

AMENDMENT NUMBER 1
TO THE
SECTION 1177 AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE STATE OF VERMONT
FOR THE
WATERBURY DAM, VERMONT
DAM SAFETY MODIFICATION AND REHABILITATION PROJECT

THIS AMENDMENT Number 1 is entered into this 30th day of January, 2025, by and between the Department of the Army (hereinafter the “Government”), represented by the District Engineer, New England District (hereinafter the “District Engineer”), and the State of Vermont Agency of Natural Resources, Department of Environmental Conservation (hereinafter the “Non-Federal Sponsor”), represented by the Commissioner.

WITNESSETH, THAT:

WHEREAS, the Government and the Non-Federal Sponsor entered into a Section 1177 Agreement on December 11, 2020 (hereinafter the “Agreement”) for payment by the Non-Federal Sponsor of its required share of costs related to the conduct of the Dam Safety Modification Study (hereinafter the “Study” as defined in Article I.A. of this Agreement) and its required share of costs related to the design and construction of the Dam Rehabilitation Project (hereinafter referred to as the “Project” and defined in Article I.B. of this Agreement) for Waterbury Dam under Section 1177;

WHEREAS, Section 305 of the Water Resources Development Act of 2020, Title III of Division AA, Public Law 116-260 (December 27, 2020), amended Section 1177 to increase the Federal expenditure limitation for a Section 1177 project to \$60,000,000;

WHEREAS, Section 8370 of the Water Resources Development Act of 2022, Title LXXXI of Division H, Public Law 117-263 (December 23, 2022), amended Section 1177 to change the non-Federal share from 35 percent of the design and construction of the Project to the same share assigned to the non-Federal interest for the cost of initial construction, applicable also to the non-Federal share of the Study;

WHEREAS, at the time of initial construction, the Non-Federal Sponsor provided contributions consisting of the highway relocations and all lands, easements, and rights-of-way in connection with the construction of Waterbury Dam, which comprised 7.1. percent of the costs of construction;

WHEREAS, the Government and the Non-Federal Sponsor desire to amend the Agreement to incorporate the Federal expenditure limitation and the non-Federal share of costs enacted by Section 305 of the Water Resources Development Act of 2020 and by Section 8370 of the Water Resources Development Act of 2022, respectively; and

WHEREAS, the Government and the Non-Federal Sponsor have the full authority and capability to perform in accordance with the terms of this Agreement and acknowledge that Section 221 of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b), provides that this Agreement shall be enforceable in the appropriate district court of the United States.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree to amend the Agreement in the following particulars, but in no others:

I. The WHEREAS clauses are modified by inserting between the following between the third and fourth WHEREAS clauses:

“WHEREAS, Section 305 of the Water Resources Development Act of 2020, Title III of Division AA, Public Law 116-260 (December 27, 2020), amended Section 1177 to increase the Federal expenditure limitation for a Section 1177 project to \$60,000,000;

WHEREAS, Section 8370 of the Water Resources Development Act of 2022, Title LXXXI of Division H, Public Law 117-263 (December 23, 2022), amended Section 1177 to change the non-Federal share from 35 percent of the design and construction of the Project to the same share assigned to the non-Federal interest for the cost of initial construction of Waterbury Dam, applicable also to the non-Federal share of the Study;

WHEREAS, at the time of initial construction, the Non-Federal Sponsor provided contributions consisting of the highway relocations and all lands, easements, and rights-of-way in connection with the construction of Waterbury Dam, which comprised 7.1 percent of the cost of initial construction;”.

II. Article I of the Agreement, “DEFINITIONS”, is modified as follows:

1. Paragraphs L. and M. are deleted, paragraph N. is redesignated as paragraph M., and new paragraph L. is inserted as follows:

“L. The term “Federal Participation Limit” means the \$60,000,000 statutory limitation on the Government’s financial participation in the study, modification, and rehabilitation of the Waterbury Dam under Section 1177.”

III. Article II., “OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR”, is modified as follows:

1. In paragraph B. after “50 percent of the shared study costs” insert “, except that the Non-Federal Sponsor shall contribute only 7.1 percent of the shared study costs incurred after

the effective date of Amendment Number 1 to this Agreement,”.

2. In paragraph D. “or the maximum Federal study cost” is deleted.

3. In paragraph E. “35 percent of construction costs” is deleted and replaced by “7.1 percent of construction costs”, and subparagraph 3. is deleted and replaced by the following:

“3. After considering the estimated amount of credit the Government expects that will be afforded to the Non-Federal Sponsor pursuant to paragraphs B.1. and B.2., above, or pursuant to Article VI.F. if an excess amount of shared study costs was provided by the Non-Federal Sponsor, the Government shall determine the estimated funds required from the Non-Federal Sponsor to meet its cost share for the then-current fiscal year. No later than 60 calendar days after receipt of notification from the Government, the Non-Federal Sponsor shall provide the full amount of such funds to the Government in accordance with Article VI.”

4. In paragraph L. “but shall be included in calculating the maximum Federal study cost” is deleted and replaced by “but shall be included in calculating the Federal Participation Limit”.

IV. Article VI, “PAYMENT OF FUNDS” is modified as follows:

1. Paragraph A. is deleted and replaced with the following:

“A. As of the effective date of Amendment Number 1 to this Agreement, shared study costs are projected to be \$3,100,000, with the Government’s share of such costs projected to be \$1,635,800 and the Non-Federal Sponsor’s share of such costs projected to be \$1,464,200, consisting of 50 percent of \$2,900,000 and 7.1 percent of \$200,000. As of the effective date of this Agreement, construction costs are projected to be \$96,800,000, with the Government’s share of such costs projected to be \$58,364,200, consisting of the Federal Participation Limit of \$60,000,000 minus the Federal share of the shared study costs of \$1,635,800, and the Non-Federal Sponsor’s share of construction costs projected to be \$38,435,800. These amounts are estimates only that are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.”

B. In paragraph F., the third sentence is deleted and replaced by: “Should the final accounting determine that the Non-Federal Sponsor has provided funds in excess of its required amount, the Government shall refund the excess amount, subject to the availability of funds or if requested by the Non-Federal Sponsor, apply the excess amount towards the non-Federal share of the construction costs if the parties proceed with the Project.”

V. Article X., “MAINTENANCE OF RECORDS AND AUDITS” is modified as follows. In paragraph B. “but shall be included in calculating the maximum Federal study cost” is deleted and replaced by “but shall be included in calculating the Federal Participation Limit”.

VI. All other terms and conditions of the Agreement remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment

Number 1 to the Agreement, which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

VERMONT DEPARTMENT OF ENVIRONMENTAL CONSERVATION

BY: _____
Justin R. Pabis, P.E.
Colonel, Corps of Engineers
District Engineer

BY:  _____
Jason Batchelder
Commissioner

DATE: 30 January 2025

DATE: 1/29/2025