

RESOLUTION NO. 30202

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT FOR SALE AND PURCHASE WITH ATHENS DISTRIBUTING COMPANY, IN SUBSTANTIALLY THE FORM ATTACHED, FOR THE PROPERTY LOCATED AT 2754 KANASITA DRIVE, TAX MAP NO. 110B-B-001.17, IN THE AMOUNT OF FOUR HUNDRED FIFTY-FIVE THOUSAND DOLLARS (\$455,000.00) FOR THE CONSTRUCTION OF AN EQUALIZATION STORAGE FACILITY, A CONSENT DECREE PROJECT, AND TO EXECUTE ALL DOCUMENTS RELATED TO THE TRANSACTION WITH CLOSING FEES, FOR AN AMOUNT NOT TO EXCEED FOUR THOUSAND DOLLARS (\$4,000.00), FOR A TOTAL AMOUNT NOT TO EXCEED FOUR HUNDRED FIFTY-NINE THOUSAND DOLLARS (\$459,000.00).

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, that it is hereby authorizing the Mayor to enter into a contract for sale and purchase with Athens Distributing Company, in substantially the form attached, for the property located at 2754 Kanasita Drive, Tax Map No. 110B-B-001.17, in the amount of \$455,000.00 for the construction of an equalization storage facility, a Consent Decree Project, and to execute all documents related to the transaction with closing fees, for an amount not to exceed \$4,000.00, for a total amount not to exceed \$459,000.00.

ADOPTED: January 28, 2020

/mem

CONTRACT FOR SALE AND PURCHASE

This Contract for Sale and Purchase of Real Estate (“Contract”) is made and entered into this ___ day of _____, 20___, (“Effective Date”) by and between ATHENS DISTRIBUTING COMPANY, a Tennessee general partnership, n/k/a ATHENS DISTRIBUTING COMPANY OF CHATTANOOGA, a Tennessee general partnership (“Seller”) and the CITY OF CHATTANOOGA, TENNESSEE, a Tennessee municipal corporation (“Buyer”).

1. **Property.** Seller, in consideration of the mutual covenants and obligations herein, does hereby agree to convey to Buyer, and Buyer agrees to purchase from Seller upon the terms and conditions hereof, the property described on **Exhibit A** attached hereto and incorporated by reference.
2. **Effective Date of Contract.** The Effective Date of this Contract, as the term shall be used herein, shall be the date first set forth above.
3. **Consideration; Payment.** Subject to the terms, conditions, and provisions herein, Buyer agrees to pay, and Seller agrees to accept as full consideration for the conveyance of the Property, the purchase price as set forth below:
 - a. **Purchase Price.** Buyer agrees to pay, and Seller agrees to accept as full consideration for the conveyance of the Property, the sum of FOUR HUNDRED FIFTY-FIVE THOUSAND AND NO/100 DOLLARS (\$455,000.00) (the “Purchase Price”). The Purchase Price shall be paid by Buyer at closing.
 - b. **Method of Payment.** At closing, the Purchase Price shall be paid by the Buyer to the Seller in cash.

4. **Survey and Title Approval.**

- a. Buyer may, at Buyer's expense and direction, obtain a survey and surveyor's certificate, in form sufficient to remove the survey exception from the title insurance commitment, prepared by a licensed surveyor selected by Buyer. Such survey shall incorporate an exact description of the Property to be conveyed, shall be dated not more than thirty (30) days prior to the Closing Date, shall show the total area of the Property in square feet, easements, if any, dimensions and locations of improvements, driveways, location of adjoining streets and rights of way, building setback lines, zoning requirements and such other details as may be required by Buyer.
- b. **Title Commitment.** Buyer may, at Buyer's expense and direction, obtain from a title insurance company, a title insurance commitment in the amount of the Purchase Price, which shall constitute the commitment of such company to insure the title to the Property in the name of the Buyer with an owner's title insurance policy. Buyer shall pay for all costs associated with the issuance of the title insurance commitment and title policy.
- c. **Environmental Assessments.** At Buyer's expense and direction, Buyer shall obtain a Phase I Environmental Site Assessment of the Property (the "Phase I"). If any matters objectionable to Buyer are disclosed by the Phase I, Buyer shall give Seller written notice within ten (10) days of receipt of the Phase I.

- d. **Review of Due Diligence Documents.** Buyer shall have forty-five (45) business days from its receipt (the “Due Diligence Period”) of all of (i) the title insurance commitment, (ii) legible copies of all documents referenced in title commitment and the title exceptions disclosed therein, (iii) the survey, and (iv) Phase I ((i) through (iv)), together, the (“Due Diligence Documents”) to review same. If any title or survey defects or other matters objectionable to Buyer are disclosed by any of the Due Diligence Documents, Buyer shall give Seller written notice of same prior to the expiration of the Due Diligence Period. Seller shall be allowed a reasonable time, not in excess of thirty (30) business days, within which to cure such defects or other objectionable matters; provided, however, that in no event shall Seller’s cure period extend beyond the Closing Date without the express written consent of Buyer. If the defects are not timely cured to Buyer’s satisfaction, Buyer may waive such defects and proceed to close, or Buyer may terminate this Contract by written notice to Seller, in which event the parties shall be released from further liability to the other.
- e. **Title at Closing.** If Buyer elects to purchase title insurance, at Closing, such title insurance commitment, as approved in form and substance by Buyer, shall be modified to remove any ALTA Standard Exceptions and any other matters to which Buyer has objected, to show title to the Property vested in Buyer, and to update the effective date of such title insurance commitment to the Closing Date.

5. **Closing Costs.**

- a. Seller shall be responsible for all fees, costs, and expenses incurred by Seller in connection with or relating to Seller's satisfying the terms and conditions hereof.
- b. Buyer shall be responsible for all fees, costs and expenses incurred by Buyer in connection with or relating to Buyer's satisfying the terms and conditions hereof.
- c. Buyer and Seller shall be responsible for their own attorney's fees.
- d. All other costs shall be allocated as follows:

<u>Cost</u>	<u>Party Responsible</u>	
	<u>Seller</u>	<u>Buyer</u>
Title Insurance & Title Examination		X
Preparation of Deed	X	
Survey		X
Recording Fees and Tax on Deed		X
Phase I Environmental Assessment		X
Water Quality Fees (prorated)	X	X

6. **Adjustments.** At Closing, the following adjustments between the parties shall be made as of 12:01 a.m. on the Closing Date of the transaction:

- a. Real estate taxes upon the Property for 2019 shall be paid by Seller. From and after the Closing Date, the Property will be exempt from the payment of real property taxes. Water quality fees assessed for the year 2019 (regardless of when due and payable) shall be prorated. Special assessments levied prior to the Closing shall be the responsibility of Seller. The provisions contained in this subparagraph shall survive the Closing and shall not be merged into the deed.

b. All other expenses of operating or owning the Property, including without limitation, utilities and any assessments, shall be apportioned as of the Closing Date, those accruing through the Closing Date being Seller's responsibility, those accruing after the Closing Date being Buyer's responsibility.

7. **Casualty; Risk of Loss and Rights of Termination.** Seller assumes the risk of loss from fire or other casualty, including, without limitation, flood, earthquake, tornado, and vandalism until the Closing Date. In the event of a fire or other casualty occurring prior to the Closing Date so that the Property is unable to be used by Buyer as a protected conservation area as determined by Buyer in its reasonable judgment, then Buyer may terminate this Contract by giving written notice to Seller. In the event the Property is damaged by any fire or other casualty prior to the Closing Date and this Contract is not terminated, Seller shall, at Buyer's option, either (i) validly and properly transfer all insurance proceeds paid or payable as a result of such damage, plus an amount equal to the deductible thereunder, to Buyer at Closing, or (ii) fully restore the damaged portions of the Property, continuously and diligently to its condition immediately prior to the occurrence of such fire or other casualty. Buyer shall have the right to postpone the Closing until any restoration work that Seller is required to perform under the preceding sentence is completed, or Buyer may proceed with the Closing at any point during the same; provided, however, if Buyer elects to proceed with the Closing prior to the completion of such repairs and restoration, Seller's obligations under this section shall survive the Closing and the delivery of the deed.

8. **Condemnation.**
- a. If all or any part of the Property shall be condemned or otherwise taken through any power of eminent domain prior to Closing, Seller shall give notice to Buyer of such action upon receipt of formal notice of such proceedings, and Buyer may elect to:
- (i) terminate the Contract and completely void the Contract, relieving both Buyer and Seller of all duties and/or obligations hereunder, or
- (ii) take the Property under the terms of this Contract and require Seller to assign to Buyer all of Seller's interest in and to any such condemnation award.
- b. Buyer's election under the preceding Paragraph a. shall be made by notice in writing to Seller and be made at any time within ten (10) days of delivery of Seller's written notice of any such taking to Buyer.
9. **Conveyances.** At Closing, Seller shall convey the Property to Buyer by Warranty Deed. Title to the Property shall be good and marketable subject only to easements, zoning, covenants, restrictions, and reservations of record and other matters reflected on the title commitment or otherwise acceptable to Buyer.
10. **Conditions.** The duties and obligations of Buyer under the terms and provisions of this Contract are and shall be expressly conditioned upon:
- a. Buyer, and Buyer's agents, may inspect and have access to the Property up to and through the Closing Date.
- b. Approval by Buyer of a satisfactory report of title insurance as specified in Paragraph 4b hereof.

- c. Approval by Buyer of a satisfactory survey as specified in Paragraph 4a hereof.
- d. Approval by Buyer of satisfactory Phase I and Phase II Environmental Site Assessments as specified in Paragraph 4c hereof.
- e. Seller's delivery to Buyer, at or before the Closing Date of such resolutions and/or consents to the sale of the Property all in such form as is satisfactory to Buyer.
- f. Buyer's approval that no material, adverse change occurring in the physical or financial condition of the Property between the Effective Date of this Contract and the Closing Date, including, but not limited to, any change in the environmental condition of the Property. To the best of Seller's knowledge, there are no conditions at, on, under or related to the Property presently or potentially posing a significant hazard to human health or the environment, whether or not in compliance with law, and there has been no production, use, treatment, storage, transportation, or disposal of any Hazardous Substance as hereinafter defined, on the Property, nor any release or threatened release of any Hazardous Substance, pollutant or contaminant into, upon or over the Property or into or upon ground or service water at the Property. To the best of Seller's knowledge, no Hazardous Substance is now or ever has been stored on the Property in underground tanks, pits or surface impoundments and there are no asbestos-containing materials incorporated into any buildings or interior improvements or equipment that are part of the Property. For purposes of

this Contract, “**Hazardous Substance**” shall have the meaning set forth at 42 U.S.C. § 9601(14), as well as the meaning(s) set forth in any applicable state law or regulation. Furthermore, confirmation that as of the Closing Date no lawsuit or similar proceeding which is adverse to the Property or Buyer’s intended use thereof has been instituted or threatened, and that no governmental investigation, action or proceeding which is adverse to the Property or Buyer’s intended use thereof has been adopted, proposed or threatened, including, but not limited to, any zoning change or taking by condemnation or eminent domain.

- g. If any construction has occurred or improvements completed on the Property within twelve (12) months prior to Closing, the recording of a proper and valid Notice of Completion prior to Closing and receipt of no claims thereunder.
- h. In the event of the failure of Conditions set forth herein to be met to the reasonable satisfaction of Buyer, Buyer may give notice to Seller of Buyer’s decision to terminate the Contract and completely void the Contract, relieving both parties of any further duties and/or obligations hereunder.

11. **Representations and Warranties.** Seller warrants and represents that:

- a. With respect to the use and ownership of the Property, to Seller’s knowledge there are no existing or threatened defaults or disputes with or by any person, including Seller, under the terms of any agreement, contract, or lease, including, but not limited to, any service, utility, or maintenance agreements.

- b. To Seller's knowledge, there are no encumbrances, liens, or charges of any kind upon the Property which will not be satisfied and discharged in full by Seller and released, at or before the Closing, in form satisfactory to Buyer and Buyer's counsel, except as reflected in the title commitment or otherwise acceptable to Buyer.
- c. To Seller's knowledge, there are no leases of any kind on the Property which will not be terminated by Seller before the Closing in form satisfactory to Buyer and Buyer's counsel.
- d. All the representations, covenants, and warranties of the Seller made herein are and shall be continuous and continuing in all of the same shall remain true and correct in all respects through the Closing Date.

12. **Contract Default.**

- a. **Seller's Default.** If Seller fails to comply with this Contract within the time specified or if Seller breaches any covenant contained herein, Buyer may pursue any remedies available to it at law or in equity. An election by Buyer to pursue any one or more of its available remedies at law or in equity shall in no way limit or be deemed a waiver of its rights to pursue any other remedies available.
- b. **Buyer's Default.** If Buyer fails to comply with this Contract within the time specified and Seller does not waive such default, Seller may pursue any remedies available to them at law or in equity. An election by Seller to pursue any one or more of their available remedies at law or in equity shall

in no way limit or be deemed a waiver of their rights to pursue any other remedies available.

13. **Closing Date and Location.**

- a. The Closing shall be held on or before _____, 20__, or at such other date as shall be mutually agreeable to Buyer and Seller.
- b. The Closing shall be held at the offices of Buyer's title company, or at such other location as is mutually satisfactory to Buyer and Seller.
- c. At Closing, all documents herein contemplated for the conveyance of the Property and all other necessary documents and instruments shall be executed and/or delivered.

14. **Possession.** Possession of the Property shall be transferred to Buyer at Closing. Seller shall have until the Closing Date to remove its personal property from the Property.

15. **Notices.**

- a. **Written Notices; Addresses.** All notices required herein must be written and shall be deemed to have been validly given when deposited postage prepared in the United States Mail, Certified, Return Receipt Requested, addressed to the parties as identified and set forth below:

Seller: Athens Distributing Company of Chattanooga
P. O. Box 23287
Chattanooga, TN 37422
Attn: Thomas H. White, III

Buyer: City of Chattanooga
c/o ECD Real Property
101 E. 11th Street, Suite G4
Chattanooga, TN 37402

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

- b. **Attorneys.** The respective attorney for each party shall have the right, but not the obligation, to give any notice on behalf of such attorney's client. Any notice so given by such attorney shall be deemed to have been given by such attorney's client.
 - c. **Facsimile.** A facsimile copy of any signed notice is deemed to be a valid notice if it is followed by mailing of the signed original of such notice pursuant to Paragraph 15a.
16. **Real Estate Commissions.** The Seller represents there are no real estate commissions owed in connection with the sale of the Property. Seller agrees to indemnify, defend, and hold harmless Buyer from and against any and all losses, liens, claims, judgments, liabilities, costs, expenses or damages (including reasonable attorneys' fees and court costs) of any kind or character arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by such parties or on their behalf with any broker in connection with this Contract other than the Broker. Notwithstanding anything to the contrary contained herein, this paragraph shall survive the Closing or any termination of this Contract.
17. **Entire Agreement.** This Contract constitutes the sole and entire agreement between Buyer and Seller and no modification hereof shall be binding unless signed by both Buyer and Seller. Representations, promises, or inducements not included in this Contract shall not be binding upon either of the parties.

18. **Successors and Assigns.** This Contract shall be binding upon and shall inure to the benefit of each of the parties hereto, their respective heirs, successors, assigns, beneficial owners and representatives.
19. **Assignment.** Seller understands and agrees that Buyer shall have the right to assign its interest and duties in this Contract.
20. **Waiver of Breach.** The failure of either party to insist upon strict performance of any of the terms or conditions and covenants contained herein shall not be deemed to constitute a waiver of any rights or remedies by either party that they may have and shall not be deemed to constitute a waiver of any subsequent breach or default.
21. **Performance.** Time is of the essence in the performance and satisfaction of the obligations and conditions of this Contract.
22. **Miscellaneous.**
 - a. **Choice of Law; Severability.** The validity, construction, interpretation and performance of this Contract shall, in all ways be governed and determined in accordance with the laws of the State of Tennessee. Should there be any provision thereof to be declared invalid, illegal or unenforceable by a court of competent jurisdiction, the legality, validity, and enforcement of the remaining provisions shall not be affected, but shall continue in full force and effect.
 - b. **Captions.** The captions used in this Contract have been inserted only for purposes of convenience and the same shall not be construed or interpreted so as to limit or define the intent or the scope of any part of this Contract.

- c. **Gender and Number.** Within this Contract, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.
- d. **Exhibits.** All exhibits described herein and attached hereto are fully incorporated into this Contract by this reference for all purposes.
- e. **Counterparts/Effective Date.** This Contract may be executed by the parties independently in any number of identical counterparts as if the parties had executed one and the same counterpart, and all of such counterparts when taken together shall constitute one and the same instrument.
- f. **No Assumption.** Buyer's acquisition of the Property shall in no way be construed as an assumption of any liability, debt or obligation related thereto, known or unknown, which is allocable to periods prior to the Closing Date. Seller's sale of the Property shall in no way be construed as an assumption of any liability, debt or obligation related thereto, known or unknown, which is allocable to periods on or after the Closing Date.
- g. **Attorneys' Fees.** In any action or proceeding between Seller and/or its assignee(s), on the one hand, and either or both of the Buyer, on the other hand, arising from or related to this Contract, the prevailing party or parties shall be entitled to reasonable attorneys' fees and costs incurred in connection with such action or proceeding in addition to any other remedy to which such prevailing party may be entitled.

- h. **Survival**. The following provisions of this Contract shall survive the Closing: Paragraphs 3, 5, 6, 12, 15, 16, 17, 18, 19, 20, 21, and 22.

IN WITNESS WHEREOF, this Contract has been executed by the Buyer and Seller on the dates set out below their respective signatures hereto.

SELLER: Athens Distributing Company of Chattanooga

By: _____

Thomas H. White, III, *President*

Date: _____

BUYER: CITY OF CHATTANOOGA

By: _____

Andy Berke, *Mayor*

Date: _____

EXHIBIT A
PROPERTY DESCRIPTION

Lot Seven (7), Final Plat Chattanooga Corp. Subdivision, as shown in plat of record in Plat Book 116, Page 193, Register's Office of Hamilton County, Tennessee.