



## MEMORANDUM

June 13, 2013

TO: Board of Mayor and Aldermen

FROM: Eric Stuckey, City Administrator  
David Parker, City Engineer/CIP Executive  
Paul Holzen, Director of Engineering  
Dan Allen, Assistant Director of Engineering

SUBJECT: Consideration of a Contract (COF Contract 2013-0080) Between the Tennessee Department of Transportation and the City of Franklin For The Sale of Stream Mitigation and Environmental Benefits

### Purpose

The purpose of this memo is to provide the Board of Mayor and Aldermen with information to make an informed decision concerning sale of 216 stream mitigation credits to the Tennessee Department of Transportation (TDOT) for stream alterations involved with the construction of Mack Hatcher Parkway.

TDOT is required to pay for stream mitigation due to the impacts associated with work on the current Mack Hatcher project under construction. Rather than place these funds into a stream mitigation bank, TDOT is being allowed to contribute their funds to the City of Franklin. These funds, in the amount of \$43,200.00, will be credited towards the construction cost of the Harpeth River Restoration Project.

### Background

Upon completion of the Harpeth River Restoration Project, the City of Franklin attained an allotted amount of Stream Mitigation Credits as shown below, which can be used towards other stream alterations within the Spencer Creek watershed.

<u>Water Body</u>	<u>Category</u>	<u>Length (LF)</u>	<u>Unit Value (\$/LF)</u>	<u>Total Value (\$)</u>
Harpeth River	Restoration	1,000	800	\$ 800,000
Harpeth River	Enhancement	200	800	\$ 160,000
McGavock Creek	Restoration	300	200	\$ 60,000
Watson Branch	Restoration	60	200	\$ 12,000

**Total \$ 1,032,000**

### Financial Impact

TDOT will pay the City of Franklin \$43,200.00, as detailed below for the Stream Mitigation Credits.

<u>Water Body</u>	<u>Category</u>	<u>Length (LF)</u>	<u>Unit Value (\$/LF)</u>	<u>Total Value (\$)</u>
Mack Hatcher Parkway	Alteration	216	200	\$ 43,200

**Total \$ 43,200**



HISTORIC  
FRANKLIN  
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## MEMORANDUM

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### **Recommendation**

Staff recommends entering into this agreement and accepting the funds to reduce the overall cost of the Harpeth River Restoration project.

CONTRACT FOR SALE OF STREAM MITIGATION ENVIRONMENTAL BENEFITS

THIS CONTRACT ("Contract") is made and entered into as of the 15<sup>th</sup> day of October, 2012, by and between **THE CITY OF FRANKLIN**, hereinafter referred to as "SELLER", and the **TENNESSEE DEPARTMENT OF TRANSPORTATION**, hereinafter referred to as "PURCHASER".

WITNESSETH THAT:

The Seller and Purchaser do hereby contract and agree as follows:

1. SALE. The Seller agrees to sell to the Purchaser, and the Purchaser agrees to buy from the Seller, upon the terms and conditions herein set forth 216 Stream Mitigation Credits ("Mitigation Credits") through Sellers development of the Harpeth River Restoration Project and Low Head Dam removal ("Restoration Project") on the Harpeth River within the Spencer Creek watershed (HUC: 051302040105) in Williamson County, Tennessee. The project location is shown on Exhibit "A" attached hereto and incorporated herein by reference.
2. PRICE. The purchase price for the 216 Mitigation Credits shall be Two hundred and 00/100 Dollars (\$200.00) per Credit, a total of Forty Three Thousand Two Hundred and 00/100 Dollars (\$43,200.00).
3. PAYMENT. Purchaser shall pay the purchase price for the Mitigation Credits within sixty (60) days of approval of this agreement.
4. TITLE. Purchaser acknowledges that the Seller's sale of the Mitigation Credits in no way conveys whole or partial title of the Restoration Project site or any other assets of the Seller to the Purchaser. The Purchaser further acknowledges the purchase price for the Mitigation Credits is for services rendered to the Purchaser by the Seller, and not for the sale, exchange, or other conveyance of real property.
5. PERFORMANCE. The Seller shall be solely responsible for ensuring that the Mitigation Credits sold to the Purchaser include implementation of the Restoration Project plan approved by TDEC and the Corps. It is the intent of the parties that the Seller will deliver two hundred sixteen (216) Mitigation Credits as described herein through successful completion of the Restoration Project plan. However, if for any reason the Seller is unable to fully implement the Restoration Project plan and deliver two hundred sixteen (216) Mitigation Credits, the Purchase Price described in Paragraph 2 shall be adjusted downward by an amount equal to the shortfall of such credits Seller is unable to deliver multiplied by the Unit Price. If for any reason the Seller is unsuccessful in implementing the approved Restoration Project plan, the Seller will not seek additional financial or other assistance from the Purchaser in any further attempt to implement the approved Restoration Project plan. In such event, Seller will use its reasonable best efforts to rectify any shortfall of stream restoration such that Seller will deliver a total of two hundred sixteen (216) Mitigation Credits.
6. REGULATORY REQUIREMENTS. The Seller understands that Purchaser is buying two hundred sixteen (216) Mitigation Credits from Seller in order to meet the compensatory mitigation requirements of certain permits issued to Purchaser for its construction activities elsewhere in the state. Until such time as the Harpeth River Restoration Project and Low Head Dam removal shall be deemed successful and handed over for long term management, Seller shall perform according to the requirements of the relevant permits all inspections and periodic or continuous monitoring and generate and submit at the required times to Purchaser and the relevant authorities all required reports. Purchaser shall provide Seller with all relevant permit information.

8. DEFAULTS. If the sale of the Mitigation Credits contemplated by this Contract is not consummated due to a default of Seller, then all funds paid by Purchaser, if any, shall be promptly refunded to Purchaser.
9. COMMISSIONS. Neither Seller nor Purchaser has employed the services of a broker in connection with this sale.
10. SPECIAL STIPULATIONS. This Contract does not include any special provisions and stipulations other than the provisions already identified and explicitly stated in this Contract.
11. SURVIVAL. All covenants, terms, and conditions of this Contract not fully performed prior to closing shall survive the closing of the Contract.
12. MISCELLANEOUS. This Contract constitutes the entire agreement between the Seller and the Purchaser and may not be modified or amended except by an instrument in writing signed by the parties. This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, representatives, successors, and permitted assigns. Time is of the essence for this Contract. The paragraph headings contained herein are for reference only and are not to be construed as a part of any term, provision, or condition hereof.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed and to become effective as of the date the Contract is last executed by the parties as indicated below.

**SELLER:** City of Franklin

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**PURCHASER:** Tennessee Department of Transportation

\_\_\_\_\_  
Authorized Signature

John C. Schroer  
\_\_\_\_\_  
Printed Name

Commissioner  
\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Approved as to Form and Legality:

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Authorized Signature

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John H. Reinbold

Printed Name

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TDOT, General Counsel

Title

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Date