

RESOLUTION NO. 32005

A RESOLUTION AUTHORIZING THE ADMINISTRATOR FOR THE DEPARTMENT OF WASTEWATER TO EXECUTE A MEMORANDUM OF UNDERSTANDING, IN SUBSTANTIALLY THE FORM ATTACHED, WITH THE CITY OF CHATTANOOGA INDUSTRIAL DEVELOPMENT BOARD FOR THE DESIGN AND CONSTRUCTION OF THE CLASS A POWER (CLASS A BIOSOLIDS AND PROCESS OPTIMIZATION FOR WASTEWATER ENERGY RECOVERY) PROJECT.

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BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing the Administrator for the Department of Wastewater to execute a Memorandum of Understanding, in substantially the form attached, with the City of Chattanooga Industrial Development Board for the design and construction of the Class A Power (Class A Biosolids and Process Optimization for Wastewater Energy Recovery) Project.

ADOPTED: March 12, 2024

/mem

## MEMORANDUM OF UNDERSTANDING

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

### RECITALS

**WHEREAS**, the Wastewater Department plans to implement and construct the Class A POWER (Class A biosolids and Process Optimization for Wastewater Energy Recovery) Project (the "Project") at the Moccasin Bend Environmental Campus (MBEC) in Chattanooga, Tennessee (the "Project Site"); and

**WHEREAS**, the Project will be awarded through the Development Authority. The City will provide a grant of funds pursuant to T.C.A. § 6-54-118 for the the project by a mix of sources that may include loans from the EPA Water Infrastructure Finance and Innovation Act of 2014 (WIFIA), the Tennessee Department of Environment and Conservation State Revolving Fund (SRF) and cash; and

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

**WHEREAS**, the Development Authority authorizes the City and a professional consultant hired by the City to manage and execute the Project on its behalf; and

**WHEREAS**, the Development Authority shall lease from the City during Phase 1 of the Project in accordance with an executed Lease Agreement;

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

**WHEREAS**, the City presented to the Development Authority in a public meeting on April 17, 2023 that the Project is necessary for upgrades to the solids handling processes at MBEC and the project will comply with requirements in the WIFIA Loan stipulations; and

**NOW, THEREFORE**, upon and in consideration of the respective promises and covenants contained herein and for other good and valuable consideration, the receipt, adequacy,

and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

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

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

### **ARTICLE II - TERMS**

This agreement shall remain effective until final construction completion of the MBEC Green Energy Project.

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

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

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

### **ARTICLE IV - CITY COMMITMENTS**

- 3.1. City Commitment. The City will obtain ownership of all the infrastructure constructed and property in the Project following the completion of construction.

- 3.2. The City will obtain the professional services of a consultant to act as the Development Authority's Agent to manage the Design-Build of the project.
- 3.3. The City and Development Authority's Agent will be responsible for the following management tasks for the completion of the Project:
  - (a) Planning and conceptual engineering of the Project;
  - (b) Development of a request for proposals, receive and review the submitted proposals, and coordinate a selection committee for the procurement of the design-builder;
  - (c) Development of the design-build agreement for the Project. The design-build agreement will be developed to implement the project for the Development Authority in accordance with Exhibit B – Progressive Design-Build Process.
  - (d) Submission of resolutions to the Development Authority for authorization;
  - (e) Submission of quarterly, or more frequently if requested, status reports to the Development Authority concerning the project;
  - (e) Submission of applications for project funding and coordination with the financing agencies; and
  - (f) Management of the selected Design-Builder including schedule management, progress reporting, workshop attendance, budget management, and approvals of invoices.
  - (g) The Project shall be leased to the IDB during construction
  - (h) Compliance with all federal, state, and local requirements.

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

- 4.1. Development Authority Commitment. The Industrial Development Board of the City of Chattanooga, Tennessee, will act as the authority described in Tennessee Code Annotated § 12-10-124.
- 4.2. The Development Authority will be responsible for the following tasks:
  - (a) Retain leasehold ownership of all proposed infrastructure and property of the Project during design and construction.
  - (b) Transfer all constructed infrastructure and property to the City of Chattanooga following the completion of construction.

- (c) Award the design-build contract to the selected design-builder; and
- (d) Follow the funds transfer process as described in Exhibit C – Project Funds Transfer.
- (e) Compliance with all federal, state, and local requirements.

#### **ARTICLE VI - MISCELLANEOUS**

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

[Signature Page Follows]

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

**Administrator, Wastewater Department  
of the City of Chattanooga, Tennessee**

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

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

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

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

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

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

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

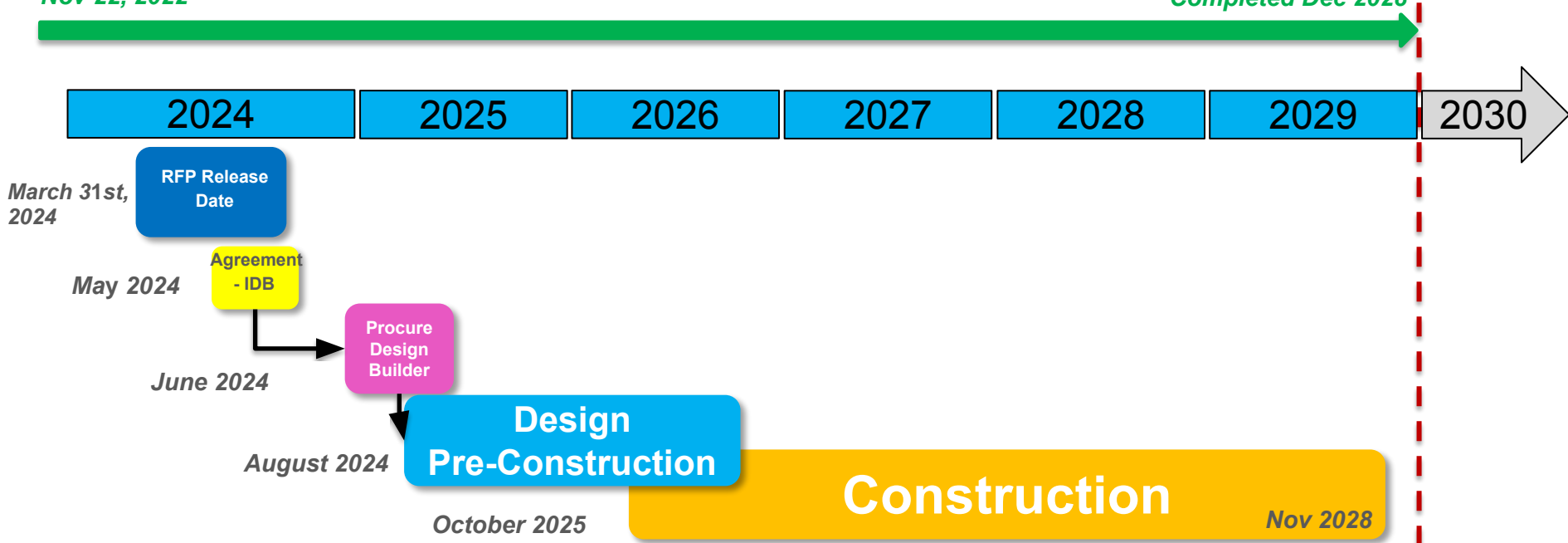
# MBEC RENEWABLE ENERGY PROGRAM

## DESIGN-BUILD TIMELINE

Exhibit A

WIFIA Loan Closed  
Nov 22, 2022

WIFIA Projects to be  
Completed Dec 2028



## **EXHIBIT B**

### **Design-Build Process**

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

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

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

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

#### **Design**

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

#### **Construction**

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

#### **Startup**

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



## **EXHIBIT C**

### **Funds Transfer Process**

1. The City budgets the funds from the funding agencies.
2. The City receives approval to receive loan financing from the funding agencies.
3. The IDB shall pay any contracts approved by the Development Authority during the course of construction.
4. As project tasks are completed, the design-builder will be permitted to invoice the IDB whenever they become due. The City and IDB's Agent will obtain the project invoices and request approval of the payment amount from the IDB as Development Authority.
5. Invoices will be paid using IDB funds.
6. IDB will be reimbursed from budgeted capital project funds on a monthly basis.
7. The design-builder will invoice the IDB until the scope of the design-builder contract is completed.
8. After the Project is completed the Development Authority shall transfer the ownership of the improvements from the design-build project to the City.