comprehensive and nothing shall preclude the Owner from including any other items it may reasonably deem necessary.

#### **Design**

The design of the project will be completed in accordance with the design-builder contract. All Project components will be designed by a professional engineer (P.E.) licensed in the State of Tennessee. A guaranteed maximum price (GMP) will be provided at an interim design milestone. Based on its review of the GMP, it may become more economical to receive construction bids the Project. The Owner reserves the right to deviate from the design-build of the project and solicit construction bids. If the design-build method remains the most economical option, the design-builder will be permitted to begin construction while finalizing the design for the project.

#### **Construction**

The construction of the project will be completed as described in the design-builder contract and design documents developed by a licensed professional engineer. Construction will be permitted to begin once the GMP is approved by the Owner.

#### **Startup**

Once construction of the Project components is substantially complete, the design-builder will implement the startup of Project components. Once the startup is approved by the Owner, the design-build will provide the Owner with final project operational manuals and allow the Owner to begin operating the Project components.



## **EXHIBIT C**

### **Funds Transfer Process**

1. The Owner receives approval to receive loan financing from the funding agencies.
2. The Owner receives the funds from the funding agencies.
3. The Owner transfers the funds to the Development Authority as approved by the City Council of Chattanooga and the Industrial Development Board.
4. As project tasks are completed, the design-builder will be permitted to invoice the Owner on a monthly basis. The Owner and Owner Agent will review the project invoices and request the associated amount from the Development Authority.
5. The design-builder will invoice the Owner until the scope of the design-builder contract is completed.
6. Any funds that remain after the Project is complete shall be transferred from the Development Authority to the Owner.