

BUTLER SNOW
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January 28, 2013

T.R.A. DOCKET ROOM

VIA HAND DELIVERY

Hon. James Allison, Chairman
c/o Sharla Dillon
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

RE: Joint Petition of Tennessee-American Water Company, the City of Whitwell, Tennessee, and the Town of Powells Crossroads, Tennessee, for Approval of a Purchase Agreement and a Water Franchise Agreement and for the Issuance of a Certificate of Convenience and Necessity, TRA Docket No. 12-00157

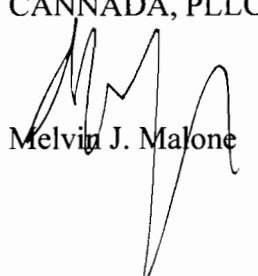
Dear Chairman Allison:

Enclosed please find the original and thirteen (13) copies of *Tennessee-American Water Company's Responses to the TRA's January 22, 2013, Data Requests* in the above-captioned matter. An extra copy is also attached to be filed-stamped for our records.

Should you have any questions concerning this filing, or require additional information, please do not hesitate to let us know.

Very truly yours,

BUTLER, SNOW, O'MARA, STEVENS &
CANNADA, PLLC


Melvin J. Malone

Enclosures

c: Parties of Record

ButlerSnow 15228877v1

1200 One Nashville Place
150 Fourth Avenue North
Nashville, TN 37219-2433

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615.503.9105
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www.butlersnow.com

**TENNESSEE-AMERICAN WATER COMPANY
DOCKET NO. 12-00157
REQUEST FROM THE TENNESSEE REGULATORY AUTHORITY**

Responsible Witness: Dan Bickerton

1. See Exhibit 1 to the testimony of Daniel Bickerton. What is the Powells Crossroads CDBG project referenced in footnote 1? Please explain how the Company determined the \$500,000 capital investment adjustment in utility plant.

Response:

The Powells Crossroads CDBG project referenced in Exhibit 1 refers to project funded through a Community Development Block Grant ("CDBG") awarded to the City of Whitwell from the Tennessee Department of Economic and Community Development. The grant award totaled \$500,000 to finance the construction of a water line improvement project located in the Powells Crossroads area of the Whitwell distribution system. A copy of the grant agreement is attached.



State of Tennessee
Department of Economic and Community Development

Office of Program Management
William R. Snodgrass Tennessee Tower, 10th Floor
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243-1102
615-741-6201 Voice/TDD / FAX: 615-741-0607

MEMORANDUM

TO: CDBG Grantee *Carolyn J. Hirschi*
FROM: Carolyn J. Hirschi
Director of Accounting for Grants and Loans
DATE: September 17, 2010
SUBJECT: Fully-Executed CDBG Contract

Enclosed is a copy for your files of the fully-executed contract with the State of Tennessee, Department of Economic and Community Development.

Please note the assigned contract number which you should reference on requests for payment and other correspondence.

If you have any questions, please feel free to contact me at (615) 253-1894.

CJH:mhc

Enclosure


Document Approval Status

SetID: SHARE Contract ID: 000000000000000000021936
Vendor ID: 0000002854 City Of Whitwell

New/Edit Approvers

Stage 1 DOC approval

▽ :Approved

 View Comments

Final Approval

Approved

✓ Patricia A King
Document Approval 1
8/17/2010 - 9:35 AM

→

Approved

✓ Brigitte N Tubbs
Document Approval 2
8/17/2010 - 3:08 PM

→

Approved

✓ Kay G Womack
Document Approval 3
9/9/2010 - 9:25 AM


Approval Comment History

Mary Anne J Queen at 9/15/2010 - 9:34 AM
Approval of the F&A approved document is on behalf of the Comptroller pursuant to current signature authorization. Document is now set to On Hold. This document should remain On Hold until OCR sets to Approved.

Kay G Womack at 9/9/2010 - 9:25 AM
Approval on behalf of the F&A Commissioner is applicable only to the OCR secured copy of 21936-GG1032595 attached to the Edison Document Management record.

Budget Office

▽ :Approved

 View Comments

Budget Threshold

Approved

✓ Matthew J Mcelroy
Con - Budget Office Approval
9/10/2010 - 7:47 AM


Approval Comment History

Mary Anne J Queen at 9/15/2010 - 9:34 AM
Approval of the F&A approved document is on behalf of the Comptroller pursuant to current signature authorization. Document is now set to On Hold. This document should remain On Hold until OCR sets to Approved.

Kay G Womack at 9/9/2010 - 9:25 AM
Approval on behalf of the F&A Commissioner is applicable only to the OCR secured copy of 21936-GG1032595 attached to the Edison Document Management record.

Post Budget

▽ :Approved

 View Comments

Post Budget

Approved

✓ Mary Anne J Queen
Document Approval - Comptrolle
9/15/2010 - 9:34 AM

→

Approved

✓ Robert E Barlow
Document Approval 3
9/15/2010 - 8:53 PM

Approval Comment History

Mary Anne J Queen at 9/15/2010 - 9:34 AM
Approval of the F&A approved document is on behalf of the Comptroller pursuant to current signature authorization. Document is now set to On Hold. This document should remain On Hold until OCR sets to Approved.

Kay G Womack at 9/9/2010 - 9:25 AM
Approval on behalf of the F&A Commissioner is applicable only to the OCR secured copy of 21936-

GG9-23-09

**GRANT**

(GG-type cost reimbursement grant to a federal or Tennessee local or quasi-governmental entity)

Agency Tracking # 33004 - 59210				Edison ID 21936	
Grantee (legal entity name) City of Whitwell				Grantee Federal Employer Identification # <input checked="" type="checkbox"/> C- 626015395	
Service Water line replacement to be funded with 2009 CDBG funds					
Grant Begin Date 10/29/2009		Grant End Date 9/30/2014		Subrecipient or Vendor <input checked="" type="checkbox"/> Subrecipient <input type="checkbox"/> Vendor	
				CFDA #(s) 14.228	
FY 10	State	Federal \$500,000.00	Interdepartmental	Other	TOTAL Contract Amount \$500,000.00
					\$0.00
					\$0.00
					\$0.00
					\$0.00
TOTAL:		\$0.00	\$500,000.00	\$0.00	\$500,000.00
American Recovery and Reinvestment Act (ARRA) Funding - <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
OCR USE F&A Secured Document # GG1032595			Agency Contact & Telephone # Pat King, Director of Finance 615-532-1289 Agency Budget Officer Approval (there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred) <i>Pat King / ncn</i> 6-10-10 Speed Code _____ Account Code _____		
			71302000		

CITY OF WHITWELL

2009 CDBG WATER SYSTEM IMPROVEMENT PROJECT

Agreement for Grant Administration Services

THIS AGREEMENT, entered into as of November 1, 2009 by and between the City of Whitwell, (hereinafter called the "City") and the Southeast Tennessee Development District (hereinafter called the "Contractor"), WITNESSETH THAT:

WHEREAS, the City desires to engage the Contractor to render certain technical or professional administrative services hereafter described in connection with the Water System Improvement Project (hereinafter called "Project"), being financed through a Community Development Block Grant (CDBG) from the Tennessee Department of Economic and Community Development.

WHEREAS, the CDBG does not require a solicitation for administrative services when this service is provided by the Southeast Tennessee Development District, which is a unit of government; and

WHEREAS, the State of Tennessee has approved the Development District to administer this project:

NOW THEREFORE, the parties hereto do mutually agree as follows:

1. The City hereby agrees to engage the Contractor and the Contractor hereby agrees to perform professional services in connection with the project as set forth below and contained in this AGREEMENT.
2. The Contractor shall do, perform and carry out, in a satisfactory and the proper manner the following services:
 - a. Provide administrative assistance to the City through staff that is trained and/or approved by the Tennessee Department of Economic and Community Development.
 - b. Set up administrative record keeping files for the City.
 - c. Manage compliance with environmental requirements.
 - d. Assist in removing any contract conditions and securing release of funds.
 - e. Assist in any necessary documentation of beneficiaries.
 - f. Assist in establishing procedure for financial management of contract funds.
 - g. Prepare and submit any necessary budget amendments.
 - h. Assist in meeting Equal Opportunity requirements and construction wage and employment requirements.
 - i. Monitoring of records for completeness.
 - j. Assistance as necessary in complying with the acquisition process under the Uniform Relocation Assistance Act.

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 - g. Prepare and submit any necessary budget amendments.
 - h. Assist in meeting Equal Opportunity requirements and construction wage and employment requirements.
 - i. Monitoring of records for completeness.
 - j. Assistance as necessary in complying with the acquisition process under the Uniform Relocation Assistance Act.

- k. Preparation, coordination and/or submission of all necessary reports, forms and documents.
 - l. Any and all other technical assistance requested and required by the City in completion of their CDBG Grant in a timely and proper manner.
3. The services of the Contractor are to commence as soon as practical after the execution of this Agreement and shall be undertaken and completed in the light of the purposes of this Agreement.
 4. The City agrees to compensate the Contractor for the following costs incurred in the conduct of the services rendered under this Agreement.
 - a. Direct chargeable salaries and fringe benefits.
 - b. Travel costs including lodging and subsistence.
 - c. Communication costs related to administration of the project.
 - d. Other direct costs.
 5. All costs charges shall be in accordance with the allowable amounts set forth in the Uniform Travel regulations adopted by the Tennessee Development District Association and the Contractor's Cost Allocation Plan prepared in accordance with the Accounting Manual for Development Districts in Tennessee prescribed by the Comptroller of the State of Tennessee.
 6. The Contractor shall maintain documentation for all expenditures under this Agreement. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Agreement, shall be maintained in conformity with generally accepted accounting principles for a period of three full years from the date of final payment, and shall be subject to audit at any reasonable time upon reasonable notice by CDBG, the Comptroller of the Treasury, the City or their duly appointed representatives. The records shall be maintained at no less than those recommended in the Uniform Accounting Manual for Development Districts in Tennessee, published by the Comptroller of the Treasury, State of Tennessee.
 7. It is expressly understood and agreed that in no event will the total compensation and reimbursement to be paid hereunder exceed the maximum sum of \$25,000 for grant administrative costs and \$1,500 for environmental review compliance, which are grant eligible expenses and included in the project budget.
 8. If through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In that event, all finished or unfinished documents, data, and reports prepared by the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed.
 9. In carrying out this Agreement, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or

recruitment advertising, layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applications for employment, notice to be provided by the Government setting forth the provisions of this non-discrimination clause. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color or national origin.

10. No officers, member, or employee of the City and no members of its governing body, and no other public official of the governing body of the locality who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Agreement, shall participate in any decision relating to this Agreement which affect his or her personal interest or have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.
11. The Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performances of services required to be performed under this Agreement. The Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed.

AGREED TO, and executed by the duly authorized officials of each party, to be effective as of the date first written above.

Witness

City of Whitwell

By: 

Chris Morrison, Mayor

Southeast Tennessee Development District


Witness

By: 

Beth Jones, Executive Director

**GRANT CONTRACT
BETWEEN THE STATE OF TENNESSEE.
DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT
AND
CITY OF WHITWELL**

This Grant Contract, by and between the State of Tennessee, Department of Economic and Community Development, hereinafter referred to as the "State" and City of Whitwell, hereinafter referred to as the "Grantee," is for the provision of water system improvements as further defined in the "SCOPE OF SERVICES."

Grantee Federal Employer Identification Number: 62-6015395

A. SCOPE OF SERVICES:

- A.1. The Grantee shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Grant Contract.
- A.2. Replacement of defective water lines with new pipe and related line appurtenances.

B. GRANT CONTRACT TERM:

This Grant Contract shall be effective for the period commencing on October 29, 2009 and ending on September 30, 2014. The State shall have no obligation for services rendered by the Grantee which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Grant Contract exceed Five Hundred Thousand Dollars (\$500,000.00). The Grant Budget, attached and incorporated herein as a part of this Grant Contract as Attachment A, shall constitute the maximum amount due the Grantee for the service and all of the Grantee's obligations hereunder. The Grant Budget line-items include, but are not limited to, all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Grantee.
- C.2. Compensation Firm. The maximum liability of the State is not subject to escalation for any reason unless amended. The Grant Budget amounts are firm for the duration of the Grant Contract and are not subject to escalation for any reason unless amended, except as provided in Section C.6.
- C.3. Payment Methodology. The Grantee shall be compensated for actual, reasonable, and necessary costs based upon the Grant Budget, not to exceed the maximum liability established in Section C.1. Upon progress toward the completion of the work, as described in Section A of this Grant Contract, the Grantee shall submit invoices prior to any reimbursement of allowable costs.
- C.4. Travel Compensation. Reimbursement to the Grantee for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time and shall be contingent upon and limited by the Grant Budget funding for said reimbursement.
- C.5. Invoice Requirements. The Grantee shall invoice the State no more often than monthly, with all necessary supporting documentation, to:

Department of Economic and Community Development
312 Rosa L. Parks Avenue, 10th Floor, Nashville, TN 37243

- a. Each invoice shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.
- (1) Invoice/Reference Number (assigned by the Grantee);
 - (2) Invoice Date;
 - (3) Invoice Period (period to which the reimbursement request is applicable);
 - (4) Grant Contract Number (assigned by the State to this Grant Contract);
 - (5) Account Name: Department of Economic and Community Development;
 - (6) Account/Grantor Number (uniquely assigned by the Grantee to the above-referenced Account Name);
 - (7) Grantee Name;
 - (8) Grantee Federal Employer Identification Number or Social Security Number (as referenced in this Grant Contract);
 - (9) Grantee Remittance Address;
 - (10) Grantee Contact (name, phone, and/or fax for the individual to contact with invoice questions);
 - (11) Complete Itemization of Reimbursement Requested for the Invoice Period, which shall detail, at minimum, the following:
 - i. Reimbursement Amount Requested by Grant Budget Line-Item for the invoice period (including any travel expenditure reimbursement requested in accordance with and attaching to the invoice appropriate documentation and receipts as required by the above-referenced "State Comprehensive Travel Regulations");
 - ii. Amount Reimbursed by Grant Budget Line-Item to Date;
 - iii. Total Amount Reimbursed under the Grant Contract to Date; and
 - iv. Total Reimbursement Amount Requested (all line-items) for the invoice period.
- b. The Grantee understands and agrees that an invoice to the State under this Grant Contract shall:
- (1) include only reimbursement requests for actual, reasonable, and necessary expenditures required in the delivery of service described in Grant Contract Section A subject to the Grant Budget and any other provision of this Grant Contract relating to allowable reimbursements; and
 - (2) not include any reimbursement requests for future expenditures.
- c. The Grantee agrees that timeframe for reimbursement begins when the State is in receipt of each invoice meeting the minimum requirements above.
- d. The Grantee shall complete and sign a "Substitute W-9 Form" provided to the Grantee by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Grant Contract for the Grantee. The Grantee shall not invoice the State under this Grant Contract until the State has received this completed form.
- C.6. Budget Line-items. Expenditures, reimbursements, and payments under this Grant Contract shall adhere to the Grant Budget. The Grantee may request revisions of Grant Budget line-items by letter, giving full details supporting such request, provided that such revisions do not result in funding for a line-item that was previously funded at zero dollars (\$0.00) and do not increase the total Grant amount. Grant Budget line-item revisions may not be made without prior, written approval of the State in which the terms of the approved revisions are explicitly set forth. Any such approval shall be superseded by a subsequent revision of the Grant Budget by contract amendment, and any increase in the total Grant amount shall require a contract amendment.

- C.7. Disbursement Reconciliation and Close Out. The Grantee shall submit a final invoice and grant disbursement reconciliation report within forty-five (45) days of the Grant Contract end date and in form and substance acceptable to the State.
- a. If total disbursements by the State pursuant to this Grant Contract exceed the amounts permitted by the Section C, Payment Terms and Conditions of this Grant Contract, the Grantee shall refund the difference to the State. The Grantee shall submit said refund with the final grant disbursement reconciliation report.
 - b. The State shall not be responsible for the payment of any invoice submitted to the state after the final invoice and grant disbursement reconciliation report. The State will not deem any Grantee costs submitted for reimbursement after the final invoice to be allowable and reimbursable by the State, and such invoices will NOT be paid.
 - c. The Grantee's failure to provide a final grant disbursement reconciliation report to the state as required shall result in the Grantee being deemed ineligible for reimbursement under this Grant Contract, and the Grantee shall be required to refund any and all payments by the state pursuant to this Grant Contract.
 - d. The Grantee must close out its accounting records at the end of the grant period in such a way that reimbursable expenditures and revenue collections are NOT carried forward.
- C.8. Indirect Cost. Should the Grantee request reimbursement for indirect cost, the Grantee must submit to the State a copy of the indirect cost rate approved by the cognizant federal agency and the State. The Grantee will be reimbursed for indirect cost in accordance with the approved indirect cost rate to amounts and limitations specified in the attached Grant Budget. Once the Grantee makes an election and treats a given cost as direct or indirect, it must apply that treatment consistently and may not change during the grant period. Any changes in the approved indirect cost rate must have prior approval of the cognizant federal agency and the State. If the indirect cost rate is provisional during the term of this agreement, once the rate becomes final, the Grantee agrees to remit any overpayment of funds to the State, and subject to the availability of funds the State agrees to remit any underpayment to the Grantee.
- C.9. Cost Allocation. If any part of the costs to be reimbursed under this Grant Contract are joint costs involving allocation to more than one program or activity, such costs shall be allocated and reported in accordance with the provisions of Department of Finance and Administration Policy Statement 03 or any amendments or revisions made to this policy statement during the Grant Contract period.
- C.10. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the costs invoiced therein.
- C.11. Unallowable Costs. The Grantee's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits or monitoring conducted in accordance with the terms of this Grant Contract, not to constitute allowable costs.
- C.12. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Grantee under this or any Contract between the Grantee and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Grantee.
- C.13. Automatic Deposits. The Grantee shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Grantee by the State. Once this form has been completed and submitted to the State by the Grantee all payments to the Grantee, under this or any other contract the Grantee has with the State of Tennessee shall be

made by Automated Clearing House (ACH). The Grantee shall not invoice the State for services until the Grantee has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Grant Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Grant Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Grant Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Grantee at least thirty (30) days written notice before the effective termination date. The Grantee shall be entitled to compensation for authorized expenditures and satisfactory services completed as of the termination date, but in no event shall the State be liable to the Grantee for compensation for any service which has not been rendered. The final decision as to the amount, for which the State is liable, shall be determined by the State. Should the State exercise this provision, the Grantee shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Grantee fails to properly perform its obligations under this Grant Contract in a timely or proper manner, or if the Grantee violates any terms of this Grant Contract, the State shall have the right to immediately terminate the Grant Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Grantee shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Grant Contract by the Grantee.
- D.5. Subcontracting. The Grantee shall not assign this Grant Contract or enter into a subcontract for any of the services performed under this Grant Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Grant Contract below pertaining to "Conflicts of Interest," "Lobbying," "Nondiscrimination," "Public Accountability," "Public Notice," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Grantee shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Grantee warrants that no part of the total Grant Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Grantee in connection with any work contemplated or performed relative to this Grant Contract.
- D.7. Lobbying. The Grantee certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Grantee shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- c. The Grantee shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, *U.S. Code*.

- D.8. Nondiscrimination. The Grantee hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Grant Contract or in the employment practices of the Grantee on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Grantee shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.9. Public Accountability. If the Grantee is subject to *Tennessee Code Annotated*, Title 8, Chapter 4, Part 4 or if this Grant Contract involves the provision of services to citizens by the Grantee on behalf of the State, the Grantee agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and the Grantee shall display in a prominent place, located near the passageway through which the public enters in order to receive Grant supported services, a sign at least twelve inches (12") in height and eighteen inches (18") in width stating:
- NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454
- D.10. Public Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Grantee shall include the statement, "This project is funded under an agreement with the Department of Economic and Community Development." Any such notices by the Grantee shall be approved by the State.
- D.11. Licensure. The Grantee and its employees and all sub-grantees shall be licensed pursuant to all applicable federal, state, and local laws, ordinances, rules, and regulations and shall upon request provide proof of all licenses.
- D.12. Records. The Grantee (and any approved subcontractor) shall maintain documentation for all charges under this Contract. The books, records, and documents of the Grantee (and any approved subcontractor), insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the state agency, the Comptroller of the Treasury, or their duly appointed representatives. The records of not-for-profit entities shall be maintained in accordance with the *Accounting Manual for the Recipients of Grant Funds in the State of Tennessee*, published by the Tennessee Comptroller of the Treasury (available at <http://comptroller.state.tn.us/ma/nonprofit/nonprofit1.pdf>). The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.13. Prevailing Wage Rates. All grants and contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401 *et seq.*

- D.14. Monitoring. The Grantee's activities conducted and records maintained pursuant to this Grant Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.15. Progress Reports. The Grantee shall submit brief, periodic, progress reports to the State as requested.
- D.16. Annual Report and Audit. The Grantee shall prepare and submit, within nine (9) months after the close of the reporting period, an annual report of its activities funded under this Grant Contract to the commissioner or head of the Granting agency, the Tennessee Comptroller of the Treasury, and the Commissioner of Finance and Administration. The annual report for any Grantee that receives five hundred thousand dollars (\$500,000) or more in aggregate federal and state funding for all its programs shall include audited financial statements. All books of account and financial records shall be subject to annual audit by the Tennessee Comptroller of the Treasury or the Comptroller's duly appointed representative. When an audit is required, the Grantee may, with the prior approval of the Comptroller, engage a licensed independent public accountant to perform the audit. The audit contract between the Grantee and the licensed independent public accountant shall be on a contract form prescribed by the Tennessee Comptroller of the Treasury. Any such audit shall be performed in accordance with generally accepted government auditing standards, the provisions of OMB Circular A-133, if applicable, and the *Audit Manual for Governmental Units and Recipients of Grant Funds* published by the Tennessee Comptroller of the Treasury. The Grantee shall be responsible for reimbursement of the cost of the audit prepared by the Tennessee Comptroller of the Treasury, and payment of fees for the audit prepared by the licensed independent public accountant. Payment of the audit fees of the licensed independent public accountant by the Grantee shall be subject to the provisions relating to such fees contained in the prescribed contract form noted above. Copies of such audits shall be provided to the designated cognizant state agency, the State Granting Department, the Tennessee Comptroller of the Treasury, and the Department of Finance and Administration and shall be made available to the public.
- D.17. Procurement. If the other terms of this Grant Contract allow reimbursement for the cost of goods, materials, supplies, equipment, and/or contracted services, such procurement shall be made on a competitive basis, including the use of competitive bidding procedures, where practical. The Grantee shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Grant Contract. In each instance where it is determined that use of a competitive procurement method was not practical, said documentation shall include a written justification for such decision and non-competitive procurement. Further, if such reimbursement is to be made with funds derived wholly or partially from federal sources, the determination of cost shall be governed by and reimbursement shall be subject to the Grantee's compliance with applicable federal procurement requirements.
- The Grantee shall obtain prior approval from the State before purchasing any equipment under this Grant Contract.
- D.18. Strict Performance. Failure by any party to this Grant Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this agreement shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Grant Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.19. Independent Contractor. The parties hereto, in the performance of this Grant Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Grant Contract shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Grantee, being a political subdivision of the State, is governed by the provisions of the Tennessee Government Tort Liability Act, *Tennessee Code Annotated*, Sections 29-20-101 *et seq.*, for causes of action sounding in tort. Further, no contract provision requiring a Tennessee political entity to indemnify or hold harmless the State beyond the liability imposed by law is enforceable because it appropriates public money and nullifies governmental immunity without the authorization of the General Assembly.

- D.20. State Liability. The State shall have no liability except as specifically provided in this Grant Contract.
- D.21. Force Majeure. The obligations of the parties to this Grant Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.22. State and Federal Compliance. The Grantee shall comply with all applicable state and federal laws and regulations in the performance of this Grant Contract.
- D.23. Governing Law. This Grant Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Grantee agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Grant Contract. The Grantee acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising there from, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.24. Completeness. This Grant Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Grant Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.25. Severability. If any terms and conditions of this Grant Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Grant Contract are declared severable.
- D.26. Headings. Section headings are for reference purposes only and shall not be construed as part of this Grant Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Grant Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Grant Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Philip Trauernicht, Administrator

Department of Economic and Community Development
312 Rosa L. Parks Avenue, 10th floor, Nashville, TN 37243
Philip.Trauernicht@tn.gov
Telephone # 615-741-6201
FAX # 615-253-1870

The Grantee:

The Honorable Jean Rountree, Vice Mayor
City of Whitwell
13671 Highway 28, Whitwell, TN 37397
Telephone # 423-658-5151
FAX # 423-658-2397

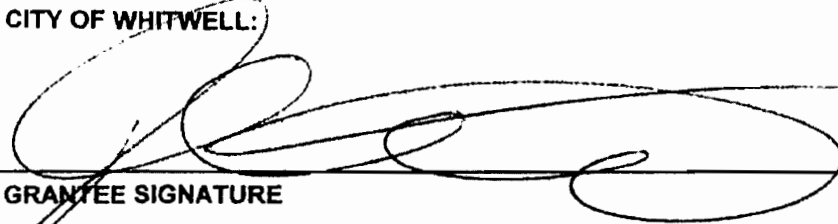
All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. Subject to Funds Availability. The Grant Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Grant Contract upon written notice to the Grantee. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Grantee shall cease all work associated with the Grant Contract. Should such an event occur, the Grantee shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Grantee shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Voluntary Buyout Program. The Grantee acknowledges and understands that, for a period of two years beginning August 16, 2008, restrictions are imposed on former state employees who received a State of Tennessee Voluntary Buyout Program (VBP) severance payment with regard to contracts with state agencies that participated in the VBP.
- a. The State will not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.
 - b. The State may contract with an entity with which a former state employee who received a VBP severance payment is an employee or an independent contractor. Notwithstanding the foregoing, the Grantee understands and agrees that there may be unique business circumstances under which a return to work by a former state employee who received a VBP severance payment as an employee or an independent contractor of a State grantee would not be appropriate, and in such cases the State may refuse Grantee personnel. Inasmuch, it shall be the responsibility of the State to review Grantee personnel to identify any such issues.
 - c. With reference to either subsection a. or b. above, a grantee may submit a written request for a waiver of the VBP restrictions regarding a former state employee and a contract with a state agency that participated in the VBP. Any such request must be submitted to the State in the form of the *VBP Contracting Restriction Waiver Request* format available from the State and the Internet at: www.state.tn.us/finance/rds/ocr/waiver.html. The determination on such a request shall be at the sole discretion of the head of the state agency that is a Party to this Grant Contract, the Commissioner of Finance and Administration, and the Commissioner of Human Resources.
- E. 5. Charges to Service Recipients Prohibited. The Grantee shall not collect any amount in the form of fees or reimbursements from the recipients of any service provided pursuant to this Grant Contract.

- E. 6. No Equipment Acquisition. This Grant Contract does not involve the acquisition and disposition of equipment acquired with funds provided under this Grant Contract.
- E. 7. The Grantee agrees to comply with the Statement of Assurances incorporated as Attachment B of the contract.
- E. 8. The Grantee shall submit all final project plans and specifications to the State for review, and obtain final approval prior to going to bid.
- E. 9. Documentation must be on file to demonstrate that fifty-one percent (51%) low and moderate income persons are served at the completion of the project. In no case may fewer than fifty-one percent (51%) LMI persons be served.
- E. 10. Grantee Participation. Grantee Participation amounts detailed in the Grant Budget are intended as a goal for the total project, and the amount of actual Grantee Participation expenditures will not impact the maximum amounts reimbursable to the Grantee as detailed by the Grant Budget column, "Grant Contract."

IN WITNESS WHEREOF,

CITY OF WHITWELL:



GRANTEE SIGNATURE

6/29/10
DATE

The Honorable Jean Rountree, Vice Mayor

PRINTED NAME AND TITLE OF GRANTEE SIGNATORY (above)

DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT:



MATTHEW KISBER, COMMISSIONER

7/14/10
DATE

APPROVED:

M.D. GOETZ, JR., COMMISSIONER

DATE

DEPARTMENT OF FINANCE & ADMINISTRATION

JUSTIN P. WILSON, COMPTROLLER OF THE TREASURY

DATE

ATTACHMENT A
GRANT BUDGET

GRANT CONTRACT #

GRANTEE: City of Whitwell

GRANTEE CONTACT: Susan Goldblatt (423) 424-4263

PROGRAM AREA: COMMUNITY DEVELOPMENT BLOCK GRANT

THE FOLLOWING IS APPLICABLE TO EXPENSE INCURRED IN THE PERIOD: 10/29/09 through 9/30/14

EXPENSE OBJECT LINE-ITEM CATEGORY	GRANT CONTRACT	GRANTEE PARTICIPATION	TOTAL PROJECT
Construction	\$301,381.00	\$28,569.00	\$329,950.00
Construction Inspection	\$45,000.00	\$0.00	\$45,000.00
Engineering Design	\$29,700.00	\$0.00	\$29,700.00
Engineering (other than design)	\$35,000.00	\$0.00	\$35,000.00
Legal Services	\$0.00	\$0.00	\$0.00
Appraisals	\$0.00	\$0.00	\$0.00
Acquisition of Property	\$0.00	\$0.00	\$0.00
Relocation (payments and assistance to persons, businesses, or non-profit organizations, including movement to other temporary or permanent sites)	\$0.00	\$0.00	\$0.00
Housing Rehabilitation (loans and grants for single-unit, privately-owned homes)	\$0.00	\$0.00	\$0.00
Housing Inspection	\$0.00	\$0.00	\$0.00
Clearance and Demolition of Structures	\$0.00	\$0.00	\$0.00
Professional Fee (Detail attached)	\$25,000.00	\$0.00	\$25,000.00
Tap Fees (for "low and moderate income" beneficiaries)	\$0.00	\$0.00	\$0.00
Environmental Review	\$1,500.00	\$0.00	\$1,500.00
Other Non-Personnel Expenses (Detail attached)	\$10,000.00	\$0.00	\$10,000.00
Project Contingency (for potential project costs exceeding the total budget amount in line items above)	\$52,419.00	\$3,431.00	\$55,850.00
GRAND TOTAL	\$500,000.00	\$32,000.00	\$532,000.00

GRANT BUDGET DETAIL

LINE-ITEM DETAIL FOR: PROFESSIONAL FEE	AMOUNT
Administration Contract between City of Whitwell and Southeast TN Development District	\$25,000.00
	\$0.00
	\$0.00
	\$0.00
	\$0.00
	\$0.00
TOTAL	\$25,000.00

LINE-ITEM DETAIL FOR: OTHER NON-PERSONNEL EXPENSES	AMOUNT
Permit Fees	\$10,000.00
	\$0.00
	\$0.00
	\$0.00
	\$0.00
	\$0.00
TOTAL	\$10,000.00

Attachment B

**TENNESSEE COMMUNITY DEVELOPMENT BLOCK GRANT
STATEMENT OF ASSURANCES**

The applicant hereby assures and certifies that:

- (a) It possesses legal authority to apply for the grant and to execute the proposed program.
- (b) Its governing body has duly adopted or passed as an official act a resolution, motion or similar action authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the applicant's chief executive officer to act in connection with the application and to provide such additional information as may be required.
- (c) Its chief executive officer or other officer of applicant approved by the State:
 - (1) Consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 (NEPA) and other provisions of Federal law, as specified in 24 CFR Part 58, which furthers the purposes of NEPA, insofar as the provisions of such Federal law apply to the Tennessee Community Development Block Grant Program;
 - (2) Is authorized and consents on behalf of the applicant and himself to accept the jurisdiction of the Federal courts for the purpose of enforcement of his responsibilities as such an official.
- (d) It will comply with the regulations, policies, guidelines and requirements of OMB Circulars Number A-87 and A-102, Revised, as they relate to the application, acceptance, and use of Federal funds under this document.
- (e) It will comply with:
 - (1) Section 110 of the Housing and Community Development Act of 1974, as amended, 24 CFR 570.605, and State regulations regarding the administration and enforcement of labor standards;
 - (2) The provisions of the Davis-Bacon Act (46 U.S.C. § 276a) with respect to prevailing wage rates (except for projects for the rehabilitation of fewer than eight units);
 - (3) Contract Work Hours and Safety Standards Act of 1962, 40 U.S.C. 327-332, requiring that mechanics and laborers (including watchmen and guards) employed on federally assisted contracts be paid wages of not less than one and one-half times their basic wage rates for all hours worked in excess of forty in a work-week; and
 - (4) Federal Fair Labor Standards Act, 29 U.S.C. § 201 et seq., requiring that covered employees be paid at least the minimum prescribed wage, and also that they be paid one and one-half times their basic wage rate for all hours worked in excess of the prescribed work-week.

- (f) It will comply with all requirements imposed by the State concerning special requirements of law, program requirements, and other administration requirements, approved in accordance with OMB Circular No. A-102 Revised.
- (g) It will comply with:
 - (1) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), and the regulations issued pursuant thereto (24 CFR Part 1), which provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the applicant, this assurance shall obligate the applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provisions of similar services or benefits;
 - (2) Title VIII Amendments Act of 1988, as amended, administering all program and activities relating to housing and community development in a manner to affirmatively further fair housing; and will take action to affirmatively further fair housing in the sale or rental of housing, the financing of housing, and the provision of brokerage services;
 - (3) E.O. 12259, Leadership and Coordination of Fair Housing in Federal Programs, requiring that programs and activities relating to the housing and urban development administered in a manner affirmatively to further the goals of Title VIII Amendments Act of 1988;
 - (4) Section 109 of the Housing and Community Development Act of 1974 (ACT), as amended, and the regulations issued pursuant thereto (24 CFR 570.601), which provides that no person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds provided under the ACT. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to otherwise qualifies handicapped individuals as provided in Section 504 of the Rehabilitation Act of 1973 shall also apply to any such program activity;
 - (5) Executive Order 11063 on equal opportunity in housing and nondiscrimination in the sale or rental of housing built with Federal assistance; and

- (6) Executive Order 11246 as amended by Executive Orders 11375 and 12086, and the regulations issued pursuant thereto (24 CFR 130 and 41 CFR Chapter 60), which provide that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of Federal or Federally assisted construction contracts. Contractors and subcontractors of Federal and Federally assisted construction contracts shall take affirmative action to insure fair treatment in employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation and selection for training and apprenticeship.
- (h) It will comply with Section 3 of the Housing and Urban Development Act of 1968, as amended, requiring that to the greatest extent feasible, opportunities for training and employment be given to lower-income persons residing within the unit of local government in which the project is located; and that contracts for work in connection with the Project be awarded to eligible business concerns which are located in, or owned in substantial part by, persons residing within the unit of local government.
- (i) It will:
 - (1) To the greatest extent practical under State law, comply with Sections 301 and 302 of Title III (Uniform Real Property Acquisition Policy) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended and will comply with Sections 303 and 304 of Title III, and HUD implementing instructions at 24 CFR Part 42; and
 - (2) Inform affected persons of their rights and of the acquisition policies and procedures set forth in the regulations at 24 CFR Part 42 and 24 CFR 370.602(b).
- (j) It will:
 - (1) Comply with Title III (Uniform Relocation Assistance) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and HUD implementing regulations at 24 CFR Part 42 and 24 CFR 370.602(a);
 - (2) Provide relocation payments and offer relocation assistance as described in Section 205 of the Uniform Relocation Assistance Act to all persons displaced as a result of acquisition of real property for an activity assisted under the Community Development Block Grant program. Such payments and assistance shall be provided in a fair, consistent and equitable manner that insures that the relocation process does to result in different or separate treatment of such persons on account of race, color, religion, national origin, sex, handicapped, or familial status;
 - (3) Assure that, within a reasonable period of time prior to displacement, comparable decent, safe and sanitary replacement dwellings will be available to all displaced families and individuals and that the range of choices available to such persons will not vary on account of their race, color, religion, national origin, sex, handicapped, or familial; and

- (4) Inform affected persons of the relocation assistance, policies and procedures set forth in the regulations at 24 CFR Part 42 and 24 CFR 3703.602 (a).
- (k) It will establish safeguards to prohibit employees, consultants and elected officials from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
- (l) It will comply with the Anti-Kickback (Copeland) Act of 1934, 18 U.S.C. § 874 and 40 U.S.C. § 276a, which outlaws and prescribes penalties for "kickbacks" of wages in Federally financed or assisted construction activities.
- (m) It will comply with the provisions of the Hatch Act which limits the political activity of employees.
- (n) It will give the State, HUD and the Comptroller General, through any authorized representatives, access to and the right to examine all records, books, papers, or documents related to the grant.
- (o) It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the program are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the State of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.
- (p) It will comply with the flood insurance purchase requirement of Section 102(a) of the Flood Disaster Protection Act of 1973, Pub. L. 93-234, 87 Stat. 975, approved December 31, 1973. Section 102(a) required, on and after March 2, 1974, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.
- (q) It will, in connection with its performance of environmental assessments under the National Environmental Policy Act of 1969, comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470), Executive Order 11593, and the Preservation of Archaeological and Historical Data Act of 1974 (16 U.S.C. 469c) by:
 - (1) Consulting with the State Historic Preservation Officer to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the proposed activity; and
 - (2) Complying with all requirements established by the State to avoid or mitigate adverse effects upon such properties.

- (x) It will conduct and administer its program in conformance with Title VI and Title VIII, and affirmatively furthering fair housing;
- (y) It will provide opportunities for citizen participation comparable to the State's requirements (those described in Section 104(a)(2) of the Act), as amended;
- (z) It will not use assessments or fees to recover the capital costs of CDBG-funded public improvements from low and moderate income owner occupants.
- (aa) It will comply with:

The Armstrong/Walker "Excessive Force" Amendment (P.L. 101-144) found in Section 519 of the Department of Veteran Affairs and Housing and Urban Development, and Independent Agencies Appropriation Act of 1990. Whereby the unit of general local government will be required to adopt and enforce a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil demonstrations.

- (bb) It will comply with Section 319 of Public Law 101-121 found in the Federal Register Vol. 54 No. 243.

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers, which exceed the dollar limits set forth in the Byrd amendment, (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**TENNESSEE-AMERICAN WATER COMPANY
DOCKET NO. 12-00157
REQUEST FROM THE TENNESSEE REGULATORY AUTHORITY**

Responsible Witness: Dan Bickerton

2. Please identify and itemize the acquisition and transaction costs that TAWC proposes to defer in a regulatory asset account for possible future recovery.

Response:

TAWC expects to incur the following internal and external costs in connection with the acquisition of the Whitwell Water System. While the amounts listed are estimates, TAWC does not expect actual costs to exceed these estimates.

Due Diligence (legal & business development)	\$25,000
Title Work (legal & survey)	\$15,000
Document Preparation (legal)	<u>\$15,000</u>
Total	\$55,000

**TENNESSEE-AMERICAN WATER COMPANY
DOCKET NO. 12-00157
REQUEST FROM THE TENNESSEE REGULATORY AUTHORITY**

Responsible Witness: Dan Bickerton

3. The Petition states on page 7, paragraph 22 (f), that the regulatory asset will be amortized over the life of the System assets. How many years is TAWC proposing?

Response:

TAWC proposes to determine the regulatory asset amortization period based on the remaining composite depreciable life of the Whitwell System assets as of the date of closing using the following calculation.

$$\frac{\text{Net Utility Plant}}{\text{Latest 12-month Depreciation Expense}} = \text{Years of Amortization}$$

Using the information from Exhibit 1 of Daniel Bickerton's testimony, the amortization period would be 18.6 years.

$$\frac{\$2,852,078}{\$153,734} = 18.6 \text{ years}$$

**TENNESSEE-AMERICAN WATER COMPANY
DOCKET NO. 12-00157
REQUEST FROM THE TENNESSEE REGULATORY AUTHORITY**

Responsible Witness: Dan Bickerton

4. The Petition states on page 4, paragraph 11, that the expenses and revenues of the Whitwell system will be kept separate from the operation of TAWC's Chattanooga system. Will any charges be allocated to the Whitwell system from TAWC or AWW? If so, what is the basis and method of allocation?

Response:

AWW will allocate additional management fees and other associated service company charges to TAWC for the additional Whitwell customers in accordance with the affiliated services agreement previously approved by the Authority. TAWC does not expect to allocate any charges to the Whitwell System business unit but does anticipate that several TAWC employees will charge their time directly to the Whitwell System business unit(s). This time will be directly charged according to the time spent on Whitwell System activities.

**TENNESSEE-AMERICAN WATER COMPANY
DOCKET NO. 12-00157
REQUEST FROM THE TENNESSEE REGULATORY AUTHORITY**

Responsible Witness: Dan Bickerton

5. In his testimony, Deron Allen discusses the various infrastructure upgrades and capital improvements required to meet System demands. What is the estimated cost of planned improvements? How will these improvements be paid for? How will the transactions be accounted for?

Response:

The cost of the planned improvements will not be finally determined until TAWC completes a comprehensive planning study of the Whitwell system including a comprehensive leak survey to identify sources of system water losses. This study is expected to be conducted during the first year of ownership. Based on information obtained to date, TAWC expects the capital improvements required over the five year period after completing the acquisition to be \$5.0 million. The majority of the capital improvements will be focused on reducing system water losses, improving system pressures and enhancing source of supply capabilities to meet system demands particularly during periods of low flows in the Sequatchie River.

The capital improvements will be financed initially through the issuance of short-term debt. The short-term debt will ultimately be taken out by a combination of long-term debt and common equity.

These capital improvements will be accounted for in the same manner as other TAWC capital improvements except for the location of the assets for tax purposes which will be identified as Whitwell, Powells Crossroads, Marion County or Sequatchie County. Costs will accumulate in a Construction Work in Progress account until such time the project is completed and placed in service, at which time all charges will be transferred to the proper utility plant account.

**TENNESSEE-AMERICAN WATER COMPANY
DOCKET NO. 12-00157
REQUEST FROM THE TENNESSEE REGULATORY AUTHORITY**

Responsible Witness: Dan Bickerton

Question:

6. What is the source of funds to pay for the acquisition of the Whitwell water system? Will the funds come from TAWC, an affiliated company or from external sources? Will new debt be issued to pay for the acquisition?

Response:

Initially TAWC will finance the acquisition through short-term debt coordinated through AWW's Treasury Department. Ultimately, this short-term debt will be replaced by a combination of long-term debt obtained through American Water Capital Corp. and common equity provided by TAWC's parent company, AWW as part of TAWC planned financing activities.

**TENNESSEE-AMERICAN WATER COMPANY
DOCKET NO. 12-00157
REQUEST FROM THE TENNESSEE REGULATORY AUTHORITY**

Responsible Witness: **Dan Bickerton**

7. Do TAWCs mortgage indentures require that newly acquired assets, such as the Whitwell water system, be pledged under such indentures?

Response:

Yes.

**TENNESSEE-AMERICAN WATER COMPANY
DOCKET NO. 12-00157
REQUEST FROM THE TENNESSEE REGULATORY AUTHORITY**

Responsible Witness: Dan Bickerton

8. For what purpose is TAWC attempting to enter into an agreement with the City of Dunlap to make additional water supply available?

Response:

One of the greatest current vulnerabilities of the Whitwell System is an inadequate source of supply during the hot summer months when flows in the Sequatchie River are very low. TAWC believes that securing an additional source of supply from the City of Dunlap, a system with excess capacity, is a critical component in assuring a safe and reliable source of supply to Whitwell system customers while TAWC studies the Whitwell system, plans and constructs the necessary system improvements.

**TENNESSEE-AMERICAN WATER COMPANY
DOCKET NO. 12-00157
REQUEST FROM THE TENNESSEE REGULATORY AUTHORITY**

Responsible Witness: Dan Bickerton

9. Is the amount shown on Exhibit 1 to Mr. Bickerton's testimony the actual purchase price paid to the City of Whitwell for the water system assets? How will the purchase be recorded on the books of TAWC?

Response:

The amount shown on Exhibit 1 to Mr. Bickerton's testimony is not the actual purchase price to be paid to the City of Whitwell but is a very close approximation of the actual purchase price that will be determined at closing.

Using the information provided in Exhibit 1 along with the response to Data Request 2 as input, an example journal entry would be as follows.

	<u>Debit</u>	<u>Credit</u>
Utility Plant in Service	\$6,421,182	
Accumulated Depreciation		\$3,569,104
Contributions In Aid of Construction		\$2,389,090
Accumulated Amortization of CIAC	\$1,100,694	
Regulatory Asset	\$ 55,000	
Cash		\$1,618,682
	<u>\$7,576,876</u>	<u>\$7,576,876</u>

**TENNESSEE-AMERICAN WATER COMPANY
DOCKET NO. 12-00157
REQUEST FROM THE TENNESSEE REGULATORY AUTHORITY**

Responsible Witness: Dan Bickerton

10. For what reason does TAWC propose to reinstate the CIAC previously written off by the City of Whitwell? Provide documentation to support the estimated amounts shown on Lines 4 and 5 of Exhibit 1.

Response:

TAWC proposes to reinstate CIAC previously written off by the City of Whitwell to account for these contributions in a manner consistent with how the Authority would expect TAWC to account for such contributions. The City of Whitwell determines its revenue requirements on a cash flow basis rather than the rate base rate of return methodology utilized by the Authority to establish TAWC's revenue requirement. This adjustment is necessary in order to not create an arbitrarily higher purchase price resulting in a higher revenue requirement for Whitwell customers for investments funded through contributions of others.

The original account balance as of June 30, 2003 (\$1,411,539) can be identified on the City of Whitwell FY6/03 balance sheet provided in the attachment to this request. The remaining amounts that make up the amounts shown on Line 4 of Exhibit 1 are also provided in the attachment along with a schedule identifying TAWC's calculation of CIAC amortization.

The calculation of CIAC amortization has two components. First, the accumulated amortization related to the CIAC balance previously written off was calculated using the percentage of accumulated depreciation to utility plant in service. The second component of CIAC amortization is the inclusion of any CIAC received since 2004. From 2004 through the date of closing, TAWC proposes to determine the annual amortization by applying the annual percentage of depreciation expense to utility plant in service to the CIAC account balance.

City of Whitwell, Tennessee
Calculation of CIAC Amortization
As of 06/30/XX & Closing

Line No.	WHITWELL CIAC	Actual FY6/03	Actual FY6/04	Actual FY6/05	Actual FY6/06	Actual FY6/07	Actual FY6/08	Actual FY6/09	Actual FY6/10	Actual FY6/11	Adj	Estimated FY6/12	Estimated YE12/12
1	Depreciation Expense	\$163,613	\$186,894	\$208,552	\$172,213	\$168,884	\$157,353	\$163,468	\$150,998	\$153,734		\$153,734	
2	Depreciation Rate	3.28%	3.47%	3.81%	3.14%	3.10%	2.86%	2.97%	2.51%	2.58%		2.56%	2.56%
3	% of System Depreciated	43.97%											
4													
5	CIAC	\$1,411,539	\$29,997	\$0	\$0	\$0	\$0	\$381,542	\$66,012	\$73,829	\$426,171	\$426,171	\$0
6	Cumulative CIAC	\$1,411,539	\$1,441,536	\$1,441,536	\$1,441,536	\$1,441,536	\$1,441,536	\$1,823,078	\$1,889,090	\$1,962,919		\$2,389,090	\$2,389,090
7													
8	Amortization Adjustment	\$620,624											
9	Annual Amortization		\$50,078	\$54,945	\$45,244	\$44,616	\$41,271	\$54,155	\$47,505	\$50,255		\$61,166	\$30,835
10	Accumulated Amortization of CIAC	\$620,624	\$670,702	\$725,648	\$770,891	\$815,507	\$856,778	\$910,933	\$958,437	\$1,008,693		\$1,069,859	\$1,100,694
11													
12	Unamortized CIAC	\$790,915	\$770,834	\$715,888	\$670,645	\$626,029	\$584,758	\$542,145	\$503,653	\$464,226		\$426,171	\$388,396
13													
14	CIAC Detail:	Amount											
15	CDBG-Crossroads Project	\$500,000											
16	Hardees Booster Station	\$66,012											
17	Cartwright Loop	\$381,542											
18	2004 Grant	\$29,997											
19	Balance previously written off	\$1,411,539											
20	Total	\$2,389,090											

City of Whitwell
Government - Wide Statement of Activities
For the Year Ended June 30, 2009

Functions/Programs	Program Revenues			Net (Expense) Revenue and Changes in Net Assets		
	Expenses	Fees, Fines and Charges for Services	Operating Grants and Contributions	Capital Grants and Contributions	Governmental Activities	Business-type Activities
Primary government:						
Governmental activities:						
Public safety:						
Police	\$ 588,707.53	\$ 33,103.81	\$ 102,540.73	\$ 277,080.99	\$ (173,982.00)	\$ 0.00
Fire	504,048.81	57,708.39	12,857.00	0.00	(433,483.22)	0.00
State street aid	44,306.01	0.00	1,000.00	0.00	(43,306.01)	0.00
Senior center	78,901.89	0.00	0.00	0.00	(78,901.89)	0.00
Total governmental activities	1,231,277.13	90,812.20	20,327.00	0.00	3,013.71	0.00
Business-type activities:						
Water utilities	1,164,157.89	1,070,861.11	0.00	381,542.26	0.00	288,245.38
Total business-type activities	1,164,157.89	1,070,861.11	0.00	381,542.26	0.00	288,245.38
Total primary government	2,395,435.12	1,161,673.31	136,724.73	659,623.25	(726,659.21)	(438,413.83)

General revenues:

Taxes:

Property taxes	111,597.52	0.00	111,597.52
Franchise taxes (fees)	30,565.89	0.00	30,565.89
Sales tax - General	310,285.44	0.00	310,285.44
State gasoline tax	49,620.41	0.00	49,620.41
State beer tax	865.87	0.00	865.87
Local beer tax	78,265.97	0.00	78,265.97
State income tax	1,690.70	0.00	1,690.70
State excise tax	7,850.37	0.00	7,850.37
TVA replacement tax	15,918.81	0.00	15,918.81
Ad valorem taxes	9,540.16	0.00	9,540.16
Other Taxes	3,571.23	0.00	3,571.23
Other	13,801.17	(29,007.30)	(15,206.13)
Unrestricted investment income	1,305.51	4,130.64	5,436.15
Total general revenues and transfers	628,949.15	(24,876.66)	603,972.49

Change in net assets

Net assets - beginning of year, as previously stated	185,558.66
Restatement (Note 18)	2,928,878.02
Net assets - beginning of year, as restated	120,041.50
Net assets - end of year	2,448,919.52

See accompanying notes to financial statements.

CITY OF WHITWELL, TENNESSEE
STATEMENT OF ACTIVITIES
FOR THE YEAR ENDED JUNE 30, 2004

Functions/Programs	Program Revenues			Net (Expense) Revenue and Changes in Net Assets		
	Expenses	Charges for Service	Operating Grants and Contributions	Primary Government		
				Capital Grants and Contributions	Governmental Activities	Business-Type Activities
PRIMARY GOVERNMENT:						
Governmental activities:						
General government	\$ 116,539	\$ -	\$ -	\$ -	\$ (116,539)	\$ -
Public safety	441,496	44,719	71,260	16,312	(309,205)	-
Public works	67,035	910	-	-	(66,125)	-
Public welfare	100,569	28,568	31,344	-	(40,657)	-
Interest	8,260	-	-	-	(8,260)	-
Total governmental activities	733,899	74,197	102,604	16,312	(540,786)	-
Business-type activities:						
Waterworks services	874,597	736,274	-	29,997	-	(108,326)
Total business-type activities	874,597	736,274	-	29,997	-	(108,326)
Total primary government	1,608,496	810,471	102,604	46,309	(540,786)	(849,112)
GENERAL REVENUES:						
Property taxes					21,464	21,464
Local option sales tax					160,581	160,581
Federal payments in lieu of taxes					10,963	10,963
Other taxes					257,252	257,252
Gain on sale of capital assets					2,367	2,367
Interest					2,581	8,881
Other					23,948	23,948
Total general revenues					479,156	485,456
TRANSFERS TO OTHER GOVERNMENTAL ENTITY						
Change in net assets					-	(99,509)
NET ASSETS:						
Beginning					473,773	2,322,538
Ending					\$ 412,143	\$ 2,221,003
						\$ 2,533,146

(The accompanying notes are an integral part of these statements.)

CITY OF WHITWELL, TENNESSEE
COMBINED BALANCE SHEET
ALL FUND TYPES AND ACCOUNT GROUPS
JUNE 30, 2003

ASSETS

	Governmental Fund Types		Proprietary Fund Type
	General	Special Revenue	Enterprise (Waterworks)
Cash and cash equivalents	\$ 68,640	\$ 92,915	\$ 672,262
Certificates of deposit	-	62,754	-
Restricted cash and certificates of deposit	-	1,593	195,004
Accounts receivable	-	-	69,345
Property taxes receivable	27,590	-	-
Other receivables	36,341	-	-
Due from other funds	-	4,148	-
Inventory	-	-	4,500
Property and equipment, net of accumulated depreciation	-	-	2,791,811
Amount to be provided for general long-term debt	-	-	-
	<u>\$132,571</u>	<u>\$ 161,410</u>	<u>\$ 3,732,922</u>

(The accompanying notes are an integral part of these statements.)

Account Groups			
General	General		
Fixed	Long-Term		
Assets	Debt		
\$	\$	-	-
-	-	-	-
-	-	-	-
-	-	-	-
-	-	-	-
-	-	-	-
-	-	-	-
661,757	-	-	-
-	152,309	-	-
<u>\$ 661,757</u>	<u>\$ 152,309</u>	-	-

(The accompanying notes are an integral part of these statements.)

**CITY OF WHITWELL, TENNESSEE
COMBINED BALANCE SHEET
ALL FUND TYPES AND ACCOUNT GROUPS
JUNE 30, 2003**

LIABILITIES AND FUND EQUITY

	<u>Governmental Fund Types</u>		<u>Proprietary Fund Types</u>
	<u>General</u>	<u>Special Revenue</u>	<u>Enterprise (Waterworks)</u>
Liabilities:			
Accounts payable	\$ 1,234	\$ 1,637	\$ 8,349
Deferred tax revenue	27,564	-	-
Other deferred revenue	9,490	-	-
Accrued interest	-	-	28,395
Accrued other expenses	9,430	-	14,663
Due to other funds	4,148	-	-
Bonds payable	-	-	505,000
Notes payable	-	-	762,000
Customer deposits	-	-	91,977
Capital lease obligations	-	-	-
Compensated absences payable	-	-	-
	<u>51,866</u>	<u>1,637</u>	<u>1,410,384</u>
Fund Equity:			
Investment in general fixed assets	-	-	-
Contributed capital	-	-	1,411,539
Retained earnings	-	-	910,999
Fund balances - Unreserved and undesignated	<u>80,705</u>	<u>159,773</u>	<u>-</u>
	<u>80,705</u>	<u>159,773</u>	<u>2,322,538</u>
	<u>\$132,571</u>	<u>\$ 161,410</u>	<u>\$ 3,732,922</u>

(The accompanying notes are an integral part of these statements.)

Account Groups			
General	General		
Fixed	Long-Term		
Assets	Debt		
\$	\$	-	-
-	-	-	-
-	-	-	-
-	-	-	-
-	-	-	-
-	-	-	-
-	-	-	-
-	-	-	-
-	148,080	-	-
-	4,229	-	-
-	-	-	-
-	152,309	-	-
661,757	-	-	-
-	-	-	-
-	-	-	-
-	-	-	-
661,757	-	-	-
\$ 661,757	\$ 152,309	-	-

(The accompanying notes are an integral part of these statements.)

CITY OF WHITWELL, TENNESSEE

STATEMENT OF NET ASSETS

JUNE 30, 2004

	Primary Government		
	Governmental Activities	Business-Type Activities	Total
ASSETS:			
Cash and cash equivalents	\$ 118,066	\$ 256,149	\$ 374,215
Certificates of deposit	62,754	-	62,754
Due from other governmental entities	(10,000)	10,000	-
Property taxes receivable	44,390	-	44,390
Other taxes receivable	-	-	-
Other receivables	60,754	82,374	143,128
Refundable deposit	-	187,300	187,300
Inventory	-	4,500	4,500
Restricted cash	246	195,004	195,250
Land and other nondepreciable assets	-	6,061	6,061
Other capital assets, net of accumulated depreciation	317,543	3,060,033	3,377,576
Total assets	\$ 593,753	\$ 3,801,421	\$4,395,174
LIABILITIES AND NET ASSETS:			
Liabilities:			
Accounts payable	\$ 5,202	\$ -	\$ 5,202
Accrued salaries payable	9,785	9,576	19,361
Accrued interest payable	-	9,743	9,743
Sales tax payable	-	4,639	4,639
Other	1,513	5,632	7,145
Deferred revenue	45,140	-	45,140
Customer deposits	-	100,524	100,524
Long-term liabilities -			
Due within one year	27,382	131,048	158,430
Due in more than one year	92,588	1,419,256	1,511,844
Total liabilities	181,610	1,680,418	1,862,028
Net assets:			
Invested in capital assets, net of related debt	199,962	1,646,838	1,846,800
Unrestricted	212,181	474,165	686,346
Total net assets	412,143	2,121,003	2,533,146
Total liabilities and net assets	\$ 593,753	\$ 3,801,421	\$4,395,174

(The accompanying notes are an integral part of these statements.)

CITY OF WHITWELL, TENNESSEE
PROPRIETARY FUND - WATERWORKS FUND
BUSINESS-TYPE ACTIVITIES
STATEMENT OF NET ASSETS
JUNE 30, 2004

ASSETS

CURRENT ASSETS:

Cash and cash equivalents	\$ 256,149
Accounts receivable, net of allowance for uncollectibles of \$30,000	82,374
Refundable deposit	187,300
Due from other funds	10,000
Inventory	4,500

Total current assets	540,323
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RESTRICTED ASSETS:

Investments in certificates of deposit, restricted by bond covenants	195,004
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CAPITAL ASSETS:

Land	6,061
Property, plant and equipment	5,379,892
	5,385,953
Less accumulated depreciation	2,319,859

Net capital assets	3,066,094
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Total assets	\$ 3,801,421
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LIABILITIES AND NET ASSETS

CURRENT LIABILITIES:

Current maturities of notes and bonds payable	\$ 131,048
Accrued salaries payable	9,576
Accrued interest payable	9,743
Sales tax payable	4,639
Other	5,632

Total current liabilities	160,638
---------------------------	---------

CUSTOMER DEPOSITS

	100,524
--	---------

LONG-TERM LIABILITIES, net of current portion shown above:

Notes payable	370,000
Capital lease obligations	16,965
Bonds payable	1,032,291
	1,419,256

NET ASSETS:

Invested in capital assets, net of related debt	1,646,838
Restricted	474,165

	2,121,003
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Total liabilities and net assets	\$ 3,801,421
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(The accompanying notes are an integral part of these statements.)

**TENNESSEE-AMERICAN WATER COMPANY
DOCKET NO. 12-00157
REQUEST FROM THE TENNESSEE REGULATORY AUTHORITY**

Responsible Witness: Dan Bickerton

11. In what ways, other than rates, will the purchase impact current customers of TAWC? Explain.

Response:

The purchase will impact current customers of TAWC through increased economies of scale. First, the increased total number of customers gives TAWC increased leverage or purchasing power on all items for both TAWC customers and customers currently served through Whitwell. Additionally, now both systems will have additional employees to draw from for support during emergency situations. Those increased employees provide an incremental greater benefit to the community through their volunteer efforts that are supported by TAWC. Knowledge, expertise and future problem-solving efforts are shared by employees from both systems. Upon the successful closing and transition of the Whitwell Water System into TAWC, this success can be leveraged into future customer growth opportunities in other areas of Tennessee which will provide even greater economies of scale. A larger and more geographical diverse water system provides a greater level of security for existing TAWC customers, greater in-house expertise and other resources more readily available to the business in time of emergency when demands for resources are at their greatest.

TAWC recognizes that bigger, for the sake of bigger is not better. But when synergies can be developed and incremental benefits flow to all customers then it's the acquisition is in the best of interests of its customers. TAWC believes the proposed acquisition achieves that goal.