

[Agreement between Collegedale and Chattanooga for a sewage system]

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of T.C.A. §§53-2017 through 53-2022 or other applicable state laws; and

WHEREAS, the construction of and operation of such sewer system by Collegedale and Chattanooga is to be extensively regulated by applicable laws and administrative regulations of the United States and the State of Tennessee; and

WHEREAS, by virtue of the authority of the laws of Tennessee, particularly T.C.A. §§6-1404 through 6-1407, Chattanooga and Collegedale are authorized to enter into such an agreement;

NOW, THEREFORE,

IN CONSIDERATION of the premises and mutual undertakings as hereinafter set forth, it is mutually agreed by and between Chattanooga and Collegedale, each acting by and through its duly authorized officials, and pursuant to resolutions duly, legally, and properly adopted, all as the same appear of record on the official minutes of the Board of Commissioners of the City of Chattanooga and the City Commission of the City of Collegedale, as follows:

1. The term of this Agreement shall be for a period of fifty (50) years from and after the date of its execution, although some provisions hereof will not be operative until the sewage systems of Collegedale and Chattanooga are interconnected and are operative. The parties recognize, however, that changes in federal or state law and regulations relating to the environment and to the operation of sewage systems and treatment works, or changes in the Chattanooga Area 208 Waste Treatment Management Plan, may require the modification from time to time of this Agreement and the parties therefore agree to fully cooperate to modify this Agreement as shall be required under such circumstances.

2. Definitions:

(a) Act or "the Act" means the Federal Pollution Control Act, also know as the Clean Water Act, as amended, 33 U.S.C. 1251, et seq.

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(b) Chattanooga Area 208 Waste Treatment Management Plan. A plan prepared under the provisions of Section 208 of the Act, (33 U.S.C. 1288) for areawide waste treatment management for areas of Hamilton County, Tennessee, and Dade, Walker, and Catoosa Counties in Georgia, as certified and designated by the respective governors of Tennessee and Georgia as approved by the Administrator of the Environmental Protection Agency.

(c) Environmental Protection Agency, or "EPA" means the Environmental Protection Agency, an agency of the United States, or where appropriate the term may also be used as a designation for the Administrator or other duly authorized official of said agency.

(d) Industrial User means:

- (1) any nongovernmental, nonresidential user of a publicly owned treatment works which is identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemented under one of the following divisions:

Division A.	Agriculture, Forestry, and Fishing.
Division B.	Mining.
Division D.	Manufacturing.
Division E.	Transportation, Communications, Electric, Gas, and Sanitary Services.

- (2) Any nongovernmental user of a publicly owned treatment works which discharges wastewater to the treatment works which contains toxic pollutants or poisonous solids, liquids, or gases in sufficient quantity either singly or by interaction with other wastes, to contaminate the sludge of any municipal systems, or to injure or to interfere with any sewage treatment process, or which constitutes a hazard to humans or animals, creates a public nuisance, or creates any hazard in or has an adverse effect on the waters receiving any discharge from the treatment works.

- (3) All commercial users of an individual system constructed with grant assistance under Section 201(h) of the Act.

(e) Interference means inhibition or disruption of the sewer system, treatment processes or operations or which contributes to a violation of any requirement of Chattanooga's NPDES Permit. The term includes prevention of sewage sludge use or disposal by the POTW in accordance with Section 405 of the Act, (33 U.S.C. 1345) or any criteria, guidelines or regulations developed pursuant to the Solid Waste Disposal Act (SWDA), the Clean Air Act, the Toxic Substances Control Act, or more

stringent state criteria (including those contained in any state sludge management plan prepared pursuant to Title IV of SWDA) applicable to the method of disposal or use employed by the POTW.

(f) National Pollution Discharge Elimination System or NPDES permit. A permit issued to a POTW pursuant to Section 402 of the Act (33 U.S.C. 1342).

(g) Pollution. The man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.

(h) Pretreatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration can be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by 40 C.F.R. §403.6(d).

(i) Local Pretreatment Standards. Any substantive or procedural requirement related to pretreatment, other than a National Pretreatment Standard imposed on an industrial user.

(j) National Pretreatment Standard or Pretreatment Standard means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Act (33 U.S.C. 1347) which applies to Industrial Users.

(k) Publicly owned treatment works or POTW. A treatment works as defined by Section 212 of the Act, (33 U.S.C. 1292) which is owned in this instance by the City of Chattanooga. This definition includes any sewers that convey wastewater to such a treatment works, but does not include pipes, sewers or other conveyances not connected to a facility providing treatment. The term also means the City of Chattanooga, a municipality, as defined in Section 502(4) of the Act, (33 U.S.C. 1362) which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

(l) Toxic pollutant. Any pollutant or combination of pollutants listed as toxic in regulations promulgated by the Administrator of the Environmental Protection Agency under the provisions of 33 U.S.C. 1317.

(m) Treatment works. Any devices and systems used in the storage, treatment, recycling and reclamation of domestic sewage or industrial wastes of a liquid nature including interceptor sewers, outfall sewers, sewage collection systems, pumping power, and other equipment and appurtenances; extensions, improvements, remodeling, additions and alterations thereof, elements essential to provide a

reliable recycled supply such as standby treatment units and clear well facilities; and any works, including land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment; and including combined storm water and sanitary sewer systems.

(n) USER. Any person, firm, corporation or governmental entity that discharges, causes or permits the discharge of wastewater into a community sewer.

(o) WASTE. Includes sewage and any and all other waste substances, liquid, solid, gaseous or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing or processing operation of whatever nature, including such waste placed within containers of whatever nature prior to, and for purposes of, disposal.

(p) Wastewater. Waste and water, whether treated or untreated, discharged into or permitted to enter a community sewer.

(q) Wastewater constituents and characteristics. The individual chemical, physical, bacteriological and radiological parameters, including volume and flow rate and such other parameters that serve to define, classify or measure the contents, quality, quantity and strength of wastewater.

3. Collegedale shall upon the completion of the construction of the interconnecting lines discharge wastewater into the Chattanooga system for treatment and ultimate disposal. Chattanooga shall be responsible for the conveyance of Collegedale's wastewater from the point of interconnection to its treatment works and shall be responsible for appropriate treatment and disposal of said sewage.

4. The operation of sewage systems and treatment works and the ultimate disposal of treated wastewater and its sludges or by-products is regulated by the United States and the State of Tennessee. It is necessary to regulate the introduction of wastewater into the system, particularly from industrial and commercial sources, to facilitate operation of the system in conformity with applicable federal and state laws, regulations, and permits. It is necessary to prohibit the introduction into the treatment works of certain classes of pollutants which may

interfere with the operation of the treatment works such as but not limited to: (1) pollutants which create a fire or explosion hazard, (2) pollutants which will cause corrosive structural damage, (3) solid or viscous pollutants in amounts which will cause obstruction to the flow in sewers or other interference with the operation of the POTW, (4) pollutants, including oxygen demanding pollutants (BOD, etc.), released in a discharge of such volume or strength as to cause interference in the POTW, and (5) heat which will inhibit biological activity in the POTW. The discharge of effluent from the treatment works and the disposal of sewerage sludge is also regulated by state and federal agencies. To achieve the standards established by the state in the City's NPDES permit, and other federal and state regulations, it is necessary to regulate the introduction of pollutants into the system.

In order to achieve the aforementioned objectives, Chattanooga has heretofore, based upon engineering studies, established specific discharge limitations (sometimes hereinafter referred to as "local pretreatment standards") regulating the introduction of sewage into the system by certain classes of users, particularly industrial users, which may from time to time need to be revised in order to achieve the aforementioned objectives. Chattanooga shall be responsible for periodic review of said local pretreatment standards, and shall from time to time revise same to insure compliance with federal and state standards and that of any other governmental body having legal authority to set such standards and restrictions.

Collegedale agrees to regulate through a comprehensive sewer use ordinance, and/or other appropriate measures, the introduction of wastewater into its system in a manner essentially consistent with ordinances and other regulatory measures of the City of Chattanooga. Collegedale shall in said comprehensive ordinance adopt local pretreatment standards and other ancillary regulations no less stringent than such standards and regulations

then in effect in Chattanooga. Collegedale shall, prior to interconnecting to Chattanooga's system, submit a copy of said comprehensive ordinance to Chattanooga and EPA for approval, and shall thereafter promptly submit copies of any amendments.

Collegedale shall be responsible for enforcing violation of national, state, and local pretreatment standards and regulations. Collegedale agrees to carry out monitoring and inspection activities to determine compliance by industrial users with pretreatment standards in a manner essentially consistent with such activities then being undertaken by Chattanooga. Collegedale may contract with a competent person, corporation, or governmental agency, including the City of Chattanooga, to sample and analyze wastewater samples. Chattanooga shall be furnished a copy of the data obtained from such monitoring activities by Collegedale and a copy of all industrial monitoring reports submitted by users of the system. So that Chattanooga may verify the monitoring reports submitted by Collegedale, Chattanooga reserves the right to from time to time collect effluent samples within Collegedale. Collegedale agrees to cooperate with Chattanooga in regard to the collection of said samples. Collegedale agrees to work jointly with Chattanooga in processing applications for discharge of industrial waste into the Collegedale system. Both Collegedale and Chattanooga shall have the authority to withhold approval of an application for discharge of industrial waste. The approval of any application will not be unreasonably withheld.

Chattanooga reserves the right to reject any wastewater which does not meet its standards or amendments thereto, but Chattanooga expressly covenants that no such rejection shall not be arbitrary on its part. Unless there shall be an imminent, immediate, and substantial danger to the public health and safety, Chattanooga shall notify Collegedale in writing at least thirty (30) days prior to rejecting any such wastewater flow and shall

cite its reasons for such rejection. To the extent that Chattanooga rejects such wastewater flow for treatment, Collegedale shall then be authorized to attempt to provide additional conveyance and treatment from any other source.

3. There are four separate and distinct types of sewer service charges which currently are applicable to this agreement. For purposes of this agreement, these separate categories will be referred to as the "Wheelage and Treatment Rate," the "Infiltration and Inflow Surcharge," the "Industrial User Surcharge," and the "Industrial Cost Recovery Charge."

The current Wheelage and Treatment Rate established by Chattanooga Ordinance No. 7498 is \$0.4654 per 1,000 gallons. The Infiltration and Inflow Surcharge Rate established by said ordinance is \$0.2494 per 1,000 gallons. The method of arriving at the monthly charge and billing procedures is set forth in Ordinance No. 5942, a copy of which is attached hereto and incorporated herein as Exhibit A.

The Industrial User Surcharge is an additional charge for industrial users who discharge wastewater in concentrations in excess of "normal wastewater." The rates currently in force and the method of computing same are set forth in Ordinance No. 7580, a copy of which is attached hereto and incorporated herein as Exhibit B.

The Industrial Cost Recovery Charge is a charge required under the Act, although the collection of same is now under "moratorium," which is established for the purpose of recovering from industrial users a portion of grant monies of the Environmental Protection Agency utilized in the sewer system. Particulars relating to the Industrial Cost Recovery Charge are included in Chattanooga Ordinance No. 7580.

Although the parties anticipate that a new rate structure shall be in existence prior to the interconnection of the systems, should the new rate structure not then be developed, the parties agree that the aforementioned rates shall apply. The

Wheelage and Treatment Rate and the Infiltration and Inflow Surcharge shall be billed directly to Collegedale in accordance with Ordinance No. 5942, except that the rates specified in Ordinance No. 7498 shall apply. The Industrial User Surcharge and the Industrial Cost Recovery Charge shall be billed by Chattanooga through Collegedale for collection from industrial users together with any similar charges by Collegedale at the time and in the manner specified in Ordinance No. 7580.

Under the terms of bond covenants now in effect, which are more fully set forth in Chattanooga Resolution No. 5103, dated December 9, 1952, Chattanooga is contractually bound to charge sewer fees sufficient for operation of the system, sufficient for retirement of the bonds, and for adequate reserves as set forth in said covenants. Some bonds issued under the aforementioned resolution are still outstanding, and the last issue is not scheduled to be retired until January 1, 1988. Until said bonds are retired, the agreement between Chattanooga and Collegedale should be in accordance with the provisions of the bond covenants. The requirement to maintain reserves to retire said bonds contained in Article IV, Section 4.04 of Resolution No. 5103 shall be deemed to be an operation and maintenance cost solely attributable to Chattanooga with respect to the rate charge system specified below.

Chattanooga has employed Hensley-Schmidt, Inc., consulting engineers, under a grant obtained from the Environmental Protection Agency, to develop a new rate charge system for Chattanooga and other users of the system. Upon completion of said study, Chattanooga agrees to revise the charges for users or user classes to accomplish the following:

- (1) maintain the proportionate distribution of operation and maintenance costs among users and user classes as required by federal regulations;
- (2) generate sufficient revenue to pay the total operation and maintenance costs necessary to the proper operation

and maintenance (including replacement) of the treatment works;
and

(3) apply excess revenues collected from a class of users to the costs of operation and maintenance to attributable to that class for the next year and adjust the rates accordingly.

(4) to fully comply with Section 204(b) of Act (33 U.S.C. 1289) and all applicable federal or state laws and regulations.

The cost of operation and maintenance of Chattanooga collector lines and interceptor sewer lines not used by Collegedale under this agreement shall be specifically considered in said rate charge system and such cost shall be proportionately distributed to Chattanooga.

Following the adoption of a comprehensive rate structure based upon the aforementioned study, the City agrees to review said rates no less frequently than biennially, and make appropriate revisions thereto. Chattanooga further covenants to operate the system at all times in an efficient and economical manner in order to minimize the revenues needed for the operation of its system.

The City shall on or before October 20 of each year, or such other time as shall be mutually agreeable, prepare a detailed preliminary budget of the estimated operating expenses of the sewer system for the succeeding year, a copy of which shall be mailed to Collegedale. Collegedale shall present to Chattanooga on or prior to December 1 of said year or other mutually agreeable date, any objections which it may have to the rates which will be in effect for the users of the system. The parties shall attempt to reconcile any differences existing, but in the event they are unable to do so, the rates established by Chattanooga shall prevail unless and until changed following appropriate legal procedures.

Collegedale agrees to adopt a user charge system for its users in accordance with Section 204(b)(1)(A) of the Act and

40 C.F.R. §§35-929 through 35-929.3 or other applicable federal or state laws or regulations. These rates shall be incorporated in appropriate municipal legislative enactments and following the public notification requirements of 40 C.F.R., Part 25.

6. Collegedale shall discharge its wastewater at a manhole at the point of termination of Chattanooga's Summitt Interceptor lying within Chattanooga near the existing boundary of Chattanooga and Hamilton County between U.S. Interstate 75 and U.S. Highways 11 and 64, or at such additional points of entry as may be mutually agreed on by the parties hereto. It shall be the sole responsibility of Collegedale, including any liability incurred in connection therewith, to convey wastewater to the point or points of entry through its own facilities. Collegedale agrees to complete such construction, expansion, or improvements necessary to connect to the Chattanooga system, and Chattanooga agrees to complete such construction, expansion or improvements necessary to enable Collegedale to interconnect at said point of entry. A metering station will be located approximately fifty feet (50') downstream from said point of entry for the purpose of monitoring and recording the number of gallons of wastewater flow and sampling wastewater characteristics.

7. The responsibility for wastewater discharged under this Agreement shall remain with Collegedale to the above-described point of entry, and upon passing through the above-described point of entry, it shall become the responsibility of Chattanooga. As between the parties, each party hereto agrees to save and hold the other party harmless from all claims, demands, and causes of action which may be asserted by anyone on account of the reception, transportation, delivery, and disposal of such wastewater while it is within the control of the respective party. This covenant shall not, however, relieve Collegedale of the responsibility for any claims, demands, and causes of action which may be asserted by anyone, specifically including Chattanooga, which arise out of the failure of Collegedale's wastewater to meet the standards and

restrictions set forth in Paragraph 4 above. Any such liability payments by Chattanooga or Collegedale resulting from the operation of its system shall be deemed an operation and maintenance expense of the respective system for purposes of determining the user fees which shall be necessary to insure that the system has sufficient revenues for operation. This covenant is not made for the benefit of any third party.

8. Chattanooga will furnish, install, operate and maintain at the point of entry the necessary equipment and devices of a standard type for measuring properly all wastewater to be discharged under this Agreement. Such meters and other equipment shall remain the property of Chattanooga; however, Collegedale shall have free access to such equipment at all reasonable times for inspection and examination, but the reading, calibration, and adjustments thereof shall only be done by employees or agents of Chattanooga, which if requested will be done in the presence of representatives of Collegedale. All readings of meters will be entered upon proper books of record maintained by Chattanooga, which may be inspected by Collegedale during normal business hours.

The charges to Collegedale for wastewater treated by Chattanooga shall be based upon water meter readings, not the measuring device referred to in this paragraph. The purpose of the measuring device is to provide a cross-check for water meter readings, to provide data concerning infiltration and inflow, and to provide data concerning wastewater constituents and characteristics which may be useful in the operation of the treatment works.

9. The obligation of Collegedale to pay for sewage delivered and treated under this Agreement shall not be construed as a debt of Collegedale requiring it to levy and collect a tax to discharge the same unless said obligation has been reduced to a legally enforceable judgment; but shall be an operating charge of its sewer system ranking equally to charges for salaries,

wages, and other operating expenses of such system. Collegedale covenants at all times to establish, maintain, prescribe, and collect fees, tolls, and charges for wastewater facilities furnished its customers, sufficient to provide funds for the payment of all obligations of Collegedale under this Agreement.

10. Chattanooga expressly covenants and agrees that it shall operate its wastewater conveyance and treatment facilities in such a manner as to fully meet the needs of Collegedale up to a capacity of 4.56 million gallons per day. Chattanooga may enter into other contracts relating to the conveyance and treatment of wastewater from other municipalities or agencies; however, Chattanooga shall not enter into other such contracts which restrict its ability to fully meet its obligations to Collegedale.

11. In case by reason of "force majeure" either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then if such party shall give notice and full particulars of such "force majeure" in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such "force majeure," shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of a public enemy, orders of any kind of the Government of the United States or of the State of Tennessee or of any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrest, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, partial or entire failure of water supply or inability on the part of Chattanooga to transmit or treat sewage hereunder, or Collegedale to deliver sewage

hereunder, on account of any other causes not reasonably within the control of the party claiming such inability.

12. Should any phrase, clause, sentence, or paragraph of this contract be held invalid or unconstitutional by any Court of competent jurisdiction of the State of Tennessee or the United States of America in any manner or respect whatsoever, it shall in no wise affect any or all of the remaining provisions, all of which shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto acting by and through their duly authorized officers, pursuant to the appropriate resolutions hereinbefore duly and properly adopted by each, have caused this contract and Agreement to be executed in duplicate, each delivering to the other a copy having the full force and effect of an original, all as of the 26th day of May, 1980.

CITY OF CHATTANOOGA

(Seal)

By: Charles A. "Pat" Rose
CHARLES A. "PAT" ROSE
Mayor

ATTEST:

H. D. Miller
H. D. MILLER, Auditor

CITY OF COLLEGEDALE

(SEAL)

By: Dewitt Bowen
DEWITT BOWEN
MAYOR

ATTEST:

Lee D. Holland
LEE D. HOLLAND, CITY MANAGER