

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF FRANKLIN AND
TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION FOR
FINANCIAL ASSISTANCE WITH THE TOTAL MAXIMUM DAILY LOAD STUDY
COF Contract #2017-0219**

THIS INTERLOCAL AGREEMENT, (“Agreement”), is entered into by and between the CITY OF FRANKLIN, (“City”), a municipal government located at 109 Third Ave. South, Franklin, Tennessee, 37064, and Tennessee Department of Environment and Conservation, (“TDEC”), a department created pursuant to the laws of the State of Tennessee, located at 312 Rosa L. Parks Avenue, Nashville, Tennessee 37243, to establish the terms and financial responsibilities for the Total Maximum Daily Load study (“TMDL” study).

RECITALS

WHEREAS, the City entered into a settlement agreement with Harpeth River Watershed Association (now d/b/a Harpeth Conservancy) and, as part of that settlement, agreed to “fund a proportional percentage of any required studies to ensure that the Harpeth River Watershed as a whole undergoes a study of scientifically appropriate level of detail and the City’s load allocation is fairly determined in the context of the entire watershed, but in no case shall the City expend funds on studies outside the City’s Urban Growth Boundary [(“UGB”)]”; and

WHEREAS, the City further agreed to “contribute proportionate, meaningful and appropriate funds for [TMDL] studies within the City’s boundaries up to an amount of \$150,000.00... and if any studies necessary to establish an accurate and fair pollutant load allocation for the City are in whole or in part outside of the City’s boundaries, the City agrees to endeavor in good faith to contribute to those studies by attempting to enter into any necessary interlocal agreements”; and

WHEREAS, the parties believe that entering this interlocal agreement will be most effective to allow the City to conduct or contract for services to aid in the TMDL study; and

WHEREAS, EPA and TDEC are developing the TMDL, and therefore TDEC is the state government entity in the best position to determine what studies are most beneficial for the TMDL study.

NOW THEREFORE, in consideration of the mutual promises contained herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

I. Purpose of Agreement. The purpose of this Interlocal Agreement is to define, as the TMDL study continues, the ways in which the City can aid in the TMDL study and to provide a mechanism for the City to aid when the services are required outside of the City’s boundaries or, when a watershed-wide study is to occur, to create a mechanism for the City to contribute its proportionate share.

II. Authority. This Agreement is made and entered into pursuant to the authority granted to the parties under the *Interlocal Cooperation Act*, Tennessee Code Annotated Sections 12-9-101,

et seq., and the parties agree that all approvals and filings required by the terms of the Act shall be achieved prior to the execution of this Agreement.

III. TDEC's Obligations.

1. TDEC, in consultation with the EPA, will advise the City of studies that are needed for the TMDL study.
2. If the requested studies are outside of the UGB, TDEC will communicate with the City the need for the study.

IV. City Obligations.

1. The City will coordinate with TDEC regarding studies that are needed for the TMDL.
2. If the requested studies are outside of the UGB, the City will notify TDEC in writing to document the City either conducting the requested studies on its own or contracting for the services.
3. The City is only obligated to expend money or aid in studies up to a total of \$150,000.00.
4. The City will provide written updates to TDEC regarding the specific studies being conducted pursuant to this agreement.

V. Term. The term of this Agreement shall be the entirety of the TMDL study.

VI. Limitation on Liability. Each party shall be responsible for its own actions and the actions of their employees, contractors, subcontractors, and agents conducted pursuant to this Agreement. The State shall have no liability except as specifically provided in this Interlocal Agreement.

VII. General Terms.

1. **Choice of Law and Forum.** This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Sections 9-8-101 through 9-8-407.
2. **Termination.** The Contract may be terminated by either party by giving written notice to the other, at least thirty (30) days before the effective date of termination. Said termination shall not be deemed a breach of contract. Upon such termination, neither the State nor the City shall have a right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
3. **Notices.** All notices, demands and requests to be given hereunder by either party shall be in writing and must be sent by certified or registered mail and shall be

deemed properly given if tendered at the address below or at such other address as either party shall designate by written notice to the other.

City: **CITY OF FRANKLIN, TENNESSEE**
Eric Stuckey, City Administrator
City Hall
109 3rd Avenue South
Franklin, TN 37064

With copy to: **CITY OF FRANKLIN LAW DEPARTMENT**
Shauna R. Billingsley, City Attorney
City Hall
109 3rd Avenue South
Franklin, TN 37064

State: **TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION**
Tisha Calabrese Benton, Director
Division of Water Resources
William R. Snodgrass TN Tower, 11th Floor
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243

With copy to: Stephanie A. Durman, Assistant General Counsel
TDEC Office of the General Counsel
William R. Snodgrass TN Tower, 2nd Floor
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243

4. **Entire Agreement and Modifications in Writing.** This Agreement contains the entire agreement between the parties, and no statements, promises, or inducements made by either party or agent of either party that is not contained in this written Agreement shall be valid or binding; and this Agreement may not be enlarged, modified, or altered except in writing and signed by the parties and attached hereto.
5. **Assignment.** The rights and obligations of this Agreement are not assignable.
6. **Waiver.** No waiver of any provision of this Agreement shall be valid unless in writing and signed by the parties.
7. **Compliance with Laws.** The parties shall comply with all laws of the United States of America, the State of Tennessee, and local laws and shall secure all necessary permits and licenses and keep the same in force during the term of this Agreement.
8. **Severability.** If any one or more of the covenants, agreements or provisions of this Agreement shall be held contrary to any expressed provisions of law or contrary to any policy of expressed law, although not expressly prohibited, contrary to any express provision of public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be

deemed separate from the remaining covenants, agreements or provisions of this Agreement.

9. **Specific Performance.** The parties recognize that the rights afforded to each under this Agreement are unique and, accordingly, each party shall, in addition to such other remedies as may be available to them in equity, have the right to enforce their respective rights hereunder by an action for injunctive relief and/or specific performance to the extent permitted by law.
10. **Headings.** The headings in this Agreement are for convenience and reference and are not intended to define or limit the scope of any provision of this Agreement.
11. **Effective Date.** This Agreement shall not be binding upon the parties until it has been properly approved by the parties. When it has been so signed and filed, this contract shall be effective September 12, 2017.
12. **Conflicts of Interest.** The City warrants that no amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the City in connection with any work contemplated or performed relative to this Interlocal Agreement.
13. **Nondiscrimination.** The City 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 City on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The City shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
14. **Records.** The City shall maintain documentation of services rendered under this Interlocal Agreement. The books, records and documents of the City, insofar as they relate to work performed under this Agreement, shall be maintained for a period of three (3) full years from the final date of this Agreement and shall be subject to audit, at any reasonable time and upon reasonable notice, by the State, the Comptroller of the Treasury, or their duly appointed representatives.
15. **Monitoring.** The City's activities conducted and records maintained pursuant to this Interlocal Agreement shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
16. **No Third Party Rights.** Nothing in this Agreement, express or implied, is intended to or shall confer upon any Person (other than the parties hereto) any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

IN WITNESS WHEREOF, the City and TDEC have executed this Agreement effective as of the date and year provided herein.

ATTEST:

CITY OF FRANKLIN, TENNESSEE

BY: Eric S. Stuckey, City Administrator

BY: Dr. Ken Moore, Mayor

DATE: _____

DATE: _____

APPROVED AS TO FORM AND LEGALITY:

Shauna R. Billingsley
City Attorney

ATTEST:

TENNESSEE DEPARTMENT OF
ENVIRONMENT AND CONSERVATION

BY: Robert J. Martineau, Jr.,
Commissioner

BY: Tisha Calabrese Benton,
Director, Division of Water Resources

DATE: _____

DATE: _____

APPROVED AS TO FORM AND LEGALITY:

Stephanie A. Durman
Assistant General Counsel, TDEC