

RESOLUTION NO. 31534

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A REAL ESTATE PURCHASE AGREEMENT WITH TENNESSEE AMERICAN WATER COMPANY TO PURCHASE A FOURTEEN THOUSAND EIGHT HUNDRED SIXTY-THREE (14,863) SQUARE FOOT PORTION OF TAX MAP NO. 135-016 AT 455 MOCCASIN BEND ROAD AND A TEMPORARY CONSTRUCTION EASEMENT FOR AN ADJACENT THREE THOUSAND THREE HUNDRED SEVENTY-FIVE (3,375) SQUARE FEET, IN SUBSTANTIALLY THE FORMS ATTACHED, AT A TOTAL PURCHASE PRICE OF TWENTY-TWO THOUSAND DOLLARS (\$22,000.00), FOR THE TENNESSEE AMERICAN WATER COMPANY CONSTRUCTION OF A WATER BOOSTER PUMP STATION AND TO AUTHORIZE THE MAYOR TO EXECUTE ALL DOCUMENTS REQUIRED TO COMPLETE THE TRANSACTION.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing the Mayor to enter into a Real Estate Purchase Agreement with Tennessee American Water Company to purchase a 14,863 square foot portion of Tax Map No. 135-016 at 455 Moccasin Bend Road and a temporary construction easement for an adjacent 3,375 square feet, in substantially the forms attached, at a total purchase price of \$22,000.00, for the Tennessee American Water Company construction of a water booster pump station and to authorize the Mayor to execute all documents required to complete the transaction.

ADOPTED: March 28, 2023

/mem

REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement (“Agreement”) is made the date accepted by Seller on the signature page of this Agreement, by **Tennessee-American Water Company**, a Tennessee corporation, with an office located at 109 Wiehl Street, Chattanooga, TN 37403 (“Buyer”), and **City of Chattanooga**, with a mailing address of 101 E. 11th Street, Chattanooga, TN 37402 (“Seller”), subject to all the following terms and conditions:

1. **Subject of the Purchase and Sale.** Buyer agrees to purchase from the Seller and the Seller agrees to sell to Buyer the portion of real estate and any improvements thereon, the real estate on Tax Map/Parcel 135 016 recorded in Deed Book 11475, Page 831 in the Register’s Office of Hamilton County, Tennessee (“Property”), attached as **Exhibit A** and incorporated herein by reference.
2. **Purchase Price.** The Purchase Price for the Property shall be **Twenty-two Thousand Dollars (\$22,000.00)** (“Purchase Price”). The Purchase Price is to be payable as follows:
 - a) There will be no earnest money involved in this transaction and the Purchase Price and all Closing costs will be due from Buyer on the date of Closing.
3. **Title to the Property.** Title to the Property shall be good and marketable fee simple interest and shall be conveyed to Buyer by a Limited Warranty Deed free and clear of any and all liens, claims and interests of any kind or nature whatsoever except the following:
 - a) current real estate taxes not delinquent; and
 - b) such other liens, rights and encumbrances as may be approved by Buyer pursuant to Paragraph 3 hereof (“Permitted Exceptions”).

As evidence of such title, Buyer shall at Buyer’s sole cost and expense, within thirty (30) days after the date of acceptance of this Agreement, order a commitment (“Title Commitment”) for an ALTA owner’s policy of title insurance issued by Cumberland Title located at 1300 Broad Street, Suite 200, Chattanooga, TN 37402 (“Title Company”), together with legible copies of all instruments identified as exceptions in the Title Commitment (the “Exception Documents”), in which Title Commitment the Title Company shall agree to insure in an amount equal to the Purchase Price, that upon the delivery of a Limited Warranty Deed from Seller to Buyer, Buyer shall have fee simple title to the Property free and clear of all matters normally excluded by the preprinted exceptions and of all liens, encumbrances, claims and interests except for exceptions deemed acceptable by Buyer in its sole discretion (the “Permitted Exceptions”). The Title Commitment shall also include such endorsements as the Buyer shall request in a form acceptable to Buyer.

3. **Contingencies and Due Diligence.** This Agreement is subject to the following contingencies:
 - a) **Zoning and Permit Approval.** This Agreement is contingent upon Buyer i) receiving prior to Closing all necessary approval(s) and/or permit(s) for Buyer’s intended use of the Property; and ii) receiving all necessary zoning, if required, for Buyer’s intended use of the Property (collectively “Zoning & Permit Approvals”). In the event said approval(s) and/or permit(s) are not received, Buyer shall have the sole right to terminate this Agreement by written notice given to Seller on or prior to the date of Closing, and neither party shall have any further liability under this Agreement. An approval shall be deemed received when the applicable approval process

has been concluded favorably to Buyer (as determined by Buyer in its sole discretion) and the result thereof has become final and unappealable

- b) **Survey.** Buyer may obtain, at Buyer's expense, a current survey of the Property (the "Survey") prior to Closing.
- c) **Environmental Assessment.** Buyer may also obtain, at its sole cost and expense, prior to Closing:
 - i. Environmental assessments prepared by a qualified environmental consulting and engineering firm which shall indicate that the Property is not now being used nor has any of the Property been used for any activities involving, directly or indirectly, the use, generation, treatment, storage or disposal of any hazardous or toxic chemical, material, substance or waste, including without limitation, any hazardous substance for the clean-up of which the Buyer or any subsequent owner of the Property could be enjoined or subjected to any damages, penalties, clean-up costs or other liabilities under the provisions of the Comprehensive Environmental Responsibility Compensation and Liability Act of 1980, 42 U.S.C. 9601, et seq. or other Federal, state or local laws, statutes or ordinances respecting hazardous substances, petroleum, asbestos or polychlorinated biphenyls (PCBs) ("Environmental Reports"). Such reports shall be satisfactory to Buyer in its sole discretion.
 - ii. To the extent practicable, Buyer shall restore the Property to its former state prior to the performance of Buyer's due diligence work described in said Paragraph 3 (a-b).

Within sixty (60) days following receipt by Buyer of this Agreement signed by Seller ("Due Diligence Period"), Buyer shall give Seller written notice of any Exception Documents, other matters contained in the Title Commitment, the Survey, the Environmental Reports, or the Zoning & Permit Approvals which are unacceptable to Buyer, which may include cost projections or governmental impositions which, in Buyer's sole discretion, are deemed unacceptable. Seller shall have thirty (30) days after receipt of that notice to have those exceptions removed and/or those matters corrected. If Seller is unable to remove said exceptions and/or correct said matters, then (i) the Agreement contemplated herein, at the option of the Buyer, shall terminate and all obligations and liabilities of the parties hereunder shall cease; or (ii) Buyer may accept the Property as-is without removal of those exceptions or correction of those matters and proceed to Closing.

4. **Representations of Seller.** Seller represents to Buyer that the following statements are, and at Closing will be, true statements of law and fact:
- a) Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, nor the compliance with or fulfillment of the terms and conditions hereof, will conflict with, or result in a breach of, the terms, conditions, or provisions of, or constitute a default under any agreement to which Seller is a party or by which Seller is otherwise bound; and
 - b) Seller has full right, power, and authority to sell, transfer, convey and assign all of the Property to Buyer and there are no legal, contractual, or other restrictions on Seller's ability to sell, transfer, convey and assign all of the Property to Buyer; and

- c) There are no mechanic's or materialman's liens against the Property, and no unpaid claims for labor performed, materials furnished, or services rendered in connection with constructing, improving, or repairing the Property in respect of which liens may or could be filed against the Property; and
- d) There are no public assessments against any of the Property or any claims pending which would result in the creation of any liens for any public improvements, including but not limited to water, sewer, street, paving, electric or power improvements, whether such improvements have been completed or are in progress; and
- e) The Property is not subject to any easements, rights, duties, obligations, covenants, conditions, restrictions, limitations, agreements, liens, or encumbrances not of record; and
- f) There are no parties currently in possession of the Property other than Seller; and
- g) Seller has not made any contract to sell or lease all or any part of the Property to any person other than Buyer, nor has Seller given to any person an option or right of first refusal which is presently exercisable to purchase all or any part of the Property; and
- h) Seller has good and marketable title to the Property, free and clear of all liens, leases, restrictions, and encumbrances, except (i) current real estate taxes not delinquent; (ii) easements, restrictions, and encumbrances of record on the date hereof; and (iii) those matters that would be disclosed by an accurate survey and inspection of the Property; and
- i) To Seller's knowledge, no existing condition of the Property or its operation exists which violates any government code, rule, statute, ordinance, or regulation; and
- j) No fact or condition will exist which would result in the termination of the current access from the Property to any presently existing highways and/or roads adjoining or situated on the Property, or to any existing sewer or other utility facilities servicing, adjoining or situated on the Property; and
- k) There are no actions, suits, proceedings, or investigations pending or threatened against the Seller or the Property before any court, administrative agency or other body and no judgment, order, writ, injunction, decree or other similar command of any court or other governmental agency, which is presently in effect, has been entered against the Property, or served on or entered against Seller in connection with the Property; and
- l) Seller is not involved in any proceedings by or against Seller in any court under the Federal Bankruptcy Code or any insolvency or debtor's relief act, whether state or federal, or for the appointment of a trustee, receiver, liquidator, assignee, sequestrator, or other similar official of a substantial part of Seller's Property; and
- m) The Property (i) contains no facilities that are subject to reporting under Section 312 of the Federal Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11022); (ii) to the best of Seller's knowledge but without doing an investigation is not the site of any underground storage tanks; (iii) is not listed on the Comprehensive Environmental Response Compensation and Liability Insurance System (CERCLIS) in accordance with Section 116 of

the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9616); and (iv) contains no environmental defects; and

- n) To the best of Seller's knowledge, there has not been constructed, deposited, stored, disposed, placed, or located on the Property any Hazardous Materials at any time while Seller has owned the Property. As used herein, "Hazardous Materials" means any elements, compounds, solutions, mixtures, substances, materials or other matter of any kind, including solid, liquid or gaseous materials which are (i) listed or defined as a "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "hazardous substance" or "toxic substance" under any municipal, state or federal law, code, ordinance or other regulation; (ii) petroleum, oil and gas; (iii) asbestos; (iv) polychlorinated biphenyls; (v) designated a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1317); (vi) defined as "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq. (42 U.S.C. 6903); (vii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, et seq. (42 U.S.C. 9601) (CERCLA); (viii) defined as a toxic substance in the Toxic Substance Control Act (1511 U.S.C. 2601, et seq.); (ix) contaminant of soil or ground water and cause degradation of the soil and/or water to the extent that mitigation methods are needed to restore the soil or water to its natural state; or (x) causes or contributors to damage to human health or the environment; and
- o) Seller agrees to furnish to Buyer any information concerning the Property requested by Buyer that Seller presently has and as may come into the possession of Seller prior to the Closing; and
- p) Seller agrees to either terminate all leases involving the Property or agree to have the Property removed from the terms and conditions of said leases.

5. **Covenants of Seller.** Seller hereby covenants and agrees:

- a) Seller shall promptly inform Buyer upon receiving any notice of any alleged violation of and shall comply with any material aspect of any statute, ordinance, law, rule, regulation, or code of any governmental authority having jurisdiction relating to the Property or the use, occupancy, or operation thereof, or any restriction, condition, covenant, or agreement concerning the Property or the use, occupancy, or operation thereof.
- b) Seller shall give Buyer, its representatives, agents, and contractors access to the Property once a Right of Entry has been executed by both Buyer and Seller to perform any tests, inspections, due diligence, or any other requirements as determined by Buyer, including but not limited to the Survey, the Environmental Report, and any work necessary for Buyer to complete its Zoning & Permit Approvals.
- c) Seller shall not enter into any agreement with any other party for the lease, option to purchase, or sale of the Property while this Agreement is in effect. In addition, Seller will not convey any easements or licenses on the Property while this Agreement is in effect.
- d) Upon Seller's acceptance of this Agreement, Seller agrees to furnish to Buyer copies of any surveys or environmental reports previously performed on the Property.

6. **Conditions Precedent to Buyer's Obligations.** The obligations of Buyer hereunder shall be subject to the fulfillment of the following conditions precedent each of which shall have been satisfied at or before Closing, or such other time as stated herein; provided, however, that Buyer may conditionally or unconditionally waive any one or more of such conditions in Buyer's sole discretion:
- a) All of the documents delivered by Seller to Buyer pursuant to the terms and conditions hereof shall have been delivered within the time specified herein and shall be in form and substance satisfactory to Buyer.
 - b) Each of the representations of Seller contained herein shall be true as of the date of Closing.
 - c) Seller shall have complied with, fulfilled, and performed each of the covenants, terms, and conditions to be complied with, fulfilled, or performed by Seller hereunder.
 - d) The Title Commitment, the Survey, and Environmental Reports shall disclose no exceptions to or conditions of title and/or conditions of the Property that are unsatisfactory to Buyer, in Buyer's sole discretion.
 - e) The Property is not located within a flood plain and does not have any wetlands located on it.
 - f) Seller shall duly and diligently observe and perform each of the obligations of Seller under the terms of this Agreement.
 - g) Buyer shall have obtained all approvals necessary for the use and development of the Property for its intended use and occupancy.
 - h) The soil and ground water conditions of the Property shall be satisfactory to Buyer, in Buyer's sole discretion.
 - i) No statement of fact shall have been revealed subsequent to the Title Commitment, the Survey, and the Environmental Report which has a materially detrimental effect on the condition of the Property, Buyer's intended use of the Property, or the costs of construction of Buyer's improvements thereon, in Buyer's sole discretion.
 - j) All utilities required for the operation of the facilities proposed by Buyer shall be on or directly adjacent to the Property and permission shall have been granted by the appropriate public authority to connect to the same.

Nothing herein contained shall be interpreted as obligating the Buyer to accede to any requirement imposed by any governmental unit as a condition for the favorable resolution of the foregoing contingencies. Any contingent provision in respect to which unacceptable requirements are imposed, as determined by Buyer in its sole discretion, shall be deemed to be unresolved.

7. **Closing.** Closing of the transactions contemplated hereby shall occur at the Title Company within thirty (30) days after Buyer has received all approvals and/or permits required for Buyer to be able to construct an elevated water tank on the Property or such other date that may be mutually agreed upon by both parties, provided, however, that if on the last date available for Closing, Zoning & Permit Approvals or other developmental approvals relating to the construction of the facilities and

the use and development of the Property for Buyer's intended use are still pending, the parties agree that the time for Closing shall be extended to a date which is thirty (30) days after such proceedings have been concluded and the result thereof has become final and unappealable. The consummation of the sale and purchase contemplated hereunder is referred to herein as the "Closing."

8. **Possession Upon Closing.** Full possession of the Property shall be delivered to Buyer at the time of Closing.
9. **Considerations of Seller.** At the Closing, Seller shall execute and deliver to Buyer the following instruments, documents, and considerations, all of which shall be in form and substance satisfactory to Buyer:
 - a) A Limited Warranty Deed conveying to Buyer fee simple title to the Property subject only to the Permitted Exceptions;
 - b) A non-foreign affidavit, properly executed, containing such information as shall be required by the Internal Revenue Code and the regulations issued thereunder sufficient to establish that Seller is not a "Foreign Person" (as defined in the Internal Revenue Code and the regulations issued thereunder);
 - c) Any forms required by the State of Tennessee and/or Hamilton County concerning the sale of real property;
 - d) A closing statement;
 - e) Such other instruments, documents and considerations which may be reasonably required by the state, county, or municipality in which the Property is located, as well as any documents required by the Title Company, Buyer, or Buyer's counsel to consummate the transaction evidenced by this Agreement.

10. Consideration of Buyer.

- a) At the Closing, Buyer shall pay to Seller the Purchase Price, less any closing prorations as hereinafter provided.
- b) Prior to Closing, Buyer shall deliver to Seller an easement for a forty (40) foot wide force main sewer located on the Property, granting Seller use of the force main sewer. Such easement shall be recorded by Buyer promptly after recordation of the Limited Warranty Deed.

11. Closing Prorations.

- a) Expenses/Revenues. There are no continuing expenses relating to the Property except non-delinquent Property taxes and assessments. All rents, income issues and profits of the Property, if any, shall be prorated between Seller and Buyer as of the date of Closing, with continuing rents, income, issues, and profits from the date of Closing (if any) allocated to Buyer.
- b) Closing Costs. Unless otherwise stipulated below, any other Closing fees charged by the Title Company shall be paid by Buyer.

i) Seller's Expenses. Seller agrees to pay all costs of (i) releasing existing loans and monetary liens and recording the releases; and (2) other expenses stipulated to be paid by the Seller under the provisions of this Agreement.

ii) Buyer's Expenses. Buyer agrees to pay the costs of (i) the title search and Title Insurance Policy and any endorsements; (ii) the Survey, if any; (iii) the Environmental Report; (iv) preparation of the Limited Warranty Deed; (v) local or state real estate transfer tax on the sale of the Property; Buyer's Broker fee/commission; and (vi) other expenses stipulated to be paid by Buyer under other provisions in this Agreement.

12. **Taxes and Assessments.** Seller shall pay, or cause to be paid, all real estate taxes relating to the Property assessed for all calendar years prior to the Closing and shall pay, or cause to be paid, that portion of such taxes assessed for and becoming a lien during the calendar year of the Closing as shall be allocable to Seller for the period through and including the date of the Closing. A credit shall be allowed to Buyer at Closing for any such taxes which are not then due and payable. If the tax rates applicable to such taxes for any such year have not been determined by the Closing, the most current tax rate shall be used. Buyer shall pay all assessments for municipal or other public improvements becoming a lien on the Property after the Closing and Seller shall pay all assessments becoming a lien prior thereto.
13. **Damage and Destruction; Condemnation.** All risk of loss or damage to the Property occurring subsequent to the date hereof shall be borne by Seller to and including the date of Closing. If any of the Property shall suffer a loss by fire, flood, tornado, accident or other cause after the date hereof and on or before the date of the Closing, or if proceedings to take or condemn the whole or any part of the Property for public or quasi-public use under any statute or by the right of eminent domain are commenced or threatened prior to the date of Closing, then Buyer may, at its option, either consummate or not consummate the transactions contemplated hereby. If Buyer elects to consummate such transactions, then all insurance proceeds payable in respect to such casualty and/or any and all damages or awards payable in respect to such taking or condemnation shall be paid to Buyer. If Buyer elects not to consummate such transactions, this Agreement shall terminate, and this Agreement shall be of no further force and effect.
14. **Termination.** In the event that (a) any one or more of the conditions precedent set forth herein is not fulfilled on or before Closing; (b) Buyer discovers that any representation or warranty made by Seller herein was, on the date of this Agreement, or at any time thereafter, inaccurate or untrue in any respect; or (c) Seller fails to comply with or perform any one or more of the covenants, terms and conditions to be complied with or performed by it hereunder, then, and in any such event, Buyer shall have the right, at its election and in addition to any other rights or remedies it may have at law or in equity, to terminate this Agreement. In the event that this Agreement is so terminated, Buyer shall be released from all further obligations and liabilities hereunder. Buyer shall also have the right to pursue all appropriate remedies including damages and specific performance, for any breach hereof and shall be entitled to recover reasonable attorney's fees incurred in connection with any such action. If Buyer fails to observe or perform any of the terms and conditions hereof to be observed or performed by Buyer, then Seller shall be permitted to pursue any monetary damages (but not specific performance) for such breach including reasonable attorney's fees.
15. **Survival of Representations, Warranties and Covenants.** All representations, warranties and covenants contained herein shall survive the execution hereof and the consummation of the

transactions contemplated herein and shall not be deemed to be merged into the deed to be delivered by Seller to Buyer hereunder. All statements contained in any schedule, certificate or other instrument, document or other consideration delivered at any time by Seller to Buyer in connection with the transactions contemplated herein shall constitute representations and warranties hereunder.

16. **Expenses; Brokerages.** Seller hereby represents and acknowledges that it has not contracted with any broker in connection with this transaction or this Agreement. Buyer hereby represents that it has contracted with a broker in connection with this transaction and this Agreement, and Buyer's broker shall be compensated under the terms of a separate agreement. Each party to this Agreement will indemnify the other from any cost for broker's fees or commissions claimed through that party.
17. **Miscellaneous.** This Agreement contains the entire agreement between the parties and supersedes all prior oral or written understandings, agreements, or contracts, formal or informal, between the parties hereto. This provision and each and every other provision of this Agreement may not, under any circumstances, be modified, changed, amended or any provisions hereunder waived verbally, but only may be modified, changed, amended or provisions hereunder waived by an agreement in writing and executed by all parties hereto. This Agreement shall be construed under and governed by the laws of the State of Tennessee.
18. **Notices.** All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given as of the date of mailing when delivered in person or sent by registered or certified mail (return receipt requested), postage prepaid, or Federal Express, UPS or other overnight mail carrier, addressed as follows:

To Buyer: **Tennessee-American Water Company**
109 Wiehl Street
Chattanooga, TN 37403
ATTN: Legal Department

To Seller: **City of Chattanooga**
Real Property, Suite G-18
101 E. 11th Street,
Chattanooga, TN 37402

With a copy to: **Office of the City Attorney**
100 E. 11th Street, Suite 200
Chattanooga, TN 37402

or to such other address as may be furnished in writing by a party to the other.

19. **Successors and Assigns.** The terms, provisions, covenants, agreements, and conditions contained in this Agreement shall apply to, inure to the benefit of, and be binding upon, the parties hereto and upon their respective heirs, legal representatives, successors, and assigns.
20. **Assignment.** Buyer shall have the right to assign its interest in this Agreement to any affiliated or related entity.

21. **No Waiver.** No failure on the part of either party at any time to require performance by the other party of any term hereof shall be taken or held to be a waiver of such term or in any way affect such party's right to enforce such term, and no waiver on the part of either party of any term hereof shall be taken or held to be a waiver of any other term hereof or the breach thereof.
22. **Severability.** The invalidity or unenforceability of any particular provision hereof shall not affect the other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision had not been contained herein.
23. **Expiration of Time Periods.** If any date specified herein is, or any period specified herein expires on, a Saturday, Sunday, or holiday, then such date or expiration date of such period, as the case may be, shall be extended to the next succeeding business day.
24. **Duration of Offer.** This offer shall expire if written acceptance endorsed hereon is not delivered to Buyer on or before 5:00 P.M. on _____, **2023.**

EXECUTED as of the date first above written.

BUYER:

TENNESSEE-AMERICAN WATER COMPANY
a Tennessee corporation

By: _____
Name: _____
Title: _____

ACCEPTANCE OF AGREEMENT

Seller hereby accepts the foregoing Agreement and agrees to sell and convey the Property to Buyer upon and subject to the terms and conditions set forth herein.

Dated this _____ day of _____, 2023.

SELLER:

Tim Kelly, Mayor of the City of Chattanooga

EXHIBIT A

Legal Description

Land located in the City of Chattanooga, Hamilton County, Tennessee. Being a portion of the property of the City of Chattanooga, Tennessee, a municipal corporation (“the City”), of record in Deed Book 11475, Page 831, Register’s Office, Hamilton County, Tennessee.

Said portion to be conveyed, and described herein is LOT ONE, MOCCASIN BEND PUMP STATION SUBDIVISION, of record in Plat Book ____, Page ____, ROHC, and is more particularly described, relative to the Tennessee State Plane Coordinate System, North American Datum of 1983 (NAD83), as follows:

BEGINNING at the Southeast Corner of aforesaid property of the City of Chattanooga, lying in the western Right-of-Way line of Moccasin Bend Road, and said point located at coordinates: North: 260,562.14 feet, East: 2,167,996.27 feet of aforesaid datum;

Thence North 84 degrees 20 minutes 40 seconds West, leaving said Right-of-Way line, and along the South Line of aforesaid property of the City of Chattanooga, a distance of 348.23 feet to a point;

Thence with new property lines, the following courses and distances:

Thence North 05 degrees 39 minutes 20 seconds East, leaving aforesaid south property line, a distance of 28.00 feet to a point;

Thence South 84 degrees 20 minutes 40 seconds East, a distance of 135.00 feet to a point;

Thence North 05 degrees 39 minutes 20 seconds East, a distance of 25.00 feet to a point;

Thence South 84 degrees 20 minutes 40 seconds East, a distance of 205.00 feet to a point to a point on aforesaid Right-of-Way line;

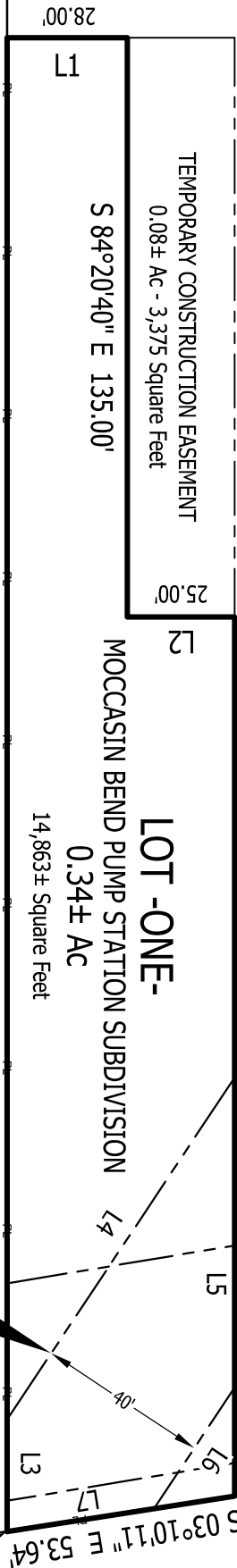
Thence South 03 degrees 10 minutes 11 seconds East, along said Right-of-Way line a distance of 53.64 feet to the POINT OF BEGINNING.

The portion to be conveyed as described herein contains 0.34 Acres (14,863 Square Feet) more or less.



TAX PARCEL 135 016
 CITY OF CHATTANOOGA
 DEED 11475-831 ROHC

Existing 50' Easement to
 Colonial Pipeline Company
 Deed 1528-650 ROHC
 25' on each side of installed pipeline, per Deed.
 Location shown hereon is based on Utility Line
 Markings by others (See Note #2).



LINE	BEARING	DISTANCE
L1	N 05°39'20" E	28.00'
L2	N 05°39'20" E	25.00'
L3	N 84°20'40" W	26.13'
L4	N 50°43'39" W	95.73'
L5	S 84°20'40" E	72.25'
L6	S 50°43'39" E	33.97'
L7	S 03°10'11" E	34.60'

TAX PARCEL 145 001
 HAMILTON COUNTY &
 CITY OF CHATTANOOGA
 DEED 1515-243 ROHC

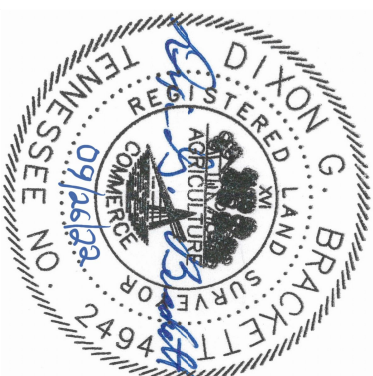
LEGEND

- PROPERTY TO BE ACQUIRED
- TEMPORARY CONSTRUCTION EASEMENT
- EXISTING PROPERTY LINE
- EASEMENT - EXISTING OR TO BE RESERVED

SCALE: 1" = 40'



Updated 09-26-2022 to show 40' Force Main
 Easement to be reserved



P.O.B.
 LOT ONE
 40' FORCE MAIN ESMT
 SE Corner
 CITY OF CHATTANOOGA
 DEED 11475-831 ROHC
 N: 260,562.14'
 E: 2,167,996.27'

- NOTES**
- North Orientation: Tennessee State Plane Coordinate System (NAD83).
 - Reference Survey: Ongoing surveys by Earthworx, LLC, Project #21-011.
 - Property Located in City of Chattanooga, Hamilton County, Tennessee.
 - This Exhibit Sketch is prepared for use in support of describing property and easements to be acquired as shown hereon. Not valid for any other purpose.

DWG. NO. 21-011 EXHIBIT 01
 DATE: 09-26-2022
 SCALE: 1" = 40'
 DRAWN: NB
 APPROVED: DGB

SHEET NO.
1

**EXHIBIT SKETCH
 MOCCASIN BEND
 PUMP STATION**



earthworx, llc
 4300 North Access Road, Suite C
 Chattanooga, Tennessee 37415

ADDRESS OF OWNER: (easement only)	SEND TAX BILLS TO: Same (easement only)	MAP PARCEL NO. (easement only) 135 016
(Name) Tennessee-American Water Company	(Name)	
(Street Address) 109 Wiehl Street	(Street Address)	
(City) (State) (Zip) Chattanooga, TN 37405	(City) (State) (Zip)	

THIS INSTRUMENT PREPARED BY:
Valerie L. Malueg, Esq.
Office of the City Attorney
100 E. 11th Street, Suite200
Chattanooga, TN 37402

Reference: Pt. of Deed Book 11475, Page 831

TEMPORARY CONSTRUCTION EASEMENT

This Temporary Construction Easement is entered into this ___ day of _____, 2023 (the “Effective Date”) by and between the **CITY OF CHATTANOOGA, a municipal corporation existing under the laws of the State of Tennessee**, hereinafter called “City” and **TENNESSEE-AMERICAN WATER COMPANY**, a Tennessee corporation, hereinafter called “TAWC”, whose address is 109 Wiehl Street, Chattanooga, TN 37403.

RECITALS

WHEREAS, City is the owner in fee simple and in possession of the property situated in Hamilton County, Tennessee, and as described in Deed Book 11475, Page 831 recorded in the real property records of Hamilton County, Tennessee, hereinafter referred to as the “Property”; and

WHEREAS, City desires to grant to TAWC a temporary easement for construction on City’s Property for the construction of a new water booster pump station (the “Work”).

NOW, THEREFORE, in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City has granted, bargained, sold and transferred, and by these presents does grant, bargain and transfer unto TAWC, its contractors, licensees, agents, successors, and assigns, subject to the rights, reservations, terms and provisions contained herein, a temporary construction easement upon, over, across, under and through Property for the performance of the Work as set forth herein.

1. Temporary Construction Easement. City, for itself and for its successor and assigns, hereby conveys, and grants to TAWC, its contractors, licensees, agents, successors and assigns, a temporary, non-exclusive construction easement (the "Temporary Construction Easement") over, under, in along, across and upon the Property for use in the initial construction of the Work and other construction purposes reasonably related to the initial construction of the Work as more particularly described on **Exhibit "A"** and as shown on **Exhibit "B"**.
2. Term. The Temporary Construction Easement shall commence on the Effective Date and shall run with the land and continue in full force and effect until thirty (30) days after the date that the Work is substantially complete. Upon such completion of the Work, the parties shall record a termination of this Temporary Construction Easement.
3. Reservation by City/Non-Exclusive Use. All right, title and interest in and to any easement area under this Temporary Construction Easement which may be used and enjoyed without interfering with the rights conveyed by this Temporary Construction Easement are reserved by City, provided, however, that City shall not enact or maintain any improvements which may cause damage to or interfere with the Work to be placed on the Property.
4. Indemnity and Insurance Provision. TAWC, its contractors, agents, successors, and assigns shall indemnify, defend, and hold harmless City against all losses, damages, causes of action, claims, costs, expenses, liabilities or demands arising from the negligence, willful misconduct, or strict liability of TAWC, or its agents, employees or contractors arising from the construction/development of the Work. During the term of this Temporary Construction Easement, TAWC shall have adequate insurance at all times at TAWC's expense, which coverages shall include but are not limited to the coverages set forth herein. TAWC shall have at all times, commercial general liability insurance with a minimum combined single limit of \$2,000,000.00 covering personal injury and property damage. The foregoing insurance shall be issued on an occurrence basis, shall be primary with respect to any liability assumed by TAWC hereunder, shall specifically name City as an additional insured, and include a waiver of subrogation in favor of City. Prior to commencement of the Work, TAWC shall provide City with Certificates of Insurance evidencing the required coverage and shall give City thirty (30) days written notice if the coverage represented in these certificates is reduced or

cancelled. TAWC agrees that, in the event TAWC contracts with a third-party or third-parties (“TAWC’s Vendors”), TAWC shall require that its vendors shall have adequate insurance at all times at TAWC’s expense or TAWC’s Vendor’s expense, which coverages shall include the same coverages as specified for TAWC, and further agrees to furnish TAWC Vendor’s Certificates of Insurance to City prior to the commencement of the Work.

5. Cost/Lien-Free Construction and Compliance with Laws. TAWC shall bear and promptly pay, without the imposition of any lien or charge on or against all or any portion of the Property, all costs and expenses of construction and maintenance of the Work. TAWC shall construct the Work in a workmanlike manner and in compliance with the applicable statutes, ordinances, rules, and regulations of all governing public authorities as those statutes, ordinances, rules, and regulations are amended from time to time. Venue for any action hereunder shall be in the appropriate court of Hamilton County, Tennessee.
6. Covenants Running with the Land/Assignment. The parties acknowledge and agree that the rights conferred by this Temporary Construction Easement are intended to, and do, constitute covenants that run with the land and shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, and assigns.
7. This Temporary Construction Easement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.
8. Time is hereby expressly made of the essence with respect to each and every term and provision of this Temporary Construction Easement, including without limitation the generality of the foregoing, with respect to each and every time constraint and deadline imposed by the terms of this Temporary Construction Easement.
9. In case any one or more of the provisions contained in this Temporary Construction Easement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Temporary Construction Easement shall be construed, to the extent reasonably possible, as if such invalid, illegal or unenforceable provision had never been contained herein.
10. Each person executing this Temporary Construction Easement warrants and represents that he or she is fully authorized to do so.

[see signatures on the following page]

IN WITNESS WHEREOF, the parties executed this Temporary Construction Easement as of the Effective Date.

Witnesses:

Print name: _____

Print name: _____

CITY OF CHATTANOOGA

BY: _____

Name: _____

Title: _____

DATE: _____

Witnesses:

Print name: _____

Print name: _____

**TENNESSEE-AMERICAN
WATER COMPANY**

BY: _____

Name: _____

Title: _____

DATE: _____

EXHIBIT "A"

Legal Description of Temporary Construction Easement

**SURVEYOR'S DESCRIPTION
TEMPORARY CONSTRUCTION EASEMENT**

To be acquired, by and for Tennessee American Water Company

Land located in the City of Chattanooga, Hamilton County, Tennessee. Being a portion of the property of the City of Chattanooga, Tennessee, a municipal corporation ("the City"), of record in Deed Book 11475, Page 831, Register's Office, Hamilton County, Tennessee.

Said Easement to be reserved is a Temporary Construction Easement, of record on Plat of LOT ONE, MOCCASIN BEND PUMP STATION SUBDIVISION, of record in Plat Book ___, Page ___, ROHC, and is more particularly described, relative to the Tennessee State Plane Coordinate System, North American Datum of 1983 (NAD83), as follows:

COMMENCE at the Southeast Corner of aforesaid property of the City, lying in the western Right-of-Way line of Moccasin Bend Road, and said point located at coordinates: North: 260,562.14 feet, East: 2,167,996.27 feet of aforesaid datum;

Thence North 84 degrees 20 minutes 40 seconds West, leaving said Right-of-Way line, and along the south line of aforesaid property of the City, a distance of 348.23 feet to a point;

Thence North 05 degrees 39 minutes 20 seconds East, leaving aforesaid south property line, and along the most western property line of aforesaid LOT ONE, a distance of 28.00 feet to the POINT OF BEGINNING;

Thence North 05 degrees 39 minutes 20 seconds East, a distance of 25.00 feet to a point;
Thence South 84 degrees 20 minutes 40 seconds East, a distance of 135.00 feet to a point which is a Corner of aforesaid LOT ONE;

Thence South 05 degrees 39 minutes 20 seconds West, a distance of 25.00 feet to a point which is a Corner of aforesaid LOT ONE;

Thence North 84 degrees 20 minutes 40 seconds West, a distance of 135.00 feet to the POINT OF BEGINNING.

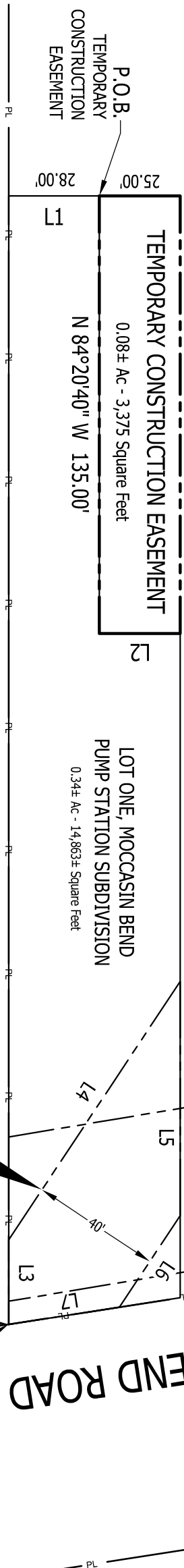
Said Temporary Construction Easement contains 0.08 Acres (3,375 Square Feet) more or less.

Drawing of Temporary Construction Easement



TAX PARCEL 135 016
 CITY OF CHATTANOOGA
 DEED 11475-831 ROHC

Existing 50' Easement to
 Colonial Pipeline Company
 Deed 1528-650 ROHC
 25' on each side of installed pipeline, per Deed.
 Location shown hereon is based on Utility Line
 Markings by others (See Note #2).



LINE	BEARING	DISTANCE
L1	N 05°39'20" E	28.00'
L2	S 05°39'20" W	25.00'
L3	N 84°20'40" W	26.13'
L4	N 50°43'39" W	95.73'
L5	S 84°20'40" E	72.25'
L6	S 50°43'39" E	33.97'
L7	S 03°10'11" E	34.60'

TAX PARCEL 145 001
 HAMILTON COUNTY &
 CITY OF CHATTANOOGA
 DEED 1515-243 ROHC

LEGEND

- TEMPORARY CONSTRUCTION EASEMENT
- PUMP STATION PROPERTY
- EXISTING PROPERTY LINE
- EASEMENT - EXISTING OR TO BE RESERVED

SCALE: 1" = 40'



NOTES

- North Orientation: Tennessee State Plane Coordinate System (NAD83).
- Reference Survey: Ongoing surveys by Earthworx, LLC, Project #21-011.
- Property Located in City of Chattanooga, Hamilton County, Tennessee.
- This Exhibit Sketch is prepared for use in support of describing property and easements to be acquired as shown hereon. Not valid for any other purpose.

**40' WIDE FORCE MAIN
 SEWER EASEMENT**
 0.07±Ac - 3,041 Sq. Ft.

P.O.C.
 TEMPORARY
 CONSTRUCTION
 EASEMENT

P.O.B.
 LOT ONE
 40' FORCE MAIN ESMT
 SE Corner
 CITY OF CHATTANOOGA
 DEED 11475-831 ROHC
 N: 260,562.14'
 E: 2,167,996.27'



Updated 09-26-2022 to show 40' Force Main
 Easement to be reserved

DWG. NO. 21-011 EXHIBIT 01
 DATE: 09-26-2022
 SCALE: 1" = 40'
 DRAWN: NB
 APPROVED: DGB

SHEET NO.
1

**EXHIBIT SKETCH
 TEMPORARY
 CONSTRUCTION EASEMENT**



earthworx, llc
 4300 North Access Road, Suite C
 Chattanooga, Tennessee 37415