

WHEREAS, National Apprenticeship Week is celebrating its 9th anniversary of raising awareness of the vital part that Registered Apprenticeships play in creating opportunities, by allowing apprentices to earn while they learn and preparing a pathway to quality, well-paying careers; and

WHEREAS, Registered Apprenticeship programs enable employers to develop and train their future workforce, while offering career seekers affordable paths to secure high-paying jobs; and

WHEREAS, the Memphis City Council acknowledges the role of Registered Apprenticeship in expanding opportunities in our workforce that are inclusive of individuals who have been historically underserved, marginalized and adversely affected by persistent poverty and inequality; in so doing, Registered Apprenticeship provides a path for all qualified individuals – including women, youth, people of color, rural communities, justice-involved individuals and people with disabilities – to become apprentices and contribute to America’s industries; and

WHEREAS, the Memphis City Council recognizes that Registered Apprenticeship, a proven and industry-driven training model, is a key strategy in improving job quality and creating access to well-paying, family-sustaining jobs for all; it also addresses some of our nation’s pressing workforce challenges, such as rebuilding our country’s infrastructure, addressing critical supply chain demands, supporting a clean energy workforce, modernizing our cybersecurity response, and responding to care economy issues.

NOW, THEREFORE, BE IT RESOLVED that the Memphis City Council does hereby declare November 13-19, 2023 as

National Apprenticeship Week

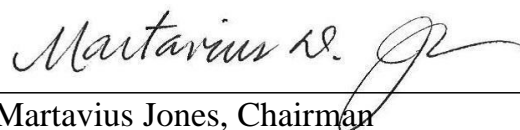
in the City of Memphis, and encourages all Memphians to consider and acknowledge the value of Registered Apprenticeships to workforce development here and throughout the United States.

Adopted: November 7, 2023

Given by my hand and under the
great seal of the City of Memphis
this 7th day of November, 2023.



Ford Canale, District 9-2



Martavius Jones, Chairman

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE 5551 AND ORDINANCE 5734 RELATIVE TO SMART CITY FIBER ACCESS SYSTEMS, ESTABLISHING CRITERIA FOR QUALIFICATION AS SMART CITY FIBER ACCESS SYSTEMS, DEFINING SMART CITY FIBER ACCESS SYSTEMS, AND AUTHORIZING FOR QUALIFYING SMART CITY FIBER ACCESS SYSTEMS ALTERNATIVE REQUIREMENTS, TERMS, CONDITIONS, LIMITATIONS, AND PROVISIONS FOR RECOVERY OF THE CITY'S COSTS INCURRED FOR THE CONSTRUCTION, MAINTENANCE, POLICING, MANAGEMENT OR REPAIR OF THE STREETS, ALLEYS, THOROUGHFARES AND RIGHTS-OF-WAY OF THE CITY

WHEREAS, the Council adopted Ordinance No. 5551 that addresses and complies with federal decisions construing the Telecommunication Act of 1996 and Tennessee statutes pertaining to the use and occupation of the City's streets and public rights of way by public and private utilities and telecommunications providers;

WHEREAS, the Council adopted Ordinance No. 5734 that establishes standard compensation rates for recovery of the City's costs incurred for the construction, maintenance, policing, management or repair of the City's streets, alleys, thoroughfares and rights-of-way from persons and entities using and occupying the streets, alleys, thoroughfares and rights-of-way of the City for economic gain or benefit;

WHEREAS, the Council recognizes the importance to the City of broad access by the City to fiber optics communications facilities to support the delivery of efficient, high-quality City services, including existing and emerging Smart City applications;

WHEREAS, the Council recognizes the importance to the City that its residents in all neighborhoods have access to high-speed broadband services;

WHEREAS, the Council recognizes the importance to the City that its low-income residents have access to affordable high-speed broadband services;

WHEREAS, the Council finds that it is necessary and appropriate to establish a new Telecommunication Company classification that makes available different permitting and fee

requirements for Telecommunication Companies that enter into binding commitments with the City to develop Smart City Fiber Access Systems that will provide the City with dedicated fiber communications resources, will ensure availability of high-speed broadband services in all of the City's neighborhoods, and will ensure that low-income residents have access to affordable high-speed broadband services;

WHEREAS, the Council desires to define the minimum requirements for Smart City Fiber Access Systems; and

WHEREAS, the Council desires to specify the permitting and fee requirements for qualifying Smart City Fiber Access Systems.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, AS FOLLOWS:

SECTION 1. FINDINGS.

The City finds as follows:

A. High-speed, reliable communications facilities are essential to permit the use of digital technology and data to improve how the City functions and serves the residents, businesses, and institutions of the City.

B. High-speed, reliable communications facilities are also essential to make available broadband services in all neighborhoods of the City, including low-income and other underserved areas.

C. It is necessary and appropriate to define the minimum requirements for a Smart City Fiber Access System that will provide these facilities and services to the City and its residents, businesses, and institutions.

D. It is necessary and appropriate to specify the permitting and fee requirements that will apply to Telecommunications Companies that commit to the establishment of Smart City Fiber Access Systems.

SECTION 2. DEFINITIONS.

“Commencement Date” means the date specified in the Development Commitment by which the Telecommunications Company will begin construction of the fiber optics system.

“Development Commitment” means a binding written agreement between the City and a Telecommunications Company approved by the Chief Administrative Officer pursuant to authority granted by this Ordinance. In addition to other requirements, the Development Commitment will contain a Commencement Date, a date for completion, and requirements to submit periodic status reports to the City.

“Physical Connection Point” means a physical connection point that is located on the Telecommunications Company network reserved and made available by the Telecommunications Company to enable the City or a related agency or entity to implement a private network which exclusively supports the delivery of City-related uses by connecting a City-provided optical network terminal (ONT) to the Telecommunications Company’s network. The Telecommunications Company will be responsible for managing the ONT.

“Low-Income Premises” means all premises within the Census Tracts in the City of Memphis with median household income less than the City of Memphis median household income.

“Minimum Service” means one (1) gigabit per second (Gbps) symmetrical broadband service through June 30, 2028.

“Premises” means any parcel of land with one or more permanent structures used for residential or business purposes that is accessible from the City’s public right-of-way.

“Revised Minimum Service” means the revised broadband speed that is established by resolution of the Council on or after July 1, 2028, applicable to Smart City Fiber Access Systems. The Revised Minimum Service shall not exceed the greater of (i) One Hundred Fifty Percent (150%) of the then-effective Minimum Service or, if available, (ii) the average of the highest tier of broadband download speeds offered by fixed broadband providers as reported in the most recently published report of the Federal Communications Commission. The Revised Minimum Service shall become applicable to Smart City Access Systems following one (1) year’s written notice. Thereafter, the City may establish a new Revised Minimum Service standard for Smart City Fiber Access Systems every four (4) years after July 1, 2028, to be effective for Smart City Fiber Access Systems in each case upon one (1) year’s written notice to the Smart City Fiber Access Systems.

SECTION 3. MINIMUM REQUIREMENTS FOR SMART CITY FIBER ACCESS SYSTEM.

A. APPLICATION FOR DESIGNATION AS A SMART CITY FIBER ACCESS SYSTEM.

A Telecommunications Company that desires that its fiber optics system be designated as a Smart City Fiber Access System shall complete an application provided by the City that will include at least the following information:

1. High-level design showing:
 - (a) Overall network footprint;

- (b) Number and locations of all Premises passed by the fiber optics system;
 - (c) Number and locations of all Low-Income Premises passed by the fiber optics system;
- 2. Construction schedule showing, at a minimum, Commencement Date and date for completion;
- 3. Commitment to meet each of the requirements for qualification as a Smart City Fiber Access System as set forth in Section 3.B.;
- 4. Signed Development Commitment in form and substance approved by the Chief Administrative Officer.

B. INITIAL QUALIFICATION AS SMART CITY FIBER ACCESS SYSTEM.

In order to initially qualify for the designation as a Smart City Fiber Access System, a Telecommunications Company must include in the Development Commitment a commitment to complete, within a specified period of time approved by the Chief Administrative Officer and specified in the Development Commitment, a fiber optics system in the City of Memphis with the following characteristics and service opportunities:

- 1. During the period until June 30, 2028, the fiber optics system must initially support the Minimum Service to all residences served and must support any Revised Minimum Service standard adopted thereafter; and

2. The fiber optics system must be available to provide the Minimum Service to the following percentages of the total business and residential Premises within the City:
 - (a) The fiber optics system must be available to at least sixty percent (60%) of the residential and business Premises within the City; and
 - (b) The fiber optics system must be available to at least sixty percent (60%) of the Low-Income Premises within the City; and
3. The Development Commitment must include a commitment approved by the Chief Administrative Officer to improve the opportunities for broadband access by low-income residents; and
4. The fiber optics system must provide to the City an indefeasible right to use at least twelve (12) dark fiber strands in every fiber cable comprising a part of the fiber optics system for a minimum period of forty (40) years; and
5. The fiber optics system must construct at least six thousand (6,000) Physical Connection Points at locations throughout the City, of which at least one-third (1/3) shall be located within Census Tracts with median household income less than the City of Memphis median household income; and
6. The fiber optics system must provide to the City Internet access at at least one hundred (100) locations as approved by the Chief Administrative Officer and specified in the Development Commitment.

7. Upon finding that the Telecommunications Company has demonstrated that its fiber optics system has satisfactorily met the requirements for qualification as a Smart City Fiber Access System, the Chief Administrative Officer will provide the Telecommunications Company written notice that the fiber optics system is qualified as a Smart City Fiber Access System, and is eligible to enter into a Smart City Fiber Access Right-of-Way Agreement. The effective date of the Smart City Fiber Access Right-of-Way Agreement will be the date of notice of qualification as a Smart City Fiber Access Agreement or such later date agreed to by the City and the Telecommunications Company.

C. CONTINUED QUALIFICATION AS SMART CITY FIBER ACCESS SYSTEM

A fiber optics system that has initially qualified as a Smart City Fiber Access System pursuant to Section 3.B. must meet the following requirements by the dates specified to continue its designation as a Smart City Fiber Access System:

1. By the date two (2) years after the Commencement Date, the fiber optics system must be available to at least twenty percent (20%) of the residential and business Premises within the City and at least ten percent (10%) of the Low-Income Premises within the City; and
2. By the date three (3) years after the Commencement Date, the fiber optics system must be available to at least forty percent (40%) of the residential and business Premises within the City and at least thirty percent (30%) of the Low-Income Premises within the City; and
3. By the date four (4) years after the Commencement Date, the fiber optics system must be available to at least sixty percent (60%) of the residential and business Premises within the City and at least sixty percent (60%) of the Low-Income Premises within the City; and

4. By the date four (4) years after the Commencement Date, the fiber optics system must provide to the City Internet access at no fewer than one hundred (100) Internet Access Points designated by the City; and

5. By the date four (4) years after the Commencement Date, the fiber optics system must have delivered to the City at least twelve (12) strands of fiber within each cable along every construction route; and

6. By the date four (4) years after the Commencement Date, the fiber optics system must have delivered to the City at least six thousand (6,000) Physical Connection Points, of which at least one-third (1/3) shall be located within Census Tracts with median household income less than the City of Memphis median household income.

7. The fiber optics system must meet Revised Minimum Service standards one (1) year after receipt of written notice of the City's adoption of each Revised Minimum Service standard.

D. EFFECT OF FAILURE TO CONTINUE TO QUALIFY AS A SMART CITY FIBER ACCESS SYSTEM

1. If a fiber optics system that has previously qualified as a Smart City Fiber Access System does not meet one or more of the requirements to continue its designation as a Smart City Fiber Access System, the City may, by written notice to the Telecommunications Company withdraw the designation as a Smart City Fiber Access System. The City's notice will specify the basis for the City's action and the date, no earlier than thirty (30) days after the notice, when the designation will be withdrawn. The City's notice will notify the Telecommunications

Company of its right to a hearing if the Telecommunications Company disputes the City's conclusion and action, and will specify the procedure to be used to request a hearing, including the deadline for requesting a hearing. The hearing will be held before an official designated by the Chief Administrative Officer. If dissatisfied with the results of the hearing, the Telecommunications Company may appeal the decision to the Chief Administrative Officer, whose decision will be final.

2. As of the date specified in the City's notice, or at such later date upon which the hearing procedure has been completed, if requested, the fiber optic system's Smart Fiber Access Right-of-Way Agreement will terminate and the fiber optics system will be subject to all requirements of Ordinance 5551, including, without limitation, the fees and charges specified in Ordinance 5734 or any later-enacted ordinance establishing fees and charges applicable to fiber optic systems utilizing the City's public rights-of-way.

E. RE-APPLICATION AFTER WITHDRAWAL OF DESIGNATION AS SMART CITY FIBER ACCESS SYSTEM

1. Should the designation of a fiber optics system as a Smart City Fiber Access System be lost as specified in Section 3.D., the Telecommunications Company may re-apply one (1) time for re-designation of its fiber optic system as a Smart City Fiber Access System. The Telecommunications Company submitting such a re-application will have the burden of demonstrating that its fiber optics system meets all of the requirements for designation as a Smart City Fiber Access System in effect on the date that the re-application is submitted.

2. Upon finding that the Telecommunications Company has carried its burden of demonstrating that its fiber optics system has satisfactorily met the requirements for re-

qualification as a Smart City Fiber Access System, the Chief Administrative Officer will provide the Telecommunications Company written notice that the fiber optics system is qualified as a Smart City Fiber Access System, and is eligible to enter into a Smart City Fiber Access Right-of-Way Agreement. Provided, however, that the Chief Administrative Office may condition the re-designation of the fiber optics system as a Smart City Fiber Access System upon inclusion in the Smart City Fiber Access Right-of-Way Agreement of reasonable reporting requirements and other reasonable conditions that the Chief Administrative Officer deems appropriate to ensure continued compliance with the requirements for a Smart City Fiber Access System. The effective date of the Smart City Fiber Access Right-of-Way Agreement will be the date of notice of re-qualification as a Smart City Fiber Access Right-of-Way Agreement or such later date agreed to by the City and the Telecommunications Company. If the Chief Administrative Officer finds that the Telecommunication Company has not met its burden, the fiber optic system will be denied re-designation as a Smart City Fiber Access System.

SECTION 4. FEE AND OTHER REQUIREMENTS APPLICABLE TO SMART CITY FIBER ACCESS SYSTEM

A. SMART CITY FIBER ACCESS RIGHT-OF-WAY AGREEMENTS

The Smart Fiber Access Right-of-Way Agreements shall include such standard and other terms as the Chief Administrative Officer deems appropriate, including the following provisions applicable only to Smart City Fiber Access Systems:

1. Exemption from paying annual right-of-way access fees during the initial and any renewal term of the Smart Fiber Access Right-of-Way Agreement.

2. A reduction in permitting and inspection fees normally charged pursuant to applicable ordinances, the amount of which shall be determined by the Director of Engineering and subject to a written agreement.

3. A term of up to twenty (20) years, subject to earlier termination for reasons described in the Smart City Fiber Access Right-of-Way Agreement, including the failure of the fiber optics system to continue to qualify as a Smart City Fiber Access System.

4. The opportunity to renew the Smart City Fiber Access Right-of-Way Agreement for an additional term of up to twenty (20) years, upon a determination by the Chief Administrative Officer that the fiber optics system continues to qualify as a Smart City Fiber Access System, and subject to approval by resolution adopted by Council.

5. Reporting requirements to enable the City to monitor the Smart City Fiber Access System's compliance with the requirements of Section 3.

B. APPLICATION OF STANDARD RIGHT-OF-WAY AGREEMENT TERMS FOLLOWING TERMINATION OR EXPIRATION OF SMART CITY FIBER ACCESS AGREEMENT

If a Telecommunication Company's fiber optics system continues to occupy any of the rights-of-way of the City following the termination or expiration of a Smart City Fiber Access Agreement, the Telecommunications Company will be required to enter into a standard City right-of-way agreement and will be subject to the fees and other requirements applicable to those using the City right-of-way, including those contained in Ordinance 5551 and Ordinance 5734, as those ordinances may be amended in the future.

SECTION 5. MISCELLANEOUS PROVISIONS

A. TENNESSEE LAW GOVERNS

In any controversy or dispute under this ordinance, Ordinance 5551, or Ordinance 5734, the law of the State of Tennessee, including its choice of law provisions, shall apply to the extent such law has not been superseded or preempted.

B. SEVERABILITY

If any section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this Authorization ordinance is for any reason held invalid or unenforceable by any court of competent jurisdiction, the remainder of this Authorization ordinance shall not be affected thereby, but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, sentence, clause, phrase, term, provision, condition, covenant and portion of this Authorization ordinance shall be valid and enforceable to the fullest extent permitted by law.

C. ENACTMENT CLAUSE

Be it further ordained, that this ordinance shall take effect from and after the date it shall have been passed by the Council, signed by the chairman of the council, certified and delivered to the office of the Mayor in writing by the comptroller, and become effective as otherwise provided by law.



RESOLUTION accepting public improvements for:
Murray Farms Business Park Phase I [CR#5422]
and releasing **Bond** held as security

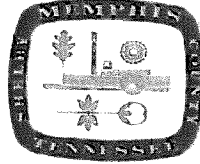
WHEREAS, **Tennessee Westminster Corp.**, is the Owner and Developer of a certain property in the present limits of the City of Memphis as reflected on the plat and located at the extension of Murray Farms Road, west of Appling City Cove in Memphis, Tennessee.

and

WHEREAS, all of the public improvements, required by the Standard Improvement Contract for the project, are completed;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Memphis that the engineering plans for **Murray Farms Business Park Phase I [CR#5422]**, and the completion of the public improvements therein, are and the same, are hereby accepted by the City.

BE IT FURTHER RESOLVED, that BancorpSouth **Letter of Credit No. 316001105610**, in the amount of **\$208,400.00**, held as security, is **hereby ordered released..**



Memphis City Council Summary Sheet

1. Description of the Item (Resolution, Ordinance, etc.)

Parks Division accepts grant in amount of \$40,000 from Tennessee Commission for Aging and Disability to support senior center operating & programming.

2. Initiating Party (e.g. Public Works, at request of City Council, etc.)

Parks Division

3. State whether this is a change to an existing ordinance or resolution, if applicable.

N/A

4. State whether this will impact specific council districts or super districts.

Grant project will take place in all Districts and both Super Districts.

5. State whether this requires a new contract, or amends an existing contract, if applicable.

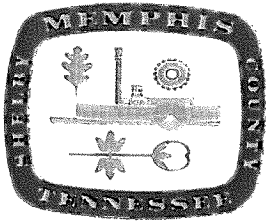
Requires contract for grant agreement with Tennessee Commission for Aging and Disability.

6. State whether this requires an expenditure of funds/requires a budget amendment

City of Memphis must approve revenue of forty thousand dollars (\$40,000.00) from Tennessee Commission for Aging and Disability. This grant award does not require additional match funding.

7. If applicable, please list the MWBE goal and any additional information needed

N/A



Resolution accepting grant funds of forty thousand dollars (\$40,000.00) from Tennessee Commission for Aging and Disability [All Districts].

WHEREAS, Tennessee Commission for Aging and Disability is a division of the State of Tennessee;
and

WHEREAS, the City of Memphis, through Memphis Parks, owns and operates five senior centers;
and

WHEREAS, Memphis Parks has been awarded five grants to support senior center operations and programming; and

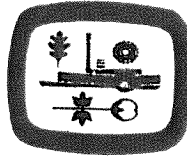
WHEREAS, each senior center has been awarded grant funds in the amount of eight thousand dollars (\$8,000.00), totaling forty thousand dollars (\$40,000.00); and

WHEREAS, it is necessary to accept these funds and amend the Fiscal Year 2024 operating budget grant account PK90126, PK90127, PK90128, PK90129, PK90130; and allow for expenditures of the same; and

WHEREAS, it is necessary to appropriate these funds in the amount of forty thousand dollars (\$40,000.00) for supplies;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Memphis that the Fiscal Year 2024 operating budget be hereby amended by accepting the grant of forty thousand dollars (\$40,000.00) for supplies into each PK90126, PK90127, PK90128, PK90129, PK90130; and

BE IT FURTHER RESOLVED that funding of forty thousand dollars (\$40,000.00) be allocated and appropriated to PK90126, PK90127, PK90128, PK90129, PK90130.



Memphis City Council Summary Sheet

1. Description of the Item (Resolution, Ordinance, etc.)

This is a resolution to accept \$39,636,000 from the Tennessee Department of Environment and Conservation Clean Water State Revolving Loan Fund, CGB22 2024-471, for the City-wide sewer collection system rehabilitation.

2. Initiating Party (e.g. Public Works, at request of City Council, etc.)

Public Works

3. State whether this is a change to an existing ordinance or resolution, if applicable.

This resolution does not change any existing ordinance or resolution.

4. State whether this will impact specific council districts or super districts.

The project is located in Council Districts 1, 4, 5, 6, and 7 and Super Districts 8 and 9.

5. State whether this requires a new contract, or amends an existing contract, if applicable.

Not Applicable

6. State whether this requires an expenditure of funds/requires a budget amendment

This requires a budget amendment

7. If applicable, please list the MWBE goal and any additional information needed

Not Applicable

**CITY OF MEMPHIS
CGB22 2024-471
AUTHORIZING RESOLUTION**

RESOLUTION AUTHORIZING AND PROVIDING FOR THE FINANCING OF THE CONSTRUCTION OF A WASTEWATER FACILITIES PROJECT, INCLUDING AUTHORIZING THE EXECUTION OF APPLICATIONS, CONTRACTUAL AGREEMENTS, AND OTHER NECESSARY DOCUMENTS, AND MAKING CERTAIN REPRESENTATIONS, CERTIFICATIONS, AND PLEDGES OF CERTAIN REVENUE IN CONNECTION WITH SUCH FINANCING.

WHEREAS, the City of Memphis is a public and governmental body in Memphis (Shelby County), Tennessee (the "Local Government"); and

WHEREAS, the Local Government has determined that it is necessary and desirable to undertake certain activities or tasks in connection with a wastewater facilities project, Department of Environment and Conservation Number CGB22 2024-471 (the "Project"), in and for the Local Government; and

WHEREAS, Tennessee Code Annotated, Section 68-221-1001 et. seq., provide for the lending of funds in the wastewater facilities Revolving Loan Fund to Local Governments for the purpose of providing funds for project loans; and

WHEREAS, the local Government has determined that it is necessary and advisable to borrow funds for the Project pursuant to these sections.

NOW, THEREFORE, be it resolved as follows:

Section 1. Local Government hereby approves the creation of indebtedness on behalf of the Local Government in the principal amount of forty two million one hundred thirty six thousand dollars (42,136,000) by the obtaining of a Project Loan.

Section 2. The execution and delivery of the application for a Project Loan in the principal amount of forty two million one hundred thirty six thousand dollars (42,136,000) to include two million five hundred thousand dollars (\$2,500,000) in loan forgiveness, for the purpose of funding all or a portion of the total estimated cost of the Project, which is forty two million one hundred thirty six thousand dollars (42,136,000), by Jim Strickland, the Mayor of the Local Government, is hereby ratified and approved in all respects.

Section 3. The form, terms, and provisions of the agreement for the Project Loan among the Local Government, the Tennessee Department of Environment and Conservation and the Tennessee Local Development Authority (the "Loan Agreement"), as presented at this meeting, are hereby approved.

Section 4. The Local Government hereby agrees to honor and accept the method of financing as may be determined by the Authority pursuant to the Loan Agreement.

Section 5. The Local Government hereby agrees to make the monthly payments on the Project Loan in accordance with the Payment Schedule to be attached to the Loan Agreement.

Section 6. The Local Government hereby agrees to levy fees, rates or charges for services provided by the Project and/or to levy ad valorem taxes sufficient to pay the interest on and principal of the Project Loan in accordance with the Loan Agreement. The Local Government also agrees to levy fees, rates, or charges and/or ad valorem taxes sufficient to pay the cost of operation and maintenance of the water system of which the Project is a part, which cost shall include depreciation and all other debt service expense of the system.

Section 7. The Local Government assigns and pledges its State-Shared Taxes to the State and consents to the withholding and application of State-Shared Taxes in the event of failure by the Local Government to remit monthly payments in accordance with the terms of the Loan Agreement, as the Loan Agreement may be supplemented or amended from time to time.

Section 8. The Local Government hereby agrees that there are no local pledges of State-Shared Taxes other than those disclosed.

Section 9. The Local Government hereby agrees to obtain alternative methods of financing for all costs necessary for the completion of the Project which are in excess of the combined financing provided by any agency of the United States Government and by the Tennessee Local Development Authority.

Section 10. The Mayor of the Local Government is authorized and directed to execute the Loan Agreement, and any amendments or supplements to the Loan Agreement, in the name and behalf of the Local Government; to deliver such documents to the other parties to such documents, such execution and delivery to be conclusive proof of the approval of the Local Government of such documents; and to take such further action and to execute and deliver such further instruments or documents as such officer may consider necessary or advisable in connection with the Loan Agreement. Provided, however, this resolution shall not be deemed to grant authority to the named officer to approve any increase in the amount of the Project Loan.

Section 11. All orders, resolutions, or ordinances in conflict with this resolution are and the same are repealed insofar as such conflict exists. This resolution shall become effective immediately upon its passage.

Duly passed and approved this _____ day of _____, 2023.

I certify under penalty of law that this document and all attachments were prepared by me, or under my direction or supervision. The submitted information is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. As specified in Tenn. Code Ann. § 39-16-702(a)(4), this declaration is made under penalty of perjury.

Jim Strickland, Mayor

**STATE REVOLVING FUND PROJECT LOAN AGREEMENT
CITY OF MEMPHIS
CGB22 2024-471**

This Loan Agreement is among the Tennessee Department of Environment and Conservation (the "Department"), the Tennessee Local Development Authority (the "Authority") and the City of Memphis (Shelby County) (the "Local Government"), which is a Tennessee governmental entity authorized to own, operate and manage water and/or wastewater facilities. The purpose of this Loan Agreement is to provide the financing of all or a portion of a wastewater facility by the Local Government. The Local Government applied for financing on (insert date of application), which is hereby incorporated into this Loan Agreement.

1) DEFINITIONS.

Unless the context in this Loan Agreement indicates another meaning, the following terms shall have the following meaning:

- a) **"Administrative fee"** means the fee to be collected by the Authority for administration of the loan in accordance with Tenn. Code Ann. §§ 68-221-1004(a) and 68-221-1204(a), both as amended;
- b) **"Agreement"** means this Loan Agreement providing financing for the Project from the Fund;
- c) **"Facility"** means either a wastewater facility or a water system;
- d) **"Fund"** means:
 - i) For wastewater projects, the wastewater revolving loan fund created by the Tennessee Wastewater Facilities Act of 1987, Tenn. Code Ann. §§ 68-221-1001 to -1015, as amended, and rules and regulations promulgated thereunder; or
 - ii) For water projects, the drinking water revolving loan fund created by the Drinking Water Revolving Loan Fund Act of 1997, Tenn. Code Ann. §§ 68-221-1201 to -1207, as amended, and rules and regulations promulgated thereunder;
- e) **"Initiation of Operation"** means the date when all, but minor components of the Project have been built, all treatment equipment is operational, and the Project is capable of functioning as designed and constructed;
- f) **"Local Government"** means the governmental entity borrowing under this Loan Agreement described in (1) Tenn. Code Ann. § 68-221-1003(7), as amended, if a wastewater facility and (2) Tenn. Code Ann. § 68-221-1203(6), as amended, if a water system;
- g) **"Obligations"** means bonds, notes and any other evidence of indebtedness lawfully issued or assumed by the Local Government;
- h) **"Period of Performance"** allows for the payment of expenses if they incurred during the time period stated in the contract; and if the loan recipient received prior approval from the

program in writing to include the cost listing in the request for reimbursement, then it would be acceptable to pay.

- i) **"Project"** means the activities or tasks concerning a facility described in the application submitted by the Local Government to be financed pursuant to this Loan Agreement;
- j) **"Project Cost"** means the total amount of funds necessary to complete the Project;
- k) **"Project Loan"** means the funds loaned from the Fund to finance the Project and, except for principal forgiven, if any, required to be repaid pursuant to this Loan Agreement;
- l) **"Revenues"** means all fees, rents, tolls, rates, rentals, interest earnings, or other charges received or receivable by the Local Government from the water or wastewater system which is the Project, or of which the Project is or will be a component, including any revenues derived or to be derived by the Local Government from a lease, agreement or contract with any other local government, local government instrumentality, the state, or a state or federal agency for the use of or in connection with the system, or all other charges to be levied and collected in connection with and all other income and receipts of whatever kind or character derived by the Local Government from the operation of the system or arising from the system;
- m) **"State"** means the state of Tennessee acting through the Department and the Authority, jointly or separately, as the context requires;
- n) **"State-Shared Taxes"** has the meaning established by Tenn. Code Ann. Section 4-31-102, as amended; and
- o) **"Unobligated State-Shared Taxes"** means State-Shared Taxes which have not been pledged or applied to any other prior indebtedness.

2) PROJECT.

a) **Description.**

The description of the Project is as described in the application submitted by the Local Government.

b) **Funding Sources.**

The Local Government estimates the total Project Cost to be \$42,136,000 which is expected to be funded as follows:

Project Loan (less principal forgiveness)	\$ 39,636,000
Principal Forgiveness	\$2,500,000
Local Funds	\$0
Other Funds	\$0
	<hr/>
TOTAL	<u>\$42,136,000</u>

c) **Type of Project. (Please check one)**

- i) Planning. (Project schedule is required)
The following project schedule is established:
 - (1) Submission of facilities plans on or before (insert date).
- ii) Planning and Design. (Project schedule is required)
The following project schedule is established:
 - (1) Submission of facilities plans on or before (insert date).
 - (2) Submission of engineering plans and specifications on or before (insert date).
- iii) Planning, Design, and Construction. (A project schedule is required)
The following project schedule is established:
 - i) Submission of engineering plans and specifications on or before (insert date).
 - ii) Start construction on or before (insert date).
 - iii) Initiate operation on or before (insert date).
 - iv) Complete construction on or before (insert date).

The Department's State Revolving Fund Loan Program may amend the project schedule above upon written request and for good cause shown.

The written request to amend the project schedule above should be submitted to the Department within 60 days prior to the end date of the milestones established above. The written request should detail the nature of the delay(s); the amended milestone dates; and any efforts to be implemented to adhere to the amended project schedule.

Failure to adhere to the project schedule established above or secure an amended project schedule from the State Revolving Fund Loan Program, will constitute a breach of contract, and may result in loss of principal forgiveness, loss of interest rate reduction or both.

The State Revolving Fund Loan Program may take other such actions as may be necessary relative to breach of contract against a borrower that fails to carry out its obligations under Tenn. Comp. R. & Regs. Chapter 0400-46-06 and this loan agreement up to and including cancellation of loan funding.

d) **Land Ownership, Easement, and Right-of-Ways.**

Land Acquisition.

- (1) Owner of a dwelling. The term owner of a dwelling means a person who is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property: Fee title, a life estate, a land contract, a 99-year lease, or a lease including any options for extension with at least 50 years to run from the date of acquisition per 40 CFR 24(20).
- (2) Additionally, the borrower must own easements and/or land, or have taken condemnation proceedings needed to construct the project before plans and specifications for a construction loan will be approved by the Department as per State Rule 0400-46-06-.06.

- (3) By checking this box, the Local Government certifies that all property, easements, and rights-of-way necessary to construct the Project is owned or, in the case of right-of-way, is permitted for use by the Local Government.
- (4) By checking this box, the Local Government certifies that it has acquired or has entered into condemnation proceedings for all real property including easements and rights-of-way that are or will be required for the construction (erection, extension, modification, addition), operation, and maintenance of the entire wastewater treatment works funded under this Project.

3) PROJECT FILES.

The State of Tennessee and/or the United States Environmental Protection Agency shall have access to the official project files and job site.

4) ASSET MANAGEMENT PLAN REQUIREMENTS. (CLEAN WATER PROJECTS ONLY)

The Local Government will comply with the Clean Water Act section 603(d)(1)(E) requirements by developing and implementing an Asset Management Plan (AMP) that includes:

- a) an inventory of critical assets that are a part of the treatment works;
- b) an evaluation of the condition and performance of inventoried assets or asset groupings;
- c) a certification that the recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan; and
- d) a plan for maintaining, repairing, and as necessary, replacing the treatment works and a plan for funding such activities; or
- e) By checking this box, the Local Government certifies that an AMP will be developed and implemented for the Project that is proposed for repair, replacement, or expansion.
- f) By checking this box, the Local Government certifies that an AMP has been developed and implemented for the Project that is proposed for repair, replacement, or expansion.

The AMP must be completed by the Notice to Proceed to start construction activities. The State and/or the federal government shall have access to the AMP for review upon the first interim construction inspection site visit. The State has developed an AMP Guide to assist in the completion of an AMP. The guide is accessible on the SRF webpage.

5) COST AND EFFECTIVENESS ANALYSIS (CEA) REQUIREMENTS. (CLEAN WATER PROJECTS ONLY)

The Local Government will comply with the Cost and Effectiveness Analysis (CEA) requirements set out in the Clean Water Act section 603(b)(13) that includes:

- a) The Local Government has studied and evaluated the cost and effectiveness of the processes, materials, techniques, and technologies for carrying out the proposed or activity for which funding assistance is sought under this title; and
- b) The Local Government has selected, to the maximum extent practicable, a project or activity that maximizes the potential for efficient water use, reuse, recapture, and conservation, and energy conservation, taking into account:
 - (i) the cost of constructing the project;
 - (ii) the cost of operating and maintaining the project or activity over the life of the project; and
 - (iii) the cost of replacing the project.
- c) By checking this box, the Local Government certifies that an evaluation of the Project for cost and effectiveness has been conducted that meets the requirements outlined in 5(a) and 5(b).

6) LOAN.

a) **Loan and use of proceeds.**

The State shall lend to the Local Government from funds available in the Fund an aggregate principal amount not to exceed \$42,136,000 to bear interest as described in (b) below. The Project Loan shall be used by the Local Government for completion of the Project and in accordance with engineering plans and specifications and special conditions, approved and required by the Department and hereby incorporated into this Loan Agreement. Interest on the Project loan will begin to accrue upon the first disbursement of the Project Loan pursuant to Section 5 of this Loan Agreement.

b) **Interest rate.**

The rate of interest for this Project Loan is 1.36%, which is the rate established by the Authority at the meeting at which this Project Loan is approved and stated on the payment schedule which is incorporated into and attached to this Loan Agreement.

c) **Administrative fee.**

The Authority shall collect a fee equal to eight basis points of the total Project Loan, where one basis point is equal to one-hundredth of one percent (0.01%). This fee shall be payable in monthly installments equal to one-twelfth (1/12) of the annual fee amount as stated on the payment schedule.

d) **Payment schedule.**

The Local Government expressly agrees to make all payments of principal and interest in accordance with the payment schedule, including the form of payment (currently electronic funds transfer), as it is from time to time revised by the State. A revision of the payment schedule shall not be deemed to be an amendment of this Loan Agreement.

7) REPAYMENT OF PROJECT LOAN.

a) **Payments.**

- i) The Local Government promises to repay to the order of the State the Project Loan plus interest, payable in installments on the 20th day of each month in accordance with the payment schedule established by the Authority and attached to this Loan Agreement. The payment schedule will require payments of interest to begin after the first disbursement pursuant to Section 6 of this Loan Agreement. The payment schedule will require repayments of principal to begin the earlier of:
 - (1) Within ninety (90) days after Initiation of Operation of the Project for construction loans or within two (2) years of loan approval for planning and design loans; or
 - (2) Within one hundred twenty (120) days after ninety percent (90%) of the Project Loan has been disbursed.
 - ii) Notwithstanding Section 5(a)(i)(1), the Authority may agree in the instance of a newly created water system to defer the commencement of principal repayment for no more than one year after Initiation of Operation of the Project.
- b) **Reduction.**
- i) The Project Loan, and the required payments made pursuant to the payment schedule, shall be reduced to reflect:
 - (1) Funding not listed in Section 2(b) which subsequently becomes available; or
 - (2) The amount actually disbursed by the State to the Local Government pursuant to the Loan Agreement as the Project Loan.
 - ii) If any of the conditions set out in Section (b)(i)(1) or (b)(i)(2) occur, a new payment schedule reflecting such changes shall be submitted to the Local Government to be attached to this Loan Agreement, superseding any previous schedules.
- c) **Prepayment.**
The Local Government, at its option, may prepay all or any portion of the Project Loan.
- d) **Principal Forgiven.**
A portion of the original principal amount of the Project loan may be forgiven by the State. The principal forgiven shall be twenty percent (20%) of the original principal amount of the project loan, or if the full original amount of the Project loan is not used, then twenty percent (20%) of the amount of the project loan actually disbursed. Notwithstanding Section 4 no interest shall accrue on the amount of principal forgiven pursuant to this Section 5(d).

8) DISBURSEMENT OF PROJECT LOAN.

- a) **Payment Methodology.**
The Local Government shall receive disbursements of the Project Loan only for actual, reasonable, and necessary costs based upon the current approved Project Budget, not to exceed the Project Loan amount listed in Section 4(a). Upon progress toward the completion of the Project, as described in Section 4 of the Project Loan Application, the Local Government

shall submit disbursement requests, including invoices and supporting documents of actual expenditures, prior to any reimbursement of allowable costs.

b) Disbursement Requirements.

The Local Government shall request disbursement from the State no more often than monthly with all necessary supporting documentation. Each disbursement request shall be sent to the contact indicated in Section 27 and shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly):

- i) Addressed to:
Department of Environment and Conservation
State Revolving Fund Loan Program
William R. Snodgrass Tower, 312 Rosa L. Parks Avenue, 12th Floor
Nashville, Tennessee 37243
- ii) Via Email: SRF.Payments@tn.gov
- iii) Reference Number (assigned by the Local Government).
- iv) Date.
- v) Period to which the disbursement request is applicable.
- vi) Project Loan Number (assigned by the Department).
- vii) Local Government Name.
- viii) Local Government Tennessee Edison Registration ID Number Referenced in Preamble of this Loan Agreement.
- ix) Local Government Remittance Address.
- x) Local Government Contact for Invoice Questions (name, phone, or fax).
- xi) Itemization of Disbursement Requested for the Disbursement Period— it must detail, at minimum, all of the following:
 - i. The amount requested by Project Budget line-item (including any travel expenditure reimbursement requested and for which documentation and receipts, as required by "State Comprehensive Travel Regulations," are attached to the invoice).
 - ii. The amount disbursed by Project Budget line-item to date.
 - iii. The total amount disbursed under the Project Loan to date.
 - iv. The total amount requested (all line-items) for the Disbursement Period.

c) The Local Government understands and agrees to all of the following:

- i) A disbursement request under this Loan Agreement shall include only requests for actual, reasonable, and necessary expenditures required in the delivery of service described by

this Loan Agreement and shall be subject to the Project Budget and any other provision of this Loan Agreement relating to allowable disbursements.

- ii) A disbursement request under this Loan Agreement shall not include any request for future expenditures.
- iii) The period of performance for a disbursement request (§200.77) means the time during which the Local Government may incur new obligations to carry out the work authorized under the Loan Agreement. The Local Government must include start and end dates of the period of performance in the Loan Agreement.
- iv) The Local Government agrees that any pre-award costs (§200.458), which are costs incurred prior to the effective date of the Loan Agreement directly pursuant to the negotiation and in anticipation of the Loan Agreement where such costs necessary for efficient and timely performance of the scope of work. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of Loan Agreement and **only** with the prior written approval of the State. If charged to the Loan Agreement, these costs must be charged to the initial budget period of the award, unless otherwise specified by the Federal awarding agency or pass-through entity.
- v) **Planning Loans Only**
 - (1) The maximum allowable disbursement is 80% of the loan until the Facilities Plan is **received** by SRF.
 - (2) The maximum allowable disbursement is 90% of the loan until the Facilities Plan is **approved** by SRF.
- vi) **Planning and Design Loans Only**
 - (1) The maximum allowable disbursement is 80% of the planning fees until the Facilities Plan is **received** by SRF.
 - (2) The maximum allowable disbursement is 90% of the planning fees until the Facilities Plan is **approved** SRF.
 - (3) The maximum allowable disbursement is 80% of the Design Loan or design fees until plans and specifications are **received** by SRF.
 - (4) The maximum allowable disbursement is 90% of the Design Loan until plans and specifications are **approved** by SRF.
- d) **Budget Line-items.**

Expenditures and disbursements under this Loan Agreement shall adhere to the Project Budget. Any increases or decreases within the Project Budget's grand total amounts shall require the Local Government to submit a request to amend the Project Budget and receive approval from the Department.
- e) **Travel Compensation.**

Disbursement to the Local Government for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time, and shall be contingent upon and limited by the Project Budget funding for said disbursement.

f) **Procurement.**

If other terms of this Loan Agreement allow disbursements for the cost of goods, materials, supplies, equipment, or contracted services, such procurement shall be made on a competitive basis, including the use of competitive bidding procedures, where practical. The Local Government shall maintain documentation for the basis of each procurement for which a disbursement is made pursuant to this Loan Agreement. In each instance where it is determined that use of a competitive procurement method is not practical, supporting documentation shall include a written justification for the decision and for use of a non-competitive procurement. If the Local Government is a sub-recipient, the Local Government shall comply with 2 C.F.R. §§ 200.317—200.326 when procuring property and services under a federal award.

g) **Retainage.**

- i) All construction contracts for the Project may provide for the withholding of retainage; provided, however, that the retainage amount may not exceed five percent (5%) of the amount of the contract.
- ii) Proof of retainage deposits must be submitted with each disbursement request. In the instance of the first payment, documented proof of the retainage account must be submitted. Subsequent payments the Local Government must provide proof that retainage was deposited into the established retainage bank account. Upon the final payment requested from the Local Government, the Local Government will provide proof the all retainage is paid to its contractors.
- iii) The Local Government shall release and pay all retainages for work completed pursuant to the terms of any contract to the prime contractor within 90 days after completion of the work or within 90 days after substantial completion of the project for work completed, whichever occurs first. As used in this subsection, work completed shall mean the completion of the scope of the work and all terms and conditions covered by the contract under which the retainage is being held. The prime contractor shall pay all retainages due to any subcontractor within 10 days after receipt of the retainages from the owner. Any subcontractor receiving the retainage from the prime contractor shall pay to any sub-subcontractor or material supplier all retainages due the sub-subcontractor or material supplier within 10 days after receipt of the retainages.
- iv) Any default in the making of the payments shall be subject to those remedies provided in this Loan Agreement.
- v) In the event that the Local Government or its prime contractor withholds retainage that is for the use and benefit of the prime contractor or its subcontractors pursuant to Tenn. Code Ann. § 66-34-104(a) and (b), neither the prime contractor nor any of its subcontractors shall be required to deposit additional retained funds into an escrow account in accordance with Tenn. Code Ann. § 66-34-104(a) and (b).
- vi)
 - (1) It is an offense for a person, firm, or corporation to fail to comply with Tenn. Code Ann. §66-34-104(a).

- (2) A violation of this subsection (e) is a Class A misdemeanor, subject to a fine of three thousand dollars (\$3,000).
- (3) Each day a person, firm or corporation fails to comply with subsection (a) or (b) or Tenn. Code Ann. § 66-34-104(a) is a separate violation of this subsection (e).
- (4) Until the violation of this subsection (e) is remediated by compliance, the punishment for each violation shall be consecutive to all other such violations.
- (5) In addition to the fine imposed pursuant to subdivisions (e)(2)(A) and (B), the court shall order restitution be made to the owner of the retained funds. In determining the appropriate amount of restitution, the formula stated in Tenn. Code Ann. § 40-35-304 shall be used.

h) Request for Disbursement as Certification.

Each request by the Local Government for disbursement of the Project Loan shall constitute a certification by the Local Government that all representations made in this Loan Agreement remain true as of the date of the request and that no adverse developments affecting the financial condition of the Local Government or its ability to complete the Project or to repay the Project Loan plus interest have occurred since the date of this Loan Agreement unless specifically disclosed in writing by the Local Government in the request for disbursement. Submitted requests for disbursement must be supported by proper invoices and other documentation required by and acceptable to the Department and the Authority.

i) Payment Certification.

After the Department has certified and the Authority has approved a request for disbursement, the Authority will disburse the Project Loan during the progress of the Project. Each disbursement shall be by electronic funds transfer, or such other form of payment as specified in the payment schedule and shall be equal to that portion of the unpaid principal amount incurred to the date of the Local Government's request for disbursement. The amount of any principal forgiven shall be allocated on a pro-rata basis to each disbursement made.

j) 90% of the Project Loan.

No more than 90% of the Project Loan shall be paid to the Local Government prior to the time:

- (1) the construction of the Project has been completed;
- (2) the facilities constituting the Project are, in the opinion of the Department, in proper operation; and
- (3) the Project has been approved by the Department. Following approval of the Project by the Department, the remaining 10% of the Project Loan may be paid to the Local Government. Provided, however, that if this Project Loan is for planning or planning and design, payments may be made prior to the completion of construction of the Project for the full amount of costs associated with the planning or planning and design.

9) ADDITIONAL FUNDING REQUEST.

a) Increase in Project Loan.

If the final Project Cost is greater than estimated in Section 2(b), then the Project Loan may be increased by an amendment executed by the parties to this Loan Agreement if the following conditions are fulfilled:

- i) Amounts in the Fund are authorized and available for such increase;
 - ii) The increased Project Loan otherwise meets the applicable statutory requirements and the rules adopted thereunder; and
 - iii) Such increase in this Project Loan does not result in any violation or breach of any contract, resolution, or ordinance of the Local Government
- b) **Loan Number and Interest Rate.**
A companion or supplemental loan will be issued with an new loan number and the current interest rate will be applied.
- c) **Other Amendments and Modifications.**
Any other amendment or modification of this Loan Agreement must first be approved by the Authority and must be in writing executed by the parties to this Loan Agreement.

10) NOTIFICATION OF DEFAULT OR DELAY OF PROJECT PERFORMANCE.

The Local Government shall provide written notice to the Department within 30 days of becoming aware of any event that prevents or causes the default or delay in the performance of its obligations under this Loan Agreement. The written notice should describe in reasonable detail the nature of the default or delay and any efforts, workaround plans, alternative sources, or other means being conducted to resume performance. If the Local Government's failure to perform is longer than 180 days, the Department may, upon notice to Local Government: (a) cancel principal forgiveness; or (b) cancel the loan funding, in whole or in part, and place the loan in repayment. The Local Government may reapply for another SRF loan once a resolution is reached by the Local Government and the Department.

11) TERMINATION FOR CONVENIENCE.

The State may terminate this Project Loan without cause for any reason. A termination for convenience shall not be a breach of this Loan Agreement. The State shall give the Local Government at least thirty (30) days written notice before the effective termination date. The Local Government shall be entitled to disbursement of loan funds for authorized expenditures and satisfactory services completed as of the termination date, but in no event shall the State be liable to the Local Government for compensation for any service that has not been rendered. The final decision as to the amount for which the State is liable shall be determined by the State. The Local Government shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount for the State its exercise of its right to terminate for convenience.

12) TERMINATION FOR CAUSE.

If the Local Government fails to properly perform its obligations under this Project Loan, or if the Local Government violates any terms of this Project Loan, the State shall have the right to immediately terminate this Project Loan and withhold payments in excess of fair disbursements for completed services. Notwithstanding the exercise of the State's right to terminate this Project Loan for cause, the Local Government shall not be relieved of liability to the State and Department for damages sustained by virtue of any breach of this Project Loan by the Local Government.

13) REPRESENTATIONS AND PLEDGES OF LOCAL GOVERNMENT.

The Local Government hereby represents, agrees, and covenants with the State as follows:

- a) To construct, operate, and maintain the Project in accordance, and to comply, with all applicable federal and state statutes, rules, regulations, procedural guidelines, and grant conditions;
- b) To comply with:
 - i) The Project schedule, engineering plans and specifications, and any and all special conditions established and/or revised by the Department; and
 - ii) Any special conditions established and/or revised by the Authority including, but not limited to, the Authority's "State Revolving Fund Policy and Guidance for Borrowers" adopted on September 21, 2016, with any amendments made as of the date of execution of the Project Loan Agreement, the terms, and conditions of which are adopted by reference as if fully set forth herein;
- c) To commence operation of the Project on its completion and not to contract with others for the operation and management of, or to discontinue operation or dispose of, the Project without the prior written approval of the Department and the Authority;
- d) To provide for the Local Government's share of the cost of the Project;
- e) To comply with applicable federal requirements including the laws and executive orders listed on Attachment A to this Loan Agreement;
- f) To advise the Department before applying for federal or other state assistance for the Project;
- g) To establish and maintain adequate financial records for the Project in accordance with generally accepted government accounting principles; to cause to be made an annual audit acceptable to the Comptroller of the Treasury of the financial records and transactions covering each fiscal year; and to furnish a copy of such audit to the Authority. In the event of the failure or refusal of the Local Government to have the annual audit prepared, then the Comptroller of the Treasury may appoint an accountant or direct the Department of Audit to prepare the audit at the expense of the Local Government;
- h) To provide and maintain competent and adequate engineering supervision and inspection of the Project to ensure that the construction conforms with the engineering plans and specifications approved by the Department;
- i) To abide by and honor any further guarantees or granting of security interests as may be required by the State which are not in conflict with state or federal law;
- j) To do, file, or cause to be done or filed, any action or statement required to perfect or continue the lien(s) or pledge(s) granted or created hereunder;

- k) To establish and collect, and to increase, user fees and charges and/or increase or levy, as the case may be, ad valorem taxes as needed to pay the monthly installments due under this Loan Agreement, as well as the other costs of operation and maintenance including depreciation and debt service of the system of which the Project is a part;
- l) The Local Government is subject to the jurisdiction of the Water and Wastewater Financing Board (“WWFB”) established in Tenn. Code Ann. § 68-221-1008 or of the Utility Management Review Board (“UMRB”) created in Tenn. Code Ann. § 7-82-701 as provided by law. If the Authority, in its sole discretion, determines that the Local Government’s obligations under this Loan Agreement have been or may be impaired, the Authority may refer the Local Government to the WWFB or UMRB (each a “Board”) as appropriate. In the event of default under this Loan Agreement, the Authority shall refer the Local Government to the Board having jurisdiction over the entity. In such event, the Local Government covenants, to the extent permitted by law, to request advisory technical assistance from the Board and to request that the Board propose any and all management, fiscal and/or rate changes necessary to enable the Local Government to fulfill its obligations to the Authority under this Loan Agreement. The Local Government agrees to supply the Board with any information that the Board may request in connection with its analysis of the Local Government’s system. The Local Government agrees that it will implement any and all technical, management, fiscal and/or rate changes recommended by the Board and determined by the Authority to be required for the Local Government to fulfill its obligations to the Authority under this Loan Agreement.

Towns, Cities, and Counties.

- m) To receive the approval of the Authority prior to issuing any Obligations that are payable all or in part from any part of the Revenues if such Obligations are intended to be on parity or superior to the lien position created under this Loan Agreement;
- n) To notify the Assistant Secretary to the Authority in writing prior to issuing any Obligations that are payable all or in part from any part of the Revenues if such Obligations are intended to be subordinate to the lien position created under this Loan Agreement;
- o) To receive the approval of the Authority prior to pledging or encumbering the Local Government’s State-Shared Taxes; and

Utility Districts & Commissions.

- p) To establish and collect, and to increase user fees and charges sufficient to meet a 1.20X debt service coverage to net revenues. Net revenues are gross earnings, fees and charges, less current expenses. Current expenses are those incurred in the operation of the system, determined in accordance with generally accepted accounting principles (“GAAP”), including the reasonable and necessary costs of operating, maintaining, repairing, and ensuring the system, salaries, wages, cost of material and supplies, and insurance premiums, but shall specifically exclude depreciation and debt service payments;
- q) No additional debt payable from Revenues will be issued or entered into unless:
 - i) Prior approval is received from the Authority;

- ii) The annual audit required by the terms of this Loan Agreement for the most recent fiscal year has been delivered within six (6) months after the end of such fiscal year;
- iii) The covenant this Loan Agreement is met for the most recent fiscal year;
- iv) The net revenues of the system for the next three fiscal years ending after the issuance of the additional debt will be sufficient to comply with the covenant in this Loan Agreement; and
- v) The Local Government has adopted a revised schedule of rates and fees and taken action to put such revisions in effect at or prior to the issuance of the additional debt.

14) SECURITY AND DEFAULT.

- a) **Towns, Cities, and Counties.** As security for payments due under this Loan Agreement, the Local Government pledges users' fees, and charges and/or ad valorem taxes, and covenants and agrees that it shall increase such fees or increase or levy, as the case may be, ad valorem taxes as needed to pay the monthly installments due under this Loan Agreement, as well as the other costs of operation and maintenance of the system, including depreciation. The Local Government covenants to establish and collect such fees and taxes and to make such adjustments to raise funds sufficient to pay such monthly payments and costs but to create only a minimum excess. The Local Government further pledges such other additional available sources of Revenues as are necessary to meet the obligations of the Local Government under this Loan Agreement.

As further security for payments due under this Loan Agreement, the Local Government pledges and assigns subject to the provisions herein its Unobligated State-Shared Taxes in an amount equal to the maximum annual debt service requirements under this Loan Agreement. If the Local Government fails to remit the monthly payments as established in the payment schedule, the Authority shall deliver by certified mail a written notice of such failure to the Local Government within five days of such failure and the Authority shall suspend making disbursements as provided in Section 6 until such delinquency is cured. If the Local Government fails to cure payment delinquency within 60 days of the receipt of such notice, such failure shall constitute an event of default under this Loan Agreement and, in addition, the Authority shall notify the Commissioner of Finance and Administration of the State of Tennessee of the default of the Local Government and the assignment of Unobligated State-Shared Taxes under this Loan Agreement. Upon receipt of such notice, the Commissioner shall withhold such sum or part of such sum from any State-Shared Taxes which are otherwise apportioned to the Local Government and pay only such sums necessary to liquidate the delinquency of the Local Government to the Authority for deposit into the fund. The Local Government acknowledges that it has no claim on State-Shared Taxes withheld as permitted under this Loan Agreement.

If the Local Government breaches any other provision of this Loan Agreement, the Authority shall deliver by certified mail a written notice of such breach to the Local Government within 30 days of the Authority learning of such breach. The Local Government's failure to cure the

breach within 60 days from receipt of notice of such breach shall constitute an event of default under this Loan Agreement.

- b) **Utility Districts and Commissions.** As security for payments due under this Loan Agreement, the Local Government pledges user fees and charges, and covenants and agrees that it shall increase such fees and charges as needed to pay the monthly installments due under this Loan Agreement, as well as the other costs of operation and maintenance of the system, including depreciation. The Local Government further pledges such other additional available sources of Revenues as are necessary to meet the obligations of the Local Government under this Loan Agreement.

Prior to the first disbursement of funds under this Loan Agreement, the Local Government will deposit with the Authority an amount of funds equal to the maximum annual debt service (the "security deposit"). The amount of the security deposit will be adjusted to reflect adjustments in the payment schedule. The Authority will credit the Local Government with interest earnings on the security deposit on at least an annual basis pursuant to policy of the Authority.

As further security for payments due under this Loan Agreement, the Local Government pledges, and assigns, subject to the provisions herein, any funds due to the Local Government from the State.

If the Local Government fails either to fully fund the security deposit as provided above or to remit the monthly payments as established in the payment schedule, the Authority shall deliver by certified mail written notice of such failure to the Local Government within seven days of such failure and the Authority shall suspend making disbursements as provided in Section 6 until such delinquency is cured. If the Local Government fails to cure payment delinquency within 15 days of the receipt of such notice, such failure shall constitute an event of default under this Loan Agreement, and in addition, the Authority shall apply from the security deposit only the funds necessary to liquidate the amount of the delinquency of the Local Government to the Authority as of that date. If the funds deposited in the security deposit are not sufficient to cure the delinquency, the Authority shall notify the Commissioner of Finance and Administration, and the Commissioner shall withhold such amount from any funds otherwise due to the Local Government from the State and pay such amount to the Authority for deposit into the Fund. The Local Government acknowledges that it has no claim on such funds withheld or paid over as permitted under this Loan Agreement. The Local Government shall replenish the security deposit within 60 days from any withdrawal of funds from that account by the Authority to liquidate the delinquency as provided above. Failure to replenish the security deposit within 60 days shall constitute an event of default under this Loan Agreement.

If the Local Government breaches any other provision of the Loan Agreement, the Authority shall deliver by certified mail a written notice of such breach to the Local Government within 30 days of the Authority learning of the breach. The Local Government's failure to cure any breach within 60 days from receipt of notice of such breach shall constitute an event of default under this Loan Agreement.

- c) **Applicable to ALL.** Upon an event of default, the Authority may declare all unpaid principal and interest to be immediately due and payable as well as pursue all available legal and equitable remedies. The Local Government shall be responsible for all costs that the Authority incurs in enforcing the provisions of this Loan Agreement after an event of default, including, but not limited to, reasonable attorneys' fees.

15) CONDITIONS PRECEDENT.

This Loan Agreement is further conditioned on the receipt of the following documents, in form and substance acceptable to the Authority, if applicable, on or before the date of the first disbursement of the Project Loan; each document is to be dated or certified, as the case may be, on or before the date of the first disbursement of the Project Loan:

- a) A general certificate of the Local Government certifying the resolution or ordinance authorizing the Local Government to enter into this Loan Agreement, the resolution or ordinance authorizing the rate and fee structure for the users of the system, and other matters;
- b) An opinion of the attorney or special counsel to the Local Government stating:
 - i) The Local Government has been duly created and is validly existing and has full power and authority (under its charter and by-laws or general law, if applicable, and other applicable statutes) to enter into and carry out the terms of this Loan Agreement;
 - ii) This Loan Agreement is duly executed and constitutes a valid and binding contract of the Local Government, enforceable in accordance with its terms except as the enforceability thereof may be limited by bankruptcy, reorganization, insolvency, moratorium, or similar laws affecting the enforcement of creditors rights generally;
 - iii) This Loan Agreement is not in conflict in any material way with any contracts, resolutions, or ordinances of the Local Government; and
 - iv) There is no litigation materially adversely affecting this Loan Agreement or the financial condition of the Local Government;
- c) An opinion of a licensed engineer or certified public accountant as to the sufficiency of the rates, fees and charges and any other fees and charges to meet costs of operation and maintenance, including depreciation and all debt service of the Local Government, as set forth in Paragraph 11(k) above;
- d) An opinion of a licensed engineer as to the reasonableness of the project costs and as to the estimated completion date of the Project;
- e) If the Local Government is a **Utility District or Commission** and the Project for the expansion of a wastewater facility rather than remedial (correction of public health problem), the Local Government shall submit written evidence of consent to the expansion by the relevant governing bodies;

- f) If the Local Government is a **Town, City, or County**, a representation of the Local Government as to loans and State-Shared Taxes.

16) NONDISCRIMINATION.

The Local Government 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 Project Loan or in the employment practices of the Local Government 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. The Local Government shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

17) PUBLIC NOTICE.

All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Local Government in relation to this Project Loan shall include the statement, "This project is funded by the Tennessee State Revolving Loan Program." All notices by the Local Government in relation to this Project Loan shall be approved by the State.

18) RECORDS.

The Local Government and any approved subcontractor shall maintain documentation for all charges under this Project Loan. The books, records, and documents of the Local Government, insofar as they relate to work performed or money received under this Project Loan, shall be maintained in accordance with applicable Tennessee law. In no case shall the records be maintained for a period of less than five (5) full years from the date of the final payment. The Local Government's records shall be subject to audit at any reasonable time and upon reasonable notice by the Grantor State Agency, the Comptroller of the Treasury, or their duly appointed representatives.

- a) The records shall be maintained in accordance with Governmental Accounting Standards Board (GASB) Accounting Standards or the Financial Accounting Standards Board (FASB) Accounting Standards Codification, as applicable, and any related AICPA Industry Audit and Accounting guides.
- b) In addition, documentation of grant applications, budgets, reports, awards, and expenditures will be maintained in accordance with the U.S. Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Grant expenditures shall be made in accordance with local government purchasing policies and procedures and purchasing procedures for local governments authorized under state law. The Local Government shall also comply with any recordkeeping and reporting requirements prescribed by the Tennessee Comptroller of the Treasury.
- c) The Local Government shall establish a system of internal controls that utilize the COSO Internal Control - Integrated Framework model as the basic foundation for the internal control system. The Local Government shall incorporate any additional Comptroller of the Treasury directives into its internal control system.

- d) Any other required records or reports which are not contemplated in the above standards shall follow the format designated by the head of the Grantor State Agency, the Central Procurement Office, or the Commissioner of Finance and Administration of the State of Tennessee.

19) LICENSURE.

Any person performing work funded through this Loan Agreement shall be licensed pursuant to all applicable federal, state, and local laws, ordinances, rules, and regulations and shall upon request provide proof of all licenses.

20) AUDIT REPORT.

- a) The Local Government shall be audited in accordance with applicable Tennessee law.
- b) The Local Government will comply with the following 2 C.F.R. Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- c) The funding for this loan could be disbursed from federal or state sources or both. Therefore, the recipient should consider that all funding received is a federal award and abide by all relevant federal and/or state compliance requirements.
- d) The funding for this Project Loan is:
CFDA Title: Capitalization Grants for Clean Water State Revolving Funds CFDA#: 66.458
Research and Development Award: Number
Grant Number: CS47000122
Federal Awarding Agency: Environmental Protection Agency
- e) Confirmations of funds disbursed can be obtained at fiscal year-end from the Tennessee Comptroller of the Treasury, Division of Local Government Audit’s Website at <https://comptroller.tn.gov/>. Any questions regarding sources of funds should be directed to the Department.
- f) At fiscal year-end, contact state SRF Loan Program for a breakdown by specific grant period(s), loan(s), and amount(s).
- i) 2 C.F.R. Part 200.501, 200.505, 200.512 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

2 C.F.R. § 200.501 states, “A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.”

2 C.F.R. § 200.512 states, “(1) The audit must be completed, and the data collection form described in paragraph (b) of this section and reporting package described in paragraph (c) of this section must be submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period. If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day.”

2 C.F.R. § 200.505 states, "In cases of continued inability or unwillingness to have an audit conducted in accordance with this part, Federal agencies and pass-through entities must take appropriate action as provided in § 200.338 Remedies for noncompliance."

A copy of the audit report shall be provided to the Comptroller by the licensed, independent public accountant. Audit reports shall be made available to the public.

21) DAVIS-BACON ACT.

The Davis-Bacon Act, 46 Stat. 1494 (Pub. Law 71-800), and Related acts apply to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. The Davis-Bacon Act (DBA) and Related Acts require contractors and subcontractors to pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area. The Davis-Bacon Act directs the Department of Labor to determine such locally prevailing wage rates. The Davis-Bacon Act applies to contractors and subcontractors performing work on federal or District of Columbia contracts. The prevailing Davis-Bacon Act wage provisions apply to the "Related Acts," under which federal agencies assist construction projects through grants, loans, loan guarantees, and insurance.

For prime contracts in excess of \$100,000, contractors and subcontractors must also, under the provisions of the Contract Work Hours and Safety Standards Act, as amended, pay laborers and mechanics, including guards and watchmen, at least one and one-half times their regular rate of pay for all hours worked over 40 in a workweek. The overtime provisions of the Fair Labor Standards Act may also apply to DBA-covered contracts.

The Local Government will comply with the following:

- a) The Local Government must adhere to the most current Wage Rate (Davis-Bacon Act) applicable to the project.
- b) The bid advertisement for construction must state the wage rate requirements. The wage rate needs to be current at the bid opening.
- c) The wage determination (including any additional classifications and wage rates conformed) and a WH-1321 - Davis-Bacon Poster English and a WH-1321 - Davis Bacon Poster Spanish must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen.
- d) The wage rate information can be obtained at www.wdol.gov/.

22) AMERICAN IRON AND STEEL.

The American Iron and Steel (AIS) provision requires Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) assistance recipients to use iron and steel products that are produced in the United States. This requirement applies to projects for the construction, alteration, maintenance, or repair of a public water system or treatment works.

The Clean Water Act (CWA) includes permanent requirements for the use of AIS in CWSRF projects. Section 608 of the CWA now contains requirements for AIS that repeat those of the Consolidated Appropriations Act of FY 2014. As such, all CWSRF projects must comply with Section 608 of the CWA for implementation of the permanent AIS requirements. Therefore, all guidance's adopted for FY 2014 apply for the permanent AIS requirements for the CWSRF. The AIS provision is a permanent requirement for CWSRF treatment works projects. The America's Water Infrastructure Act of 2018 amended the Safe Drinking Water Act to extend the AIS provision for DWSRF projects through Fiscal Year 2023.

Waiver. Each Local Government that receives CWSRF and/or DWSRF water infrastructure financial assistance is required to use American made iron and steel products in the construction of its project. However, if the recipient can justify a claim made under one of the categories below, a waiver may be granted. Until a waiver is granted by EPA, the AIS requirement must be adhered to as described in the Act.

EPA's implementation memorandum on AIS requirements includes specific instructions for communities interested in applying for a waiver.

How to Request a Waiver

General Steps:

- a) Community prepares the waiver request and submits it to the State SRF. The request should include project specifications for the product.
- b) State SRF reviews and submits the request to EPA.
- c) EPA posts the waiver request for public comment for 15 days (see the Waiver Requests Received by EPA tab).
- d) EPA provides a response and posts it on the website.

23) BUILD AMERICA, BUY AMERICA (BABA) ACT

In accordance with the Infrastructure Investment and Jobs Act (IIJA), Public Law No. 117-58, the Local Government must comply with all federal requirements applicable to receiving assistance from IIJA funding, which includes that all of the iron and steel, manufactured products, and construction materials used in the Project are to be produced in the United States unless:

- a) the Local Government has requested and obtained a waiver from the State pertaining to the Project, or the Project is otherwise covered by a general applicability waiver; or
- b) all of the contributing Agencies have otherwise advised the Local Government in writing that the BABA requirements are not applicable to the Project.

EPA's BABA implementation memorandum includes specific instructions for product coverage, waivers, co-funding, and documenting compliance. For more information on the BABA requirements, visit the EPA Office of Water's website at <https://www.epa.gov/cwsrf/build-america->

buy-america-baba or you may also email questions to BABA-OW@epa.gov or contact the State. For information on approved waivers, visit <https://www.epa.gov/cwsrf/build-america>

24) DISADVANTAGED BUSINESS ENTERPRISE (DBE)/WOMEN'S BUSINESS ENTERPRISE (WBE)

In accordance with federal Executive Order 11625 dated October 13, 1971, and Executive Order 12138 dated May 18, 1979, the local government must make a good faith effort to include participation from Disadvantaged Business Enterprises (DBE) in sub-agreement awards. The Minority Business Enterprises (MBE) fair share goal is 2.6% for construction and 5.2% for supplies, services, and equipment. The Women's Business Enterprises (WBE) fair share goal is 2.6% for construction and 5.2% for supplies, services, and equipment.

Pursuant to 40 C.F.R. § 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services, and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

- a) Ensure Disadvantaged Business Enterprises (DBE) are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State, and Local Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State, and local Government recipients, this includes dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- e) Use the services and assistance of the Small Business Administration (SBA) and the Minority Business Development Agency of the Department of Commerce.
- f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e).

25) TITLE VI COMPLIANCE.

Local Government shall comply with requirements of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d-1, pursuant to the guidelines established by the Tennessee Human Rights Commission's Title VI Compliance Office, by completing all of the following items:

- a) Provide name and contact information of Local Government's Title VI Coordinator to State.

- b) Ensure Policies and Procedures Manual contains a Title VI section with information on: (a) Filing a complaint; (b) Investigations; (c) Report of findings; (d) Hearings and appeals; (e) Description of Title VI Training Program; (f) Limited English Proficiency (LEP) procedure; and (g) Retaliation.
- c) Train all staff (regular, contract, volunteer) on Title VI upon employment and annually thereafter. Training documentation shall be made available upon request of State and include: 1) dates and duration of each training; 2) list of staff completing training on each date.
- d) Annually complete and submit a Title VI self-survey as supplied by Department.
- e) Implement a process and provide documentation to ensure service recipients are informed of Title VI and how to file a discrimination complaint.
- f) Additional Title VI resources may be found at: [Title VI Compliance Program Website](#).

26) FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA).

This Project Loan requires the Local Government to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Local Government is responsible for ensuring that all applicable FFATA requirements are met and that the Local Government provides information to the State as required.

27) DATA UNIVERSAL NUMBERING SYSTEM (DUNS).

The Local Government will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Project Loan. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>.

28) GOVERNING LAW.

This Loan Agreement shall be governed by and construed in accordance with the laws of the state of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Loan Agreement. The Local Government acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees, including but not limited to, the Department, the Authority, and the employees thereof, arising under this Loan Agreement shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. Title 9, Chapter 8.

29) SEVERABILITY.

In the event any covenant, condition or provision of this Loan Agreement is held to be invalid or unenforceable by a final judgment of a court of competent jurisdiction, the invalidity thereof shall in no way affect any of the other covenants, conditions, or provisions hereof.

30) NOTICES COMMUNICATIONS AND CONTACTS.

All instructions, notices, consents, demands, or other communications required or contemplated by this Project Loan shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of

method of transmission, shall be addressed to the respective party as set out below: Any notice shall be delivered to the parties at the addresses below (or such other addresses as the parties shall specify to each other in writing):

To Department: Tennessee Department of Environment and Conservation
State Revolving Fund Loan Program
312 Rosa L. Parks Ave, 12th Floor
Nashville, TN 37243
ATTN: Administrative/Financial Manager

To Authority: Tennessee Local Development Authority
Cordell Hull Building
425 Rep. John Lewis Way N.
Nashville, TN 37243-3400
ATTN: Assistant Secretary

To Local Government: City of Memphis
125 N Main Street
Suite 608
Memphis, TN 38103-2091
ATTN: Jim Strickland, Mayor

31) SECTION HEADINGS.

Section headings are provided for convenience of reference only and shall not be considered in construing the intent of the parties to this Loan Agreement.

32) SPECIAL CONDITIONS.

None.

33) EFFECTIVE DATE.

The effective date of this Loan Agreement shall be the date on which the Authority approves this Loan Agreement as by the signature.

IN WITNESS WHEREOF, the parties to this Loan Agreement have caused the Loan Agreement to be executed by their respective duly authorized representatives.

LOCAL GOVERNMENT

TENNESSEE LOCAL DEVELOPMENT AUTHORITY

Name: City of Memphis
City

Name: _____

Signature: _____
Jim Strickland, Mayor

Signature: _____

Date: _____

Date: _____

Meeting Approval Date: _____

Interest Rate: _____

APPROVED AS TO FUNDING:

COMMISSIONER, DEPARTMENT OF ENVIRONMENT AND CONSERVATION

COMMISSIONER OF FINANCE AND ADMINISTRATION

Signature: _____
David W. Salyers, P.E., Commissioner

Signature: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

**DEPARTMENT OF ENVIRONMENT AND CONSERVATION
OFFICE OF GENERAL COUNSEL**

Signature: _____

Date: _____

Memphis City Council Summary Sheet for MLGW Items

1. Description of the Item

Resolution approving the execution, delivery and performance of an Amendment to the Natural Gas Supply Agreement with the Municipal Gas Authority of Georgia, for the sale and purchase of natural gas, and other documents respecting the natural gas prepayment transaction.

2. Additional Information

This is an Amendment to an original Gas Purchase Agreement with Municipal Gas Authority of Georgia that was approved on August 1, 2018. MLGW has received a discount of \$0.42/MMBtu in gas purchases from Gas Authority under the Gas Purchase Agreement, and has the opportunity to receive Discounts realized by the refinancing by amending the original Gas Purchase Agreement.

CITY COUNCIL RESOLUTION

RESOLUTION APPROVING THE EXECUTION, DELIVERY AND PERFORMANCE OF AN AMENDMENT TO THE NATURAL GAS SUPPLY AGREEMENT WITH THE MUNICIPAL GAS AUTHORITY OF GEORGIA, FOR SALE AND PURCHASE OF NATURAL GAS, AND OTHER DOCUMENTS RESPECTING THE PROPOSED NATURAL GAS PREPAYMENT TRANSACTION

WHEREAS, Memphis Light, Gas & Water, a division of the City of Memphis, Tennessee has a need for natural gas supplies to serve its customers; and

WHEREAS, on August 1, 2018, following approvals from this Board and the Memphis City Council, MLGW executed a "Natural Gas Supply Agreement" with Municipal Gas Authority of Georgia ("Gas Authority") for a term of approximately 30 years (the "Gas Purchase Agreement" attached hereto as Exhibit A), providing for the purchase of natural gas by MLGW from Gas Authority in an amount not to exceed 6,000 MMBtu per day on an annual average basis, at a rate with not less than a \$0.20/MMBtu discount; and

WHEREAS, the Gas Authority purchases its gas from Patriots Energy Group Financing Agency ("Issuer"), a public body and a body corporate and politic pursuant to the laws of the State of South Carolina, which finances the project from the proceeds of certain tax-exempt bonds; and

WHEREAS, pursuant to the original Gas Purchase Agreement, Issuer will seek to refinance the prepayment under, and the other costs of, the prepayment project by issuing its Gas Project Revenue Bonds in one or more Series (including Sub-series), pursuant to a Trust Indenture, dated as of August 1, 2018, between Issuer and a Trustee; and

WHEREAS, on average, MLGW has received a discount of \$0.42/MMBtu in gas purchases from Gas Authority under the Gas Purchase Agreement, and has the opportunity to receive Discounts realized by the refinancing by amending the original Gas Purchase Agreement; and

WHEREAS, this Amendment (attached hereto as Exhibit B) amends the original Gas Purchase Agreement to set the Discount for the next Reset Period and to further amend the original Gas Purchase Agreement to extend the term thereof by a period of five (5) years and modify the DCQ delivery schedule; and

WHEREAS, as a condition precedent to the effectiveness of the parties' obligations under the Amendment, Issuer will have issued the Bonds associated with the Reset Period; and

WHEREAS, under the Amendment, MLGW will pay for gas supplies delivered pursuant to the amended Gas Supply Agreement only if and as such supplies are delivered; and

WHEREAS, the Board of Light, Gas and Water Commissioners has recommended to the Council of the City of Memphis has recommended approval of the Amendment.

NOW, THEREFORE, BE IT RESOLVED that subject to the approval of the Memphis City Council, the Amendment No. 1 to Natural Gas Supply Agreement, and the Purchase Terms, transactions, purchases and obligations represented thereby, are hereby approved in substantially the form of the draft of the Amendment No. 1 to Natural Gas Purchase Agreement (Exhibit B) placed in the Minute File of the Participant, and the President and CEO is hereby authorized, with advice of counsel, to finalize the Amendment No. 1 to Natural Gas Purchase Agreement with such changes, additions, and deletions as are required, in their sole discretion, to complete the Amendment, and the execution of the Amendment will be conclusive evidence of any such approval; and

FURTHER RESOLVED that the President and CEO is hereby authorized to execute and deliver all such additional certificates, documents and other instruments reasonably required or desirable to complete the transactions contemplated by Amendment, including but not limited to any necessary tax certificates or documents necessary to evidence the Participant's compliance with any tax or continuing disclosure requirements arising as a result of the Participant's execution of the Amendment or as reasonably required by any surety or other provider of payment assurance on behalf of the Participant.

EXCERPT
from
MINUTES OF MEETING
of
BOARD OF LIGHT, GAS AND WATER COMMISSIONERS
CITY OF MEMPHIS
held
October 18, 2023

WHEREAS, Memphis Light, Gas & Water, a division of the City of Memphis, Tennessee has a need for natural gas supplies to serve its customers; and

WHEREAS, on August 1, 2018, following approvals from this Board and the Memphis City Council, MLGW executed a "Natural Gas Supply Agreement" with Municipal Gas Authority of Georgia ("Gas Authority") for a term of approximately 30 years (the "Gas Purchase Agreement" attached hereto as Exhibit A), providing for the purchase of natural gas by MLGW from Gas Authority in an amount not to exceed 6,000 MMBtu per day on an annual average basis, at a rate with not less than a \$0.20/MMBtu discount; and

WHEREAS, the Gas Authority purchases its gas from Patriots Energy Group Financing Agency ("Issuer"), a public body and a body corporate and politic pursuant to the laws of the State of South Carolina, which finances the project from the proceeds of certain tax-exempt bonds; and

WHEREAS, pursuant to the original Gas Purchase Agreement, Issuer will seek to refinance the prepayment under, and the other costs of, the prepayment project by issuing its Gas Project Revenue Bonds in one or more Series (including Sub-series), pursuant to a Trust Indenture, dated as of August 1, 2018, between Issuer and a Trustee; and

WHEREAS, on average, MLGW has received a discount of \$0.42/MMBtu in gas purchases from Gas Authority under the Gas Purchase Agreement, and has the opportunity to receive Discounts realized by the refinancing by amending the original Gas Purchase Agreement; and

WHEREAS, this Amendment (attached hereto as Exhibit B) amends the original Gas Purchase Agreement to set the Discount for the next Reset Period and to further amend the original Gas Purchase Agreement to extend the term thereof by a period of five (5) years and modify the DCQ delivery schedule; and

WHEREAS, as a condition precedent to the effectiveness of the parties' obligations under the Amendment, Issuer will have issued the Bonds associated with the Reset Period; and

WHEREAS, under the Amendment, MLGW will pay for gas supplies delivered pursuant to the amended Gas Supply Agreement only if and as such supplies are delivered;

Memphis City Council Summary Sheet for MLGW Items

1. Description of the Item

Resolution approving Change No. 5 to Contract No. 12013, MLGW Water Engineering & Operations Generator Maintenance and Repair with Cummins, Incorporated (This change is to extend the current contract for one year in the funded amount of \$24,760.00, which reflects a 5% increase from the previous renewal due to increases in material costs.) in the funded amount of \$50,000.00.

2. Additional Information

The project scope is to maintain and repair water plant generators, lift station generators, and emergency back-up generators at various MLGW Water Pumping and Lift Stations. This change is to extend the current contract for one (1) year in the funded amount of \$24,760.00, which reflects a 5% increase from the previous renewal due to increases in material costs. The extension amount will cover full service (1 per year) and quarterly inspections for 12 generators at MLGW Pumping and Booster stations. MLGW is also requesting additional funds to provide ongoing generator maintenance needs while soliciting a new generator maintenance contract to include new generators within the next 18 months. The total funded amount of this extension is \$50,000.00. The original renewal term was for the period covering January 9, 2023 through January 8, 2024. The extended contract term will end on January 8, 2025. This extension complies will all applicable laws and policies. The new contract value is \$400,000.00.

RESOLUTION

WHEREAS, the Board of Light, Gas and Water Commissioners in their meeting of October 18, 2023 approved Change No. 5 to Contract No. 12013, MLGW Water Engineering & Operations Generator Maintenance and Repair with Cummins, Incorporated to extend the current contract in the funded amount of \$50,000.00, and is now recommending to the Council of the City of Memphis that it approves said extension as approved; and

WHEREAS, the project scope is to maintain and repair water plant generators, lift station generators, and emergency back-up generators at various MLGW Water Pumping and Lift Stations. This change is to extend the current contract for one (1) year in the funded amount of \$24,760.00, which reflects a 5% increase from the previous renewal due to increases in material costs. The extension amount will cover full service (1 per year) and quarterly inspections for 12 generators at MLGW Pumping and Booster stations. MLGW is also requesting additional funds to provide ongoing generator maintenance needs while soliciting a new generator maintenance contract to include new generators within the next 18 months. The total funded amount of this extension is \$50,000.00. The original renewal term was for the period covering January 9, 2023 through January 8, 2024. The extended contract term will end on January 8, 2025. This extension complies will all applicable laws and policies. The new contract value is \$400,000.00; and

NOW THEREFORE BE IT RESOLVED BY THE Council of the City of Memphis, that there be and is hereby approved Change No. 5 to Contract No. 12013, MLGW Water Engineering & Operations Generator Maintenance and Repair with Cummins, Incorporated to extend the current contract in the funded amount of \$50,000.00 as approved.

EXCERPT
from
MINUTES OF MEETING
of
BOARD OF LIGHT, GAS AND WATER COMMISSIONERS
CITY OF MEMPHIS
held
October 18, 2023

The Manager of Procurement and Contracts recommends to the Board of Light, Gas and Water Commissioners the approval of Change No. 5 to Contract No. 12013, MLGW Water Engineering & Operations Generator Maintenance and Repair with Cummins, Incorporated to extend the current contract in the funded amount of \$50,000.00.

The project scope is to maintain and repair water plant generators, lift station generators, and emergency back-up generators at various MLGW Water Pumping and Lift Stations. This change is to extend the current contract for one (1) year in the funded amount of \$24,760.00, which reflects a 5% increase from the previous renewal due to increases in material costs. The extension amount will cover full service (1 per year) and quarterly inspections for 12 generators at MLGW Pumping and Booster stations. MLGW is also requesting additional funds to provide ongoing generator maintenance needs while soliciting a new generator maintenance contract to include new generators within the next 18 months. The total funded amount of this extension is \$50,000.00. The original renewal term was for the period covering January 9, 2023 through January 8, 2024. The extended contract term will end on January 8, 2025. This extension complies will all applicable laws and policies. The new contract value is \$400,000.00.

NOW THEREFORE BE IT RESOLVED BY the Board of Light, Gas and Water Commissioners:

THAT, Subject to the consent and approval of the Council of the City of Memphis, the approval of Change No. 5 to Contract No. 12013, MLGW Water Engineering & Operations Generator Maintenance and Repair with Cummins, Incorporated to extend the current contract in the funded amount of \$50,000.00, as outlined in the above preamble, is approved; and further

THAT, the President, or his designated representative is authorized to execute the Extension.

I hereby certify that the foregoing is a true copy of a resolution adopted by the Board of Light, Gas and Water Commissioners at a regular -special- meeting held on 18th day of October 2023 at which a quorum was present.


SVP, CFO & CAO Secretary - Treasurer

Memphis City Council Summary Sheet for MLGW Items

1. Description of the Item

Resolution approving Change No. 1 to Contract No. 12385 (solicited under Contract No. 12302), Substation Engineering Services (Transmission) with Allen & Hoshall, Incorporated (This change is to renew the current contract for the first of four annual renewal terms for the period covering December 14, 2023 through December 13, 2024) in the funded not-to-exceed amount of \$300,000.00.

2. Additional Information

The project scope is to provide transmission engineering services including but not limited to design of new overhead 161 kV tower lines, upgrading existing tower lines, spotting structures, drilled pier foundation design, creating associated environmental permit design documents, NERC Alerts, etc., and writing related specifications thereof. This change is to renew the current contract for the first of four (4) annual renewal terms for the period covering December 14, 2023 through December 13, 2024 in the funded not-to-exceed amount of \$300,000.00, with no increase in rates.

RESOLUTION

WHEREAS, the Board of Light, Gas and Water Commissioners in their meeting of October 18, 2023 approved Change No. 1 to Contract No. 12385 (*solicited under Contract No. 12302*), Substation Engineering Services (Transmission) with Allen & Hoshall, Incorporated to renew the current contract in the funded not-to-exceed amount of \$300,000.00, and is now recommending to the Council of the City of Memphis that it approves said renewal as approved; and

WHEREAS, the project scope is to provide transmission engineering services including but not limited to design of new overhead 161 kV tower lines, upgrading existing tower lines, spotting structures, drilled pier foundation design, creating associated environmental permit design documents, NERC Alerts, etc., and writing related specifications thereof. This change is to renew the current contract for the first of four (4) annual renewal terms for the period covering December 14, 2023 through December 13, 2024 in the funded not-to-exceed amount of \$300,000.00, with no increase in rates. MLGW is requesting additional funding for the Contractor to complete the following projects over the next renewal period: 1. Transmission line design for internal MLGW 115kV and 161kV facilities; 2. Transmission line design for customer-requested 161 kV interconnection ring-bus substations; 3. Any stream bank restoration to protect MLGW transmission facilities; and 4. Training MLGW personnel to perform design work associated with these projects. This renewal complies with all applicable laws and policies. The new contract value is \$600,000.00; and

NOW THEREFORE BE IT RESOLVED BY THE Council of the City of Memphis, that there be and is hereby approved Change No. 1 to Contract No. 12385 (*solicited under Contract No. 12302*), Substation Engineering Services (Transmission) with Allen & Hoshall, Incorporated in the funded not-to-exceed amount of \$300,000.00 as approved.

EXCERPT
from
MINUTES OF MEETING
of
BOARD OF LIGHT, GAS AND WATER COMMISSIONERS
CITY OF MEMPHIS
held
October 18, 2023

The Manager of Procurement and Contracts recommends to the Board of Light, Gas and Water Commissioners the approval of Change No. 1 to Contract No. 12385 (*solicited under Contract No. 12302*), Substation Engineering Services (Transmission) with Allen & Hoshall, Incorporated to renew the current contract in the funded not-to-exceed amount of \$300,000.00.

The project scope is to provide transmission engineering services including but not limited to design of new overhead 161 kV tower lines, upgrading existing tower lines, spotting structures, drilled pier foundation design, creating associated environmental permit design documents, NERC Alerts, etc., and writing related specifications thereof. This change is to renew the current contract for the first of four (4) annual renewal terms for the period covering December 14, 2023 through December 13, 2024 in the funded not-to-exceed amount of \$300,000.00, with no increase in rates. MLGW is requesting additional funding for the Contractor to complete the following projects over the next renewal period: 1. Transmission line design for internal MLGW 115kV and 161kV facilities; 2. Transmission line design for customer-requested 161 kV interconnection ring-bus substations; 3. Any stream bank restoration to protect MLGW transmission facilities; and 4. Training MLGW personnel to perform design work associated with these projects. This renewal complies with all applicable laws and policies. The new contract value is \$600,000.00.

NOW THEREFORE BE IT RESOLVED BY the Board of Light, Gas and Water Commissioners:

THAT, Subject to the consent and approval of the Council of the City of Memphis, the approval of Change No. 1 to Contract No. 12385 (*solicited under Contract No. 12302*), Substation Engineering Services (Transmission) with Allen & Hoshall, Incorporated in the funded amount of \$300,000.00, as outlined in the above preamble, is approved; and further

THAT, the President, or his designated representative is authorized to execute the Renewal.

I hereby certify that the foregoing is a true copy of a resolution adopted by the Board of Light, Gas and Water Commissioners at a regular -special meeting held on 19th day of October, 2023 at which a quorum was present.



SVP, CFO & CAO Secretary - Treasurer

Memphis City Council Summary Sheet for MLGW Items

1. Description of the Item

Resolution approving Change No. 1 to Contract No. 12386 (solicited under Contract No. 12302), Substation Engineering Services (Substation) with Allen & Hoshall, Incorporated (This change is to renew the current contract for the first of four annual renewal terms for the period covering December 5, 2023 through December 4, 2024) in the funded not-to-exceed amount of \$300,000.00.

2. Additional Information

The project scope is to provide substation engineering services including but not limited to the design of electrical apparatus installation/replacement in substation switchyards (air disconnect switches, power circuit breakers, power transformer, batteries, etc.), design of bus systems, site design involving drainage, grading, erosion control, landscaping, and driveways; structural design of steel support structures, foundations, hand-holes, and cable trench, curbs, inlets, oil spill traps, fencing; and training of MLGW employees to perform design work in electrical, mechanical and civil engineering disciplines in accordance with applicable standards and established MLGW design practices. This change is to renew the current contract for the first of four (4) annual renewal terms for the period covering December 5, 2023 through December 4, 2024 in the funded not-to-exceed amount of \$300,000.00, with no increase in rates from the initial term.

RESOLUTION

WHEREAS, the Board of Light, Gas and Water Commissioners in their meeting of October 18, 2023 approved Change No. 1 to Contract No. 12386 (*solicited under Contract No. 12302*), Substation Engineering Services (Substation) with Allen & Hoshall, Incorporated to renew the current contract in the funded not-to-exceed amount of \$300,000.00, and is now recommending to the Council of the City of Memphis that it approves said renewal as approved; and

WHEREAS, the project scope is to provide substation engineering services including but not limited to the design of electrical apparatus installation/replacement in substation switchyards (air disconnect switches, power circuit breakers, power transformer, batteries, etc.), design of bus systems, site design involving drainage, grading, erosion control, landscaping, and driveways; structural design of steel support structures, foundations, hand-holes, and cable trench, curbs, inlets, oil spill traps, fencing; and training of MLGW employees to perform design work in electrical, mechanical and civil engineering disciplines in accordance with applicable standards and established MLGW design practices. This change is to renew the current contract for the first of four (4) annual renewal terms for the period covering December 5, 2023 through December 4, 2024 in the funded not-to-exceed amount of \$300,000.00, with no increase in rates from the initial term. MLGW is requesting additional funding for the Contractor to complete the following work over the next renewal term: 1. MLGW Way Forward Substation Engineering services in support of substation transformer and breaker replacements at various substations; 2. customer-requested 161 kV interconnection ring-bus substation designs and 3. training MLGW personnel to perform design work associated with these projects. This renewal complies with all applicable laws and policies. The new contract value is \$600,000.00; and

NOW THEREFORE BE IT RESOLVED BY THE Council of the City of Memphis, that there be and is hereby approved Change No. 1 to Contract No. 12386 (*solicited under Contract No. 12302*), Substation Engineering Services (Substation) with Allen & Hoshall, Incorporated to renew the current contract in the funded not-to-exceed amount of \$300,000.00 as approved.

EXCERPT
from
MINUTES OF MEETING
of
BOARD OF LIGHT, GAS AND WATER COMMISSIONERS
CITY OF MEMPHIS
held
October 18, 2023

The Manager of Procurement and Contracts recommends to the Board of Light, Gas and Water Commissioners the approval of Change No. 1 to Contract No. 12386 (*solicited under Contract No. 12302*), Substation Engineering Services (Substation) with Allen & Hoshall, Incorporated to renew the current contract in the funded not-to-exceed amount of \$300,000.00.

The project scope is to provide substation engineering services including but not limited to the design of electrical apparatus installation/replacement in substation switchyards (air disconnect switches, power circuit breakers, power transformer, batteries, etc.), design of bus systems, site design involving drainage, grading, erosion control, landscaping, and driveways; structural design of steel support structures, foundations, hand-holes, and cable trench, curbs, inlets, oil spill traps, fencing; and training of MLGW employees to perform design work in electrical, mechanical and civil engineering disciplines in accordance with applicable standards and established MLGW design practices. This change is to renew the current contract for the first of four (4) annual renewal terms for the period covering December 5, 2023 through December 4, 2024 in the funded not-to-exceed amount of \$300,000.00, with no increase in rates from the initial term. MLGW is requesting additional funding for the Contractor to complete the following work over the next renewal term: 1. MLGW Way Forward Substation Engineering services in support of substation transformer and breaker replacements at various substations; 2. customer-requested 161 kV interconnection ring-bus substation designs and 3. training MLGW personnel to perform design work associated with these projects. This renewal complies with all applicable laws and policies. The new contract value is \$600,000.00.

NOW THEREFORE BE IT RESOLVED BY the Board of Light, Gas and Water Commissioners:

THAT, Subject to the consent and approval of the Council of the City of Memphis, the approval

of Change No. 1 to Contract No. 12386 (solicited under Contract No. 12302), Substation Engineering Services (Substation) with Allen & Hoshall, Incorporated to renew the current contract in the funded not-to-exceed amount of \$300,000.00, as outlined in the above preamble, is approved; and further

THAT, the President, or his designated representative is authorized to execute the Renewal.

I hereby certify that the foregoing is a true copy of a resolution adopted by the Board of Light, Gas and Water Commissioners at a regular - special meeting held on 17th day of October, 2023, at which a quorum was present.


SVP, CFO & CAO Secretary - Treasurer

Memphis City Council Summary Sheet for MLGW Items

1. Description of the Item

Resolution approving Change No. 1 to Contract No. 12302, Substation Engineering Services (Protection) with Fisher & Arnold, Incorporated (This change is to renew the current contract for the first of four annual renewal terms for the period covering November 21, 2023 through November 20, 2024) in the funded not-to-exceed amount of \$500,000.00.

2. Additional Information

The project scope is to provide Protection Engineering services including but not limited to creating/updating protection once lines, schematics, and wiring drawings; installation and replacement of Protective Relays, Remote Terminal Units, Fault Recorders, Control Board Panels, and equipment wiring; developing relay settings for Electromechanical and Digital Relays. This change is to renew the current contract for the first of four (4) annual renewal terms for the period covering November 21, 2023 through November 20, 2024 in the funded not-to-exceed amount of \$500,000.00, with no increase in rates.

RESOLUTION

WHEREAS, the Board of Light, Gas and Water Commissioners in their meeting of October 18, 2023 approved Change No. 1 to Contract No. 12302, Substation Engineering Services (Protection) with Fisher & Arnold, Incorporated to renew the current contract in the funded not-to-exceed amount of \$500,000.000, and is now recommending to the Council of the City of Memphis that it approves said renewal as approved; and

WHEREAS, the project scope is to provide Protection Engineering services including but not limited to creating/updating protection once lines, schematics, and wiring drawings; installation and replacement of Protective Relays, Remote Terminal Units, Fault Recorders, Control Board Panels, and equipment wiring; developing relay settings for Electromechanical and Digital Relays. This change is to renew the current contract for the first of four (4) annual renewal terms for the period covering November 21, 2023 through November 20, 2024 in the funded not-to-exceed amount of \$500,000.00, with no increase in rates. MLGW is requesting additional funding for the Contractor to complete the following projects over the next renewal period: 1. Replacing Remote Terminal Units (RTU's) at Substations 21, 25, and 26; 2. MLGW Way Forward Protection Engineering services in support of the substation electromechanical relay replacement program; 3. Replacing Protective Device Relays at various substations that have reached end-of-life and/or can no longer be maintained in MLGW's electrical system; and 4. Training MLGW personnel to perform design work associated with these projects. This renewal complies with all applicable laws and policies. The new contract value is \$800,000.00; and

NOW THEREFORE BE IT RESOLVED BY THE Council of the City of Memphis, that there be and is hereby approved Change No. 1 to Contract No. 12302, Substation Engineering Services (Protection) with Fisher & Arnold, Incorporated to renew the current contract in the funded not-to-exceed amount of \$500,000.00 as approved.

EXCERPT
from
MINUTES OF MEETING
of
BOARD OF LIGHT, GAS AND WATER COMMISSIONERS
CITY OF MEMPHIS
held
October 18, 2023

The Manager of Procurement and Contracts recommends to the Board of Light, Gas and Water Commissioners the approval of Change No. 1 to Contract No. 12302, Substation Engineering Services (Protection) with Fisher & Arnold, Incorporated to renew the current contract in the funded not-to-exceed amount of \$500,000.00.

The project scope is to provide Protection Engineering services including but not limited to creating/updating protection once lines, schematics, and wiring drawings; installation and replacement of Protective Relays, Remote Terminal Units, Fault Recorders, Control Board Panels, and equipment wiring; developing relay settings for Electromechanical and Digital Relays. This change is to renew the current contract for the first of four (4) annual renewal terms for the period covering November 21, 2023 through November 20, 2024 in the funded not-to-exceed amount of \$500,000.00, with no increase in rates. MLGW is requesting additional funding for the Contractor to complete the following projects over the next renewal period: 1. Replacing Remote Terminal Units (RTU's) at Substations 21, 25, and 26; 2. MLGW Way Forward Protection Engineering services in support of the substation electromechanical relay replacement program; 3. Replacing Protective Device Relays at various substations that have reached end-of-life and/or can no longer be maintained in MLGW's electrical system; and 4. Training MLGW personnel to perform design work associated with these projects. This renewal complies with all applicable laws and policies. The new contract value is \$800,000.00.

NOW THEREFORE BE IT RESOLVED BY the Board of Light, Gas and Water Commissioners:

THAT, Subject to the consent and approval of the Council of the City of Memphis, the approval of Change No. 1 to Contract No. 12302, Substation Engineering Services (Protection) with Fisher & Aroid, Incorporated to renew the current contract in the funded not-to-exceed amount of \$500,000.00, as outlined in the above preamble, is approved; and further

THAT, the President, or his designated representative is authorized to execute the Renewal.

I hereby certify that the foregoing is a true copy of a resolution adopted by the Board of Light, Gas and Water Commissioners at a regular - special meeting held on 18th day of October, 2023, at which a quorum was present.


SVP, CFO & CAO Secretary - Treasurer

Memphis City Council Summary Sheet for MLGW Items

1. Description of the Item

Resolution awarding a purchase order to Automotive Tool Group for connectors in the amount of \$264,220.00.

2. Additional Information

The connectors are needed to ensure we maintain adequate inventory and will be issued to crews as they are needed for planned jobs throughout Shelby County, Tennessee.

RESOLUTION

WHEREAS, the Board of Light, Gas and Water Commissioners in their meeting of October 18, 2023 approved the purchase of connectors and is now recommending to the Council of the City of Memphis that it approves said purchase contingent upon approval of the 2024 fiscal year budget; and

WHEREAS, the connectors are needed to ensure we maintain adequate inventory and will be issued to crews as they are needed for planned jobs throughout Shelby County, Tennessee; and

WHEREAS, bids were opened on August 30, 2023. Notice to Bidders was advertised. Ten bids were solicited, and six bids were received with the lowest and best complying bidder being the firm of Automotive Tool Group. This award complies with all applicable laws and policies; and

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Memphis that there be and is hereby approved the purchase of connectors from Automotive Tool Group in the amount of \$264,220.00 chargeable to the MLGW 2024 fiscal year budget contingent upon approval.

EXCERPT
from
MINUTES OF MEETING
of
BOARD OF LIGHT, GAS AND WATER COMMISSIONERS
CITY OF MEMPHIS
held
October 18, 2023

The Manager of Procurement and Contracts recommends to the Board of Light, Gas and Water Commissioners that it award a purchase order to Automotive Tool Group for connectors in the amount of \$264,220.00.

The connectors are needed to ensure we maintain adequate inventory and will be issued to crews as they are needed for planned jobs throughout Shelby County, Tennessee.

Bids were opened on August 30, 2023. Notice to Bidders was advertised. Ten bids were solicited, and six bids were received with the lowest and best complying bidder being the firm of Automotive Tool Group. This award complies with all applicable laws and policies.

The 2023 budgeted amount for Emergency Maintenance is \$6,198,000.00; the amount spent-to-date is \$4,656,388.01; leaving a balance of \$1,541,611.99; of which \$264,220.00 will be spent contingent upon approval of the 2024 fiscal year budget; and

NOW THEREFORE BE IT RESOLVED BY the Board of Light, Gas and Water Commissioners:

THAT, subject to the consent and approval of the Council of the City of Memphis, award of a purchase order to Automotive Tool Group is approved for furnishing:

11,000 – Connector set screw type range #2 strd al to #12; connector, multi-port for use on #2 to #12 solid. 4 ports to provide for connecting #2 to #2 al to 12 cu. Connector to be made of high conductivity aluminum with clear PVC covering. To be packaged in containers marked with the Division stock number #37-2469;

Totaling \$264,220.00; f.o.b. Memphis, Tennessee, transportation prepaid; our dock; said prices being firm; delivery in 14 weeks; terms net 15 days.

I hereby certify that the foregoing is a true copy of a resolution adopted by the Board of Light, Gas and Water Commissioners at a regular - special meeting held on 19th day of October 2023, at which a quorum was present.



SVP, CFO & CAO Secretary - Treasurer

Memphis City Council Summary Sheet for MLGW Items

1. Description of the Item

Resolution awarding a twenty-four month blanket purchase order to Mueller Company LLC., for fire hydrants in the amount of \$2,055,725.28.

2. Additional Information

The six-inch diameter fire hydrants are needed to ensure we maintain adequate inventory and will be issued to crews as they are needed for planned jobs and to replace hydrants.

RESOLUTION

WHEREAS, the Board of Light, Gas and Water Commissioners in their meeting of October 18, 2023 approved a twenty-four month blanket purchase order for the purchase of fire hydrants and is now recommending to the Council of the City of Memphis that it approves said purchase as approved in the 2023 fiscal year budget, and subsequent budget years as approved; and

WHEREAS, the six-inch diameter fire hydrants are needed to ensure we maintain adequate inventory and will be issued to crews as they are needed for planned jobs and to replace hydrants; and

WHEREAS, bids were opened on August 23, 2023. Notice to Bidders was advertised. Four bids were solicited, and three bids were received with the lowest and best complying bidder being the firm of Mueller Company LLC. This award complies with all applicable laws and policies; and

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Memphis that there be and is hereby approved the purchase of fire hydrants from Mueller Company LLC. in the amount of \$200,000.00 chargeable to the MLGW 2023 fiscal year budget and the remaining balance of \$1,855,725.28 chargeable to subsequent budget years as approved.

EXCERPT
from
MINUTES OF MEETING
of
BOARD OF LIGHT, GAS AND WATER COMMISSIONERS
CITY OF MEMPHIS
held
October 18, 2023

The Manager of Procurement and Contracts recommends to the Board of Light, Gas and Water Commissioners that it award a twenty-four month blanket purchase order to Mueller Company LLC. for fire hydrants in the amount of \$2,055,725.28.

The six-inch diameter fire hydrants are needed to ensure we maintain adequate inventory and will be issued to crews as they are needed for planned jobs and to replace hydrants.

Bids were opened on August 23, 2023. Notice to Bidders was advertised. Four bids were solicited, and three bids were received with the lowest and best complying bidder being the firm of Mueller Company LLC. This award complies with all applicable laws and policies.

The 2023 budgeted amount for Planned Water Maintenance is \$3,000,000.00; the amount spent-to-date is \$79,464.69; leaving a balance of \$2,920,535.31; of which \$200,000.00 will be spent in 2023 on this purchase order; leaving a balance available of \$2,720,535.31 after award; the remaining balance of \$1,855,725.28 to be spent in subsequent budget years as approved; and

NOW THEREFORE BE IT RESOLVED BY the Board of Light, Gas and Water Commissioners:

THAT, subject to the consent and approval of the Council of the City of Memphis, award of a purchase order to Mueller Company LLC. is approved for furnishing:

72 - Hydrant 6" MJ inlet 3' bury 3-way fire; hydrant, fire, 6", 5-1/4" valve opening, 3-way nozzles, two 2-1/2" hose and one 4" steamer/pumper connection. 3' bury depth, to be furnished with all nozzle caps and painted aluminum. To be made in accordance with Division Specification No. 56-23X6S dated October 12, 2018;

720 - Hydrant 6" MJ inlet 4' bury 3-way fire; hydrant, fire, 6", 5-1/4" valve opening, 3-way nozzles, two 2-1/2" hose and one 4" steamer/pumper connection. 4' bury depth, to be furnished with all nozzle caps and painted aluminum. Hydrants shall be made in accordance with Division

Specification No. 56-23X6S dated October 12, 2018;

144 - Hydrant 6" MJ inlet 5' bury 3-way fire; hydrant, fire, 6", 5-1/4" valve opening, 3-way nozzles, two 2-1/2" hose and one 4" steamer/pumper connection. 5' bury depth, to be furnished with all nozzle caps and painted aluminum. Hydrant shall be made in accordance with Division Specification No. 56-23X6S dated October 12, 2018;

Totaling \$2,055,725.28; f.o.b. Memphis, Tennessee, transportation prepaid; our dock; said prices being firm; terms net 30 days; delivery in 4 weeks.

I hereby certify that the foregoing is a true copy of a resolution adopted by the Board of Light, Gas and Water Commissioners at a regular ~~regular~~ special meeting held on 18th day of October 2023 at which a quorum was present.


SVP, CFO & CAO Secretary - Treasurer

REFERENDUM ORDINANCE NO. _____

A REFERENDUM ORDINANCE TO AMEND, PURSUANT TO [ARTICLE XI, § 9](#) OF THE CONSTITUTION OF THE STATE OF TENNESSEE (HOME RULE AMENDMENT), PROVISIONS OF THE CHARTER OF THE CITY OF MEMPHIS, THE SAME BEING CHAPTER 11 OF THE ACTS OF 1879, AS AMENDED, RELATIVE TO PARTISAN ELECTIONS FOR THE OFFICES OF MAYOR AND CITY COUNCIL MEMBERS AND TO REPEAL ALL PROVISIONS OF THE CITY’S CHARTER INCONSISTENT WITH THIS AMENDMENT

WHEREAS, the Tennessee Code Annotated § 2-13-208, provides that municipal elections shall be nonpartisan unless the municipality's charter specifically permits partisan elections. When a municipality's charter allows partisan elections, political parties may nominate candidates for municipal office by using the primary election provisions of Title 2 of Tennessee Code Annotated (the “Election Code”) or as otherwise authorized by the rules of the party; and

WHEREAS, it is deemed advisable and in the best interest of the citizens of the City of Memphis that the City of Memphis Charter be amended by ordinance as provided by [Article XI, Section 9](#) of the Constitution of the State of Tennessee (Home Rule Amendment) for the purpose of permitting partisan elections for the Offices of the Mayor and Memphis City Council Members.

[Section 1](#). Proposed Amendment Authorized.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, TENNESEE, That pursuant to Article XI, Section 9 of the Constitution of the State of Tennessee, as amended, a proposal for amending the Charter of the City, as set forth in this ordinance, shall be published and submitted by the City of Memphis to its qualified voters at the first state general election, which shall be held in the City of Memphis on August 1, 2024, and which shall be held at least sixty (60) days after such publication.

[Section 2](#). Publication of Home Rule Amendment as required by Tennessee Constitution.

BE IT FURTHER ORDAINED, That the Comptroller is hereby directed to cause this Ordinance, as finally adopted, to be published pursuant to provisions of Article XI, Section 9 of the Constitution of the State of Tennessee immediately after adoption by the City Council.

[Section 3](#). Certification and Delivery to Election Commission.

BE IT FURTHER ORDAINED, That upon the adoption of this Ordinance becoming effective as required by law, the Comptroller of the City of Memphis shall immediately certify adoption of this Ordinance and deliver a certified copy thereof to the Shelby County Election Commission in charge of holding the general State election on August 1, 2024, and shall request that the proposed amendment to the Home Rule Charter of the City of Memphis, in the preferred form set forth in this Ordinance, be placed on the ballot.

[Section 4.](#) Proposal and preference.

BE IT FURTHER ORDAINED, That the City Council does hereby adopt the suggested proposal and form of question to be placed on the ballot for a referendum vote on a Home Rule Amendment to the Charter of the City of Memphis in a State General election to be held on the 1st day of August, 2024, which question shall read as follows:

“ Shall the Charter of the City of Memphis be amended to read:

‘ Elections for the Offices of Mayor and Memphis City Council Members shall be partisan, such that political parties, including but not limited to the Democratic and Republican parties, may nominate candidates for the offices of Mayor and Memphis City Council Members by using the primary election provisions of the Tennessee Election Code or as otherwise authorized by the rules of the party. All provisions of the Charter that are inconsistent with this charter amendment are repealed.’ ?

I, Shirley Ford, Director of Finance for the City of Memphis do hereby certify that the foregoing amendment shall have no impact on the annual revenues and expenditures of the City.

FOR THE AMENDMENT	(YES) _____
AGAINST THE AMENDMENT	(NO) _____

[Section 5.](#) Effective Date of Charter Amendment.

BE IT FURTHER ORDAINED, That this Ordinance shall take effect for the purposes set forth herein sixty (60) days after approval by a majority of the qualified voters voting thereon in an election to be held on the 1st day of August, 2024, the public welfare, requiring it.

[Section 6.](#) Certification of Results.

BE IT FURTHER ORDAINED, That the Shelby County Election Commission certify the result of said election on the referendum question to the Comptroller of the City of Memphis, who shall see that said result is made a part of the Minutes of the Council of the City of Memphis.

[Section 7.](#) **BE IT FURTHER ORDAINED,** That the Mayor be and is hereby authorized to appropriate and expend out of general revenues of the City of Memphis, Tennessee, a sum sufficient to pay a pro-rata cost attributable to the inclusion of the proposed amendment on the ballot for the election to be held on the 1st day of August, 2024, if any.

[Section 8.](#) Nonconflicting - Conflicting Laws.

BE IT FURTHER ORDAINED, That from and after the effective date of this Home Rule Amendment, all laws constituting the present Charter of the City of Memphis in conflict with the subject matter of this amendatory Home Rule Ordinance shall be immediately annulled, vacated,

and repealed and all laws constituting the present Charter of the City of Memphis not in conflict with this amendatory Home Rule Ordinance, be and the same are here continued in full force and effect.

Section 9. Severability.

BE IT FURTHER ORDAINED, that if any clause, section, paragraph, sentence or part of this Ordinance shall be held or declared to be unconstitutional and void, it shall not affect the remaining parts of this Ordinance, it being hereby declared to be the legislative intent to have passed the remainder of this Ordinance notwithstanding the parts so held to be invalid, if any.

Section 10. Publication as Required by the City Charter.

BE IT FURTHER ORDAINED, that this Ordinance shall also be published by the Comptroller at the same time and manner as required by the City's Charter for all ordinances adopted by the City Council.

Section 11. Enactment of Referendum Ordinance.

BE IT FURTHER ORDAINED, that the adoption of this Referendum Ordinance shall take effect from and after the date it shall have passed by the Council, signed by the Chairman of the Council, certified and delivered to the Office of the Mayor in writing by the Comptroller, and become effective as otherwise provided by law.

CHAIRMAN:
Martavius Jones

REFERENDUM ORDINANCE NO. _____

A REFERENDUM ORDINANCE TO AMEND, PURSUANT TO ARTICLE XI, § 9 OF THE CONSTITUTION OF THE STATE OF TENNESSEE (HOME RULE AMENDMENT), PROVISIONS OF THE CHARTER OF THE CITY OF MEMPHIS, THE SAME BEING CHAPTER 11 OF THE ACTS OF 1879, AS AMENDED, RELATIVE TO APPLICATION OF CITY CHARTER REFERENDUM ORDINANCE NO. 1794 TO CITY MUNICIPAL ELECTIONS

WHEREAS, by decree of the United States District Court, the Court found that the majority run-off provision in the City's Charter, Referendum Ordinance No. 1794, with regard to the City's offices of Mayor, city judges and the then existing six at large council seats caused minority vote dilution denying black citizens of Memphis the same opportunity as white citizens to elect representatives of their choice;

WHEREAS, the same court entered a separate consent decree approving a remedy with regard to the application of the majority run-off provision in the City's Charter with regard to the offices of the City Council, which was ratified by the citizens of Memphis in Referendum Ordinance No. 4346 on November 5, 1996;

WHEREAS, in the thirty-two years following the 1991 federal court decree, the City Council has not heretofore proposed any referendum with regard to the application of the majority run-off provision in the City's Charter, Referendum Ordinance No. 1794, to the office of Mayor;

WHEREAS, due to large number of persons that qualified for election in the October 5, 2023 City general municipal for the Office of Mayor, it is deemed necessary to insure that a winning candidate for the Office of Mayor obtain a majority of the votes cast in the general election or run-off, if necessary, to prevent a Mayor being elected by a small plurality of the votes cast in the general election;

WHEREAS, it is deemed advisable to allow the citizens of Memphis to decide whether continuation of the exclusion of the Office of Mayor from the application of the majority run-off provision in the City's Charter, Referendum Ordinance No. 1794, is in the best interests of the citizens of the City of Memphis.

Section 1. Proposed Amendment Authorized.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, TENNESSEE, That pursuant to Article XI, Section 9 of the Constitution of the State of Tennessee, as amended, a proposal for amending the Charter of the City, as set forth in this ordinance, shall be published and submitted by the City of Memphis to its qualified voters at the first state general election, which shall be held in the City of Memphis on November 5, 2024, and which shall be held at least sixty (60) days after such publication.

Section 2. Publication of Home Rule Amendment as required by Tennessee Constitution.

BE IT FURTHER ORDAINED, That the Comptroller is hereby directed to cause this Ordinance, as finally adopted, to be published pursuant to provisions of Article XI, Section 9 of the Constitution of the State of Tennessee immediately after adoption by the City Council.

Section 3. Certification and Delivery to Election Commission.

BE IT FURTHER ORDAINED, That upon the adoption of this Ordinance becoming effective as required by law, the Comptroller of the City of Memphis shall immediately certify adoption of this Ordinance and deliver a certified copy thereof to the Shelby County Election Commission in charge of holding the general State election on November 5, 2024, and shall request that the proposed amendment to the Home Rule Charter of the City of Memphis, in the preferred form set forth in this Ordinance, be placed on the ballot.

Section 4. Proposal and preference.

BE IT FURTHER ORDAINED, That the City Council does hereby adopt the suggested proposal and form of question to be placed on the ballot for a referendum vote on a Home Rule Amendment to the Charter of the City of Memphis in a State General election to be held on the 5th day of November, 2024, which question shall read as follows:

"Shall the Charter of the City of Memphis be amended to provide that the majority run-off provision in the City's Charter, Referendum Ordinance No. 1794, shall apply to any election for the office of Mayor."

I, Shirley Ford, Director of Finance for the City of Memphis do hereby certify that the foregoing amendment shall have _____ impact on the annual revenues and expenditures of the City.

FOR THE AMENDMENT	(YES) ___
AGAINST THE AMENDMENT	(NO) ___

Section 5. Effective Date of Charter Amendment.

BE IT FURTHER ORDAINED, That this Ordinance shall take effect for the purposes set forth herein sixty (60) days after approval by a majority of the qualified voters voting thereon in an election to be held on the 5th day of November, 2024, the public welfare, requiring it.

Section 6. Certification of Results.

BE IT FURTHER ORDAINED, That the Shelby County Election Commission certify the result of said election on the referendum question to the Comptroller of the City of Memphis, who shall

see that said result is made a part of the Minutes of the Council of the City of Memphis.

Section 7. BE IT FURTHER ORDAINED, That the Mayor be and is hereby authorized to appropriate and expend out of general revenues of the City of Memphis, Tennessee, a sum sufficient to pay a pro-rata cost attributable to the inclusion of the proposed amendment on the ballot for the election to be held on the 5th day of November, 2024 and for the cost of seeking a declaratory judgment as to the enforceability of proposed amendment if approved by the qualified voters of the City.

Section 8. Nonconflicting - Conflicting Laws.

BE IT FURTHER ORDAINED, That from and after the effective date of this Home Rule Amendment, all laws constituting the present Charter of the City of Memphis in conflict with the subject matter of this amendatory Home Rule Ordinance shall be immediately annulled, vacated, and repealed and all laws constituting the present Charter of the City of Memphis not in conflict with this amendatory Home Rule Ordinance, be and the same are here continued in full force and effect.

Section 9. Severability.

BE IT FURTHER ORDAINED, that if any clause, section, paragraph, sentence or part of this Ordinance shall be held or declared to be unconstitutional and void, it shall not affect the remaining parts of this Ordinance, it being hereby declared to be the legislative intent to have passed the remainder of this Ordinance notwithstanding the parts so held to be invalid, if any.

Section 10. Publication as Required by the City Charter.

BE IT FURTHER ORDAINED, that this Ordinance shall also be published by the Comptroller at the same time and manner as required by the City's Charter for all ordinances adopted by the City Council.

Section 11. Enactment of Referendum Ordinance.

BE IT FURTHER ORDAINED, that the adoption of this Referendum Ordinance shall take effect from and after the date it shall have passed by the Council, signed by the Chairman of the Council, certified and delivered to the Office of the Mayor in writing by the Comptroller, and become effective as otherwise provided by law.

SPONSORS:
JB Smiley, Jr.
Cheyenne Johnson
Rhonda Logan
Dr. Jeff Warren

**MARTAVIUS JONES
CHAIRMAN**

**AN ORDINANCE TO CREATE A POLICE ADVISORY AND
REVIEW COMMITTEE**

WHEREAS, the State of Tennessee has enacted Public Chapter 454, codifying changes to Tenn. Code Ann. §38-8-301, *et. seq.* and requiring modifications to City of Memphis Code of Ordinances Chapter 28, Article VII, pertaining to the Civilian Law Enforcement Review Board; and

WHEREAS, the City Council desires to provide transparency and promote interaction between the citizens and the Memphis Police Department in compliance with Public Chapter 454; and

WHEREAS, in accordance with Public Chapter 454, the City Council desires to repeal Chapter 28, Article VII, pertaining to the Civilian Law Enforcement Review Board and further desires to adopt Public Chapter 454, creating a Police Advisory and Review Committee, effective October 29, 2023;

NOW, THEREFORE,

SECTION 1. BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that Chapter 28, Article VII, Civilian Law Enforcement Review Board is hereby repealed in its entirety and substituted to read as follows:

(a)

(1) The City Council hereby creates a Police Advisory and Review Committee for the City of Memphis.

(2) The purpose of the committee is to strengthen the relationship between citizens and the Memphis Police Department; to ensure the timely, fair, and objective review of citizen complaints while protecting the individual rights of police officers; and to make recommendations concerning citizen complaints to the Chief of Police.

(b)

(1) The committee will consist of seven (7) members, each of whom must:

(A) Possess a reputation for fairness, integrity, and responsibility,

and have demonstrated an active interest in public affairs and public service;

(B) Be a registered voter, as defined by Tenn. Code. Ann. § 2-1-104(a)(24), of the City of Memphis; and

(C) Not be a current employee of the City Council.

(2) The membership on the committee shall not be restricted or otherwise limited based upon demographics, economic status, or employment history.

(c)

(1) Committee members shall be appointed by the Mayor and confirmed by a majority vote of the City Council, with initial appointments to be made for the following terms:

(A) Two (2) members of the committee are appointed for one-year terms;

(B) Two (2) members of the committee are appointed for two-year terms; and

(C) Three (3) members of the committee are appointed for three-year terms.

(2) No more than two (2) persons may be appointed from one (1) City Council district.

(3) Following the initial appointments, all subsequent appointments, except to fill vacancies, are for three-year terms.

(4) Vacancies occurring other than through the expiration of terms are filled for the remainder of the term of the member being replaced.

(5) A committee member appointed pursuant to this subsection (c) shall not serve more than two (2) consecutive

terms.

(6)

(A) Upon making the initial appointments to the committee, the Mayor shall designate one (1) member of the committee to convene the first regular meeting of the committee.

(B) At its first regular meeting, the committee shall elect one (1) of its members to serve as chair, who serves a term of one (1) year or until a successor is elected. The chair may appoint other officers as the chair deems appropriate.

(d)

(1) Upon the recommendation of a majority of the committee members or by a finding of the Mayor, the Mayor, with a majority approval of the City Council, may remove a member of the committee for official misconduct or neglect of duty including neglect of any duty in subsection (g).

(2) Members who are absent from three (3) consecutive regular committee meetings are considered to have vacated their positions on the committee and may be replaced.

(3) Members who cease to possess the qualifications for membership on the committee under subdivision (b)(1) are deemed to have forfeited their position on the committee.

(e) A person shall not receive compensation for services performed as an appointed member of the committee.

(f) Each person appointed to the committee shall complete the citizen's police academy course offered by the Chief of Police to educate citizens on law enforcement operations, practice, and training. The course must be completed within six (6) months of the date of a person's appointment to the committee. Members who fail to

complete required courses are considered to have vacated their positions on the committee and may be replaced. Each member of the committee must also participate in an official ride along and become familiar with police policies and procedures within six (6) months of the date of the person's appointment.

(g) Members of the committee shall:

(1) Respect an individual's, including a police officer's, right to privacy, and maintain confidentiality of records;

(2) Maintain the confidentiality of Internal Affairs Unit files; personnel files; and other files, records, or recordings received pertaining to their membership on the committee;

(3) Excuse themselves from participating in the review of a complaint in which they have a personal, professional, or financial conflict of interest,

(4) Conduct themselves in a manner that ensures public confidence in the fairness, impartiality, and integrity of the committee, and refrain from making inappropriate or prejudicial comments regarding a matter being reviewed by the committee or which may be reasonably expected to be reviewed by the committee; and

(5) Qualify and take an oath to uphold the Constitution of the United States, the laws of the State of Tennessee, and the ordinances of the City of Memphis and to faithfully discharge the duties of such office.

(h) The City Attorney shall investigate any allegation of misconduct by a committee member or their staff and submit a written report of investigative findings to the Mayor and City Council.

(i)

(1) The Mayor may select an executive director of the committee whose appointment is subject to the approval of a majority of the members of the committee.

(2) The executive director must:

(A) Possess a reputation for fairness, integrity, and responsibility and have demonstrated an active interest in public affairs and service;

(B) Be a registered voter of the City of Memphis;

(C) Not be a former employee of a law enforcement agency for the preceding twelve (12) months;

(D) Possess prior investigative experience, such as would be possessed by an attorney or a local law enforcement officer;

(E) Respect an individual's, including police officer's, right to privacy, and maintain confidentiality of records;

(F) Maintain the confidentiality of all law enforcement records and files that the executive director or committee receives as a result of the committee's performance of its official duties;

(G) Not participate in the review of a complaint in which the executive director has a personal, professional, or financial conflict of interest;

(H) Conduct the duties of the office in a manner that maintains public confidence in the fairness, impartiality, and integrity of the committee, and refrain from making inappropriate or prejudicial comments regarding a matter being reviewed by the committee or which may be reasonably expected to be reviewed by the committee; and

(I) Comply with all rules applicable to other employees of the City of Memphis.

(3)

(A) A person shall not be approved as executive director under subdivision (i)(1) until the person has:

(i) Supplied a fingerprint sample for the purpose of a state criminal history background check to be conducted by the

Tennessee Bureau of Investigation, as well as a national criminal history background check to be conducted by the Federal Bureau of Investigation; and

(ii) Submitted to a lawfully administered test designed to detect the presence of a controlled substance or a controlled substance analogue.

(B) The City shall pay the costs incurred to conduct the criminal history background check and to administer the test under subdivision (i)(3)(A).

(C) The Tennessee Bureau of Investigation and the entity conducting the test shall report the results of the criminal history background check and test to the Mayor or the Mayor's designee within five (5) business days of the bureau's receipt of such results.

(D) The results of the criminal history background check and test are deemed to be confidential under Title 10, Chapter 7, Part 5 and are not required to be disclosed or made available under T.C.A. § 10-7-503(a).

(i)

(1) The executive director shall accept written, sworn complaints from members of the public regarding misconduct of City of Memphis police officers and shall forward the complaints to the head of the Internal Affairs Unit of the Memphis Police Department within three (3) business days of their receipt. Upon receipt of a complaint, the unit shall immediately cause an investigation to be conducted of the allegations pursuant to the standard operating procedures of the Memphis Police Department. The executive director may also accept unsworn or anonymous complaints and, if accepted, refer the complaints to the internal

affairs unit for investigation.

(2) Upon notification by the head of the Internal Affairs Unit that an investigation of an allegation of misconduct by a police officer is closed, whether the investigation was prompted by a complaint received by the executive director or otherwise, the executive director may review the unit file or the referral action form and determine if the investigation is complete.

(3)

(A) If the executive director determines that the investigation is complete in accordance with subdivision (j)(2), then the executive director shall file a report with the committee at its next regularly scheduled meeting that contains a copy of the Internal Affairs Unit case, summary, or referral action form, and any documentation of disciplinary action pertaining to the case.

(B) If the executive director determines that the investigation is not complete, then the executive director shall notify the committee, at its next regularly scheduled meeting, that, in the executive director's opinion, additional investigation or additional time may be required for the investigation to be complete.

(k) At each of the regularly scheduled committee meetings, the executive director shall file a report with the committee that details the resolution of unsworn or anonymous complaints the executive director has been able to resolve without an investigation by the internal affairs unit.

(l) The executive director may request legal services and advice from the City Attorney. If the City Attorney determines that the provision of legal services and advice would constitute a conflict of interest, then the City Attorney shall advise the executive director of the conflict and the executive director may request the City Attorney to provide other outside counsel for such legal services and advice.

(m) The executive director shall:

- (1) Ensure the proper recording of the minutes of the committee;
- (2) Maintain proper records and files pertaining to committee business;
- (3) Receive and record all exhibits, petitions, documents, or other materials presented to the committee in support of or in opposition to a question before the committee;
- (4) Comply with state law and local ordinances regarding notice of meetings;
- (5) Provide complainants with information about the complaint process;
- (6) Be a notary public;
- (7) Compile statistical information regarding complaints of misconduct by law enforcement officers as reported to the executive director from a member of the public, reported to the internal affairs unit where the investigation was reviewed by the executive director, or which were initiated by the executive director; and
- (8) Include the information compiled under subdivision (m)(7) in an annual report to the Chief of Police, the Mayor, and the City Council of the committee's activities.
- (9) Complaints will be placed into one of the following categories for administrative purposes:
 - (A) Force: The use or threatened use of improper, unnecessary or excessive force by a member of the Memphis Police Department.
 - (B) Arrest: The restraint of a person's liberty was improper or unjustified.
 - (C) Entry: Entry into a building or onto property was improper, including the use of excessive force against the property to gain entry.
 - (D) Search: The search of a person or their property was improper, in violation of established police procedures or unjustified.

(E) Harassment: The taking of police action which was predicated upon factors which are irrelevant, under the circumstances, to good law enforcement decision-making.

(F) Demeanor: Improper actions regarding an officer's bearing, gestures, language or other action which allegedly is offensive or of doubtful social propriety.

(G) Other Procedures: Allegation of other actions which are in violation of departmental rules, procedures, or policies.

(H) Service: The inadequacy or lack of police service.

(I) Property: Property lost or damaged while in police custody or confiscated through police action.

(n)

(1) The committee shall review all reports submitted by the executive director under subdivision (j)(3)(A).

(2) If the executive director finds that an investigation is not complete under subdivision (j)(3)(B), then the committee may, by a majority vote of its members:

(A) Request the Chief of Police to conduct a further investigation of the incident, specifying that additional information is needed; or

(B) Direct the executive director to return the investigation to the Internal Affairs Unit for additional investigation.

(3) The executive director shall report any additional investigative findings made to the committee, and upon completion of its inquiry, the committee shall report its written findings and conclusions to the Chief of Police and the Mayor.

(4)

(A) The committee shall have access to all public records it deems necessary to conduct its affairs in furtherance of its duties under

this section, including law enforcement agency records. Such records include:

(i) Complaints and supporting documents provided by complainants;

(ii) Offense, incident, and arrest reports; and

(iii) Incident-related documents such as schedules, dispatch notes, dispatch tapes and transcriptions, citations, videos, photographs, and records of interviews with complainants, employees, and witnesses.

(B) The committee shall not access nonpublic records, including employee medical records, or records that are otherwise exempt from disclosure under any state or federal law.

(5)

(A) Upon completion of the review of an Internal Affairs investigation, the committee may, subject to its own specific findings and conclusions, make recommendations to the Chief of Police for the improvement of law enforcement policies and activities and to benefit the community.

(B) All meetings must be open to the public and the Chief of Police, or his/her designee, may attend and provide information and advice to, or accept the recommendations, if any, of the committee.

(6)

(A) The committee shall compile a comprehensive report of its activities at least once a year, containing statistics and summaries of citizen complaints, including a comparison of the committee's findings and conclusions with those of the internal affairs unit, along with the actions taken by the Chief of Police.

(B) The report compiled in subdivision (n)(6)(A) must be

submitted to:

(i) The executive director for inclusion in the executive director's annual report to the Chief of Police;

(ii) The Mayor;

(iii) The City Council;

(iv) The chairs of the Civil Justice and Criminal Justice Committees of the Tennessee House of Representatives; and

(v) The chair of the Judiciary Committee of the Tennessee Senate.

(7)

(A) The committee may request legal services and advice from the City Attorney. If the City Attorney determines that the provision of legal services and advice would constitute a conflict of interest, then the City Attorney shall advise the committee of the conflict and the committee may request the City Attorney to provide other outside counsel for such legal services and advice.

(B) If the executive director is prohibited from participating in the review of a complaint pursuant to subdivision (i)(2)(G), then the committee may petition the Mayor to appoint a temporary assistant to perform the duties of the executive director.

(o)

(1) The committee shall adopt rules of procedure for the transaction of committee business not inconsistent with this section.

(2) Four (4) members of the committee constitute a quorum. A meeting of the committee must not commence or continue in the absence of a quorum, and a majority vote of those forming a quorum is required for action to be taken by the committee except where otherwise specified in this section.

(3) Regular meetings of the committee must be held no less than quarterly, on the first Wednesday of January, April, July, and October, or as the committee may otherwise elect. A scheduled meeting may be rescheduled at the preceding regular meeting. The chairman and three (3) members of the committee may call a special meeting of the committee upon at least five (5) days' notice.

(4) Committee meetings and records must be open to the public in accordance with Tennessee law, including Title 8, Chapter 44, Part 1, and Title 10, Chapter 7. The committee shall provide an opportunity for public comment about an investigation being reviewed by the committee pursuant to rules established by the committee.

(5)

(A) The police advisory and review committee does not have the power to issue subpoenas for documents or to compel witness testimony.

(B) This subdivision (o)(5) does not prohibit the issuance of a subpoena by the City Council as otherwise provided by law.

(C) A subpoena issued by the City Council, on behalf of the Police Advisory and Review Committee, must:

(i) Be issued pursuant to majority vote of the City Council;

(ii) Not be issued in the form of a blanket authorization, but must specify each document to be produced; and

(iii) Not be issued for documents that are confidential under state or federal law.

(D) Notwithstanding subdivision (o)(4), any document provided to a committee that is confidential under state or federal law must be treated as confidential and must not be released to the public.

(p)

(1) The committee or its staff shall not review an investigation:

(A) Concerning an incident that occurred prior to January 1, 2023;

(B) Prior to the closure of an investigation by the Internal Affairs Unit or of a criminal investigation;

(C) While the complainant, the officer complained about, or a witness is actively engaged in pursuing a remedy provided by the rules and regulations of the Civil Service Commission or grievance process, including arbitration, as set forth in the memorandum of understanding between law enforcement officers and the City; or

(D) If the complainant has initiated, threatened, or given notice of the intent to initiate litigation against the City or its employees.

(2) The committee shall not direct the Chief of Police to alter or impose disciplinary action against an employee of the Memphis Police Department.

(q) Public meetings will follow a routine agenda which includes the following components:

(1) Call to order, roll call;

(2) Acceptance of agenda;

(3) Approval of previous meeting minutes;

(4) Approval of administrative matters;

(5) Opportunity for public comment on pending individual cases; and

(6) Deliberation of individual cases.

(r) The committee and the executive director shall be jointly responsible for the creation and maintenance of a mobile-friendly website. The website shall be independent from the main web portal of the City of Memphis. The executive director shall have a budget for the establishment of the website and an annual budget to maintain the website. The website shall be updated

at least monthly and shall include the following:

- (1) An "About Us" page describing the committee's mission. This page shall also contain a link to this ordinance and any other applicable law.
- (2) A "Process" page describing, in detail, the options for filing a complaint with the committee, the process by which complaints are reviewed, all relevant timing requirements and deadlines, and a description of all possible outcomes.
- (3) A "Committee Members and Staff" page listing office location, hours, and phone number as well as the names, photos, and contact information for all committee members and staff.
- (4) A "File a Complaint" page containing an online form which can be used to file a formal complaint.
- (5) A "Complaints Reviewed" page that lists all complaints received, and posts the following information for each complaint:
 - (A) the current stage in proceedings of each complaint and the time and place of any meetings concerning the investigation;
 - (B) no more than 45 days after the complaint is filed, the completed investigation, finding, and recommendation of the committee; and
 - (C) no more than 30 days after receiving a response from the Memphis Police Department as to the committee's recommendation, the finding and explanation of action taken by the Chief of Police.
 - (D) A "Committee Meetings" page that posts all approved minutes from meetings of the committee and lists the time and location of future committee meetings.
 - (E) Any other pages or information the committee deems necessary in carrying out its mission.

AN ORDINANCE TO AMEND CHAPTER 41- WRECKERS OR TOWING OPERATORS OF THE CODE OF ORDINANCES OF MEMPHIS, TENNESSEE, SO AS TO UPDATE FEES PRESCRIBED

WHEREAS, the Memphis City Council strives to ensure our laws are clear, current and relevant to keep our citizens safe and best serve our business community, assisting them in operating in accord with the laws contained within the Tennessee Code Annotated and the Code of Ordinances of Memphis, Tennessee; and

WHEREAS, the City of Memphis has a significant governmental interest in protecting the health, safety and welfare of the general public and preserving the public order; and

WHEREAS, Chapter 41 of the Code of Ordinances of Memphis, Tennessee, allows the Memphis City Council to define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of the public, and the peace and dignity of the City; and

WHEREAS, the fees charged for non-consensual wreckers and towing operators within the City of Memphis have not been updated since 2006; in contrast, the cost of doing business has steadily risen since 2006, and current inflation and materials pricing have raised that cost even higher; and

WHEREAS, steady or increasing calls for service, coupled with space and staffing shortages at the City of Memphis Impound Lot require Towing Company drivers to spend more time dropping vehicles on the lot, thus further eroding the profitability of the business; and

WHEREAS, the Memphis City Council has heard the pleas of the city's Towing Operators to raise fees for their service to sustainable levels;

NOW, THEREFORE,

Section 1. BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that Chapter 41 - Wreckers and Towing Operators, of the Code of Ordinances, is hereby amended as follows:

Article 1, Section 41-2. Definitions.

Extra Winching means a tow that requires the use of more cable than prescribed for each Class of wrecker in Section 41-4.

Holiday hours means any paid holiday recognized by the U.S. Federal or Tennessee State Governments.

Night hours means the hours between 6:00 p.m. and 7:00 a.m. daily.

Weekend hours means the hours between 6:00 p.m. Friday and 7:00 a.m. Monday.

Article 1, Section 41-5. Wrecker classifications.

A. Class A. For towing passenger cars, pickup trucks, small trailers or other vehicles having a gross vehicle weight of zero through 7,000 pounds and meeting the following requirements:

B. Class B. For towing medium-size trucks, trailers, or other vehicle having a gross vehicle weight of 7,001 pounds through 11,000 pounds and meeting the following requirements:

Article 1, Section 41-6. Wrecker Fees Prescribed

The following fees shall apply for each class of wrecker services providing non-consensual tow services:

A. Class A Wrecker Service: The maximum charge for Class A wrecker services, except in those instances which require the use of heavy-duty equipment as provided for in paragraph (2)(a) of this section, shall be as follows within the corporate limits of the city:

For the purposes of this section, “towed” vehicles are vehicles which can be driven but are towed to the lot at the request of the owner or police office. “Wrecked” vehicles are vehicles which cannot be driven and must be towed to the lot and not related to recovery of vehicles submerged in water and, or off the road by 200 feet.

	Recovery Base Rate	
<u>Wrecker Class</u>	<u>Towed</u>	<u>Wrecked</u>
A	\$225.00	\$275.00
Extra Winching	\$100.00 one-time fee	\$100.00 one time-fee

The applicable fee shall include the point of final destination given to the wrecker driver in accordance with section 41-12(a).

B. Class B and C wrecker service fees shall apply as follows:

For the purposes of this section, “towed” vehicles are vehicles which can be driven but are towed to the lot at the request of the owner or police office. “Wrecked” vehicles are vehicles which cannot be driven and must be towed to the lot and not related to recovery of vehicles submerged in water and, or off the road by 200 feet.

		Recovery Base Rate	
<u>Wrecker Class</u>		<u>Towed</u>	<u>Wrecked</u>
B	Straight Trucks, Vans, etc.:	\$370.00	\$475.00
B	Extra Winching	\$300.00 one-time	\$300.00 one time
<u>Wrecker Class</u>		<u>Towed</u>	<u>Wrecked</u>
C	Tandem-Axle, Not Loaded:	\$430.00	\$535.00
C	Tandem-Axle, Loaded:	\$465.00	\$575.00
	Recreational Vehicles:		
C	25 Feet & Under in Length	\$370.00	\$460.00
C	Over 25 Feet in Length:	\$505.00	\$610.00
C	Buses (Large):	\$505.00	\$610.00
C	Extra Winching	\$450.00 one-time fee	\$450.00 one-time fee

The fee for the use of a licensed driver helper for Class B wreckers shall not exceed \$60.00/hour and for Class C wreckers shall not exceed \$100.00/hour.

Fee To Drop Vehicle Before Departing.

If the owner or operator of the vehicle is present and removes the vehicle to be towed from the premises before it is connected to the towing vehicle, the owner or operator shall not be charged any fee. If the owner or operator of the vehicle is present after the towing vehicle has been connected to the vehicle to be towed, the vehicle shall not be towed, but the owner or operator of the vehicle shall be liable for a reasonable fee not to exceed seventy-five dollars (\$75.00), in lieu of towing, provided the owner or operator of the vehicle forthwith removes the vehicle from the premises. A vehicle shall be deemed connected if every procedure required to secure the vehicle to the wrecker or wrecker equipment so that the vehicle may be safely towed has been completed at the time the owner or operator arrives, including the attachment of any safety chains. In the event that a tow is disregarded, the wrecker owner/operator responding to the call shall be rotated back to the top of the City's Wrecker Rotation List.

Bi-Annual Fee Review

The fees prescribed in this Chapter, including the foregoing and any prescribed in the Chapter's subsequent Articles or Sections, shall be subject to review by the Memphis City Council once every two years, to ensure parity with Towing Operator business costs.

Section 41-7. City Impound Lot Storage Fees, Private Lot Fees, and Administrative Fees

(a) A **one-time administrative fee of seventy-five dollars (\$75.00)** will be assessed for each tow ticket processed at the Memphis Police Department (City Impound Lot Facility or private tow lot), **after the first 72-hours of impoundment**. Such fee shall be charged to the consumer.

(b) The storage of a vehicle (excepting tractor trailer trucks) by a wrecker operator on a private tow lot or any municipally operated vehicle storage or impound lot shall be thirty dollars (\$30.00) for each twenty-four (24) hour period, or fraction thereof, after the first two (2) hours of impoundment. All vehicles that have been damaged in an accident and cannot be safely driven shall be towed. Such vehicles shall be removed from the scene of the accident by a wrecker service owner or operator and towed to such wrecker owner or operator's private wrecker lot, provided that, such wrecker owner or operator has not been notified by the Memphis Police Department that the vehicle is needed for evidentiary or investigative purposes.

(c) **The storage fee for tractor trailer trucks on a private tow lot or any municipally operated vehicle storage or impound lot shall be sixty dollars (\$60.00) for the rig and sixty dollars (\$60.00) for the trailer, for each twenty-four hour period, or fraction thereof. All vehicles must be stored behind the fence of the vehicle storage lot.**

(d) **In the case of private property impound (PPI) tows (also known as towaways), the fee shall be limited to no more than two hours. In the case that a trailer is attached to the driving vehicle, the fee amount shall apply to the driving vehicle and the attached trailer as a single unit. No additional fees may be charged for using dollies, trailers, lifts, slim jim or any other equipment, services, or licensed drive helpers.**

(e) **A "Gate Fee" of fifty dollars (\$50.00) shall be charged to release any car from a private tow lot or any municipally operated vehicle storage or impound lot during night, weekend, or holiday hours. A gate fee and daily storage fee may not be charged for the same day.**

Section 2. BE IT FURTHER ORDAINED, That the provisions of this Ordinance are hereby severable. If any of these sections, provisions, sentences, clauses, phrases or parts are held unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect.

Section 3. BE IT FURTHER ORDAINED, That this Ordinance shall take effect after having been passed by City Council, signed by the Chair of Council, certified and delivered to the office of the Mayor in writing by the comptroller, and becomes effective as otherwise provided by law.

Sponsor:
Ford Canale