



HISTORIC
FRANKLIN
TENNESSEE

ITEM #9
WRKS 07/12/2011

MEMORANDUM

July 1, 2011

To: Board of Mayor and Alderman

From: Eric Stuckey, City Administrator
David Parker, City Engineer
Mark Hilty, Water Management Director

Subject: Agreement Between the City of Franklin and the Harpeth River Watershed Association for the Restoration of a Portion of the Harpeth River

Purpose

The purpose of this memorandum is to introduce a draft agreement with the Harpeth River Watershed Association pertaining to the restoration of a portion of the Harpeth River in the vicinity of river mile 88.9.

Background

The City of Franklin received an Aquatic Resources Alteration Permit (ARAP) for water withdrawal from the Harpeth River from the Tennessee Department of Environment and Conservation (TDEC) on November 28, 2007. The ARAP requires the City to investigate the feasibility of removing the low-head dam associated with the City's Water Treatment Plant intake facilities. A feasibility study conducted in 2008 determined that under certain conditions, the low-head dam can feasibly be removed.

The Harpeth River Watershed Association has developed a design concept of dam removal with Beaver Creek Hydrology, funded through a U.S. Department of the Interior Fish and Wildlife Service in the amount of \$350,000. The design includes the removal of the low-head dam while maintaining a pool sufficient for the City's Water Treatment Plant to withdraw water from the Harpeth River as permitted by its ARAP. Additionally, the design provides for restoration of the Harpeth River in the vicinity of the low-head dam and raw water pump station with the goal of improving water quality and removing river flow obstructions.

The design features of the proposed project include the use of natural materials to, in part, maintain pool elevation for water withdrawal, to reshape and stabilize riverbanks reducing erosion and sediment transport, and to create habitat elements. The project dovetails with the Integrated Water Resources Plan (IWRP) which in part, is evaluating the means of withdrawal from the Harpeth River for treatment for part of the City's domestic water system needs.

Financial Impact

The financial impact to the City is approximately \$482,000. Through discussions with TDEC, there is a potential opportunity to acquire in-kind services from the State that have an estimated value of



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\$189,000, reducing the financial impact to \$293,000. The draft Low Head Dam Removal Feasibility Study prepared by Metcalf & Eddy Inc in 2008 estimated dam removal to cost \$280,000, comparable to the financial impact should in-kind services be received by TDEC.

Recommendation

Staff recommends moving forward with this agreement with the understanding that the City will work to develop a similar agreement with TDEC for the dam removal.

AGREEMENT

BETWEEN THE CITY OF FRANKLIN AND THE HARPETH RIVER WATERSHED ASSOCIATION FOR THE RESTORATION OF A PORTION OF THE HARPETH RIVER IN THE GENERAL AREA OF RIVER MILE 88.9

COF CONTRACT NO 2010-0069

THIS AGREEMENT, (hereinafter “Agreement”), made and entered into this ____ day of _____, 2011 by and between THE CITY OF FRANKLIN, TENNESSEE (hereinafter “City”) and the HARPETH RIVER WATERSHED ASSOCIATION (hereinafter “HRWA”).

WITNESSETH

WHEREAS, the City received an Aquatic Resources Alteration Permit (ARAP), NRS06.332, for water withdrawal from the Harpeth River from the Tennessee Department of Environment and Conservation (TDEC) dated November 28, 2007 requiring the City to investigate the feasibility of removing the low-head dam associate with the City’s Water Treatment Plant intake facilities; and

WHEREAS, the draft Low Head Dam Removal Feasibility Study (October 2008) prepared by Metcalf & Eddy Inc. for the City determined that the removal of the low-head dam is feasible under certain considerations; and

WHEREAS, the HRWA having contracted with the design firm of Beaver Creek Hydrology LLC (Engineer) has developed a Design Plan that will provide a feasible solution for the removal of the low-head dam; and

WHEREAS, the Design Plan includes the removal of the low-head dam while maintaining a pool sufficient for the City’s Water Treatment Plant to withdraw water from the Harpeth River as permitted by its ARAP , NRS06.332; and

WHEREAS, the Design Plan by the Engineer will also provide restoration to the reach of the Harpeth River in the vicinity of the low-head dam thus benefitting the general public by improving the water quality parameters of the Harpeth River while providing a free flowing river system; and

WHEREAS, the HRWA has applied for and received a grant through the U.S. Department of the Interior Fish and Wildlife Service in the amount of \$350,000 for the Harpeth River Restoration Project (“Project”) based on the Design Plan by the Engineer; and

WHEREAS, in order for the Project to be completed as designed with an estimated cost of \$865,326 the City will need to provide an assurance of funding for approximately \$481,466, since the grant obtained by the HRWA (\$350,000) and their committed in-kind contribution (\$33,860) will not cover the entire cost of the Project; and

WHEREAS, the City is conducting an Integrated Water Resources Plan (IWRP) effort to better understand and plan for the use of the various water resources available, part of which is the

withdrawal of water from the Harpeth River for treatment to use as source for part of the City's domestic water system needs; and

WHEREAS, the City is required to contract through the competitive bid process for the implementation of the Project if there is to be City funds applied to the Project; and

WHEREAS, the City and the HRWA have agreed on a effort to jointly fund the Project with the City taking the lead in overseeing the administration of the bidding and construction of the Project; and

WHEREAS, it is in the best interest of all parties and the Project for the Engineer to be kept involved in the implementation of the Project to the maximum extent possible.

NOW, THEREFORE, in consideration of these premises and the mutual promises contained herein, it is agreed by and between the parties as follows:

1. The foregoing recitals are incorporated into this Agreement and made a part thereof.
2. The HRWA shall be responsible for the contract with the Engineer for the Design Plan and limited construction administration of the Project and the administration/management of the U.S. Department of the Interior Fish and Wildlife Services's (Service) grant. The HRWA shall make available to the City the Design Plan for the bidding and construction of the Project.
3. The cost for the Design Plan and grant administration/management (estimated to be \$229,400) shall be paid from the Service's \$350,000 grant, with the remainder of the grant funds to be spent for the Project's construction. Any change in the Design Plan as approved shall require the prior written approval of the City.
4. The HRWA further agrees to provide an in-kind contribution of work in the amount of \$33,860. Said contribution shall be above and beyond the grant and shall be provided to the City upon the award of the construction contract.
5. The City shall work with TDEC towards an agreement of participation by TDEC for the removal of the existing low-head dam (estimated cost of \$189,000).
6. The City and the HRWA shall strive to obtain agreements with other interested parties for participation in the Project through in-kind work or contributions of funding.
7. The City shall fund the remainder of the cost of the project by either in-kind services or actual payment for work performed (estimated to be \$292,466 should the City be successful in entering into an agreement with TDEC for the low-head dam removal; otherwise estimated cost of \$481,466).
8. This Agreement is subject to the appropriation and availability of City funds and the approval of the City's IWRP with the understanding that the City's Water Treatment Plant is to be maintained as a part of the City's infrastructure. In the event that the funds are not appropriated or are otherwise unavailable, or that the IWRP approval calls for the abandonment of the Water Treatment Plant, the City reserves the right to terminate this Agreement upon written notice to the HRWA. Said termination shall not be deemed a breach of Agreement by the City. Upon such termination, the HRWA shall have no rights to recover from the City any actual,

general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

9. The HRWA agrees to indemnify and hold harmless the City as well as its officials, employees, officers and agents from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the HRWA, its employees, its contractors, or any person acting for or on its behalf in the performance of the Project relating to this Agreement. The HRWA further agrees it shall be liable for the reasonable cost of attorneys for the City in the event such services are necessitated to enforce the terms of this Agreement or otherwise enforce the obligations of the HRWA to the City. In the event of any such suit or claim, the HRWA shall give the City immediate notice thereof, but in no event later than ten (10) days from service thereof, and shall provide all assistance required by the City in the City's defense. The City shall give the HRWA written notice of any such claim or suit, and the HRWA shall have full right and obligation to conduct the HRWA's own defense thereof. Nothing contained herein shall be deemed to accord to the HRWA, through its attorney, the right to represent the City in any legal matter, such rights being reserved by the City.

10. The City shall have no liability except as specifically provided in this Agreement.

11. This Agreement may be modified by the parties only by a written amendment specifically citing the paragraph(s) within this Agreement to be amended.

12. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term, covenant, condition or provision of this Contract shall be held to be waived, modified, or deleted except by written amendment signed by the parties hereto.

13. The HRWA 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 Agreement or in the employment practices of the HRWA on the grounds of disability, age, race, color, religion, sex, national origin, or any classification protected by the Constitution or statutes of the state of Tennessee. The HRWA shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

14. The HRWA shall comply with all applicable federal, state and City laws and regulations in the performance of its duties under this Agreement. The parties agree that failure of the HRWA to comply with this provision shall constitute a material breach of this Agreement and subject the HRWA to the repayment of all City funds expended, or expenses incurred, under this Agreement.

15. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective heirs, legal representatives, successors and assigns.

16. This Agreement is made under and will be construed in accordance with the laws of the State of Tennessee without giving effect to that state's choice of law rules. The parties' choice of

forum and venue shall be exclusively in the courts of Williamson County, Tennessee. The HRWA acknowledges and agrees that any rights or claims against the City of Franklin or its officials, contractors, agents or employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available to the City under law.

17. If any terms, covenants, conditions or provisions of this Agreement are held to be invalid or unenforceable as a matter of law, the other terms, covenants, conditions and provisions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Agreement are declared severable.

18. The City and the HRWA agree that any notice provided for in this Agreement or concerning this Agreement shall be in writing and shall be made by personal delivery, by certified mail (return receipt requested), by nationally recognized overnight delivery service (such as FedEx or UPS), or by facsimile transmission (provided that notice shall also be given in one of the other methods prescribed herein) addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

To City:

David Parker, PE
City Engineer/CIP Executive
P.O. Box 305
Franklin, TN 37065-0305
FAX : (615) 790-0469

To HRWA:

Title: _____
Address: _____

FAX: _____

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates as indicated.

HARPETH RIVER WATERSHED ASSOCIATION

By: _____

Print Name: _____

Title: _____

Date: _____

CITY OF FRANKLIN, TENNESSEE

By: _____
Dr. Ken Moore, Mayor

Date: _____

APPROVED AS TO FORM:

By: _____
Shauna R. Billingsley, City Attorney