

AMENDMENT NUMBER 1
to
PROJECT COOPERATION AGREEMENT

Dated August 5, 2008
Between
Department of the Army
and
City of Quincy
for the
Construction of the
Broad Meadows Marsh Habitat Restoration

This Amendment Number 1 will amend the executed Project Cooperation Agreement (hereinafter "PCA") dated August 5, 2008 by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, New England District and the City of Quincy (hereinafter the "Non-Federal Sponsor"), represented by the Mayor.

WITNESSETH THAT:

WHEREAS, the Government entered into a PCA dated August 5, 2008 with the Non-Federal Sponsor for certain services associated with the Broad Meadows Marsh Habitat Restoration as defined in the PCA;

WHEREAS, all parties have agreed to construction of the Broad Meadows Marsh Habitat Restoration at Broad Meadows Marsh, Quincy, Massachusetts as generally described in the Broad Meadows Marsh Ecosystem Restoration Report/Environmental Assessment, dated June, 2004 and approved by Commander, North Atlantic Division, on August 3, 2004;

WHEREAS, Non-Federal Sponsor desires to perform certain work (hereinafter the "*non-Federal work*" as defined in the amended Article I.S. of this Agreement set forth below, and which was determined to be integral to the Project on May 18, 2012) which is a part of the *Project* and receive credit toward the amount of its required contributions for the *Project* for the costs of such work.

NOW, THEREFORE, the parties agree to amend the PCA as follows:

1. Article I.E is amended by adding "the costs of the *non-Federal work* determined in accordance with Article II.P of this Agreement;" after "the Government's actual construction costs", substituting "Article XVII.C.1" for "Article XVII.B.1", and substituting "Article XVII.C.3 and Article XVII.C.4" for "Article XVII.B.2. and Article XVII.B.3.";
2. Article I.I. is amended by adding "and the costs for the *non-Federal work*, as determined by the Government," after "obligations of the Government";
3. Article I.J. is amended by adding "sum of the costs included in *total project costs* for the *non-Federal work*, as determined by the Government, and the" after "The term "*non-Federal proportionate share*" shall mean the ratio of the";

4. Article I.U. is re-lettered to Article I.V.;
5. Article I.T. is re-lettered to Article I.U.;
6. Article I.S. is re-lettered to Article I.T.;
7. The following is inserted as Article I.S. "The term "*non-Federal work*" shall mean services relating to flood water pumping at the Quincy Hockey Arena parking lot resulting from the drainage swale obstruction through the time a new drainage swale is constructed.;
8. Article II.A. is replaced with "The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter the "Congress") and using those funds and funds provided by the Non-Federal Sponsor, expeditiously shall construct the *Project*, except for the *non-Federal work*, applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies. The Non-Federal Sponsor expeditiously shall perform the *non-Federal work* in accordance with applicable Federal laws, regulations, and policies.";
9. The last sentence in Article II.A.2. is replaced with "The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the contents of solicitations, award of contracts or commencement of design or construction using the Government's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *Project*, except for the *non-Federal work*, shall be exclusively within the control of the Government.";
10. The following is added as Article II.A.4. "The Non-Federal Sponsor shall afford the Government the opportunity to review and comment on the solicitations for all contracts for the *non-Federal work*, including relevant plans and specifications, prior to the Non-Federal Sponsor's issuance of such solicitations. To the extent possible, the Non-Federal Sponsor shall afford the Government the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Government with notification of a contract modification is not possible prior to execution of the contract modification, the Non-Federal Sponsor shall provide such notification in writing at the earliest date possible. To the extent possible, the Non-Federal Sponsor also shall afford the Government the opportunity to review and comment on all contract claims prior to resolution thereof. The Non-Federal Sponsor shall consider in good faith the comments of the Government but, except as otherwise required in paragraph P. of this Article, the contents of solicitations, award of contracts or commencement of design or construction using the Non-Federal Sponsor's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *non-Federal work* shall be exclusively within the control of the Non-Federal Sponsor.";
11. The following is added as Article II.A.5. "At the time the Non-Federal Sponsor furnishes a contractor with a notice of acceptance of completed work for each contract awarded by the Non-Federal Sponsor for the *non-Federal work*, the Non-Federal Sponsor shall furnish a copy thereof to the Government."
12. The first sentence of Article II.C.3. is amended by inserting "paragraph R. of this Article," after the phrase "subject to the availability of funds and as limited by";

13. Article II.D.3. is amended by inserting “and paragraph R.” after the phrase “as limited by paragraph D.4.”;
14. Article II.E.1. is amended by substituting “XVII.C.3.” for “XVII.B.2.” and substituting “XVII.C.4.” for “Article XVII.B.3.”;
15. Article II.E.3. is amended by substituting “XVII.C.3.” for “XVII.B.2.” and substituting “XVII.C.4.” for “Article XVII.B.3.”;
16. Article IV.C.1 is amended to insert “However, for lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement that are required for the *non-Federal work*, fair market value shall be the value of such real property interests as of the date the Non-Federal Sponsor awarded the first construction contract for the *non-Federal work*, or, if the Non-Federal Sponsor performed the construction with its own forces, the date that the Non-Federal Sponsor began construction of the *non-Federal work*.” after the first complete sentence of the paragraph;
17. Article V.C. is amended to insert “and the construction portion of the *non-Federal work*” after the phrase “to enable the disposal of dredged or excavated materials” and to insert “the performance of and scheduling for the *non-Federal work*,” after the phrase “the Government’s cost projections;”;
18. Article V.D. is replaced in its entirety with “The Project Coordination Team may make recommendations to the District Engineer on matters related to the *Project* that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Project Coordination Team. The Government, having the legal authority and responsibility for construction of the *Project* except for the *non-Federal work*, has the discretion to accept or reject, in whole or in part, the Project Coordination Team’s recommendations. On matters related to the *non-Federal work*, that the Project Coordination Team generally oversees, the Project Coordination Team may make recommendations to the Non-Federal Sponsor including suggestions to avoid potential sources of dispute. The Non-Federal Sponsor in good faith shall consider the recommendations of the Project Coordination Team. The Non-Federal Sponsor, having the legal authority and responsibility for construction of the *non-Federal work*, has the discretion to accept or reject, in whole or in part, the Project Coordination Team’s recommendations except as otherwise required by the provisions of this Agreement, including compliance with applicable Federal, State, or local laws or regulations.”;
19. Article VI.A. is amended by deleting the word “and” after the phrase “contributions provided by the parties” and by inserting “and the costs included in *total project costs* for the *non-Federal work* determined in accordance with Article II.P. of this Agreement, and the credit to be afforded for the *non-Federal work* pursuant to Article II.Q. of this Agreement.” after the phrase “in accordance with Article IV of this Agreement”;
20. Article VI.A.1. is replaced in its entirety with “As of the effective date of this Agreement, *total project costs* are projected to be \$6,200,000; *total aquatic ecosystem restoration costs* are projected to be \$6,200,000; the Non-Federal Sponsor’s contribution of funds required by Article II.C.2. of this Agreement is projected to be \$1,540,000; *total recreation costs* are projected to be

\$0.00; the Non-Federal Sponsor's contribution of funds required by Article II.D.2. and Article II.D.4. of this Agreement is projected to be \$0.00; the costs included in *total project costs* for the *non-Federal work* determined in accordance with Article II.P. of this Agreement are projected to be \$40,000; the credit to be afforded for the *non-Federal work* pursuant to Article II.Q. of this Agreement is projected to be \$40,000 for the *aquatic ecosystem restoration features* and \$0.00 for the *recreation features*; the Non-Federal Sponsor's contribution of funds required by Article II.E.2. of this Agreement is projected to be \$0.00; the *non-Federal proportionate share* is projected to be 25 percent; the Non-Federal Sponsor's contribution of funds required by Article XVII.C.4. of this Agreement is projected to be \$0.00; the value included in *total project costs* for lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined in accordance with Article IV of this Agreement is projected to be \$0.00 for the *aquatic ecosystem restoration features* and \$0.00 for the *recreation features*; and the Government's total financial obligations for the additional work to be incurred and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.J. of this Agreement are projected to be \$0.00. These amounts and percentage are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor."

21. Article VI.A.2. is amended to insert "the costs included in *total project costs* for the *non-Federal work* determined in accordance with Article II.P. of this Agreement; the credit to be afforded for the *non-Federal work* pursuant to Article II.Q. of this Agreement;" after the phrase "Article II.D.2. and Article II.D.4. of this Agreement;" and by substituting "Article XVII.C.4." for "Article XVII.B.3.";
22. Article VI.B. is amended to substitute "Article XVII.C.4." for "Article XVII.B.3.";
23. Article VI.B.1. is amended to insert ", after consideration of any credit the Government projects will be afforded for the non-Federal work pursuant to Article II.Q. of this Agreement," after the phrase "to be required from the Non-Federal Sponsor" and by substituting "Article XVII.C.4." for "Article XVII.B.3.";
24. Article VI.B.2. is amended to insert ", after consideration of any credit the Government projects will be afforded for the *non-Federal work* pursuant to Article II.Q. of this Agreement," after the phrase "such sums as the Government deems necessary" and by substituting "Article XVII.C.4." for "Article XVII.B.3.";
25. Article VI.C.2. is amended to insert "and Article II.R." after the phrase "and as limited by Article II.D.4.";
26. Article XIII.B. is amended to substitute "Article XVII.C.3. and Article XVII.C.4." for "Article XVII.B.2. and Article XVII.B.3.";
27. Article XIII.E. is amended to substitute "Article XVII.C.4." for "Article XVII.B.3.";
28. Article XVII.A. is amended to substitute "Except as provided in paragraph B. below, the Government shall perform any identification, survey, or evaluation of historic properties that it determines is necessary for the *Project*." for the first sentence of the paragraph.;

29. Article XVII.B. is amended to substitute “In the event that the Government determines that any identification, survey, or evaluation of historic properties is required for construction of the *non-Federal work*, and if the Government and the Non-Federal Sponsor agree in writing that the Non-Federal Sponsor should perform such identification, survey, or evaluation of historic properties, the Non-Federal Sponsor shall perform such identification, survey, or evaluation in accordance with this paragraph and other written directions of the Government.” for the entire paragraph.;
30. Article XVII.B.1. is amended to substitute “The Non-Federal Sponsor shall ensure that its studies are conducted by qualified archaeologists, historians, architectural historians and historic architects, as appropriate, who meet, at a minimum, the Secretary of the Interior’s Professional Qualifications Standards. The Non-Federal Sponsor shall submit study plans and reports to the Government for review and approval and the Non-Federal Sponsor shall be responsible for resolving any deficiencies identified by the Government.” for the entire paragraph.;
31. Article XVII.B.2. is amended to substitute “Any costs of identification, survey, or evaluation of historic properties incurred by the Non-Federal Sponsor pursuant to this paragraph shall be included in the costs for *non-Federal work* subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs.” for the entire paragraph.;
32. Article XVII.B.3., Article XVII.B.3.a., and Article XVII.B.3.b. are deleted from the Agreement.;
33. Article XVII.C. is amended to substitute “Except as provided in paragraph C.2. below, the Government, as it determines necessary for the *Project*, shall perform or ensure the performance of any mitigation activities or actions for historic properties or that are otherwise associated with historic preservation including data recovery activities.” for the entire paragraph.;
34. The Agreement is amended to add the following as Article XVII.C.1.: “Any costs incurred by the Government for such mitigation activities, except for data recovery activities associated with historic preservation, shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.”;
35. The Agreement is amended to add the following as Article XVII.C.2.: “In the event that the Government determines that mitigation activities or actions other than data recovery activities associated with historic preservation are required for construction of the *non-Federal work*, and if the Government and the Non-Federal Sponsor agree in writing that the Non-Federal Sponsor should perform such activities or actions, the Non-Federal Sponsor shall perform such activities or actions in accordance with the written directions of the Government. The Non-Federal Sponsor shall perform the agreed upon activities or actions prior to construction of the *non-Federal work*. Any costs incurred by the Non-Federal Sponsor in accordance with the provisions of this paragraph shall be included in the costs for *non-Federal work* subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs.”;
36. The Agreement is amended to add the following as Article XVII.C.3.: “As specified in Section 7(a) of Public Law 86-523, as amended by Public Law 93-291 (16 U.S.C. 469c(a)), the costs of data recovery activities associated with historic preservation shall be borne entirely by the

Government and shall not be included in *total project costs*, up to the statutory limit of one percent of the *Section 1135 Project Limit*.”;

37. The Agreement is amended to add the following as Article XVII.C.4.: “The Government shall not incur costs for data recovery activities associated with historic preservation that exceed the statutory one percent limit specified in paragraph C.3. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit and the Secretary of the Interior has concurred in the waiver in accordance with Section 208(3) of Public Law 96-515, as amended (16 U.S.C. 469c-2(3)).”;
38. The Agreement is amended to add the following as Article XVII.C.4.a.: “Any costs of data recovery activities associated with historic preservation that exceed the one percent limit and are determined by the Government to be attributable to the *ecosystem restoration features* shall not be included in *total project costs* but shall be shared between the Non-Federal Sponsor and the Government consistent with the cost sharing requirements for Section 1135, as follows: 25 percent will be borne by the Non-Federal Sponsor and 75 percent will be borne by the Government.”;
39. The Agreement is amended to add the following as Article XVII.C.4.b.: “Any costs of data recovery activities associated with historic preservation that exceed the one percent limit and are determined by the Government to be attributable to the *recreation features* shall not be included in *total project costs* but shall be shared between the Non-Federal Sponsor and the Government consistent with the cost sharing requirements for recreation, as follows: 50 percent will be borne by the Non-Federal Sponsor and 50 percent will be borne by the Government.”;
40. The Agreement is amended to add the following as Article XVII.D.: “If, during its performance of *relocations*, construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material in accordance with Article III of this Agreement, or performance of the *non-Federal work*, the Non-Federal Sponsor discovers historic properties or other cultural resources that have not been evaluated in accordance with this Article, the Non-Federal Sponsor shall provide prompt written notice to the Government of such discovery. The Non-Federal Sponsor shall not proceed with performance of the *relocation*, construction of the improvement, or performance of the *non-Federal work* that is related to such discovery until the Government provides written notice to the Non-Federal Sponsor that it should proceed with such work.”;
41. All other provisions of the Agreement shall remain in full force and effect unless duly modified or amended.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment Number 1, which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

CITY OF QUINCY

BY: *Chas P. Samaris*
For CHARLES P. SAMARIS
Colonel, Corps of Engineers
District Engineer

BY: *Thomas P. Koch*
THOMAS P. KOCH
Mayor

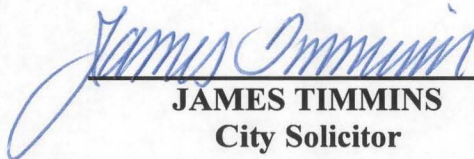
DATE: 27 Aug 12

DATE: 8/16/12

CERTIFICATE OF AUTHORITY

I, James S. Timmins, do hereby certify that I am the principal legal officer of the City of Quincy that the City of Quincy is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the City of Quincy in connection with the Broad Meadows Marsh Habitat Restoration, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement and that the persons who have executed this Agreement on behalf of the City of Quincy have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 16th day of August 2012.



JAMES TIMMINS
City Solicitor

CERTIFICATION REGARDING LOBBYING

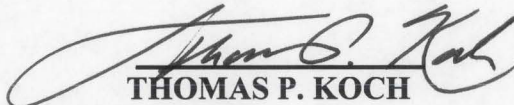
The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.


THOMAS P. KOCH
MAYOR

DATE: 8/14/12