

MEMORANDUM OF AGREEMENT

BY AND AMONG

THE EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS, THE DEPARTMENT OF CONSERVATION AND RECREATION¹, THE CITY OF BOSTON, THE TOWN OF BROOKLINE, THE EMERALD NECKLACE CONSERVANCY, AND THE MUDDY RIVER RESTORATION PROJECT MAINTENANCE AND MANAGEMENT OVERSIGHT COMMITTEE CONCERNING ROLES AND RESPONSIBILITIES FOR MAINTENANCE AND MANAGEMENT FOR THE MUDDY RIVER RESTORATION PROJECT IN THE CITY OF BOSTON AND THE TOWN OF BROOKLINE

WHEREAS, Frederick Law Olmsted left the people of the nation, the Commonwealth of Massachusetts, the City of Boston and the Town of Brookline a magnificent historic, cultural and environmental legacy of public parks and open spaces;

WHEREAS, in January of 1984 the Commonwealth of Massachusetts committed itself to reclaiming that legacy by creating the Olmsted Historic Landscape Preservation Program and the “Emerald Necklace Master Plan” of 1990, updated in 2001; and, the mission of the Commonwealth and the Program is to preserve significant historic landscapes and to encourage the public’s appreciation, understanding, wise use and maintenance of this historic legacy;

WHEREAS, the health, safety and quality of life of the residents and communities of Boston and Brookline have been threatened by and subject to flooding, impaired water quality and degraded habitat related to the Muddy River in the Emerald Necklace;

WHEREAS, in accordance with a Memorandum of Agreement (“MOA”) dated June 8, 1999, the City of Boston and the Town of Brookline accepted responsibility for the implementation of the Emerald Necklace Environmental Improvements Master Plan and the Phase I Muddy River Flood Control, Water Quality, Landscape Restoration and Habitat Enhancement Project (EOEA# 11865) (the master plan and the projects contained therein and Phase I for the area between the Charles River and Perkins Street by Jamaica Pond, including specifically Charlesgate, the Back Bay Fens, the Riverway, Leverett Pond, Willow Pond and Wards Pond, collectively referred to as the “Project”, and the first portion of Phase I referred to as “Charlesgate”) with additional financial support from the Commonwealth and Federal Government;

WHEREAS, the goals of the Project include, but are not limited to, flood control, water quality improvements, habitat enhancements and historic preservation of the Project area defined as Charlesgate, Back Bay Fens, Riverway, Leverett Pond, Willow Pond and Wards Pond;

WHEREAS, the Executive Office of Energy and Environmental Affairs (“EOEEA”), the Department of Environmental Management (see footnote 1), the Massachusetts Emergency Management Agency, the Boston Water and Sewer Commission, the Town of Brookline (“Town”) and the City of Boston (“City”) committed to a Memorandum of Understanding, dated

¹ The Department of Conservation and Recreation is the successor agency to both the Department of Environmental Management and the Metropolitan District Commission pursuant to Chapters 26 and 41 of the Acts of 2003.

November 4, 1999, concerning the funding and administering of the planning, permitting, and design of Phase I of the Project and the construction and implementation of Charlesgate, and in which the City and Town accepted responsibility for their respective shares of future maintenance and management activities, including the implementation of best management practices, which are identified in a maintenance and management plan, submitted jointly by the City and the Town to the Secretary of Environmental Affairs, and reviewed as part of the review for adequacy of the environmental impact report pursuant to the Massachusetts Environmental Policy Act (“MEPA”), sections 61-62H of Chapter 30 of the General Laws and its associated regulations, and which maintenance and management plan is attached hereto and incorporated herein (the “Plan”);

WHEREAS, pursuant to MEPA the Secretary of Environmental Affairs (the “Secretary”) issued a certificate, dated May 1, 2003 on the Final Environmental Impact Report, and a Certificate dated April 1, 2005 on the Supplemental Environmental Impact Report (the “SFEIR”), each of which reaffirms that maintenance and management are key to ensuring that the Project meets its long-term goals and that the significant public investment in the project is adequately protected;

WHEREAS, the MEPA Certificates further acknowledge the need and requirement to clearly define the structure, roles and responsibilities, and develop adequate enforceable commitments for maintenance and management of the Project area to protect the substantial investment, both the incurred and anticipated, of federal, state, and local public funds to implement the Project, for which the typical cost-share arrangement is being modified as follows: the state shall assume 100% of the non-federal share of the first \$42 million of capital costs (excluding certain costs such as maintenance and management obligations, and the proponents’ Project betterments including work at Wards Pond, which are not subject to the state cost sharing obligation), with the non-federal share of costs above \$42 million being assumed 50/50 by the state and municipalities but not intended to exceed the preferred project estimate of \$91 million as may be amended to reflect actual costs (whose 50% municipal share will be split 87% Boston and 13% Brookline, based on the agreed upon respective percentage of ownership of the land and waterways in the Project area) in recognition of the commitment by the City and Town to the implementation of maintenance and management obligations, while acknowledging that the local maintenance and management obligations concerning specific Project areas are dependant upon the corresponding funding by the Commonwealth of the non-federal share of costs within the first \$42 million of the comprehensive Project.

WHEREAS, the DCR also recognizes the critical importance of maintenance and management of the Project area and is committed to maintaining and managing the parkways and other areas within and abutting the Project area that are subject to its care, custody and control to the same standard to which the City and the Town are obligated to maintain the areas subject to their respective care, custody and control;

WHEREAS, pursuant to the Phase One Waiver Final Record of Decision dated July 29, 2002 concerning Charlesgate, the Secretary required the establishment, of an independent oversight committee, which is known as the Muddy River Restoration Project Maintenance and Management Oversight Committee (the “MMOC”);

WHEREAS, the Emerald Necklace Conservancy, Inc. (the “Conservancy”) is a non profit corporation and public-private partnership which works to restore, maintain, protect and promote the landscape, waterways and parkways of the Emerald Necklace park system as special places for people to visit and enjoy, and to engage and inform the public;

WHEREAS, the signatories to this Memorandum of Agreement (together, the “parties”) firmly believe that ongoing coordination and cooperation among the parties, the development of public-private partnerships, fostering public education and participation and the implementation of effective long-term maintenance and management systems are critical components to ensuring effective stewardship of the Project area and the preservation of this significant and historic public resource;

WHEREAS, the parties agree that proper maintenance and management of the Project area will be critical for achieving and sustaining all the Project goals, neglect of these responsibilities, whether benign or otherwise, will result in sediment reaccumulating in the river, degradation of water quality and habitat, and endangering the historic landscape;

WHEREAS, the parties recognize that the unique nature of this historic landscape located in multiple jurisdictions offers the parties a unique opportunity to work together cooperatively to ensure outstanding stewardship of the entire Project area;

WHEREAS, the parties believe it is appropriate to recognize and outline their respective roles and responsibilities relative to maintenance and management of the Project area after completion of construction to ensure the preservation and protection of this unique Olmsted park system, and to protect the substantial public investment in the Project and the Project area;

WHEREAS, the parties recognize that the obligations and responsibilities of the City and Town hereunder are conditional upon provision of the agreed upon federal and state funding for the Project;

NOW, THEREFORE, in order to clearly define the roles and responsibilities of the parties to this Memorandum of Agreement for maintenance and management activities associated with the Project area, the parties, including their respective successor organizations and successor agencies designated by law, agree as follows:

1. Purpose.

The parties to this Memorandum of Agreement concerning the Project (the “Agreement”) hereby each commit to:

- (a) protect the substantial public investment in and to restore, improve, and provide proper stewardship for the natural, recreational, and cultural resources in the Project area;
- (b) make best efforts to create and maintain public-private partnerships to support the stewardship and improvement of the natural, recreational and cultural resources;

- (c) comply with state, federal and local laws and permits, and the conditions and requirements of all existing and anticipated state and federal project agreements associated with the Project;
- (d) make clear the roles and responsibilities for the implementation of the required maintenance and management plan in a transparent and comprehensive manner;
- (e) establish a framework for ongoing, public participation and evaluation of progress on the implementation of the maintenance and management plan and associated activities;
- (f) wherever possible work collaboratively across jurisdictional barriers and boundaries to implement the maintenance and management obligations of the various public landowners with respect to the Project area in a seamless and transparent manner, and to respect both the specific processes of and the spirit of this unique inter-governmental agreement which may serve as a model for other multi-governmental projects for decades to come; and
- (g) maintain open and consistent communication among themselves regarding any matter which affects the Project or the Project area.

2. Maintenance and Management.

The parties recognize and agree that a substantial public investment is being made in the Project and that the long-term success of the Project is dependant upon responsible and effective stewardship of the entire Project area and maintenance and management in conformance with the standards detailed in and the specific provisions of the maintenance and management plan submitted by the City and Town, and reviewed and deemed adequate by the Secretary of Environmental Affairs ("Plan"). Essential measures in this stewardship include commitments to implementation and maintenance of storm-water best management practices, historic preservation and maintenance of Project infrastructure and parklands and parkways. Therefore, the parties hereby agree to the following with respect to maintenance and management of the Project area:

- (a) Upon the issuance of a certificate of final completion for each phase of construction or the return of that portion of the Project area to the care custody and control of the City or Town whichever occurs earlier, the parties agree that the parklands within the Project area shall be maintained and managed in accordance with the standards detailed in and the specific provisions of the parklands Maintenance and Management Plan dated January 2005, which is set forth in Section 9 of the SFEIR, as it may be amended from time to time in the future. Said plan, including any such amendments, is incorporated herein as Appendix A to this Agreement, and made a part hereof.
- (b) The parties agree that the DCR parkways and roadways within or proximate to the Project area shall be maintained and managed in accordance with the standards detailed in and the specific provisions of the parkways maintenance plan for the Muddy River Project Area developed by DCR, as it may be amended from time to time in the future

("DCR's Parkways Maintenance Plan"). Said plan, including any such amendments, is incorporated herein as Appendix B to this Agreement, and made a part hereof. Notwithstanding, under no circumstances shall the City or Town be responsible for maintaining parkways and roadways outside their respective care and control.

- (c) The parties agree that the local roadways and stormwater drainage system within or proximate to the Project area shall be maintained and managed in accordance with the standards detailed in and the specific provisions of the Stormwater Management and Maintenance Plan, which is set forth in Appendix C of the SFEIR, as it may be amended from time to time in the future. Said plan, including any such amendments, is incorporated herein as Appendix C to this Agreement, and made a part hereof.
- (d) The City and the Town shall each implement the maintenance and management obligations stated in the Plan, any conditions contained in relevant MEPA certificates of the Secretary, any Section 61 findings issued pursuant to MEPA, and the requirements of any permit or approval issued in connection with the Project, with respect to those portions of the Project area that are within their respective care, custody or control, and shall provide the necessary resources to ensure compliance with such obligations as required by the MEPA certificates, Section 61 findings and any other permits and approvals for the Project.
- (e) Compliance with the Plan by the City and by the Town shall be incorporated as conditions of any contract for state financial assistance associated with the Project, and any permits and approvals granted by any state agency with respect to the Project;
- (f) Compliance with the Plan by the City and by the Town shall be considered independent legal obligations, each of which shall be specifically enforceable by the Commonwealth, including EOEEA. In addition, compliance with the Plan shall be specifically enforceable by any other state agency but only to the extent that compliance with the Plan or any part of it is a condition of a permit or approval issued by that agency.
- (g) In a manner consistent with the standards used by the City and the Town under the Plan, DCR shall provide the necessary resources to maintain and manage the parklands, parkways and other resources within or proximate to the Project area that are under its care, control and maintenance.
- (h) The parties recognize that following issuance to DCR by the Environmental Protection Agency ("EPA") of the final National Pollution Discharge Elimination System municipal separate storm sewer system permit ("NPDES-MS4 Permit"), it may be necessary for DCR to modify the Parkways Maintenance Plan. DCR agrees that it shall make such modifications within ninety (90) days' of the issuance of the NPDES-MS4 Permit.
- (i) The Town, the City and DCR agree to work cooperatively to ensure consistent and seamless maintenance and management of those portions of Project area within their respective care, custody and control, and the Conservancy and the MMOC agree to work cooperatively with them to achieve these goals.

- (i) The parties agree to work cooperatively to urge other landowners, both public and private, which own or control either land or infrastructure which abuts or affects the Project area to implement maintenance and management practices which are consistent with those set forth in the Plan.

3. Creation of Cabinet and its Management Structure.

The parties recognize and agree that long-term success in fulfilling the Project goals cannot be achieved without open lines of communication and sharing of information among the parties to this Agreement and the public, coordination of activities across jurisdictional boundaries and appropriate staffing and other resources to implement the maintenance and management plan. To this end, the parties hereby establish a Management Cabinet (the "Cabinet") to formalize a maintenance and management structure to oversee the Project in furtherance of these purposes and achieving and maintaining the long-term success of the Project.

- (a) The Cabinet shall serve primarily as a mechanism and forum for high-level management officials to discuss, consider, resolve and implement decisions made with respect to: the range of issues associated with maintenance and management, historic preservation, stewardship and performance standards, including the appropriate capital and operating funding; the implementation, review, potential modification, and enforcement of standards pertaining to these issues; achievements; ongoing cooperation in furtherance of implementing new knowledge and lessons learned in the Project area; and any needs for and potential assistance that could be provided by the parties.
- (b) The Cabinet shall be the forum through which the parties shall facilitate coordination of the implementation by the parties of the Plan, and address compliance of the parties with the Plan, including the standards specified therein. Notwithstanding the foregoing, the parties specifically recognize and agree that the Cabinet shall not administer or otherwise control the day-to-day management or operation of any parklands, including lands, facilities, parkways or water courses that are under the care, custody or control of either the City, the Town or DCR; it being expressly understood that such is reserved to the City, the Town and DCR, respectively.
- (c) The Cabinet shall have five (5) members, the City, the Town, DCR, the Conservancy and the MMOC, which shall be represented on the Cabinet by the person holding the positions set forth below, or such other person as shall be designated by the party and shall have decision-making authority with respect to issues addressed by the Cabinet. Specifically, the City shall be represented by its Commissioner of Parks, the Town by its Commissioner of Public Works, DCR by its Commissioner, the Conservancy by its President or the Chair of its Board, and the MMOC by its Chair.
- (d) The Cabinet shall hold meetings at least quarterly, and otherwise as reasonably requested by any party, and as otherwise needed. At least one of the quarterly meetings each year shall be organized specifically for the public.

- (e) Each member of the Cabinet shall have one vote. A quorum necessary to conduct a meeting of the Cabinet shall consist of not less than four (4) of the members of the Cabinet. The parties shall make an effort to make all decisions by consensus; but in no event shall any decision of the Cabinet be made by vote of fewer than four (4) members.
- (f) The members of the Cabinet shall preside over meetings on a rotating basis, each member presiding over one meeting and the order in which they shall preside being chosen by lot.
- (g) Five years from the issuance of the certificate of final completion of the last phase of the Project or five years from the date the last area of the Project is completed and returned to the care, custody and control of the City or Town, whichever occurs first, the Parties agree to review the effectiveness of the Cabinet structure, and its functions and representation and to identify recommended modifications, if any, and whether this Agreement should be amended consistent with that review.

4. Muddy River Restoration Project Maintenance and Management Oversight Committee (MMOC).

The parties agree that proper maintenance and management of the Project area are critical to achieving the Project goals, and that implementation of a continuing, independent oversight body for the Project is essential to meeting these goals consistently in the long-term and to protecting the significant public investment in the Project. The parties agree that the MMOC, referenced and described in various documents issued by the Secretary, including the Secretary's Certificate dated April 1, 2005 on the SFEIR, shall fulfill such a role in the project management structure associated with the Project and will be supported by the proponents and Commonwealth as defined in the environmental documents including Records of Decision (RODs) and Certificates.

The composition of the MMOC, including both its voting and ex-officio members, and the mechanism for appointing new members are described in Appendix D, which is attached hereto, and incorporated herein and made a part of this Agreement.

The MMOC has been designated by the Secretary to serve as the formal vehicle for public participation in the Project, and has a unique and critically important function on the Cabinet. The MMOC provides ongoing independent evaluation of the Project and works to ensure full compliance by all parties with their obligations under the Certificates and Project permits, and outstanding stewardship of the Project area. Therefore, the parties agree as follows:

- (a) In order to enable the MMOC to fulfill its function, the parties agree to communicate in good faith and to share directly with the MMOC all information and documentation relating to the Project that are either requested by the MMOC or recognized by another party to be relevant to the Project or the maintenance and management of the Project area, so that the MMOC may fulfill its function. The MMOC shall communicate and share information directly with all parties, so that the parties may fulfill their functions, including maintenance and management obligations as applicable. The MMOC shall inform the Cabinet of outstanding issues that require consideration and resolution.

- (b) Without limiting the role of the MMOC, the MMOC shall provide the primary forum and conduit for public participation in the Project, including the independent review, oversight and decision-making process of the parties associated with their maintenance and management obligations with respect to the Project area.
- (c) The MMOC shall endeavor to hold monthly meetings and such additional meetings as may be necessary.
- (d) In implementing its role as described in this Paragraph 4, the MMOC shall have the following responsibilities: review and evaluate the implementation and progress of construction activities and maintenance and management standards; evaluate progress and provide independent oversight of long-term maintenance and management activities; provide independent review and comment concerning reports and filings related to the Project area; monitor and evaluate compliance with permit, contract and legal obligations associated with the Project, including Section 61 findings; promote coordination and communication concerning maintenance and management activities among the Parties and the public; encourage representation of a broad public constituency on the MMOC; serve as a conduit for public participation and access to information concerning maintenance and management of the Project area; and report frequently to the Cabinet any issues for its discussion and consideration.
- (e) The Town, the City and DCR or other appropriate state agency shall provide funding for the duration of the construction of the Project plus five years from the issuance of a certificate of final completion for the Project or the return of the entire Project area to the care custody and control of the City or Town whichever occurs earlier, to support the activities of the MMOC. Funding shall be not less than \$35,000 per year from the City, \$20,000 per year from the Town, and \$20,000 per year from DCR. Funding for the MMOC shall be administered and distributed both in a manner and through a qualified organization acceptable to the governmental entities that are parties to this Agreement. Such parties recognize that at the time of execution of this Agreement, Mission Hill Main Streets is serving as the MMOC's fiscal agent and they agree that such organization is qualified and acceptable to serve in such capacity. The MMOC shall internally manage the funds through procedures established by the MMOC and overseen by its Operations Committee. The MMOC shall establish a financial management system that provides for accurate and complete disclosure of all funds received and disbursed relative to the MMOC. An annual budget identifying anticipated expenditures shall be submitted to the Proponents, the Secretary, and DCR by the start of its fiscal year, which shall end June 30 each year. An annual financial report shall be submitted to the proponents, the Secretary, and DCR within 90 days of the end of the fiscal year. The report should include a financial statement that details all funds received and expenditures made during the previous fiscal year. The MMOC shall provide quarterly financial reports to any of the governmental parties to the Agreement, upon request.

5. Role of the Emerald Necklace Conservancy.

Since its incorporation in 1998, the Conservancy has advocated for the Muddy River's renewal, has undertaken early Muddy River restoration project studies in collaboration with The Fenway Alliance, and worked with public sector representatives to obtain project funding and Army Corps involvement. The Conservancy will continue its involvement in, and support of, the restoration of the Muddy River, including through the following activities:

- (a) The Conservancy shall use best efforts to work with the other parties to assess and identify annual funding necessary for the maintenance and management of the Project area, funding for administration and activities, and to support the efforts of the City, the Town and DCR to secure the necessary annual funding for the City's, the Town's, DCR's maintenance and management and capital obligations.
- (b) The Conservancy will facilitate the development of partnerships among the Parties and non-profit organizations; act as a liaison with the cultural and educational institutions in the neighborhoods along the Muddy River; and develop and implement public education and other programs to promote an understanding and appreciation of the landscape, waterways, parkways and features of the Emerald Necklace.
- (c) The Conservancy shall assist the Cabinet in its administration through, at the request of the Cabinet: assisting in convening meetings; identifying locations of Cabinet meetings; and disseminating materials relating to Cabinet meetings and activities.
- (d) The Conservancy will engage in advocacy for the Project and related Emerald Necklace issues, including adequate funding of such.
- (e) The Conservancy will work with the parties for the promotion and implementation of volunteer/stewardship initiatives.
- (f) The Conservancy will work with the parties to implement public education efforts in order to raise public awareness of the Project and related issues of the importance of parks restoration and maintenance.
- (g) The Conservancy will work to encourage private sector contributions of resources toward the improvement of the public park system, in order to supplement and extend the capabilities of the public sector, without replacing the public sector responsibility for baseline maintenance obligations.
- (h) The Conservancy will work with the parties, and through established public-private partnerships, to provide guidance on the development of consistent Emerald Necklace standards (such as, lighting, benches, trash barrels and of services) to further a seamlessly managed and maintained, and readily identifiable park system.

- (i) The Conservancy will work, as a member of the MMOC, to review and evaluate issues and concerns related to maintenance and management of the Project area. Notwithstanding the foregoing, apart from this agreement and as a member of the public, the Conservancy may separately review these issues and comment to public agencies and private groups.

6. Dispute Resolution.

In the event of a dispute related to this Agreement or the appendices referred to herein, the parties shall use the following as a condition precedent to any party pursuing other available remedies, including legal remedies. Notwithstanding the foregoing, the parties are committed to trying in good faith to resolve all issues that relate to this Agreement and the Project informally and expeditiously through the Cabinet, and agree that for the purposes of this Paragraph 6, there shall not be a dispute until such informal efforts through the Cabinet shall have been deemed ineffective by any party in its sole discretion:

- (a) A party who believes a dispute exists (the “disputing party”) shall give written notice of such dispute in writing to the party or parties involved in the dispute (the “responding party” or the “responding parties”), and shall provide a copy of such notice simultaneously to each other party to this Agreement. Such notice shall clearly, though as briefly as practicable, state the substance and scope of the dispute, the disputing party’s position relative thereto, including legal and factual justifications therefore, the remedy sought, and any other pertinent matters.
- (b) The responding party or parties shall respond in writing to the disputing party within ten (10) business days of receiving such notice, and shall send a copy of such response to each of the other parties to this Agreement. Such writing shall clearly, though as briefly as practicable, state the responding party’s (or parties’) response to each of the items included in the disputing party’s writing, and any other pertinent matters.
- (c) A telephone conference shall be held within ten (10) business days between representatives of the parties having decision-making authority regarding the dispute, to negotiate in good faith a resolution of the dispute.
- (d) If, within ten (10) business days after such telephone conference, the parties have not succeeded in negotiating a resolution of the dispute, the parties’ representatives shall submit the dispute to mediation by contacting the MA Office of Dispute Resolution (MODR), which will convene and coordinate the mediation process. Notwithstanding the foregoing, the parties agree that no public employee shall act as a mediator in connection with any dispute.
- (e) The parties hereby agree to mediate in good faith for a minimum period of ten (10) business days from the actual commencement of the mediation.
- (f) The parties may mutually agree to extend any of the time periods stated herein.

- (g) The parties agree that the mediation provided for here is a compromise negotiation for purposes of all international, federal and state rules of evidence. The entire procedure will be confidential to the extent permitted by law. All conduct, statements, promises, offers, views and opinions, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, representatives or other invitees to the mediation and by the neutral, who is the parties' joint agent for the purpose of these compromise negotiations, are confidential and shall, in addition and where appropriate, be deemed to be privileged. Such conduct, statements, promises, offers, views and opinions shall not be discoverable or admissible for any purposes, including impeachment, in any litigation or other proceeding involving the parties and shall not be disclosed to anyone not an agent, employee, expert, witness, or representative for any of the parties. However, evidence otherwise discoverable or admissible in a later proceeding is not excluded from discovery or admission as a result of its use in the mediation. If not entirely enforceable, the parties intend that the court enforce this provision to the extent enforceable by such court.
- (h) The parties agree that nothing contained herein shall affect or limit, in any way, any party, as applicable, from independently exercising or enforcing its authority under any applicable statute, regulation or other provision of law that it is charged with administering.

7. U.S. Army Corps of Engineers Project Agreement Conditions.

The parties recognize that certain obligations and conditions associated with the Project must be fulfilled by certain parties independent of this memorandum as part of any project agreement for the Project with the United States Army Corp of Engineers and local, state and federal project permits. The parties agree, however, that fulfillment of those conditions and obligations (in force or as lawfully modified) by the relevant parties shall be considered binding obligations under this Agreement.

8. Rights and Liabilities of the Parties.

Nothing in this Agreement, except as expressly stated, shall be construed to diminish, enlarge or modify any right or liability of any of the parties, or (in any event) create liability on the part of any public agency or private person for the act or omission of another public agency or a private person. Nothing in this Agreement shall be construed to amend, repeal or otherwise alter the authority or jurisdiction of any public agency. Nothing in this Agreement, including any process established herein, shall be construed to amend, repeal or otherwise alter any mitigation commitment, obligation or requirement pursuant to MEPA.


9. Effective Date and Term.

The effective date of this Agreement shall be the date of execution by the last of the parties to sign. The Agreement shall remain in effect from the effective date and shall not expire until thirty (30) years from the completion date of the capital investments of the Project, unless the term is extended or modified with the unanimous written agreement of all of the parties. This

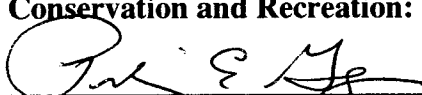
duration of the Agreement represents the currently estimated expected life of the capital investments implemented, if maintained as anticipated, as part of the Project.

Each of the parties signing below represents and warrants that it is authorized to sign on behalf of and to bind their respective Party to this Agreement.

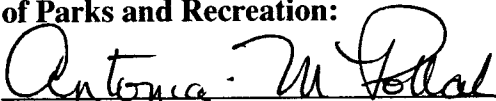
For the Executive Office of Energy and Environmental Affairs:


Secretary Ian Bowles
Date: 6/7/07



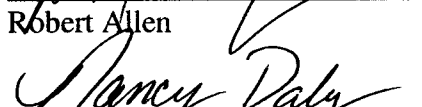
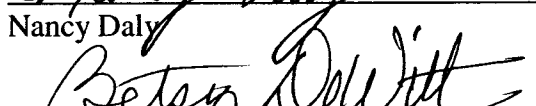
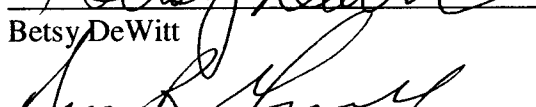
For the Department of Conservation and Recreation:


Acting Commissioner Priscilla E. Geigis
Date: 5/22/07


For the City of Boston, by its Commissioner of Parks and Recreation:


Commissioner Antonia Pollak
Date: 5/22/07


For the Town of Brookline, by its Board of Selectmen


Gil Hoy, Chair

Robert Allen

Nancy Daly

Betsy DeWitt

Jesse Mermell
Date: 5/22/07

For the Muddy River Restoration Project Maintenance and Management Oversight Committee:


Frances Allou Gershwin, its Chair
Date: 5-22-07

For the Emerald Necklace Conservancy:


Simone Auster, its President
Date: 5/22/07

Emerald Necklace Muddy River Restoration Project

Memorandum of Agreement

APPENDIX A

Parklands Maintenance and Management Plan
dated January 2005
appears as Section 9 of the SFEIR
and is found on a CD

Emerald Necklace Muddy River Restoration Project

Memorandum of Agreement

APPENDIX B

**Parkways Maintenance and Management Plan of the
Massachusetts Department of Conservation and Recreation
for the Muddy River Project Area**

See pages following

Emerald Necklace Muddy River Restoration Project
Memorandum of Agreement

APPENDIX C

**Stormwater Management and Maintenance Plan
appears as Appendix C of the SFEIR**

Emerald Necklace Muddy River Restoration Project

Memorandum of Agreement

APPENDIX D

**Provisions regarding the composition and appointment of
members of the Muddy River Restoration Project Maintenance
and Management Oversight Committee**

See page following

APPENDIX D

As indicated in various Certificates and other documents issued by the Secretary, the composition of and mechanism for appointment of members of the Muddy River Restoration Project Maintenance and Management Oversight Committee, shall be as follows:

- (a) The MMOC shall consist of a member (except as otherwise indicated) from each of the agencies and organizations listed in Paragraphs (b) and (c) below (or the designee from within that agency or organization), and such other members as may be appointed by the Secretary from time to time as set forth in Paragraph 4(d). Members representing the organizations listed in this Paragraph 4(b) shall be voting members of the MMOC, and those representing the agencies listed in Paragraph 4(c) shall be non-voting ex officio members of the MMOC. The Secretary, in her discretion, may add or remove member agencies and organizations from the MMOC, and shall consider the recommendations of the MMOC itself with respect to organizations and agencies which should be represented on the MMOC.
- (b) Except for the Emerald Necklace Citizens Advisory Committee, each of the following organizations shall have one (1) representative on the MMOC who shall be a voting member of the MMOC:

- Boston Society of Landscape Architects
- Brookline GreenSpace Alliance
- Charles River Watershed Association
- Emerald Necklace Conservancy
- The Fenway Alliance
- MASCO
- Massachusetts Audubon Society
- Muddy River Restoration Project Technical Advisory Committee

The Emerald Necklace Citizens Advisory Committee shall have six (6) representatives on the MMOC, which shall include representatives from Boston and from Brookline, and each such representative shall be a voting member of the MMOC.

- (c) Each of the following agencies and organizations shall have one (1) representative on the MMOC, who shall be a non-voting, ex officio member of the MMOC:
 - Boston Landmarks Commission
 - Boston Parks and Recreation Department
 - Brookline Parks and Open Space Division
 - Brookline Preservation Commission
 - Massachusetts Emergency Management Agency
 - Massachusetts Executive Office of Environmental Affairs
 - Massachusetts Historic Commission
 - Massachusetts Department of Conservation and Recreation
- (d) From time to time, additional voting and non-voting members may be designated by the Secretary.