

**MEMORANUM OF AGREEMENT
BETWEEN
CITY OF BOSTON AND TOWN OF BROOKLINE**

AGREEMENT made this 8th day of June by and between the Town of Brookline, a municipal corporation located in Norfolk county, Massachusetts acting through its Department of Public Works (hereinafter, "Brookline") and the City of Boston, a municipal corporation located in Suffolk County, Massachusetts acting through its Parks and Recreation Department (hereafter, "Boston").

WHEREAS, the Muddy River in the Emerald Necklace is a joint responsibility of Boston and Brookline due to the municipal boundaries running through the center of the Muddy River, Leverett Pond, the Bubbling Brook, Willow Pond, and the stream from Wards Pond (See Exhibit "A"); and,

WHEREAS, Boston and Brookline seek to remedy the flooding, water quality, and habitat of the Muddy River system through the engineering and construction of restoration work; and,

WHEREAS, the Federal Emergency Management Agency (hereinafter, "FEMA"), the Federal Housing and Urban Development (hereinafter, "HUD") and the Massachusetts Emergency Management Agency (hereinafter, "MEMA") have granted funds for flood hazard mitigation of the Muddy River, and the Commonwealth of Massachusetts Department of Environmental Management (hereinafter "DEM"), the Boston Water and Sewer Commission (hereinafter, "BWSC") and the Brookline Public Works Department have allocated funds for the Muddy River; and,

WHEREAS, Boston and Brookline seek to investigate and secure additional monies for the Muddy River Restoration; and,

WHEREAS, it has been determined that a jointly undertaken design and contract process will inure to the mutual benefit of the citizens of Boston and Brookline; and,

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

ARTICLE I. PARTIES RESPONSIBILITIES

A. Boston shall:

1. in accordance with applicable provisions of Massachusetts General Laws, contract for design and construction services to accomplish the goals of the restoration of the Muddy River; and,
2. through contract services, provide all labor, equipment, materials, and other services necessary for the Phase I Muddy River work as described in "The Emerald Necklace Environmental Improvements Master Plan; Phase I Muddy River Flood Control, Water Quality and Habitat Enhancement; Environmental Notification Form, January 1999;" and,
3. prior to publication or execution, provide Brookline with all documents related to the above described work; and,
4. notify Brookline in writing of any change in the Scope of Work as defined through the contract documents, including therein an explanation of the same so that any necessary amendment or revision to the contract agreement may be made to cover the work; and

5. furnish to Brookline a written report on the progress of the project as such reports are produced in accordance with the provisions of the contract documents.

Brookline shall:

1. upon request, be permitted to inspect and copy all records related to the work;
and,
2. at all reasonable times, have access to the work site to inspect the work; and,
3. provide existing specifications or drawings for any projects or programs that impact the Muddy River and its watershed; and,
4. review all documents provided by Boston in timely manner;
5. provide a detailed maintenance plan to Boston, delineating the care and responsibilities for the upkeep of all improvements pursuant to the provisions of this agreement; and
6. Cooperate and assist Boston with scheduling and communicating to Brookline regulatory agencies and coordinating public meetings and hearings.

ARTICLE II. INCORPORATION

This Agreement is subject to the terms and conditions of the Massachusetts Standard Contract, and attachments appurtenant thereto, by and between the City of Boston and the Commonwealth of Massachusetts Department of Environmental Management relative to the Muddy River.

ARTICLE III. MUTUAL COOPERATION

Boston and Brookline shall designate representatives to meet regularly with the Citizens Advisory Committee, Massachusetts Environmental Protection Agency, and other agencies as necessary for the purposes of design review and project status reports.

ARTICLE IV. INDEMNIFICATION/LIABILITY

Any contractor working on the project shall indemnify Boston and Brookline, and their officers, agents, servants and employees against any and all claims, suits or liability of any nature whatsoever arising out of or resulting from the project in the amount of forty-five million dollars (\$45,000,000).

ARTICLE V. TIME/METHOD OF PAYMENT

1. Boston shall act as the fiscal agent for Brookline. Boston shall finance the planning, design, engineering, permitting, and construction associated with the Muddy River restoration, and be reimbursed by FEMA, HUD, MEMA, DEM and other agencies for expenditures made pursuant to the terms of their respective agreements.
2. In the event of additional work, involving costs not provided for by any other grant program or existing appropriated municipal funds, Brookline shall consider, subject to appropriation and subject to prior approval by Brookline, paying Boston for all or a portion of the additional work upon its completion. Should Brookline not approve Funds for additional work, then Boston has no obligation to conduct additional work involving costs not otherwise provided for and has complete discretion as to what additional work, if any it will undertake.
3. Proposals from Boston for additional work, shall be approved in advance by Brookline except in the case of a condition which is an actual threat to the public safety in which case Boston shall endeavor to notify Brookline of the need for the work as soon as practicable.

ARTICLE VI. RECORD KEEPING AND REPORTS

Boston shall keep accurate and comprehensive records of the services performed, the costs incurred and the reimbursements and contributions received. Every six months and upon termination of this agreement, Boston shall make available all records for Brookline to prepare a financial statement detailing, among other things, the services performed, the costs, incurred and reimbursements and contributions received for the work in the previous six months.

ARTICLE VII. SEVERABILITY

If any provision of this Agreement is declared or found to be illegal, unenforceable, or void by a court of competent jurisdiction, then both parties shall be relieved of all obligations under that provision. The balance of the Agreement shall be enforced to the full extent permitted by Massachusetts law unless one or both parties would be materially prejudiced.

ARTICLE VIII. ARTICLE HEADINGS

The headings of the Articles set forth herein are for convenience or reference only and are not a part of this Agreement and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

ARTICLE IX. GOVERNING LAW

This agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

ARTICLE X. TERM

This Agreement shall take effect as of the day and year first written above and shall terminate on June 30, 2005, or upon completion of the Muddy River restoration,

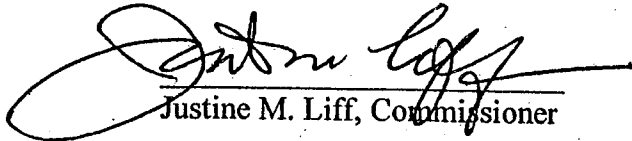
whichever is sooner; provided that, in the event that funding is not available, or for any reason whatsoever, cannot be made available for this project, this Agreement shall terminate.

In the event that Boston is notified by the FEMA, HUD, MEMA, DEM, or other funding agency that the project is terminated, Boston shall immediately notify Brookline in writing and, thereafter, neither Boston nor Brookline shall have any obligations under this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representative.

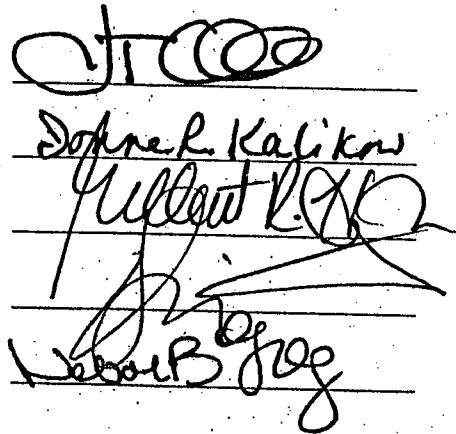
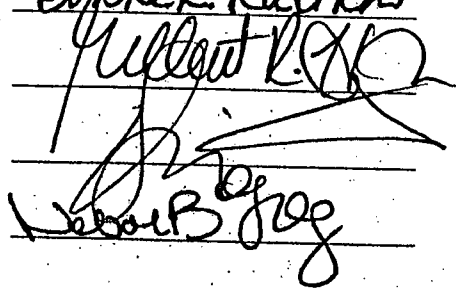
CITY OF BOSTON

By: The Parks and Recreation
Department

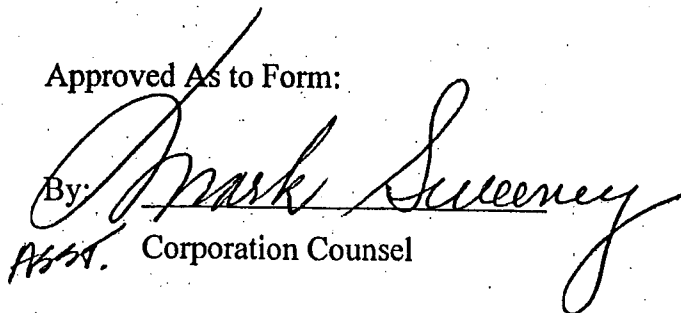

Justine M. Liff, Commissioner

TOWN OF BROOKLINE

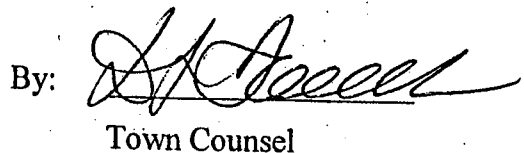
By: Board of Selectmen


Daniel R. Kalikow

Robert B. Grogan

Approved As to Form:

By: 
Mark Sweeney
Asst. Corporation Counsel

Approved As to Form:

By: 
Town Council