

REQUEST FOR PROPOSALS

BROKER SERVICES

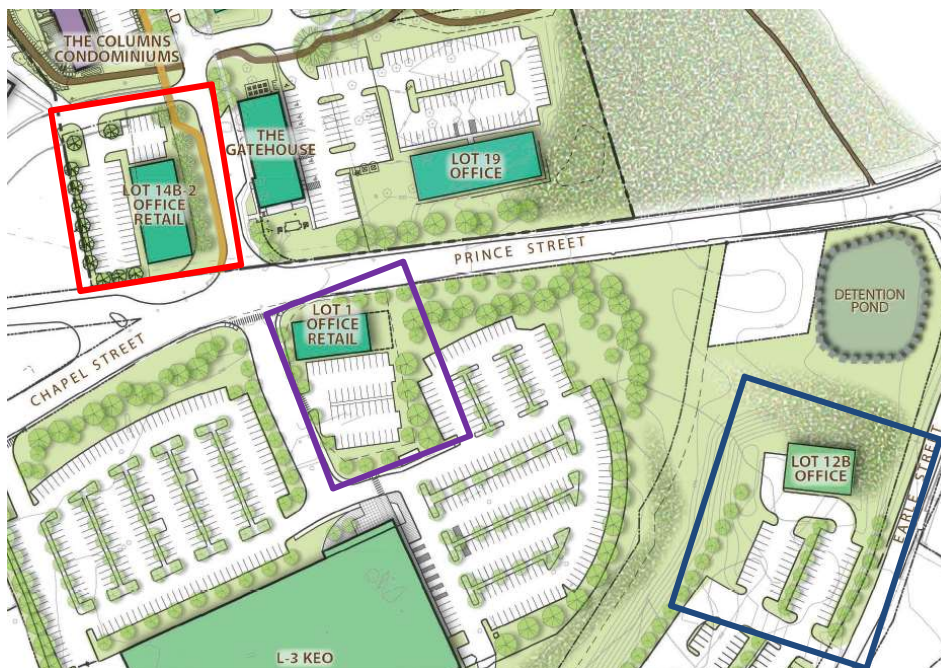
for mixed-use, industrial and commercial land at
Carriage Grove, Belchertown, MA
Village Hill, Northampton, MA

1. Executive Summary

Massachusetts Development Finance Agency (MassDevelopment) is seeking the services of a commercial brokerage firm to be its exclusive agent for two development projects, one located in Northampton and one in Belchertown. Through this Request for Proposals (RFP), MassDevelopment intends to select a broker to provide brokerage services under two separate contracts for each of the two development projects.

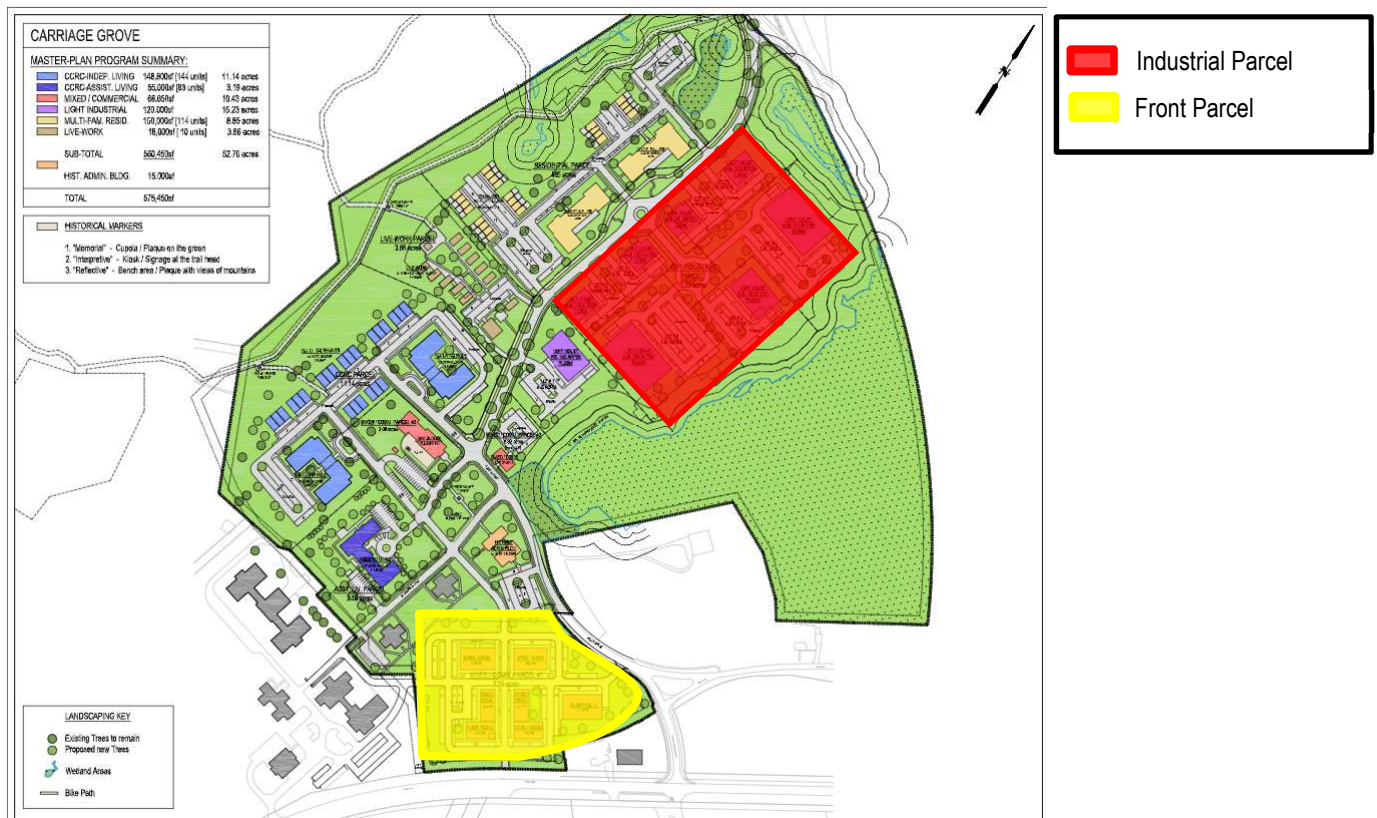
Village Hill, Northampton

Village Hill in Northampton is a 126-acre master-planned, mixed-use neighborhood on the site of the former Northampton State Hospital. MassDevelopment is seeking brokerage services for the remaining three commercial parcels: 207 Earle Street (Lot 12B below, in blue), 2 Prince Street (Lot 14B below, in red), and 3 Prince Street (Lot 1 below, in purple). All the lots are designated for commercial /office, R&D, or restaurant use with Lot 12B allowing for more industrial uses as well.



Carriage Grove, Belchertown

The Belchertown Economic Development Industrial Corporation (BEDIC) through its agent, Massachusetts Development Finance Agency (MassDevelopment), is seeking broker services for two development sites within Carriage Grove in Belchertown. Carriage Grove is a master planned, mixed-use neighborhood on the site of the former Belchertown State School (School). The two development parcels include an approximately 15-acre area designated for light-industrial uses (Industrial Area) and an approximately 7.5-acre parcel with frontage along Rte. 202 (Front Parcel) for mixed-commercial uses (see image below). The Industrial Area is subject to U.S. Economic Development Agency grant requirements, restricting the use at the site to industrial and commercial uses. Retail is not permitted.



Industrial Area and Front Parcel overlaid on Carriage Grove Master Plan

2. Village Hill Overview

In 2002, Hospital Hill Development LLC, a partnership between MassDevelopment and The Community Builders (TCB), purchased the former Northampton State Hospital campus from the Commonwealth of Massachusetts. The approved master plan for the 126-acre campus calls for office, retail and light industrial uses, over 300 residential units with a large affordable component, and 60–80 units of assisted living.

MassDevelopment is the project's managing partner, overseeing the development effort and is responsible for planning, permitting, remediation, demolition, construction of new infrastructure, marketing of commercial space, and creation of market-rate residential units through agreements with private developers.

By leveraging over \$12M in public investment since 2002, Hospital Hill Development has achieved an almost complete build out of the site, including both new construction and adaptive reuse. Development has included a 53-unit mixed-income rental building, a 28-unit cohousing complex, the adaptive reuse of an old hospital building into a 25-unit condominium building, the construction of single-family home neighborhoods, commercial and non-profit facilities, a large manufacturing facility for L-3 Keo, and the construction of a bespoke furniture manufacturing facility.

At present, there are only 3 commercial parcels remaining available for development within the Village Hill complex.

207 Earle Street (Lot 12B)



207 Earle Street, known as Lot 12B on the master plan, is a 1.5 acre site located on Earle Street, close to the intersection of Earle Street and Prince Street. Less than one mile from downtown Northampton and proximate to the Manhan Rail Trail, 207 Earle Street can accommodate up to 10,000 SF of development with parking for 46 cars.

2 Prince Street (Lot 14B)



2 Prince Street, known as Lot 14B on the master plan, is a 1-acre site, located at the merger of Prince Street, Chapel Street, and West Street. It can accommodate up to 7,500 SF of development, with parking for 45 cars. The site is adjacent to the Haskell Building, which currently houses Department of Mental Health (DMH) office; any development would be required to include 11 parking spaces for DMH use (available in the Additional Information Link in Section 4).

3 Prince Street (Lot 1) 0.6 acres



3 Prince Street, known as Lot 1 on the master plan, is a 0.6 acre site located along Prince Street. It sits in front of the L3 KEO manufacturing facility, which employs engineering and

manufacturing disciplines to design and building sensor systems for submarines, surface ships, and other defense platforms. Lot 1 can accommodate up to 10,000 SF development with parking for 43 cars. Per the existing Special Permit, any building constructed at the site should be two-stories or higher along the street. The Special Permit is included in the Additional Information link in Section 4.

Village Hill Utilities and Infrastructure

- Water and sewer utilities are stubbed to the sites.
- Electrical service is provided by National Grid and conduit is stubbed to the sites.
- Charter provides cable and internet service in Northampton and conduit is stubbed to the sites.
- MassDevelopment is currently working with the City to resolve a question around storm water management for Lots 12B and 1 on the south side of the campus. We intend to have this resolved in the next 6-12 months.

3. Carriage Grove Overview

Carriage Grove History

Prior to the development of the Belchertown State School, the site was farmland. In 1916, the Commonwealth of Massachusetts purchased a number of farms to develop the school, which opened in 1922. The School maintained its own water system, sewage treatment system, power plant, fire department and telephone systems, all of which are defunct.

The School closed in 1992 and the BEDIC took title to the property in 2002. In 2012, the BEDIC and the Town of Belchertown (Town) entered into an agreement with MassDevelopment to manage the cleanup and redevelopment of the former School site. Since 2012, MassDevelopment has managed the master planning, state environmental permitting, abatement and removal of dilapidated buildings and utility tunnels, and the installation of new infrastructure to support the site's redevelopment.

Carriage Grove is a unique redevelopment opportunity that occupies 90 acres near the heart of Belchertown along Route 202 with views of the Holyoke Mountain Range to the west. The neighborhood includes the Town of Belchertown's municipal complex (senior center, recreation, and police departments) and abuts more than 500 acres of open space including the New England Small Farms Institute and the Lake Wallace trail area. It sits across Rte. 202 from the Belchertown Public Schools complex and several restaurants and retail shops, and is close to medical offices and the Hampshire County Courthouse. Historic Belchertown Center is ½ a mile to the north east along Rte. 202. New private developments at Carriage Grove include Christopher Heights of Belchertown, an 83-unit assisted living facility opened in 2018, and the Belchertown Day School opened in September 2020.

Carriage Grove is designed to include senior living and services, commercial, retail, light industrial and other business uses, as well as multi-family residential opportunities. The [Business Neighborhood Center zoning](#), adopted by the Town of Belchertown in 2014

encompasses the entire mixed-use neighborhood, and allows for flexibility of uses and design through an expedited permitting process. The zoning code provides several design requirements.

Since 2018, over \$7.5 million in public investments at Carriage Grove has resulted in new roads, public infrastructure and utilities to support new private investment. Front Street and Carriage Drive are newly constructed roads with utilities stubbed to the development parcels. Important site features include walking trails, a village common, panoramic views, decorative streetlights, and mature trees. A new road into the 15-acre Industrial Parcel has been designed and is under construction using federal and state grant funds.

In 2020, the BEDIC and MassDevelopment released an RFI for the development of up to 24 acres of residential land in Carriage Grove. In 2022, the BEDIC signed a Purchase and Sale Agreement with a developer for an approximately 12-acre housing development. The same developer has an option on an additional 12-acres for future housing as well as options on two additional sites for potential commercial uses (see attached Attachment 1 for locations). The developer has a Right of First Refusal (ROFR) on the Front Parcel, although the ROFR document has not been finalized. The developer has no interests in the approximately 15-acre Industrial Area.

Carriage Grove Utilities and Infrastructure

- Water and sewer utilities are stubbed to the sites.
- Site storm water management should be addressed by the developer.
- Electrical service is provided by National Grid and conduit is stubbed to the sites.
- Charter Spectrum provides cable and internet service in Belchertown and conduit is stubbed to the sites.
- Piped natural gas is not available in Belchertown.

4. Additional Village Hill and Carriage Grove Information

[Click here](#) for information about Village Hill and Carriage Grove including the site history, environmental permitting, and infrastructure details. The information, materials and opinions contained in these documents are for general information purposes only, are not intended to constitute legal or other professional advice, and should not be relied upon or treated as a substitute for specific advice relevant to particular circumstances.

5. RFP Scope of Services

Through this RFP MassDevelopment seeks the services of a commercial brokerage firm to be its exclusive agent for

- 1) Lots 1, 12B, 14B in Village Hill, Northampton, and for
- 2) the Industrial Area and the Front Parcel in Carriage Grove, Belchertown.

MassDevelopment retains the right to add additional land to the scope of services. The selected firm will provide brokerage services as assigned, including gathering market information, developing and implementing marketing strategies to actively market the available

properties to the brokerage and business community, and assisting in structuring the sale and/or lease of land or buildings. Further information is below.

General Duties. The selected brokerage firm shall use its best efforts to obtain qualified buyers/tenants for the available land and buildings at the highest sale/lease rates achievable. Broker shall also fulfill the following obligations:

1. Coordinate ongoing prospect contact in consultation with MassDevelopment: qualify leads, tour prospects and coordinate responses to inquiries.
2. Assign a lead broker to this assignment to work with MassDevelopment staff on transaction management.
3. Attend meetings or conference calls with MassDevelopment to review prospect activity, marketing opportunities, program development, land or building pricing, and implementation.
4. Maintain an electronic database available to MassDevelopment for all marketing activity.
5. Coordinate implementation of MassDevelopment's Carriage Grove and Village Hill real estate marketing plans. Specific tasks to be undertaken by the broker shall include but not be limited to:
 - (a) Compile a list of recommended trade related publications suitable for advertising Carriage Grove and Village Hill real estate.
 - (b) Compile reports on comparable transactions on a periodic basis and as needed for specific proposals.
 - (c) Provide draft recommendations regarding collateral materials.
 - (d) Coordinate marketing efforts with MassDevelopment's Marketing and Real Estate Departments.
 - (e) Maintain the Carriage Grove and Village Hill listings on the CoStar and LoopNet Commercial Real Estate websites.
 - (f) Develop prospect lists and coordinate mailings and other contact with selected businesses or industry sectors.
 - (g) Participate in developing a marketing program and materials for Carriage Grove and Village real estate.
 - (h) Increase project visibility among cooperating brokers and encouraging active and inclusive co-brokerage participation.
 - (i) Manage mailings and e-mail solicitations that reach appropriate prospects or agents.
 - (j) Pay for marketing, signage and/or mailing costs.
 - (k) Plan and implement outreach programs to trade organizations, professional associations, etc.
 - (l) Qualify all prospects and review such qualifications with MassDevelopment.
 - (m) Advise on best approach to managing Front Parcel ROFR at Carriage Grove both with the holder of the ROFR and potential purchasers.
6. Review and analyze all offers, including analysis of financial terms, compliance with MassDevelopment, respective stakeholder goals and objectives, contingencies and other terms and conditions.
7. Support MassDevelopment (and for Carriage Grove parcels the BEDIC) through the

disposition of the property, including but not limited to negotiation, due diligence review, drafting of term sheet, and purchase and sale agreement negotiations.

MassDevelopment (and for Carriage Grove parcels, the BEDIC) will enter into a contract with a responsive, responsible respondent based on qualifications, best value, professional capability, and demonstrated knowledge of and success in the target markets. The Carriage Grove contract will have a termination date of November 2025 with an option to extend for a year at the BEDIC's sole discretion. The Village Hill contract will have a base term of two years with an option to extend at MassDevelopment's sole discretion.

6. RFP Process

Schedule and Submissions

The selection schedule is as follows:

RFP Available:	February 22
Tour of Carriage Grove and Village Hill (optional):	March 8, 11am
Please RSVP to Michelle Hennigar (mhennigar@massdevelopment.com) by March 6 at 5pm	
Deadline for Questions:	March 17 by 5:00 pm
Please send to Michelle Hennigar (mhennigar@massdevelopment.com)	
Response to Questions Issued:	March 24 by 5:00 pm
Proposal Submission Deadline:	April 7 by 5:00 pm
Interview Period (If needed):	TBD

MassDevelopment reserves the right to revise the timeline as it considers necessary.

All inquiries concerning this RFP must be submitted to: Michelle Hennigar, mhennigar@massdevelopment.com

This RFP has been distributed electronically using e-mail and on MassDevelopment's website. It is the responsibility of respondents to check the website for any addenda or modifications to this RFP.

It should be noted that to ensure compliance with the standards issued by the Governor and Department of Public Health related to gatherings and social distancing, participation in the optional site tour must be prearranged. The date of the tour is March 8 at 11:00 AM. **Any prospective respondent that is interested in seeing the overall project and the sites that will be marketed should e-mail Michelle Hennigar at mhennigar@massdevelopment.com no later than 5:00 pm on March 6.**

All questions must be submitted in writing by e-mail on or before March 17 by 5:00 pm. Prospective respondents should note that all clarifications and exceptions including those relating to the terms and conditions of the contract must be submitted prior to the deadline for

questions. Answers to all questions of a substantive nature will be distributed to all prospective respondents in the form of a formal addendum which will become part of the ensuing contract.

Respondents to this RFP **must submit their responses via e-mail** (pdf format ONLY, preferably searchable) to mhennigar@massdevelopment.com with the subject line “RFP: Carriage Grove & Village Hill – Name of proposing company”¹. Responses must be received no later than April 7, 2023 by 5:00 PM.

Any proposal received after the time specified will be considered a late proposal. A late proposal shall not be considered for award. Delays in e-mail deliveries shall not excuse late proposal submissions.

Diverse Business Enterprises

MassDevelopment strongly encourages the use of Minority Owned Business Enterprises (“MBEs”), Women Owned Business Enterprises (“WBEs”), Veteran-Owned Business Enterprises (“VBEs”), and Service Disabled Veteran Business Enterprises (“SDVBEs”, and collectively with the MBEs, WBEs, and VBEs hereinafter referred to as “Diverse Business Enterprise(s)”), each as certified by or recognized as certified by the Commonwealth of Massachusetts Operational Services Division’s Supplier Diversity Office (“SDO”) pursuant to 425 CMR 2.00, as consultants, contractors, sub-consultants, subcontractors, and suppliers in the procurement all professional services in addition to direct design, engineering, and construction services. Accordingly, MassDevelopment has developed a Diverse Business Participation Program (the “DBE Program”) which establishes criteria to encourage and measure participation by Diverse Business Enterprises in the provision of such services. The DBE Program addresses MassDevelopment’s commitment and the commitment of respondents to this RFP, to seek opportunities for Diverse Business Enterprise participation in this contract.

Please see Attachment 4 for MassDevelopment’s DBE Program guidelines and forms which must be submitted with respondent’s proposal.

7. Elements of Proposal

All proposals shall provide information relating to the elements listed below in sufficient detail to allow MassDevelopment to conduct an informed and fair selection process.

Firms interested in serving as the broker are required to submit a qualification statement of no more than five pages (in addition to standard corporate documentation and resumes of key personnel), that includes the following information which will be used by MassDevelopment in evaluating proposals:

¹ Please note that MassDevelopment cannot receive e-mail attachments larger than 25 megabytes (an attachment larger than 25 megabytes will cause your e-mail to be rejected entirely). If your proposal exceeds that limit, please upload your proposal to your own storage service and provide MassDevelopment with a link to the file(s).

- a. Qualifications and Key Personnel: The respondent should provide the identity and describe the qualifications of the Key Personnel to be involved with the brokerage tasks. The respondent should include resumes (including background and relevant experience) for all Key Personnel in an Appendix to the proposal. Key Personnel should have at least 5 years' experience in commercial property brokerage, preferably no less than 2-years of experience working with a public sector client.
- b. Experience/Past Performance: The respondent should provide a schedule of sales and purchases coordinated by your firm in the last three (3) years, particularly focusing on office, R&D, flex, mixed-use and light manufacturing properties. Please describe your firm's capabilities and experience as it relates to these property types. Please include a description of the firm's relevant experience in performing the described scope of services, including (i) professional qualifications to perform services, (ii) specialized experience and technical competence, (iii) work with other local government agencies and private-sector development organizations, particularly in the Commonwealth of Massachusetts, and (iv) experience in Western Massachusetts. The respondent must provide names and current contact information of at least 3 references from current and former clients for whom the firm has performed similar work.
- c. Capacity/Organization and Management Approach: The respondent should include the identity and description of the affiliate and/or network agencies in terms of industry and national and international coverage, if applicable, and a suggested format and frequency of client reporting. Explain the roles envisioned for your firm and MassDevelopment in marketing the properties, negotiating a sales transaction, and moving a transaction to closing. Demonstrate how your firm has participated in negotiations and how your participation has resulted in the best possible transaction terms for property owners. Describe your approach to working with and meeting the needs of MassDevelopment and the owners.
- d. Technical Approach: The respondent should provide a description of the proposed marketing process and strategy including prospect target groups, method(s) of contact, both digital and printed marketing materials (including representative material from past assignments), follow-up and solicitation of offers. Describe how you will assess the correct market for specific properties, how you will allocate marketing budgets, and how you will generate interest in out-of-state/out-of-country locations. Describe your proposed method for determining values and rationale for the "ask" and "take" price range.
- e. Diverse Business Enterprise (DBE) Participation Schedule and Narrative: See Attachment 4.
- f. Insurance: Please provide a certificate of liability insurance setting forth the firm's current liability insurance coverage including limits, deductibles, and a statement

declaring the firm's agreement, if awarded this contract, to purchase and maintain the liability insurance set forth below as evidenced by a certificate of insurance from an insurance company having an A.M. Best rating of "A-, VII" and licensed to transact business in the Commonwealth of Massachusetts.

- a. Commercial General Liability Requirements, including personal injury and if applicable, product liability/completed operations coverage in the minimum amount of \$1 million personal injury, \$1 million per occurrence, and \$2 million general/product/completed operations aggregate. Policy must be written on a per project basis;
 - b. Auto liability coverage for owned, hired and non-owned vehicles in the minimum amount of \$1 million per occurrence combined single limit;
 - c. Workers' Compensation for all its employees, as required by statute, with employer's liability of \$500,000 or more include \$500,000 accident and \$500,000 disease;
 - d. Professional liability (errors & omissions) with per claim limits of not less than \$1 million
- g. Cost: Schedule of professional fees: In a separate file, describe the anticipated compensation/fee structure for sale or purchase of real estate across a full range of property types and values. Please address issues such as cooperating broker fees and method of payment, qualification of carry-over prospects, carry-over period and maximum number of carry-over.

Note: The fee proposal shall be submitted as a separate file from the qualification statement that will be opened and viewed after the selection committee's comparative evaluation is completed.

Massachusetts Development Finance Agency, 99 High Street, Boston, MA 02110 (and for Carriage Grove parcels the BEDIC, 2 Jabish Street, Belchertown, MA 01007) shall be an additional insured under the General Liability and Auto Liability policies.

8. Evaluation Criteria

MassDevelopment's selection committee will evaluate and compare each submitted proposal using the following evaluation criteria. The criteria are not listed in any order of importance:

- a. Qualifications and Key Personnel: The identity and qualifications of key personnel, including their expected participation.
- b. Firm Experience/Past Performance: The strength of the respondent's firm and the degree of the firm's experience in sales and acquisition as demonstrated through references; thorough knowledge of the varied Massachusetts real estate markets and Western Massachusetts, in particular; and expertise in a wide range of transactions and property

types, small and large, both straight-forward and complex in nature.

- c. Capacity/Organization and Management Approach: The respondent's capacity to apply and commit itself successfully to the tasks and to perform the required services on schedule. The clarity, completeness, and effectiveness of the proposed organizational structure and the proposed management approach required to successfully manage this work. The demonstrated ability of the team members to effectively work together and interact with MassDevelopment staff.
- d. Technical Approach: The quality, completeness and methodology of the proposed marketing approach.
- e. Fee structure: Appropriateness and competitiveness of the fee proposal for different categories and prices of real estate.
- f. DBE: Whether the respondent is a diverse business enterprise as defined in Section 6.

Determination of the successful respondent(s) will be made using a best value determination with the goal of making an award to the respondent who is responsible, possesses the management, financial and technical capabilities necessary to fulfill the requirements of the contract, whose proposal conforms to the RFP's requirements stated herein, and who is judged by an integrated assessment of the general considerations and specific criteria defined in the evaluation criteria set forth herein to be most advantageous to MassDevelopment, with the proposed price and other factors considered.

MassDevelopment has determined that it is in the public interest, for purposes of this procurement, that evaluation factors relating to the respondent's proposal are more important than the proposed price. Therefore, MassDevelopment may select a respondent who offers a price higher than the lowest price among the responsible, eligible and qualified respondents if it is determined that the additional technical merit offered is worth the additional price in relation to the other proposals received. For evaluation purposes, if the proposals received are determined to be technically comparable, then the proposed price becomes more important.

9. Selection Process

Only responses containing the Elements of Proposal (Section 7) and meeting the minimum requirements set forth in the Evaluation Criteria (Section 8) may be considered for further evaluation. Respondents will be evaluated based upon their responsiveness to this RFP in terms of the demonstrated ability to perform all required services; compliance with all eligibility requirements; experience; and quality and effectiveness of proposed programs and all other information solicited.

There will be no public opening of proposals submitted under this RFP. An internal selection committee of MassDevelopment, BEDIC, and Town representatives will be convened to review the submitted proposals, and this committee may or may not contact respondents for further clarification or interviews and may also contact references. The committee reserves the right to identify a "short list" of qualified respondents for follow-up interviews or to make recommendations based on the information contained in the proposals. Instructions for interviews, if required, will be provided to the short-listed firms.

MassDevelopment reserves the right to waive any of the informal requirements of this RFP, to request additional information from any respondent, to award without negotiations or discussions, to negotiate with any respondent, to reject any or all proposals or parts of proposals, to solicit new proposals, and to award contracts to one or more respondents or to reject any or all respondents as it deems in its best interest. Award of a contract for the work contemplated by this RFP may be subject to the approval of the BEDIC's Board of Directors.

The firm selected will begin to perform services, as needed by MassDevelopment subject to execution of a Brokerage Services Contract in substantially the same form as included in Attachment 3. MassDevelopment reserves the right to negotiate the final terms of the contract and compensation. Should MassDevelopment be unable to negotiate a satisfactory fee with the selected finalists, then the next highest ranked finalists will be selected and the negotiation process repeated.

10. General Provisions

- a. MassDevelopment reserves the right to reject any or all responses or parts of responses, to solicit new responses, and to award contracts as it deems to be in its best interest.
- b. By submitting a proposal to MassDevelopment, the respondent is certifying that its offer is in all respects bona fide, fair, and made without collusion or fraud with any person. As used in this section, "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.
- c. Respondents are encouraged to utilize qualified Diverse Business Enterprises (as defined in Section 6). MassDevelopment hereby notifies all respondents that Diverse Business Enterprises will be afforded full opportunity to submit offers and/or proposals in response to this RFP and will not be subjected to discrimination on the basis of race, color, sex or national origin in consideration for an award.
- d. Potential respondents are hereby notified that issuance of this RFP and receipt of proposals does not assure that a respondent will be selected.
- e. MassDevelopment is not liable for any costs incurred by a respondent in the preparation and production of a proposal or for any work performed prior to contract execution.
- f. MassDevelopment reserves the right to waive any informalities, minor deviations, insignificant mistakes, and matters of form rather than substance and to seek clarification of the proposals, which can be waived or corrected without prejudice to other respondents, potential respondents, or MassDevelopment. No officer or agent of MassDevelopment is authorized to waive this reservation.

- g. A proposal may be modified or withdrawn by a respondent prior to ten (10) business days after the proposal submission deadline by delivering a written notice to the location designated as the place where proposals are to be received.
- h. Any proposal submitted in response to this RFP that is not modified or withdrawn as specified in Section 9 (g) above, shall be considered a firm offer and shall remain effective unconditionally for ninety (90) days.
- i. No respondent shall hold any press conference, issue news releases, or make announcements concerning its selection or non-selection for a contract prior to MassDevelopment's public release of this information; thereafter any such press conference, release, or announcement shall be made only after obtaining the written approval of MassDevelopment.
- j. MassDevelopment provides respondents with an opportunity to administratively resolve disputes, complaints, or inquiries related to MassDevelopment proposal solicitations or contract awards. MassDevelopment encourages respondents to seek resolution of disputes through consultation with MassDevelopment staff. All such matters will be accorded impartial and timely consideration. If consultation with MassDevelopment staff does not lead to a resolution of the dispute, respondents must file a written dispute with MassDevelopment's Office of General Counsel.
- k. During the evaluation process, the content of each proposal will be held in confidence and details of any proposal will not be revealed (except as required under law).
- l. Unless otherwise specified in the response to the RFP, the quoted price includes all overhead, insurance, taxes, fees, and licenses applicable to the delivery or services set forth in the proposal.
- m. Respondents are further advised that upon signing a contract, the selected respondent must certify that it has complied with any and all laws of the Commonwealth relating to the payment of taxes, reporting of employees and contractors, and withholding and remitting of child support as required by M.G.L. c.62C, §49A, and has either (i) filed all tax returns and paid all taxes required by law; (ii) has filed a pending application for abatement of such taxes; (iii) has a pending petition before the appellate tax board contesting such taxes; or (iv) does not derive taxable income from Massachusetts Sources such that it is subject to taxation by the Commonwealth of Massachusetts; and must certify that it is a "Qualified Employer" or an "Exempt Employer" as defined under Chapter 521 of the Massachusetts Acts of 1990, as amended by Chapter 329 of the Massachusetts Acts of 1991, and 102 CMR 12.00 *et. seq.* as provided in the contract. A respondent's failure to certify compliance with said laws would be cause for MassDevelopment not to enter into a contract. MassDevelopment further reserves the right to investigate, at any time prior to MassDevelopment's execution of a contract or during the term of a contract, any information indicating that there has been a failure to

comply with said laws. If MassDevelopment determines that any selected respondent has not complied with said laws, it shall decline to enter into a contract, may terminate any contract entered into, and further may decline to extend the contract.

- n. This procurement is subject to M.G.L. c. 7 §§ 22C - 22F which provides that a state agency, state authority, the house of representatives or the senate may not procure goods or services from any person employing ten or more employees in an office or other facility located in Northern Ireland, who fails to certify that:
 - i. he/she does not discriminate in employment, compensation, or terms, conditions and privileges of employment on account of religious or political belief; and
 - ii. he/she promotes religious tolerance within the work place, and the eradication of any manifestations of religious and other illegal discrimination; and
 - iii. he/she is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland.

Mass. Gen. Laws c. 7, §§22C – 22F shall not apply if (i) the procurement is essential, as determined by MassDevelopment, and compliance would eliminate the only proposal or offer or would result in inadequate competition; or (ii) there is not comparable proposal or offer (i.e. within 10%) by a certifying firm; or (iii) the firm does not employ ten or more employees in an office or other facility located in Northern Ireland.

- o. MassDevelopment is subject to the requirements concerning the disclosure of public records under the Massachusetts Public Records law, M.G.L. c. 66, and thus documents and other materials made or received by MassDevelopment are subject to the public disclosure laws.
- p. All respondents must be registered to do business and be in good standing with the Massachusetts Secretary of State's Office in order to transact business in Massachusetts. MassDevelopment may request evidence of good standing prior to entering into any contract.
- q. A respondent will not be selected if it appears on any list of debarred or suspended contractors maintained by the Commonwealth or the Federal government.
- r. See the attached contract form for other certifications and other provisions with which the selected respondents must comply. MassDevelopment reserves the right to modify this contract and certifications to the extent it deems necessary.

11. Attachments

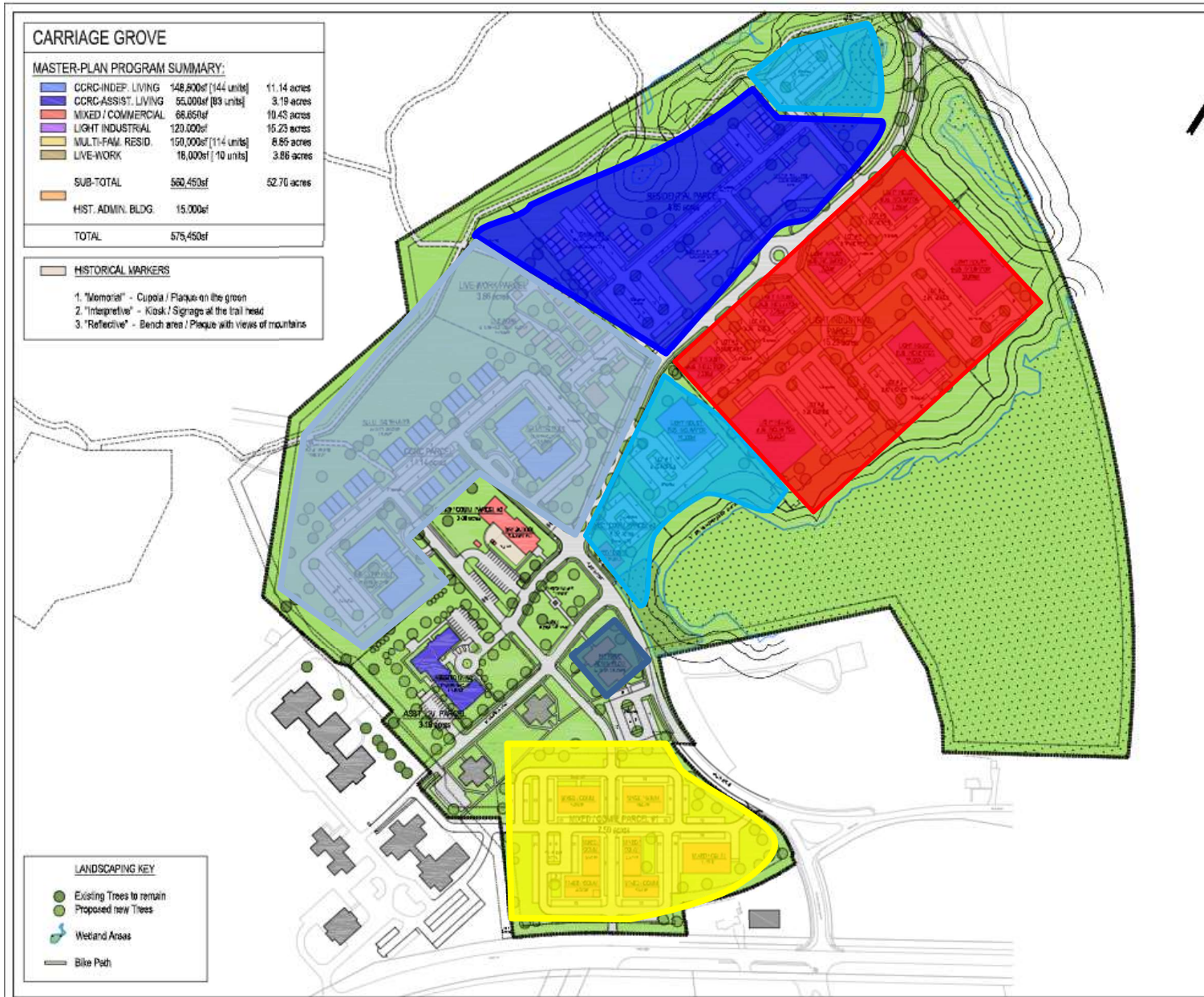
Attachment 1— Carriage Grove Development Site Map

Attachment 2 – List of Carriage Grove and Village Hill available properties

Attachment 3 – Form of Agreement

Attachment 4 – MassDevelopment’s Diverse Business Participation Program Guidelines

Attachment 1 – Carriage Grove Development Site Map



Attachment 2 - List of Carriage Grove and Village Hill available properties

Carriage Grove – Available properties

Area	Acreage	Potential Development	Site Comments
Industrial Parcel	~15 acres	Light manufacturing	Frontage on new road under construction or Carriage Drive.
Front Parcel	~7.5 acres	Mixed-use, retail	Frontage on Route 202

Village Hill – Available Properties

Area	Acreage	Potential Development	Site Comments
207 Earle Street (Lot 12B)	1.5 acres	Commercial / Office, Light Industrial, Office, R&D	Up to 10,000 SF development with parking for 46
2 Prince Street (Lot 14B)	1 acre	Commercial / Office, Office, R&D, Restaurant	Up to 7,500 SF development with parking for 45
3 Prince Street (Lot 1)	0.6 acres	Commercial / Office, Office, R&D, Restaurant	Up to 10,000 SF development with parking for 43.

Attachment 3 – Form of Agreement

BROKERAGE AGREEMENT

THIS BROKERAGE AGREEMENT (“Agreement”) is made as of _____, 2023 (the “Effective Date”), by and between **MASSACHUSETTS DEVELOPMENT FINANCE AGENCY**, a body politic and corporate created and established under Chapter 23G of the Massachusetts General Laws and having a principal place of business located at 99 High Street, 11th Floor, Boston, Massachusetts 02110 (“MassDevelopment” or “Agency”) and [_____] a [_____] corporation, having a principal place of business in Massachusetts at [_____] (“Broker”). MassDevelopment and Broker may hereinafter be referred to individually as a “Party” or collectively as the “Parties”.

WHEREAS, MassDevelopment desires to retain a commercial real estate brokerage firm to serve as agent for the purpose of marketing, selling, and ground leasing certain land and buildings in [_____] Massachusetts as assigned (“Disposition Properties”), as further described within **Exhibit A**; and

WHEREAS, Broker was selected pursuant to a public procurement process initiated in [DATE] and is a licensed real estate broker in the Commonwealth of Massachusetts and is capable of providing and desires to provide such services to MassDevelopment in accordance with the provisions of this Agreement.

NOW, THEREFORE, IN CONSIDERATION of the mutual promises and conditions contained herein, and for other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties do hereby stipulate and agree as follows:

ARTICLE I

EXCLUSIVE AGENCY LISTING

1. **Employment.** MassDevelopment hereby employs Broker as its exclusive agent and broker to (i) sell and/or ground lease the land and buildings owned by MassDevelopment (“Disposition Properties”), as assigned. Broker accepts the same, upon all of the terms and conditions set forth herein. MassDevelopment shall provide Broker with a Delivery Order and a scope of specific properties to either sell or assist in the purchasing process.

2. **Trust.** Broker recognizes that a relationship of trust and confidence is created by this Agreement, and Broker agrees to use its best efforts, once an assignment is provided through a Delivery Order, to (i) promptly provide MassDevelopment with a marketing program to be approved by MassDevelopment (“Marketing Program”), (ii) endeavor to sell and/or ground lease the Disposition Properties, and (iii) perform all of the duties set forth hereinafter.

3. **Individuals.** Broker’s obligations hereunder shall be performed primarily by Broker. Broker shall not substitute, remove or add any individual without the prior written consent of MassDevelopment. In the event of termination of Broker under this Agreement, MassDevelopment shall not engage any individual or other person acting by or on behalf of Broker in connection with the services

to be performed by Broker under this Agreement (the “Services”), and if MassDevelopment engages the services of an entity which employs any such individual, it will not permit such individual or other person to render the Services.

ARTICLE II

TERM

1. Term. This Agreement shall commence on the Effective Date and, unless extended as provided below, shall expire on the date which is ____ () years after the Effective Date (as may be extended, the “Expiration Date”). MassDevelopment shall have the right, exercisable in its sole election, to extend the term of this Agreement for one (1) year (the “Extension Option”). MassDevelopment may exercise the Extension Option delivering written notice thereof to Broker prior to the initial Expiration Date.

2. Termination.

(a) Notice of Intention to Terminate for Cause. If at any time reasonable concerns about a Broker’s performance of its obligations under this Agreement arise, MassDevelopment may demand adequate, written assurance of performance consistent with this Agreement. In the event of a default, MassDevelopment shall give Broker ten (10) days prior written notice (the “Default Notice”), informing Broker that MassDevelopment, acting on knowledge or belief, has concluded that Broker is in default of the Agreement. Broker shall have thirty (30) days to cure said default. If Broker cures the default, then the Default Notice shall be null and void. If, in the judgment of MassDevelopment, Broker has not cured the default, MassDevelopment may, but shall not be required to, terminate this Agreement by delivering written notice thereof (the “Termination for Cause Notice”), and Broker shall be paid in accordance with and subject to the provisions of Article V below, and the termination of this Agreement will be treated as a termination for convenience. Failure by MassDevelopment to enforce any provision of this Agreement or exercise its right to terminate this Agreement as aforesaid shall not be a waiver and shall not prevent MassDevelopment from enforcing that provision or any other provision of this Agreement in the future or exercising its right to terminate this Agreement.

(b) Notice of Intention to Terminate Without Cause. MassDevelopment may terminate this Agreement without cause at any time upon thirty (30) days prior written notice to Broker (the “TWC Notice”). In the event MassDevelopment terminates this Agreement without cause, within thirty (30) days after receiving the TWC Notice, Broker shall deliver to MassDevelopment reasonably detailed documentation of the out-of-pocket expenses incurred by Broker in connection with the Services. Within thirty (30) days of receiving such documentation from Broker, MassDevelopment shall reimburse Broker for all such out-of-pocket expenses.

3. Actions of Broker Upon Termination.

(a) Upon termination, Broker shall immediately proceed in accordance with any specific instructions included in the Termination for Cause Notice or the TWC Notice, protect any work product and deliverables, and make every reasonable effort to mitigate costs that may result from the termination.

(b) If MassDevelopment terminates Broker, Broker shall promptly deliver to MassDevelopment all data, evaluations, calculations, plans, studies, details, specifications, estimates, reports, documents, or other work product or deliverables, acquired or created by Broker, pertaining to the Services performed up to the time of termination. Upon receipt, MassDevelopment shall have full power and authority to take possession of and use all such records, documents, working papers, etc. and prosecute the Services to completion by contract or agent or as MassDevelopment otherwise may deem expedient. This provision is specifically enforceable.

4. Authority Termination, Final Accounting. Upon receipt of the Termination of Cause Notice or the TWC Notice, the employment and any authority created pursuant hereto shall immediately cease, but Broker agrees to fulfill all reporting functions hereunder for until the date on which this Agreement shall terminate. Broker shall also immediately deliver to MassDevelopment all materials and supplies, contracts and documents, and other papers and records pertaining to the Disposition Properties, Acquisition Properties or Lease Properties, provided that Broker may keep copies for its files of documents or records generated by Broker or to which Broker is a party on the explicit condition that such documents and records and the contents thereof shall not be disclosed to any other party or to employees or agents of Broker not directly involved in the Services, and Broker agrees not to allow any such disclosure to occur. Notwithstanding the forgoing, Broker may disclose the information to attorneys, accountants and other consultants only with respect to any litigation or as required by law, court order or process, deposition or discovery or any other information that is generally available to the public.

ARTICLE III

DUTIES OF BROKER

1. General Duties. Broker shall use its best efforts to (i) obtain qualified buyers for the Disposition Properties at the highest sale price achievable. Broker shall also fulfill the following obligations:

1. Coordinate ongoing prospect contact in consultation with MassDevelopment: qualify leads, tour prospects and coordinate responses to inquiries.
2. Assign a lead broker to this assignment to work with MassDevelopment staff on transaction management.
3. Attend meetings or conference calls with MassDevelopment to review prospect activity, marketing opportunities, program development, land or building pricing, and implementation.

4. Maintain an electronic database available to MassDevelopment for all marketing activity.
5. Coordinate implementation of MassDevelopment's real estate marketing plans. Specific tasks to be undertaken by the broker shall include but not be limited to:
 - (a) Compile a list of recommended trade related publications suitable for advertising the subject real estate.
 - (n) Compile reports on comparable transactions on a periodic basis and as needed for specific proposals.
 - (o) Provide draft recommendations regarding collateral materials.
 - (p) Coordinate marketing efforts with MassDevelopment's Marketing and Real Estate Departments.
 - (q) Maintain the listing(s) on the CoStar and LoopNet Commercial Real Estate websites.
 - (r) Develop prospect lists and coordinate mailings and other contact with selected businesses or industry sectors.
 - (s) Participate in developing a marketing program and materials for the subject real estate.
 - (t) Increase project visibility among cooperating brokers and encouraging active and inclusive co-brokerage participation.
 - (u) Manage mailings and e-mail solicitations that reach appropriate prospects or agents.
 - (v) Pay for marketing, signage and/or mailing costs.
 - (w) Plan and implement outreach programs to trade organizations, professional associations, etc.
 - (x) Qualify all prospects.

ARTICLE IV

PURCHASE AND SALES PROCEDURES

1. General. Broker agrees that acceptance of all offers to purchase, sell and/or ground lease any of the Properties is subject to MassDevelopment's final approval, which approval may be withheld by MassDevelopment in its sole discretion. Any purchase, sales or ground lease terms provided to Broker by MassDevelopment may be modified as MassDevelopment deems advisable.

2. Sale of Disposition Property.

(a) Prior to and after the receipt of any purchase offer for a Disposition Property, Broker shall obtain all reasonably available information concerning the financial responsibility and reputation of the prospective purchaser. Broker shall inform MassDevelopment of all information regarding the prospective purchaser of which Broker has actual knowledge.

(b) If MassDevelopment accepts the financial qualifications of a prospective purchaser and the business terms and conditions of the offer to purchase or ground lease for a Disposition Property, MassDevelopment shall cause its legal counsel to prepare a purchase and sale or ground lease agreement for execution and Broker shall so advise the prospective purchaser. Broker shall assist MassDevelopment in negotiating the purchase agreement, if requested by MassDevelopment.

(c) MassDevelopment shall not be obligated to approve any purchase offer for a Disposition Property by or enter into any purchase agreement with any prospective purchaser.

ARTICLE V

COMMISSIONS

All services to be performed by Broker under this Agreement shall be compensated according to the following terms:

1. Commission. In the event of a sale of a Disposition Property, MassDevelopment agrees to pay a commission to Broker not to exceed the following amounts:

Fee Schedule

Beginning Disposition Range	Ending Disposition Range	Compensation Percentage²
\$1	\$1,500,000	
\$1,500,001	\$3,000,000	
\$3,000,001	\$4,500,000	
\$4,500,001 and up		

In the event of a ground lease, the commission payable to Broker will be determined by valuing the ground lease on a net present value basis with a market-derived discount rate for the term of the ground lease and calculated using the brokerage fee schedule shown above. Should the parties not be able to

² These fees are for both direct and co-brokered land and building transactions. The co-broker (MassDevelopment will receive half the commission if a client is introduced by MassDevelopment) would receive up to 50% of the compensation.

agree on a discount rate, they agree to accept a discount rate as determined by a mutually acceptable appraiser.

MassDevelopment will pay the above commissions when and if:

(a) Title to such Disposition Property passes, a deed is recorded or a ground lease is executed and the consideration is paid, and;

(b) Such Disposition Property is sold or ground leased by MassDevelopment through the efforts of Broker during the term of this Agreement, or within six (6) months after the termination of this Agreement to anyone whose name is on a list submitted by Broker to MassDevelopment and with whom MassDevelopment is engaged in continued negotiations at the time of termination of this Agreement; such list shall not include more than five (5) prospective purchasers for each Disposition Property, each of which shall have been introduced to the transaction and to MassDevelopment prior to the termination of this Agreement.

MassDevelopment will not be obligated to pay the above commissions when a Disposition Property is sold by MassDevelopment through the efforts of MassDevelopment prior to the Effective Date of this Agreement, or within six months after the Effective Date of this Agreement, to any of the following prospective purchasers, their parents, subsidiaries or affiliates:

2. Cooperating Brokerage. In the event that a cooperating broker is involved in a transaction for sale or ground lease of a Disposition Property, said co-broker (a "Cooperating Broker") shall be entitled up to fifty percent (50%) of the commission as calculated above, the amount to be deducted from the amount paid to Broker. Broker shall not be entitled to any portion of any bonus or incentive paid to a Cooperating Broker.

ARTICLE VI

INDEMNIFICATION

1. As a material inducement for MassDevelopment to enter into this Agreement, Broker shall indemnify, defend and hold harmless MassDevelopment, its successors and assigns, and all of their officers, directors, lenders, shareholders, beneficial owners, trustees, partners, affiliates, agents and employees (collectively "MassDevelopment Indemnitees") against any and all claims, losses, judgments, awards, penalties, fines, forfeitures, reasonable attorneys' fees and related litigation or arbitration costs and expenses, and amounts paid in settlement ("Losses"), which in any way arise out of or relate to any claim(s) against any MassDevelopment Indemnatee which arise out of or relate to Broker and/or the Services. Subject to the limitations contained in this Agreement, Broker shall make full and timely payment to each and every MassDevelopment Indemnatee of any expenses (including reasonable attorneys' fees and costs and expenses) which such MassDevelopment Indemnatee may incur in the enforcement of this Section

against Broker. This indemnity shall survive any amendment, modification, renewal, expiration or termination of this Agreement. MassDevelopment shall give to Broker prompt notice of any claim for which it may seek indemnification. Upon acceptance of a duty to indemnify, (i) Broker shall have the right to control the defense of the claim, and (ii) its settlement shall be subject to approval of Broker's insurance carrier.

2. As a material inducement to Broker to enter into this Agreement, MassDevelopment shall defend, indemnify and hold harmless Broker for any brokerage commissions which Broker owes to any Cooperating Broker under this Agreement if MassDevelopment fails to pay Broker the commission due and owing under this Agreement from which the Cooperating Broker is entitled to its commission.

ARTICLE VII

INSURANCE

1. Insurance Coverage Requirements. Broker shall effect and maintain insurance in amounts as set forth below with companies licensed to transact business in the Commonwealth of Massachusetts, having an A.M. Best Company rating of "A-, VII" and otherwise satisfactory to Owner, at its own cost and expense to protect itself from claims under any Worker's Compensation Act; from claims for damages because of bodily injury including sickness, disease or death; from claims for damages because of injury to or destruction of tangible property; and from claims arising out of the performance of professional services caused by errors, omissions or negligent acts for which it is legally liable.

- (i) Commercial general liability, including personal injury and if applicable, product liability/completed operations coverage in the minimum amount of \$1,000,000 personal injury, \$1,000,000 per occurrence and \$2,000,000 general/product/completed operations aggregate;
- (ii) Automobile liability coverage for owned, hired and non-owned vehicles in the minimum amount of \$1,000,000 per occurrence combined single limit;
- (iii) Workers' compensation for all its employees, as required by statute, with employers' liability of \$500,000.00 or more including \$500,000 accident and \$500,000 disease; and
- (iv) Professional liability having limits of \$1,000,000 per occurrence on a claims made basis.

2. Certificate(s) of Insurance. Broker shall furnish MassDevelopment with certificates of insurance showing that Broker has complied with this Section prior to entering into the Agreement and naming "**Massachusetts Development Finance Agency, its successors and/or assigns, as their interests may appear**" as an additional insured, which certificates shall provide that written notification of cancellation of the insurance policies required hereunder shall be given to the MassDevelopment thirty (30) days prior to such cancellation.

ARTICLE VIII

CONFLICT OF INTEREST; SPECIAL STATE EMPLOYEE STATUS

1. Conflict of Interest. Broker shall not hire or employ, on either a full-time or part-time basis during the duration of this Agreement, any person(s) so long as such person(s) shall be employed by MassDevelopment. Broker hereby certifies that this Agreement is made in good faith, without fraud or collusion of any kind with any other consultant for the same services, and that Broker is acting solely on its own behalf without connection with or obligation to, any undisclosed person or firm and in full compliance with M.G.L. Chapter 268A and any other applicable conflict of interest laws. By execution of this Agreement, Broker certifies and discloses that Broker and its consultants have no financial or other interest in the execution or outcome of the project that is the subject of this Agreement. If any officer, director, member, agent or employee of MassDevelopment has a financial interest in Broker, Broker hereby agrees that its representatives shall consult with MassDevelopment's legal representatives to learn what action shall be taken to comply with M.G.L. Chapter 268A and any other applicable conflict of interest laws. All conflict of interest matters that arise during the duration of this Agreement shall be handled in a manner consistent with the Laws and Regulations, and Broker and its consultants shall conduct themselves at all times in a manner that will avoid any conflict of interest.

2. Special State Employee Status. Broker understands that any person providing services under the Agreement will be a "special employee," for purposes of M.G.L. Chapter 268A, but shall otherwise be an independent contractor and not an employee of MassDevelopment. Broker further agrees to comply with said Chapter 268A, as "special state employee," and to promptly disclose to MassDevelopment any activity under the Agreement by Broker or an employee thereof that is or may result in a violation thereof.

MassDevelopment acknowledges that Broker can perform services for other clients during the duration of this Agreement, provided such services for other clients do not conflict with the Services required under this Agreement or with Laws and Regulations.

ARTICLE IX

CERTIFICATIONS AND LAWS

1. Certification. By signing the Agreement, Broker certifies, under the pains and penalties of perjury, that it is in compliance with, and shall remain in compliance with, all legal requirements governing performance of this Agreement and the Vendor's authority to transact business in Massachusetts, and that Broker:

(a) is in compliance with all Massachusetts laws relating to the payment of taxes, reporting of employees and contractors, and withholding and remitting of child support, as required by M.G.L. c. 62C, § 49A, and has either (i) filed all tax returns and paid all taxes required by law; (ii) has filed a pending application for abatement of such taxes; (iii) has a pending petition before the appellate tax board contesting such taxes; or (iv) does not derive taxable income from Massachusetts Sources such that it is subject to taxation by the Commonwealth of Massachusetts;

(b) is a “Qualified Employer” or an “Exempt Employer” as defined under Chapter 521 of the Massachusetts Acts of 1990, as amended by Chapter 329 of the Massachusetts Acts of 1991, and 102 CMR 12.00 et seq.;

(c) is in compliance with all federal and state laws and regulations prohibiting discrimination including, without limitation, Mass. General Laws c. 151B and all other relevant state and federal antidiscrimination laws and executive orders;

(d) is not currently debarred or suspended from doing business with any governmental entity by the Commonwealth of Massachusetts, or any of its entities or subdivisions under any Commonwealth law or regulation, including without limitation M.G.L. c. 29, § 29F and M.G.L. c. 152, § 25C, and that it is not currently debarred or suspended from doing business with any governmental entity by the Federal government under any federal law or regulation;

(e) is in compliance with federal anti-lobbying requirements of 31 U.S.C. § 1352;

(f) is in compliance with all laws of the Commonwealth relating to unemployment compensation contributions and payments in lieu of contributions pursuant to M.G.L. c. 151A, § 19A(b), or has notified MassDevelopment in writing that M.G.L. c. 151A does not apply to Vendor because Vendor does not have any individuals performing services for it within the Commonwealth of Massachusetts to the extent that Vendor would be required to make any such contributions or payments to the Commonwealth;

(g) is not employing ten or more employees in an office or other facility located in Northern Ireland, and is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland; or, if applicable, is employing ten or more employees in an office or other facility located in Northern Ireland and (i) does not discriminate in employment, compensation, or terms, conditions and privileges of employment on account of religious or political belief; (ii) promotes religious tolerance within the work place, and the eradication of any manifestations of religious and other illegal discrimination; and (iii) is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland; and

(h) (i) shall not knowingly use undocumented workers in connection with the performance of the Agreement or any contract with the Agency; (ii) shall verify, pursuant to federal requirements, the immigration status of all workers assigned to perform Services under this Agreement without engaging in unlawful discrimination; and (iii) shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker(s).

Any breach of the foregoing requirements shall constitute a material breach of this Agreement subjecting the Vendor to sanctions, including but not limited to monetary penalties, withholding of payments, and/or suspension or termination of this Agreement or any other contract with the Agency.

ARTICLE X

DIVERSE BUSINESS ENTERPRISE POLICY

1. Policy. It is the policy of the Commonwealth and the Agency to promote equity of opportunity in state contracting; and, to that end, to encourage full participation of Diverse Business Enterprises (as defined below) in all areas of state contracting pursuant to Executive Orders 565, 523, and 526. For purposes of this section, “Diverse Business Enterprise(s)” shall mean a minority business enterprise, women business enterprise, veteran business enterprise, or service-disabled veteran-owned business enterprise, each as certified by or recognized as certified (as of the Effective Date) by the Commonwealth of Massachusetts Operational Services Division’s Supplier Diversity Office (SDO) pursuant to 425 CMR 2.00. It is the Agency’s intention to create a level playing field on which Diverse Business Enterprises can compete fairly for contracts.

In addition to all other equal opportunity employment requirements of this Agreement, the Agency strongly encourages the use of Diverse Business Enterprises as consultants, contractors, subconsultants, subcontractors, and suppliers. Lists of Diverse Business Enterprises certified or verified by the SDO are located at www.mass.gov/sdo.

Broker shall cooperate with the Agency and exercise good-faith efforts to seek opportunities for Diverse Business Enterprise participation. At the time this Agreement is executed, Broker shall submit a certified Diverse Business Enterprise Participation Schedule, in the form attached hereto as **Exhibit B**, to the Agency. The Diverse Business Enterprise Participation Schedule is incorporated into this Agreement.

ARTICLE XI

MISCELLANEOUS

1. Assignment. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns, provided, however, that Broker shall not assign this Agreement

2. Status of Broker. Broker and MassDevelopment acknowledge that Broker is acting under this Agreement solely as an independent contractor and not as a partner, joint venturer or employee of MassDevelopment. Broker acknowledges that Broker shall have no authority to act for, bind or obligate MassDevelopment in any manner whatsoever, except to the extent expressly provided herein or otherwise specifically authorized in writing by MassDevelopment.

3. Notices. Any notice or other communication required or permitted to be given hereunder shall be in writing, and shall be delivered personally, by facsimile (with a hard copy sent by a recognized overnight national courier service (e.g., FedEx) for next Business Day delivery) or shall be sent by certified or registered mail, return receipt requested, first-class postage prepaid, to the Parties at the addresses set forth below (or to such other addresses as the Parties may specify by due notice to the other):

If to MassDevelopment: Massachusetts Development Finance Agency

99 High Street, 11th Floor
Boston, MA 02110

Attn: Executive Vice President, Real Estate

With a copy to: Massachusetts Development Finance Agency
99 High Street, 11th Floor
Boston, MA 02110
Attn: General Counsel

If to Broker:

Any notice delivered to a Party's designated address by (a) personal delivery, (b) facsimile (with a hard copy by recognized overnight national courier service), or (c) registered or certified mail, return receipt requested, shall be deemed to have been received by such Party at the time the notice is delivered to such Party's designated address or facsimile number or, in the case of registered or certified mail, three (3) business days after deposit with the postal service. Confirmation by the courier delivering any notice given pursuant to this Section shall be conclusive evidence of receipt of such notice. Each Party hereby agrees that it will not refuse or reject delivery of any notice given hereunder, that it will acknowledge, in writing, receipt of the same upon request by any other Party and that any notice rejected or refused by it shall be deemed for all purposes of this Agreement to have been received by the rejecting Party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

4. Entire Agreement. This Agreement embodies the entire agreement and understanding of the Parties with respect to the subject matters contained herein. There are no representations, warranties, covenants or undertakings other than those expressly set forth or referred to herein or therein. This Agreement supersedes any and all prior agreements and undertakings between the Parties with respect to the specific subject matters discussed herein. The failure of either Party to enforce at any time, or for any period of time, any provision of this Agreement shall not be construed to be a waiver of such provision.

5. Validity. If any provision of this Agreement shall be held to be invalid or unenforceable, the same shall not affect in any respect whatsoever the validity or enforceability of the remainder of this Agreement.

6. Waiver. No consent or waiver, express or implied, by a Party to or of any breach or default by another Party in the performance by such other Party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other Party of the same or any other obligations of such other Party hereunder. Failure on the

part of a Party to complain of any act or failure to act of another Party or to declare the other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such Party of its rights hereunder. The giving of consent by a Party in any one instance shall not limit or waive the necessity to obtain such Party's consent in any future instance. No waiver shall be effective against either Party unless it is in writing, signed by that Party.

7. Terminology. All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa. The use herein of the word "including," when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific terms or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter.

8. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement.

9. Survival of Obligations. In addition to the indemnity obligation, any other provision where law, equity and common sense would require that said provision survive any termination, shall be deemed to have survived.

10. Captions. Any captions to, or headings of, the articles, sections, subsections, paragraphs or subparagraphs of this Agreement are solely for the convenience of the Parties, are not a part of this Agreement, and shall not be used for the interpretation or determination of validity of this Agreement or any provision hereof.

11. Governing Law. This Agreement shall be construed in accordance with and governed by the laws and the decisions of the courts of the Commonwealth of Massachusetts without regard to its principles regarding conflicts of laws.

12. Further Assurances. Broker shall from time to time do such additional acts and execute and deliver such further instruments as MassDevelopment or its counsel may reasonably request to effectuate the intent of this Agreement.

13. Amendment. This Agreement may be amended or modified only by a written agreement executed by MassDevelopment and Broker. Neither Party shall have the authority to waive this provision.

14. No Third Party Beneficiaries. No term or provision of this Agreement or the exhibits hereto is intended to or shall be for the benefit of any person or entity not a party hereto, and no such other person or entity shall have any right or cause of action hereunder.

15. Construction. Each Party acknowledges that it and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved

against the drafting Party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

16. General Limitation of Recourse. There shall be no liability under this Agreement of, nor any recourse under this Agreement to, any officer, director, shareholders, lenders, employee or agent of Broker or of any affiliate thereof, or of MassDevelopment or of any affiliate thereof. The liability of Broker, shall be limited to the amounts recoverable in the insurance policies provided by Broker to MassDevelopment, as part of this Agreement.

17. Time of Essence. Time is of the essence of this Agreement and each and every provision herein.

Broker shall not cease or delay the performance of any work, including any disputed work, on account of any dispute arising out of or relating to the Agreement or work thereunder, and shall faithfully, diligently and continuously perform the work under the Agreement under protest. Failure to perform disputed work of any kind or nature under this Agreement because of a dispute shall be a material default of this Agreement and MassDevelopment shall have the right to terminate Broker, without an opportunity to cure and without prejudice to any other right or remedy available to MassDevelopment.

[Signatures on following page]

IN WITNESS WHEREOF, this Agreement has been executed by the duly authorized representatives of MassDevelopment and Broker and is effective as of the date first written above.

**MASSACHUSETTS DEVELOPMENT
FINANCE AGENCY**

[NAME OF BROKER]

By: _____

Name: Tania Hartford

Title: Executive Vice President,
Real Estate

By: _____

Name:

Title:

Approved as to Form

Agency Counsel

Contract Number: [_____]

*[Signature page of Brokerage Agreement between Massachusetts Development Finance Agency and
[Name of Broker]*

EXHIBIT A

Services - General Duties. The selected brokerage firm shall use its best efforts to obtain qualified buyers/tenants for the available land and building at the highest sale/lease rates achievable. Broker shall also fulfill the following obligations:

5. Coordinate ongoing prospect contact in consultation with MassDevelopment: qualify leads, tour prospects and coordinate responses to inquiries.
6. Assign a lead broker to this assignment to work with MassDevelopment staff on transaction management.
7. Attend meetings or conference calls with MassDevelopment to review prospect activity, marketing opportunities, program development, land or building pricing, and implementation.
8. Maintain an electronic database available to MassDevelopment for all marketing activity.
6. Coordinate implementation of MassDevelopment's real estate marketing plans. Specific tasks to be undertaken by the broker shall include but not be limited to:
 - (a) Compile a list of recommended trade related publications suitable for advertising the subject real estate.
 - (y) Compile reports on comparable transactions on a periodic basis and as needed for specific proposals.
 - (z) Provide draft recommendations regarding collateral materials.
 - (aa) Coordinate marketing efforts with MassDevelopment's Marketing and Real Estate Departments.
 - (bb) Maintain the listings on the CoStar and LoopNet Commercial Real Estate websites.
 - (cc) Develop prospect lists and coordinate mailings and other contact with selected businesses or industry sectors.
 - (dd) Participate in developing a marketing program and materials for the listings.
 - (ee) Increase project visibility among cooperating brokers and encouraging active and inclusive co-brokerage participation.
 - (ff) Manage mailings and e-mail solicitations that reach appropriate prospects or agents.
 - (gg) Pay for marketing, signage and/or mailing costs.
 - (hh) Plan and implement outreach programs to trade organizations, professional associations, etc.
 - (ii) Qualify all prospects.

EXHIBIT B

MassDevelopment's Diverse Business Enterprise (DBE) 3 Participation Schedule

PART 1: CONSULTANT INFORMATION

Business Name and Address: _____

Contact Name and Phone Number: _____

Email Address: _____

Consultant **is/is not** Supplier Diversity Office certified as a DBE:

☐ Yes ☐ No, not a certified DBE

If yes, check appropriate category(ies) below (**attach** any SDO Certification Letters):

☐ MBE ☐ WBE ☐ VBE ☐ SDVBE

PART 2: NARRATIVE (if applicable)

For contracts with values \$50,000.00 or more, consultant **must attach** to this schedule a narrative containing: (1) communications regarding DBE outreach, (2) identification of the work that may be completed by any DBEs, (3) a dispute resolution process with DBEs, and (4) procedures for the replacement of DBEs if termination is required.

PART 3: CONSULTANT'S DBE SUBCONTRACTORS/SUBCONSULTANTS

Have you sought out DBE Participation at the subcontract/subconsultant level: ☐ Yes ☐ No ☐ N/A **If yes,**
which methods did you use: ☐ Solicitation placed in trade publications ☐ Written notification

☐ Assist DBEs in obtaining required bonding or insurance ☐ COMMBUYS

☐ Other: _____

If yes, complete the below list:

<u>Name and Address of Planned Diverse Business Enterprise Subcontractors/ Subconsultants</u>	<u>Circle Appropriate Certification and <u>attach</u> Certification Letter from SDO</u>	<u>Dollar Amount of Participation on a Massachusetts fiscal year (July 1 – June 30) basis</u>
	MBE / WBE / VBE / SDVBE	
	MBE / WBE / VBE / SDVBE	
	MBE / WBE / VBE / SDVBE	

³ For purposes of this schedule, DBE shall collectively refer to enterprises certified or verified by the Supplier Diversity Office (SDO) as Minority, Women, Service-Disabled Veteran Owned Business Enterprises and Veteran Owned Business Enterprises (each respectively a MBE, WBE, SDVBE, and VBE). The SDO certifications are located at www.mass.gov/sdo

	MBE / WBE / VBE / SDVBE	
	MBE / WBE / VBE / SDVBE	

PART 4: CERTIFICATION (REQUIRED)

Under the pains and penalties of perjury, I certify that the information provided on this form and all attachments is accurate.

Signature: _____

Written Name: _____

Attachment 4 – MassDevelopment’s Diverse Business Participation Program Guidelines

MassDevelopment strongly encourages the use of Diverse Business Enterprises (as defined in Section 4 of the RFP as consultants, contractors, sub-consultants, subcontractors, and suppliers in the procurement of its direct design, engineering, construction and all professional services. Accordingly, MassDevelopment has developed a Diverse Business Participation Program (the “DBE Program”) which establishes criteria to encourage and measure participation by Diverse Business Enterprises in the provision of such services.

The DBE Program addresses MassDevelopment’s commitment, and the commitment of respondents to this RFP, to seek opportunities for Diverse Business Enterprise participation. The DBE Program requires MassDevelopment to reach out to Diverse Business Enterprises in its contracting opportunities and to track the percentage of Diverse Business Enterprises which participate in Agency contracting at the direct contracting level. The participation levels of Diverse Business Enterprises in MassDevelopment’s direct contracting will be reported to MassDevelopment’s Board of Directors annually.

In addition, the DBE Program requires examination of respondent’s anticipated utilization of Diverse Business Enterprises at the subcontractor/subconsultant level, including the percentage of the total proposed price to be supplied by Diverse Business Enterprises and the identity of the work to be performed by Diverse Business Enterprises. The DBE Program also considers the strategies and good faith efforts each respondent will use to obtain qualified Diverse Business Enterprise subcontractors/subconsultants and suppliers, how the respondent will interface with MassDevelopment for outreach, pre-solicitation review of subcontracting/subconsulting, and compliance monitoring and reporting. It will also consider how the respondent will address resolving disputes with Diverse Business Enterprise subcontractors/subconsultants, including proposed termination and alternative plans for the substitution and replacement of Diverse Business Enterprise firms that have been terminated. Finally, it will consider what technical assistance initiatives and supportive service strategies the respondent will employ to promote full participation by Diverse Business Enterprises and to support the efforts by such firms to build capacity.






Respondent Submission Requirements

As part of respondent’s proposal submission, the Participation Schedule (included in **Attachment 3, Form of Agreement**) must be submitted. It is anticipated that contracts may meet the eligibility criteria of Part 2. Accordingly, the proposal submission should include a narrative with a summary of the below information.

1. Explain how the respondent intends to ensure overall compliance with MassDevelopment’s policy of promoting equity and opportunity for Diverse Business Enterprises, including the strategies the respondent used to obtain certified MBE, WBE,

VBE or SDVBE subcontractors and suppliers to perform work or provide supplies for the project.

2. Explain the good faith efforts the respondent has already made to obtain Diverse Business Enterprise participation, including:
 - The strategies the respondent has used to obtain certified MBE, WBE, VBE or SDVBE subcontractors and suppliers,
 - Documented communication with MassDevelopment about Diverse Business Enterprise outreach,
 - How the respondent used information concerning Diverse Business Enterprise subcontracting opportunities provided by MassDevelopment during the pre-proposal conference, if any, and/or through other means,
 - Solicitations placed by the respondent in general circulation media, trade association publications, minority-focused media and other reasonable and available means to obtain Diverse Business Enterprise involvement,
 - Written notifications sent by the respondent to Diverse Business Enterprises encouraging participation in the proposed contract,
 - Efforts the respondent made to identify specific portions of the work that might be performed by Diverse Business Enterprises,
 - A list of names, addresses, and telephone numbers of Diverse Business Enterprises that were contacted,
 - A description of the information provided to targeted Diverse Business Enterprises regarding the particular project, and
 - Efforts made by the respondent to assist Diverse Business Enterprises in obtaining bonding or insurance required by the respondent or by MassDevelopment.
3. Submit a narrative explaining how during performance of the contract the respondent will maintain continued efforts to preserve and enhance Diverse Business Enterprise participation, including the respondent's:
 - Description of how the respondent will interface with the MassDevelopment project manager and contract manager for outreach and assistance generally and with respect to the specific issues below,
 - Description as to how the respondent will abide by the monitoring and reporting requirements of the contract,
 - Description of the dispute resolution procedures the respondent will institute under its subcontracts with Diverse Business Enterprises to encourage amicable resolution of disputes and continued performance by the Diverse Business Enterprises, and
 - Description of the procedures and guidelines for the termination of Diverse Business Enterprises as well as for the identification and selection of substitutes.

<u>Included in RFP</u>	
	Industrial Parcels
	Front Parcel (under ROFR)
<u>Not included in RFP</u>	
	Under PSA
	Residential Option Parcels
	Commercial Option Parcels