INTERLOCAL AGREEMENT BETWEEN MEMPHIS LIGHT, GAS AND WATER DIVISION AND SHELBY COUNTY GOVERNMENT ON BEHALF OF THE PUBLIC WORKS DIVISION FOR FIRE FEE BILLING AND RELATED SERVICES IN SHELBY COUNTY, TENNESSEE

CONTRACT NUMBER 8122

THIS INTERLOCAL AGREEMENT ("Agreement") is entered into by and between Memphis Light, Gas and Water Division ("MLGW"), a municipal utility of the City of Memphis, Tennessee, located at 220 South Main Street, Memphis, Tennessee, 38103 and Shelby County Government ("SCG") located at 160 North Main Street, Suite 801, Memphis, Tennessee, 38103, to establish the terms and compensation for fire fee billing and related services for addresses located in Shelby County, Tennessee on this ____ day of _____, 2009.

RECITALS

WHEREAS, MLGW and the SCG pursuant to Tennessee Code Annotated ("TCA") § 12-9-108 may enter into interlocal agreements; and

WHEREAS, SCG has established a Fire Fee to be collected from areas of Shelby County for protection by Shelby County's Fire Department ("SCFD") pursuant to T.C.A. § 5-17-106; and

WHEREAS, SCG is authorized to enter into a contract for the collection of the Fire Fees and/or related fees with MLGW pursuant to Shelby County Contract Number 8122 adopted August 30, 1973; and

WHEREAS, SCG may from time to time enter into agreements with municipalities located in Shelby County, Tennessee to collect additional fees for fire, ambulance and other related services; and

WHEREAS, MLGW and SCG have determined it to be in the best interest of the citizens of Shelby County, Tennessee to enter into this interlocal agreement detailing the fee structure for the billing and collection of the Fire Fee and/or related fees;

NOW THEREFORE, in consideration of the mutual promises and covenants contained, the parties agree as follow:

1. **Billing**. MLGW shall bill on each monthly bill to each separate residence, apartment unit, business and other utility connection ("Ratepayer") a Fire Fee and/or related fees in accordance with the classification of the ratepayer by SCG ("Work"). The Fire Fee and/or

related fee shall be those set by the Shelby County Public Works Director pursuant to T.C.A. § 5-16-101 et seq. and published in the Shelby County Fire Fee Rules and Regulations, a copy of which is attached hereto and incorporated herein as Exhibit A as amended from time to time.

1.1 MLGW shall, from October 16, 2009 forward, bill the Fire Fee and/or related fees in concert with MLGW's billing cycles.

1.2 MLGW shall collect the Fire Fee and/or related fees from each ratepayer and shall report to SCG by the 20th of the next succeeding month the total monthly billing amount, along with the number of current ratepayers and a listing of all uncollectible Fire Fees and/or related, plus or minus any adjustment because of the changes in classifications of ratepayers as certified by SCG.

1.3 MLGW shall deduct an amount reflecting MLGW's cost of billing the Fire Fee and/or related fees. The flat amount shall be 2% of gross billed revenues per month. An additional deduction for uncollected fees shall be made from the gross billed revenues net of MLGW's 2% billing and collection fees. These amounts shall be deducted monthly from the payment distribution. MLGW shall remit funds to SCG on the 20th of each succeeding month.

1.4 SCG, and not MLGW, shall be financially responsible for any uncollected billing of the Fire Fee and/or related fees. All uncollected billings for customers who are delinquent on Fire Fees and/or related fees shall be forwarded to SCG for final disposition. SCG shall share in the cost should any Fire Fees be collected through MLGW collection efforts. All uncollected billings for customers who are delinquent on utility fees and/or Fire Fees and/or related fees shall be collected by procedures in accordance with the policies of MLGW. These uncollectible accounts will be deducted from the monthly gross billing of the fee in determining the amount due SCG.

1.5 In the event that the actual third party additional and extra expenses incurred by MLGW in the performance of service covered by this Agreement exceed the 2% fee, SCG shall reimburse MLGW for the extra actual third party expenses incurred, not to exceed cost.

1.6 The authorizing documentation from the governing body(ies) of the municipalities requesting services are included as Exhibits B and shall be supplemented from time to time as needed.

2. **Terminating Service.** All customers shall be subject to MLGW's Credit Policy.

3. **Changing Fire Fee Rates and Ratepayer Classifications.** In the event that SCG desires to change Fire Fee and/or related rates and/or ratepayer classifications for Fire Fees and/or related fees, SCG shall notify MLGW a minimum of 30 days in advance of intended SCG implementation date. MLGW will not alter the Fire Fee and/or related fees rates or Fire Fee and/or related fees rate classifications without proper SCG notification.

4. **MLGW Information.** MLGW shall furnish such other related and reasonable information as SCG may require and which is available from the records of MLGW.

5. **Classification and Resolution Indemnification.** Subject to all applicable laws in the event of any suit against SCG in which MLGW is named a party to a lawsuit by or because of the improper classification of a ratepayer or of the invalidity of the underlying resolution, SCG shall defend MLGW and shall hold harmless MLGW from any and all liability.

6. **Billing Error Indemnification.** To the extent allowed by law MLGW assumes responsibility and will defend and hold SCG harmless because of termination of utility services as a result of errors in billing by MLGW's agents, servants, or employees.

7. **Disputes**. Any disputes between MLGW and SCG in regard to this Agreement shall be directed to MLGW's Contracts Department. If SCG disagrees with the decision of MLGW Contracts Department, the matter can be taken to the MLGW Board of Commissioners for mediation. Nothing contained in this Agreement shall be construed to limit either parties' rights or remedies available under applicable law.

8. **Term.** This Agreement is for a period of 60 months and is to become effective on the date this Agreement is signed by all parties, and is subject to an annual fee adjustment as agreed by the parties. It shall be the responsibility of MLGW to submit any request for on the increased fee percentage to SCG 90 days prior to the annual anniversary. If the requested fee adjustment is not agreed to by the parties prior to the annual anniversary, this Agreement shall terminate 90 days after the annual anniversary to allow for an orderly transition.

9. **Termination – Breach.** Should either party fail to fulfill in a timely and proper manner its obligations under this Agreement or if either party should violate the terms of this agreement, the nonbreaching party shall have the right to immediately terminate this agreement. Such termination shall not relieve the breaching party of any damages sustained by the nonbreaching party. Termination of this Agreement by the nonbreaching party for any breach by the breaching party shall be in addition to any other remedies available for such breach. Nothing in this Agreement shall be construed as prohibiting the nonbreaching party from pursing any other available remedies, including without limitation, injunctive relief and money charges.

10. **Compliance with Laws, Codes, Ordinances, and Resolutions.** The parties agree to comply with any and all applicable federal, state and local laws and regulations.

11. **Amendments, Changes and Modifications.** Except as otherwise provided this Agreement may not be effectively amended, changed, modified, or altered without the written consent of all parties.

12. **Waiver.** No waiver of any provision of this Agreement shall affect the right of any party to enforce such provision or to exercise any right or remedy available in the event of default.

13. Employment Discrimination. The parties shall not subscribe to any personnel policy which permits or allow for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, disabilities or for any reason which is in violation of applicable laws concerning employment.

14. Taxes. It is acknowledged by both MLGW and SCG that both MLGW and SCG are governmental entities exempt from taxation.

15. No Warranties. MLGW as the entity performing the services states that it offers no warranties of any kind express or implied including but not limited to fitness for use.

16. Maintenance of Records. The parties agree to maintain documentation of all charges. The books, records and documents of the parties as they relate to work performed or monies received under this agreement shall be maintained for the period required by the Tennessee Open Records Act and may be audited by either party at its expense at any reasonable time and upon reasonable notice by the requesting party. The records shall be maintained for a period of three (3) years from the termination of the Agreement.

17. Partnership/Joint Venture. Nothing in this Agreement shall in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties shall hold itself out in a manner contrary to the terms of this paragraph. No party shall become liable for any representation, act or omission of any other party contrary to the terms of this paragraph.

18. Force Majeure. With the exception of reimbursement of services, no party shall have any liability to the other by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by force majeure, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of Government, act of public enemy, or power restoration, or other cause of similar or dissimilar nature beyond its control.

19. Severability. Should any provision of this Agreement be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this Agreement.

20. Prior Agreements. The written terms and provisions of this Agreement shall supersede all prior Fire Fee agreements of MLGW, or its representatives, employees, and agents.

21. Captions. The captions used in this Agreement are for reference only and are not part of the Agreement.

22. Counterparts. This Agreement may be executed in one or more counterparts. Each counterpart shall be deemed an original. All counterparts shall together constitute one and the same agreement.

23. **Indemnification.** Subject to Section 6, MLGW will not indemnify or hold harmless in any fashion SCG from any claims arising from any failure, regardless of any language in any attachment or other document that SCG may provide. MLGW shall have no liability as to any action in the furtherance of this agreement unless otherwise specified under this Agreement or Tennessee law.

24. **Assignment – Consent Required.** The provision of this Agreement shall inure to the benefit of and shall be binding upon the respective successors and assignees of both parties. Neither this Agreement nor any of the rights and obligations shall be assigned or transferred in whole or in part without the prior written consent of all parties. Any such assignment or transfer shall not release the assigning party from its obligations.

25. **Notices.** Any notices required or permitted to be given under the terms of this Agreement shall be effective only if in writing and delivered either in person to the authorized agent or by First Class or United States mail to the addresses set out below, or to such other person or address as any party may designate in writing and deliver as provided:

COUNTY: Shelby County Public Works Division
Attn: Ted Fox
160 N. Main, Suite 801
Memphis, TN 38103

and

Shelby County Government
Contract Administration
160 N. Main Street, Suite 550
Memphis, TN 38103

MLGW: Memphis Light, Gas and Water Division
Attention: Manager – Residential Customer Care
220 South Main Street
Memphis, TN 38103

MLGW or SCG may, by notice given, designate any further or different addresses to which subsequent notices, certificates, documents or other communications shall be sent.

26. **Governing Law.** This Agreement shall be governed and enforced according to the law of Tennessee. All actions, whether sounding in contract or tort, relating to the validity, construction, interpretation and enforcement of this Agreement shall be instituted and litigated in the courts located in Shelby County, Tennessee and in no other. The parties to this Agreement submit to the jurisdiction of the courts located in Shelby County, Tennessee.

27. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with respect to the subject matter. All prior agreements, representations, statements, and

negotiations are superseded. This Agreement may be amended only by a writing executed by all parties.

28. **Effective Date.** This Agreement shall not be binding upon the parties until it has been properly approved by the legislative bodies of the respective parties; it has been signed first by MLGW and then by the authorized representatives of SCG and has been filed in the office of SCG's Contract Administration. When it has been so signed and filed, this Agreement shall be effective as of the date first written above.

[Signature Page to Follow]

29. **Authentication. IN WITNESS WHEREOF**, the parties, by and through their duly authorized representatives, have executed this agreement as of the date above written.

MEMPHIS LIGHT, GAS AND WATER DIVISION

BY: _____
JERRY R. COLLINS, JR.
President and Chief Executive Officer

Attest:

BY: _____
JOHN MCCULLOUGH
Secretary and Chief Financial Officer

Approved as to Form:

BY: _____
CHERYL PATTERSON
General Counsel
Board of Light, Gas and
Water Commissioners

SHELBY COUNTY GOVERNMENT

BY: _____
A C WHARTON, JR.
Mayor

Attest:

BY: _____

Approved as to Form and Legality:

BY: _____
CONTRACT ADMINISTRATOR/
Assistant County Attorney