

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 associated with the City's Water Treatment Plant intake facilities (the "Low-Head Dam"); 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, HRWA submitted a financial assistance application (the "financial assistance application") to the U.S. Department of the Interior Fish and Wildlife Service (the "Service") to secure funding for the removal of the Low-Head Dam, which financial assistance application included a verbal commitment from the Tennessee Department of Environment and Conservation of a significant in-kind contribution for the removal project; and

WHEREAS, the design firm Beaver Creek Hydrology LLC (Engineer) produced a Concept Plan that will provide a feasible solution for the removal of the Low-Head Dam, which plan was incorporated into the financial assistance application; and

WHEREAS, HRWA received a cooperative agreement from the Service in the amount of \$350,000 (the "Cooperative Agreement") to be used towards the cost of the removal of the Low-Head Dam and restoration of the Harpeth River in the vicinity of the Low-Head Dam (the "Harpeth River Restoration Project" or the "Project"), with the agreement between HRWA and the Service that the project was to be completed by September 30, 2012; and

WHEREAS, HRWA and the many Partners in the project began work on the Project once the Cooperative Agreement between HRWA and the Service became active in August 2011; and

WHEREAS, HRWA used Cooperative Agreement funds to contract with the Engineer and has developed a Design Plan that provides a feasible solution for the removal of the Low-Head Dam and that has been approved by the Project steering committee in May, 2011, which committee includes the city of Franklin, TDEC, the Service, the TN Wildlife Resources Agency; U.S. Geological Survey, and others; 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 also provides for 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, 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 \$498,641, since the Cooperative Agreement (\$350,000) will not cover the entire cost of the Project, and the in-kind contribution in wildlife monitoring by the TWRA and Service valued at \$22,500 are not required for the Project; and

WHEREAS, the City is conducting an Integrated Water Resources Plan (IWRP) in an 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 an 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, permit submissions, limited construction administration of the Project and the administration/management of the Cooperative Agreement. 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, final plans, permit submissions, construction observation, and administration and management of the Cooperative Agreement and project, (estimated to be \$229,400) shall be paid from the Cooperative Agreement. The balance of the Cooperative Agreement will be used towards the Project's construction. Any change in the Design Plan as approved shall require the prior written approval of the City and HRWA.
4. The City shall fund the remainder of the cost of the Project by either in-kind services or actual payment for work performed (estimated cost of \$498,641).
5. The City shall work with TDEC to obtain an official agreement of participation by TDEC for the removal of the existing Low-Head Dam (estimated cost of \$189,000), but the City's

obligations under this Agreement are not contingent upon it entering into any kind of agreement with TDEC.

6. The City and HRWA shall strive to obtain agreements with other interested parties for participation in the Project through in-kind work or contributions of funding, but the City's and HRWA's respective obligations under this Agreement are not contingent upon either of them entering into any such third-party agreements. Based on the in-kind contribution of TDEC valued at \$189,000 in the Project budget of June 3, 2011 and likely other opportunities within the City's resources and other third party in-kind contributions that are valued at \$33,860 in this version of the Project budget, the likely actual expense to the City is estimated at \$275,781.

7. 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 infrastructure. In the event that the funds are not appropriated, and/or the City's Water Treatment Plant is not maintained as part of the City's infrastructure, 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 City shall reimburse HRWA for the funds expended and eligible for re-payment to the Service in accordance with the Cooperative Agreement through the effective date of the termination to not exceed an amount of \$170,000 which represents the cost of work to produce Final Plans, secure all relevant permits, produce bid documents, and required reporting and project management performed by HRWA for the Cooperative Agreement. Other than reimbursement of the Cooperative Agreement as provided above, 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 resulting from a termination under this section.

8. 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 City, likewise agrees to indemnify and hold harmless HRWA, as well as its officers, directors, 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 City, its employees, its contractors, or any person acting for or on its behalf in the performance of the Project relating to this Agreement. Each of the parties shall provide the other party prompt notice of any such suit or claim, but in no event later than ten (10) days from service thereof on the first party. Each party shall also provide the other party such reasonable assistance as is necessary for the other party to defend itself. But parties shall have full right and obligation to conduct their own defense thereof. Nothing contained herein shall be deemed to accord to HRWA, through its attorney, the right to represent the City in any legal matter, such rights being reserved by the City, nor shall anything herein be deemed to accord to the City, through its attorney, the right to represent HRWA in any legal matter, such rights being reserved by HRWA.

9. Each of the parties shall bear the costs of their own legal fees and expenses in connection with this Agreement; provided, however, in the event of a dispute between the parties regarding this Agreement, the prevailing party in any such dispute shall be entitled to recover its attorney's fees and expenses from the non-prevailing party. For purposes of clarification, in the event a dispute arises and is resolved by agreement either before or after initiation of litigation, then unless the agreement resolving the dispute expressly says otherwise, both parties agree they shall bear the cost of their own legal fees and expenses in connection with said dispute.

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 Agreement to insist upon the strict performance of any one or more 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, covenant, condition or provision of this Agreement shall be held to be waived, modified, or deleted except by written amendment signed by the parties hereto.

13. 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 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. HRWA shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

14. The City and HRWA shall comply with all applicable federal, state and City laws and regulations in the performance of their respective duties under this Agreement. The parties agree that failure of either party to comply with this provision shall constitute a material breach of this Agreement and subject the breaching party to damages resulting to the non-breaching party.

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. HRWA acknowledges and agrees that any rights or claims against the City 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 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:

Dorene Bolze
Executive Director
P. O. Box 1127
Franklin, TN 37065
Fax: (615) 373-8512

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



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



HISTORIC
FRANKLIN
TENNESSEE

MEMORANDUM

\$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.

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COF CONTRACT NO 2010-0069

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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~~ associated with the City’s Water Treatment Plant intake facilities (~~the “Low-Head Dam”~~); 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 submitted a grant application (~~the “grant application”~~) to the U.S. Department of the Interior Fish and Wildlife Service (~~the “Service”~~) to secure funding for the removal of the Low-Head Dam and other improvements to the Harpeth River, which grant application included a verbal commitment from the ~~Tennessee Department of Environment and Conservation~~ of a significant in-kind contribution for the Low-Head Dam removal portion of the project; and

WHEREAS, the design firm Beaver Creek Hydrology LLC (Engineer) produced a ~~Concept Plan~~preliminary design that will provide a feasible solution for the removal of the Low-Head Dam, which ~~plan~~design was incorporated into the grant application; and

WHEREAS, ~~the~~ HRWA received ~~the~~ grant from the Service in the amount of \$350,000 (~~the “Grant”~~) to be used towards the cost of the removal of the Low-Head Dam and restoration of the Harpeth River in the vicinity of the Low-Head Dam (the “Harpeth River Restoration Project” or the “Project”), with the agreement between HRWA and the Service that the ~~p~~Project was to be completed by September 30, 2012; and

~~WHEREAS, HRWA and the many Partners in the project began work on the Project once the grant agreement between HRWA and the Service became active in August 2011; and~~

WHEREAS, ~~the~~ HRWA used Grant funds to contract with the Engineer and has developed a Design Plan that provides a feasible solution for the removal of the Low-Head Dam and other Harpeth River restoration improvements, and that has been approved by the Project steering

committee in May, 2011, which committee includes the ~~eCity of Franklin~~, TDEC, the Service, the TN Wildlife Resources Agency; U.S. Geological Survey, and others; 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 also provides for 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, in order for the Project to be completed as designed with an estimated cost of ~~\$865,32671,141~~, the City will need to provide an assurance of funding for approximately \$498,641, since the Grant (\$350,000) will not cover the entire cost of the Project, and the in-kind contribution in wildlife monitoring by the TWRA and Service valued at \$22,500 are not required for the Project; and

WHEREAS, the City is conducting an Integrated Water Resources Plan (IWRP) in an 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 an 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, permit submissions, limited construction administration of the Project and the administration/management of the 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 ~~final~~ Design Plan, ~~final plans~~, permit submissions, construction observation, and administration and management of the Grant and ~~p~~Project, (estimated to be \$229,400) shall be paid from the Grant. The balance of the Grant will be used towards the Project's construction. Any change in the Design Plan as approved shall require the prior written approval of the City and ~~the~~ HRWA.
4. The City shall fund the remainder of the cost of the Project by either in-kind services or actual payment for work performed (estimated cost of \$498,641).

5. The City shall work with TDEC to obtain an official agreement of participation by TDEC for the removal of the existing Low-Head Dam (estimated cost of \$189,000); ~~but the City's obligations under this Agreement are not contingent upon it entering into any kind of agreement with TDEC.~~

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, but the City's and the HRWA's respective obligations under this Agreement are not contingent upon either of them entering into any such third-party agreements. Based on the in-kind contribution of TDEC valued at \$189,000 in the Project budget of June 3, 2011 and likely other opportunities within the City's resources and other third party in-kind contributions that are valued at \$33,860 in this version of the Project budget, the likely actual expense to the City is estimated at \$275,781.

7. 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 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 ~~City shall reimburse HWRA the amount of the Grant expended by HRWA through the effective date of the termination. Other than reimbursement of the Grant, as provided above,~~ 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 resulting from a termination under this section.

8. 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 City, likewise agrees to indemnify and hold harmless HRWA, as well as its officers, directors, 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 City, its employees, its contractors, or any person acting for or on its behalf in the performance of the Project relating to this Agreement.~~—Each of the parties shall provide the other party prompt notice of any such suit or claim, but in no event later than ten (10) days from service thereof on the first party. Each party shall also provide the other party such reasonable assistance as is necessary for the other party to defend itself. But parties shall have full right and obligation to conduct their own defense thereof. Nothing contained herein shall be deemed to accord to HRWA, through its attorney, the right to represent the City in any legal matter, such rights being reserved by the City, nor shall anything herein be deemed to accord to the City, through its attorney, the right to represent ~~HWRWA~~ in any legal matter, such rights being reserved by HRWA.

9. ~~— Each of the parties shall bear the costs of their own legal fees and expenses in connection with this Agreement; provided, however, in the event of a dispute between the parties regarding~~

~~this Agreement, the prevailing party in any such dispute shall be entitled to recover its attorney's fees and expenses from the non-prevailing party. For purposes of clarification, in the event a dispute arises and is resolved by agreement either before or after initiation of litigation, then unless the agreement resolving the dispute expressly says otherwise, both parties agree they shall bear the cost of their own legal fees and expenses in connection with said dispute.~~

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 Agreement to insist upon the strict performance of any one or more 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, covenant, condition or provision of this Agreement 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 City and the HRWA shall comply with all applicable federal, state and City laws and regulations in the performance of their respective duties under this Agreement. The parties agree that failure of either party to comply with this provision shall constitute a material breach of this Agreement and subject the breaching party to damages resulting to the non-breaching party.
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 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:

Dorene Bolze
Executive Director
P. O. Box 1127
Franklin, TN 37065
Fax: (615) 373-8512

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