

AGREEMENT

BETWEEN THE CITY OF FRANKLIN AND THE TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION FOR THE REMOVAL OF LOW-HEAD DAM AT CITY OF FRANKLIN WATER INTAKE FACILITY ON LEWISBURG PIKE, FRANKLIN, TENNESSEE

COF CONTRACT NO 2011-0164

THIS AGREEMENT, (hereinafter "Agreement"), made and entered into this ____ day of _____, 2011 by and between THE CITY OF FRANKLIN, TENNESSEE (hereinafter "City") and the TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION (hereinafter "TDEC").

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 Harpeth River Watershed Association (hereinafter "HWRA") 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 (the "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 the 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, 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, TDEC has agreed to remove the dam and provide the following services:

1. TDEC is to provide all labor and equipment to remove all concrete, reinforcing steel, steel sheet piling, existing pipes, and fill material associated with the dam.
2. TDEC agrees to remove all materials down to bedrock or stream bed grade.
3. TDEC will decide upon pollution controls and de-watering with regards to its role of taking out the dam. The dam will be removed at the driest time of the year.
4. TDEC will follow all erosion and sediment control BMP's as shown in the Final Plans.
5. TDEC will work closely with the Engineer to schedule the removal such that construction of the double invert boulder cross vane can begin immediately following removal of the dam. This will require coordination with another contractor selected in the Project's bidding process.

WHEREAS, TDEC's obligation under this Agreement will be no more than the estimated cost to remove the Low-Head Dam, or One Hundred Eight-Nine Thousand and No/100 Dollars (\$189,000.00), which will be the limit of the in-kind contribution.

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 parties shall have no liability except as specifically provided in this Agreement.
3. This Agreement may be modified by the parties only by a written amendment specifically citing the paragraph(s) within this Agreement to be amended.
4. 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.
5. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective heirs, legal representatives, successors and assigns.
6. 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.
7. The City and TDEC 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 TDEC:

Ronnie Bowers
TDEC Project Coordinator
711 R.S. Gass Blvd
Nashville, Tennessee 37243

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

TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION

By: _____
Robert J. Martineau, Commissioner

Date: _____

CITY OF FRANKLIN, TENNESSEE

By: _____
Dr. Ken Moore, Mayor

Date: _____

APPROVED AS TO FORM:

By: _____
Shauna R. Billingsley, City Attorney

By: _____
Devin M. Wells, Assistant General Counsel




HISTORIC
FRANKLIN
TENNESSEE

MEMORANDUM

November 9, 2011

TO: Board of Mayor and Aldermen

FROM: David Parker, City Engineer/CIP Executive
Eric Stuckey, City Administrator 

SUBJECT: Tennessee Department of Environment and Conservation (TDEC)
Agreement for Low-Head Dam Removal at Water Intake Facility
COF Contract No 2011-0164

Purpose

The purpose of this memorandum is to introduce to the Board of Mayor and Aldermen (BOMA) for consideration an agreement between the City of Franklin and the Tennessee Department of Environment and Conservation for the removal of the Low-Head Dam at the City's water intake facility on Lewisburg Pike.

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.

On September 13, 2011, the BOMA approved an agreement (COF Contract No 2010-0069) with the Harpeth River Watershed Association (HRWA) for the Harpeth River Restoration Project that includes the removal of the Low-Head Dam at the City's water intake facility on Lewisburg Pike. This Agreement is a joint effort towards the funding of the Restoration Project and includes the mention of possible financial assistance from TDEC towards the removal of the existing Low-head Dam. The proposed agreement (COF Contract No 2011-0164) with TDEC is intended to identify what services TDEC will provide in the Low-Head Dam removal efforts. The agreement with TDEC specifies a cap in their in-kind contribution in the removal of the Low-Head Dam of One Hundred Eight-Nine Thousand and No/100 Dollars (\$189,000.00).

Financial Impact

TDEC will be responsible for the Low-Head Dam removal portion of the Harpeth River Restoration Project in an amount not to exceed \$189,000.00 which in turn reduces the City's financial obligation to the project as designed at \$309,641.00. With other expected in-kind contributions, the City's obligation could be reduced to \$275,781.00.

Recommendation

Approval of the Agreement (COF Contract No 2011-0164) with TDEC for the removal of the Low-Head Dam at the City's water intake facility on Lewisburg Pike is recommended.