

**MEMORANDUM OF UNDERSTANDING
BY AND AMONG
THE EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS, THE DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT, THE MASSACHUSETTS EMERGENCY MANAGEMENT
AGENCY, THE BOSTON WATER AND SEWER COMMISSION,
THE TOWN OF BROOKLINE AND THE CITY OF BOSTON
CONCERNING RESPONSIBILITIES FOR FUNDING AND ADMINISTERING
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 and of the Commonwealth of Massachusetts 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; and, the Commonwealth's mission 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 Boston Park System known as the Emerald Necklace;

WHEREAS, in accordance with a Memorandum of Agreement ("MOA"), dated June 8, 1999, between the City of Boston and the Town of Brookline, the City of Boston has 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 Plan and the projects contained therein and Phase I collectively referred to as the "Project", and the first portion of Phase I referred to as "Charlesgate");

WHEREAS, the Secretary of Environmental Affairs issued pursuant to the Massachusetts Environmental Policy Act, sections 61-62H of Chapter 30 of the General Laws and its associated regulations, a certificate, dated April 29, 1999, that establishes a special review procedure for the evaluation and review of the Project and a Citizen's Advisory Committee to enhance public participation in the entire Project, and a separate certificate concerning the scope of the required environmental impact report;

WHEREAS, the parties to this memorandum (hereinafter the "parties") believe it is appropriate to recognize and outline their respective roles relative to funding and administering the successful design, permitting and construction of Phase I (generally understood as estimated at approximately \$43,200,000) of the Project;

NOW, THEREFORE, in order to provide the required funds and related administration for the planning, permitting, and design of Phase I of the Project and the construction and implementation of Charlesgate, the parties hereto agree as follows:

1. The parties intend that the funds outlined herein will be transferred to the City of Boston for the purposes of planning, permitting and the design of Phase I and implementing and completing Charlesgate in a timely manner, and the parties understand that the City of Boston Parks and Recreation Department shall be the project manager for the Project;
2. The City of Boston will receive and expend these funds solely for Phase I, including Charlesgate, purposes, as mutually agreed among the parties, and in accordance with applicable federal, state and local laws, regulations and associated policies, including but not limited to those concerning bidding and procurement of construction or other services required for the Project;
3. The parties agree to cooperate and work together to ensure that all requirements of the various programs from which funds will be provided, including those concerning non-federal matching funds, are fulfilled;
4. A total of approximately \$7,100,000 is understood as the funding considered necessary for the total cost of the planning, designing, and permitting of Phase I and implementing, constructing and completing Charlesgate, and that these funds are anticipated from the following sources as further described:
 - a. The Massachusetts Emergency Management Agency and the Department of Environmental Management ("MEMA/DEM") will continue to seek final approval from the Federal Emergency Management Agency ("FEMA") Hazard Mitigation Grant Program for approximately \$2,300,000 in federal hazard mitigation funds, and should such approval be received, MEMA/DEM will enter into a contract with the City of Boston to provide these funds as described in the associated FEMA application. All parties agree to cooperate and continue to work together to secure these funds. Once a contract has been executed, the funds will be disbursed to the City of Boston on a reimbursable basis, pursuant to applicable regulations and the terms of the contract;
 - b. The \$790,242 in funds already provided by the United States Department of Housing and Urban Development ("HUD") through a federal fiscal year ("FFY") 1997 Community Development Block Grant ("CDBG") to MEMA (CDBG Disaster Recovery Initiative Grant Agreement #97-01 between MEMA and the City) will be disbursed to the City of Boston on a reimbursable basis, pursuant to applicable regulations and the terms of the grant agreement;
 - c. The additional \$1,500,000, that may be made available from HUD to MEMA through a grant under the FFY 1998 CDBG program, will be provided, if made available to the Commonwealth as anticipated, to the City of Boston through a grant contract to be negotiated between MEMA and the City of Boston. DEM and MEMA will complete and forward to HUD an action plan, as required by HUD, for the availability of these funds.

Upon approval of said action plan by HUD, the City of Boston will prepare and provide to MEMA a separate acceptable action plan and any other materials required for the expenditure of these grant funds. The funds will be disbursed to the City of Boston on a reimbursable basis, pursuant to applicable regulations, and expended in accordance with the terms of said contract;

- d. DEM will enter into an agreement with the City of Boston to provide a maximum of \$464,701, as appropriated by the Massachusetts Legislature in line item 2100-3012 of section 2 of Chapter 289 of the Acts of 1998, which shall be transferred to the City of Boston and expended in accordance with said agreement;
 - e. The Town of Brookline, through its Department of Public Works, agrees to transfer to the City of Boston, consistent with the above-referenced MOA, \$500,000, which is the totality of the town's share of Phase I, to be made available as part of the town's fiscal year 2001 capital budget;
 - f. The City of Boston agrees to commit the approximately \$45,700 in remaining funds originally provided by HUD to the city through the FFY 1997 CDBG Disaster Recovery Initiative program;
 - g. The Boston Water and Sewer Commission will transfer \$1,500,000, which is the totality of the commission's share of Phase I, to the City of Boston to be expended on Phase I;
5. The City of Boston and the Town of Brookline, upon the appropriate completion of the design, permitting and implementation and construction of Phase I or as otherwise provided in the maintenance and management plan approved as described in this paragraph, accept responsibility, including any costs, for their respective shares of future maintenance and management activities (not including capital improvement projects), including the implementation of best management practices, identified in an appropriate maintenance and management plan, submitted jointly by the city and the town to the Secretary of Environmental Affairs, that will be reviewed as part of the review for adequacy of the environmental impact report pursuant to MEPA; provided however, should the approximately \$7,100,000 identified in paragraph 4 not be provided, the city and the town may limit or, if necessary, cease their involvement with the Project.
 6. The City of Boston agrees, in consultation with and subject to the approval of the parties, to establish and comply with reasonable and well-defined schedules for the design, permitting and construction of Phase I upon receipt of funding as outlined in this memorandum.
 7. Nothing in this memorandum, except as expressly stated, shall be construed to diminish, enlarge or modify any right or liability of any of the parties, or create liability on the part of any public agency for the act or omission of another public agency or a private person. Nothing in this memorandum shall be construed to amend, repeal or otherwise alter the authority or jurisdiction of any public agency.

8. The parties acknowledge the importance of the tasks outlined in this memorandum and the monumental undertaking required for successful completion of Phase I as well as the entire Project. In recognition of this and of the significance of the Emerald Necklace to its constituents and that successful restoration cannot be achieved except through the collective cooperation of the parties, each party to this memorandum agrees to cooperate relative to the Project to ensure the preservation and protection of this unique Olmsted park system.

9. The effective date of this memorandum shall be the date of execution by the last of the parties to sign.

**For the Executive Office of
Environmental Affairs:**


Secretary Robert Durand

Date: 11/4/99

**For the Department of
Environmental Management:**


Commissioner Peter Webber

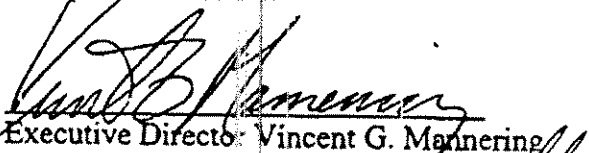
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**For the Massachusetts Emergency
Management Agency:**


Director Stephen J. McGrail

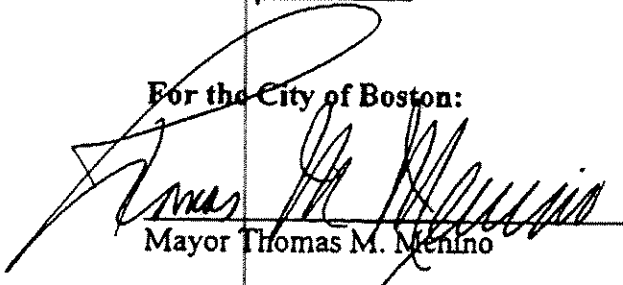
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**For the Boston Water and
Sewer Commission:**


Executive Director Vincent G. Manning

Date: 10/29/99

For the City of Boston:


Mayor Thomas M. Menino

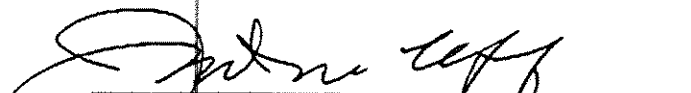
Date: 11/2/99

For the Town of Brookline:


Selectman Joseph Geller, Chairman

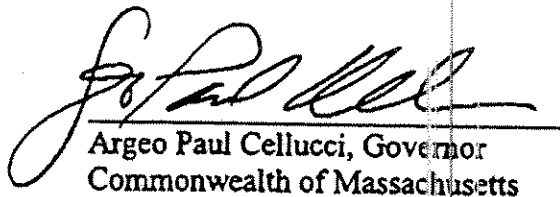
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**For the Boston Parks
and Recreation Department:**


Commissioner Justine Liff, as project manager

Date: 11/4/99

I, Argeo Paul Cellucci, Governor of the Commonwealth of Massachusetts, celebrate the significant progress of the parties to this memorandum in advancing the restoration objectives as outlined herein, commend the cooperative relationship that has developed among public and private groups in furtherance of these objectives, and recognize the need for continuing commitment by the parties to ensure the future health of the Muddy River, an integral component of the historic landscape legacy of Frederick Law Olmsted, Sr.


Argeo Paul Cellucci, Governor
Commonwealth of Massachusetts

Date: 11/4/99