

**MASSACHUSETTS DEVELOPMENT
FINANCE AGENCY**

REQUEST FOR PROPOSALS

FOR

**MANAGEMENT OF THE MIRROR LAKE RECREATION AREA IN DEVENS,
MASSACHUSETTS**

MAY 5, 2025

1. BACKGROUND

The Massachusetts Development Finance Agency (“MassDevelopment” or “Agency”) is a body politic and corporate created by the Commonwealth of Massachusetts to help foster economic development across the Commonwealth. The Agency is governed by an 11-member Board of Directors. MassDevelopment prides itself on a team-oriented, solutions-based approach to economic development. The Agency provides its clients with entrepreneurial solutions to complex real estate projects and financing options that create economic opportunities in Massachusetts. Our staff is located in offices throughout the Commonwealth.

MassDevelopment, pursuant to Chapter 498 of the Acts of 1993, as amended, was designated as the public agency responsible for the redevelopment, reuse, and operation of the Devens Regional Enterprise Zone, located in Devens, Massachusetts (“Devens”). Located in central Massachusetts, Devens is the site of the former Fort Devens military installation. MassDevelopment is overseeing the redevelopment of the old base into a 4,400-acre mixed-use community. To date millions of square feet of industrial and commercial development has been completed. The size and scale of the development ranges from commercial buildings less than 5,000 sf to large-scale manufacturing and warehouse-distribution facilities. Devens features over 100 businesses and organizations that collectively employ more than 7,000 workers. There are approximately 200 new and existing housing units, a newly constructed three-story, age restricted residential facility, and nearly 2,100 acres of open space and recreation land.

2. PROJECT DESCRIPTION

Mirror Lake is an approximately thirty acre “kettle hole”, a deep pond formed when New England’s last glacier melted away. It has been open for certain public uses since 1998. Mirror Lake lies within both conservation and preservation land districts and the selected respondent must operate the lakefront under the specified conservation restrictions.

The Mirror Lake waterfront is a portion of the lake shore with approximately 115 feet of sand shoreline that gradually slopes to a depth of approximately 28 feet within a marked swim area. The water quality at Mirror Lake is typically excellent and shows limited signs of environmental water degradation. A block masonry building is available for equipment storage.

MassDevelopment is soliciting proposals from respondents to provide management of the Mirror Lake beachfront and boat ramp areas located off Patton Road in Devens, Massachusetts for the 2025 summer season. A print-out of the Mirror Lake Conservation District is provided for information. Mirror Lake’s season begins in June of each year and goes for ten to fifteen weeks from 10am-7pm, seven days per week. A site visit can be arranged by contacting the Devens Recreation Office at the Devens Public Works building located at 99 Buena Vista Street, Devens, MA 01434 (978-772-8876).

MassDevelopment expects to enter into contract(s) with one or more responsive, responsible respondents based on qualifications and best value. The contracts will have a base term of one (1) operating season of no less than ten (10) weeks and no more than fifteen (15) weeks. The

operating season will be agreed upon by both parties, taking weather and available staffing into consideration. MassDevelopment shall have the option, at its sole discretion, to renew the contract for two (2) additional terms of one (1) operating season each, through 2027.

MassDevelopment reserves the right to waive any informalities or to reject any or all proposals. Award of a contract for the work contemplated by this Request for Proposals (“RFP”) may be subject to the approval of MassDevelopment’s Board of Directors.

3. SELECTION SCHEDULE/TIME AND PLACE OF SUBMISSION OF PROPOSALS

The selection schedule is as follows:

RFP/Q Available:	MAY 5, 2025
Area Site Visit	BY APPOINTMENT
Deadline for Questions:	MAY 12, 2025 by 3pm
Response to Questions Issued:	MAY 19, 2025
Proposal Submission Deadline:	MAY 26, 2025 by 3pm

MassDevelopment reserves the right to alter the timeline as it deems necessary.

All inquiries concerning this RFP must be addressed to the following person:

Hillary Clark
Recreation/Events Manager
MassDevelopment
99 Buena Vista Street, Devens, MA 01434
(978) 772-8876, hclark@massdevelopment.com

This RFP has been distributed electronically using MassDevelopment’s website. It is the responsibility of respondents to check the website for any addenda or modifications to this RFP.

All questions should be submitted in writing on or before **May 12, 2025 by 3pm**. **[Email is preferred.]** 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 submission of a proposal. Answers to all questions of a substantive nature will be posted on MassDevelopment’s website at (<https://www.massdevelopment.com/rfps-and-rfqs/>). It is the responsibility of respondents to ensure that they receive all information pertaining to this RFP by visiting the website link listed above.

Respondents to this RFP must submit one electronic copy of their proposals. Responses must be received no later than **May 26, 2025 by 3pm**. Electronic copies of responses, preferable in a searchable PDF format, must be sent to the e-mail address listed above with the subject line “RFP – Mirror Lake Management.”

Any proposal received after the time specified will be considered a late proposal and may or may not be received or evaluated in the sole discretion of MassDevelopment.

4. 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)”) as consultants, contractors, subconsultants, 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/Q, to seek opportunities for Diverse Business Enterprise participation in this contract.

Please see **Attachment 2** for MassDevelopment’s DBE Program guidelines and forms which must be submitted with respondent’s proposal.

5. SCOPE OF SERVICES

Management and operation of the Mirror Lake Recreational Area for the summer season shall include the following:

- a) Respondent shall retain sole management and control over its employees and agents.
- b) Respondent shall ensure that all personnel be subjected to a Criminal Offender Records Information (“CORI”) system check and records of such CORI check be kept and maintained.
- c) Respondent shall provide full waterfront services including the positions of Waterfront Director, Water Safety Instructors, Lifeguards, and attendants. Respondent will provide staffing levels which are appropriate to accommodate the use of the area by the public and participants in any camp program run by respondent which uses facilities in Devens.
- d) Respondent shall staff waterfront areas with personnel holding current and adequate industry standard lifeguard, water safety, first aid, and CPR certifications.
- e) Attendants will collect fees, supervise the parking area, monitor and direct boat landing traffic, and direct handicapped parking.
- f) All staff, while on duty, will wear standardized lifeguard uniforms (to be approved by MassDevelopment/Devens Recreation).
- g) Mirror Lake activities will include recreational swimming, instructional swim programs, boat/canoe/kayak rental and/or instruction, and supervised outings. Organized outings/events shall be coordinated with and approved in advance by MassDevelopment/Devens Recreation.
- h) Any and all vendors serving the Mirror Lake Recreational Area must be approved in advance by MassDevelopment/Devens Recreation and shall present a copy of its certificate(s) of insurance which shall show evidence of such insurance coverage as MassDevelopment may request and secure any additional permits required, including but

not limited to a food permit through the Nashoba Associated Boards of Health and propane permit through Devens Fire Department. No alcohol shall be allowed. Respondent and any such vendors are responsible for obtaining any permits applicable to the vending activity.

- i) Prior to the beginning of the season, respondent shall present in a form acceptable to MassDevelopment and its Devens Fire Chief, a “Standard Operating Procedure and Emergency Action Plan” for all Mirror Lake activities.
- j) Respondent shall monitor all activities for the highest level of safety and comply with applicable conservation and land preservation restrictions.
- k) Respondent’s minimum hours of operation shall be: seven (7) days a week, 10 a.m. – 7 p.m. from an agreed upon start date in June through an end date in August or September. The number of weeks will be between ten (10) and fifteen (15) as determined by MassDevelopment and Vendor.
- l) Respondent is subject to and shall comply with all Nashoba Valley Board of Health regulations.
- m) Respondent shall assume all costs, charges, and expenses incurred relative to the management of Mirror Lake including, but not limited to, the following:
 - a. Labor, including salaries, wages, taxes, benefits as accrued, retirement plan, and benefit services.
 - b. Other costs, charges, and expenses, including insurance costs for workers’ compensation, general liability and other insurance maintained (at minimum limits to be set by MassDevelopment), sales and use taxes, licenses, and permits.
- n) Respondent shall keep itemized records (financial reports) of all revenue collected by respondent (including, without limitation, Admission Fees, Season Pass Admission Fees, fees from swim lessons, boat rental, camps, concessions and outings, etc.) and all expenses incurred by respondent in the performance of the services. All such records shall be kept by the respondent on the basis of generally accepted accounting principles consistently applied and shall be submitted to MassDevelopment on a monthly basis. A final report listing all of the revenues and expenses for the term is due to MassDevelopment not later than the September 30th immediately following each operating season.
- o) Respondent shall submit monthly attendance figures to MassDevelopment.
- p) No capital or significant operational improvements, hole digging (for signs of otherwise) or alteration of buildings shall be undertaken except with prior express written approval of MassDevelopment/Devens Recreation.

6. 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. A submission must, at a minimum, include the following elements:

- Firm Background
- Staffing and Certifications – proposed staffing requirements and timelines to provide the services outlined in the RFP, along with certifications
- Relevant Management Experience

- Qualification Statement – detail the experience of the organization, including experience on comparable projects.
- Business Plan – include proposed user fees, other revenues, and proposed management fee.
- References
- Diverse Business Enterprise (DBE) Participation Schedule and Narrative (See Attachment 2).
- Insurance – please provide a certificate of insurance setting forth the respondent’s current insurance coverage including limits, deductibles, and a statement declaring the respondent’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. Umbrella Liability -- \$5 million per occurrence and \$5 million aggregate. General Liability and Umbrella Liability policies shall be written on an Occurrence form;
 - e. Massachusetts Development Finance Agency, its successors and/or assigns, as their interests may appear, shall be named additional insured under the General Liability, Auto Liability, and Excess Umbrella Liability policies.

The successful respondent’s insurance coverages shall be primary over and above any insurance maintained by MassDevelopment.

7. 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:

- Quality, completeness and accuracy of proposal submissions
- Quality and comprehensiveness of proposed plan
- Professional qualifications of the proposed team
- Past performance and experience of the proposed team on comparable projects
- Competitiveness of the financial terms of the proposal
- Clear demonstration of capacity to provide all services related to the performance for duration of the contract
- Diverse business Enterprise Participation

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. The Diverse Business Participation Schedule and Narrative is an important component of the evaluation of proposals.

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.

8. SELECTION PROCESS

Only responses containing the Elements of Proposal (Section 6) and meeting the minimum requirements set forth in the Evaluation Criteria (Section 7) may be considered for further evaluation.

There will be no public opening of proposals submitted under this RFP. An internal selection committee 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 formal 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.

The respondent(s) selected will begin to perform services, as needed by MassDevelopment subject to execution of a contract substantially in the form attached as **Attachment 1** hereto. 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 finalist(s), then the next highest ranked finalist(s) will be selected and the negotiation process repeated.

9. 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 above). 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 (h) 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 the MassDevelopment 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 public disclosure.
- 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.

Attachments

Attachment 1—Form Contract

Attachment 2 – MassDevelopment's Diverse Business Participation Program Guidelines

Attachment 3 – Conservation Restriction

[Attachment 1 – Form Contract]

MASSACHUSETTS DEVELOPMENT FINANCE AGENCY

AGREEMENT FOR SERVICES

This Agreement for Services (the “Agreement”) is made and entered into as of _____, 20__ (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, having a principal place of business at 99 High Street, 11th Floor, Boston, Massachusetts 02110 (the “Agency” or “MassDevelopment”), and _____, a _____, having a principal place of business at _____ (the “Vendor”).

WITNESSETH THAT

WHEREAS, MassDevelopment, pursuant to Chapter 498 of the Acts of 1993, has been designated as the public agency responsible for the redevelopment, reuse, and operation of the Devens Regional Enterprise Zone, located in Devens, Massachusetts (“Devens”); and

WHEREAS, the Agency desires to retain a provider of facility management services for Mirror Lake recreational area in Devens, Massachusetts (the “Facility”), as such services are more fully described herein (the “Services”); and

WHEREAS, the Vendor was selected through a competitive procurement process and is qualified and desires to perform the Services for the Agency to meet these needs.

NOW, THEREFORE, for the consideration hereinafter set forth, the parties hereto do mutually agree as follows:

ARTICLE 1 - SERVICES.

Services. The Vendor agrees to perform, at the Vendor's own expense, all the work and furnish all the vehicles, material, equipment and labor necessary and proper to perform the Services during the term of this Agreement, all in accordance with the terms and provisions of this Agreement including the requirements set forth in Exhibit A, Scope of Services, attached hereto and incorporated herein. The Vendor shall perform the work in a proper, thorough and workmanlike manner to the satisfaction of the Agency.

The Request for Proposals, the proposal submitted by the Vendor, and any Addenda and interpretations heretofore issued are hereby incorporated herein and made a part of this Agreement, superseding all prior and contemporaneous written or oral understandings.

The Agency may request changes, additions or deletions to the Services of the Vendor to be performed hereunder (as “Amendment”). Such changes, including any increase or decrease in

the amount of the Vendor's compensation, shall be mutually agreed upon in writing and incorporated in the Agreement.

ARTICLE 2 – FEES & INVOICES.

A. Fees. The Agency will pay to Vendor the sum of _____ (\$_____), as a management fee (the “Management Fee”).

B. Admission Fees. Vendor shall charge as an admission fee the sum of \$____ per adult and \$____ per child (the “Admission Fee”) for each individual entering the Facility during the 2025 season as defined in Exhibit A. Vendor shall be permitted to sell season passes to non-Devens residents for use of the Facility in Vendor’s discretion. The Admission Fee for such season passes (the “Season Pass Admission Fee”) shall be set by Vendor after approval of the Season Pass Admission Fee by Agency.

C. Itemized Records. Vendor shall keep itemized records (financial reports) of all revenue collected by Vendor (including without limitation, Admission Fees, Season Pass Admission Fees, fees from swim lessons, boat rental, camps, concessions and outings, etc.) and all expenses incurred by Vendor in the performance of the Services under the Agreement. All such records shall be kept by the Vendor on the basis of generally accepted accounting principles consistently applied and shall be submitted to the Agency at the end of the Term. A final report listing all of the revenues and expenses for the Term is due to Agency not later than September 30th immediately following each operating season.

D. Invoices. Invoices for services rendered and costs incurred shall be prepared by the Vendor on the Vendor's standard form, as approved by the Agency, and submitted along with the Vendor's itemized records to the Agency. The invoices shall reflect costs for actual services performed and otherwise conform to the requirements of this Article. An invoice in proper form shall be paid by the Agency to the Vendor within thirty (30) days of presentation to the Agency.

ARTICLE 3 – RELATIONSHIP OF THE PARTIES.

A. Agency's Liability. The Agency's liability under this Agreement shall be limited to the payments due hereunder. In no event shall the Agency be liable for any additional amounts, including without limitation, any indirect, special or consequential damages.

B. Independent Contractor.

(i) It is understood and agreed that the Vendor is an independent contractor and that the Vendor shall perform the Services, as defined herein and on Exhibit A. The Vendor shall determine, in the Vendor's sole discretion, the manner and means by which the Services are accomplished, subject to the express condition that the Vendor shall at all times comply with applicable law. The Vendor shall perform the Services in a professional and competent manner. It is expressly understood and agreed that neither the Vendor nor the Vendor's employees and

agents, if any, shall be considered agents or employees of the Agency, and they shall have no authority whatsoever to bind the Agency by contract or otherwise.

(ii) The Vendor represents that it has, or will secure, at its own expense, all personnel required in performing the Services under the Agreement. The Vendor shall assign such personnel, subject to the approval of the Agency, and such personnel shall not be employees of nor have any contractual relationship with the Agency. The Vendor further agrees that its personnel will not hold themselves out as, nor claim to be, officers or employees of the Agency by reason of the Agreement.

(iii) All personnel provided by Vendor shall, prior to performing any services in connection with this Agreement, be subjected to a Criminal Offender Records Information ("CORI") system check and a Massachusetts Sexual Offender Registry Information ("SORI") system check. Records of such CORI and SORI checks shall be kept and maintained by the Vendor.

(iii) The Vendor acknowledges and agrees that it shall be the obligation of the Vendor to report to the proper authorities all fees received by the Vendor pursuant to the Agreement, and the Vendor agrees to indemnify, defend and hold harmless the Agency to the extent of any obligation imposed by law on the Agency to pay any withholding taxes, social security, unemployment or worker's compensation insurance or similar items in connection with any payments made to the Vendor by the Agency pursuant to the Agreement on account of the Services of the Vendor or the Vendor's employees or agents, if any.

C. Indemnity. The Vendor shall indemnify, defend and hold harmless the Agency and its successors and assigns, and all of its officers directors, lenders, shareholders, beneficial owners, trustees, partners, affiliates, agents and employees from and against any and all claims, suits, actions, judgments, demands, losses, costs, attorney's fees, expenses, damages and liability to the extent caused by, resulting from, or arising out of the intentional acts, negligent acts, errors, omissions, or allegations thereof, of the Vendor, its employees, agents or representatives in the performance of the Services under the Agreement.

D. (i) The Vendor understands that any person providing services under the Agreement will be a "special state employee," for purposes of M.G.L. Chapter 268A, but shall otherwise be an independent contractor and not an employee of the Agency. The Vendor further agrees to comply with said Chapter 268A, as "special state employee," and to promptly disclose to the Agency any activity under the Agreement by the Vendor or an employee thereof that is or may result in a violation thereof.

(ii) The Agency acknowledges that the Vendor can perform services for other clients during the duration of this Agreement, provided such clients do not conflict with the services required under this Agreement and subject to applicable law.

ARTICLE 4 - INSURANCE.

A. Insurance. The Vendor 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 the Agency, 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) Umbrella liability in the minimum amount of \$5,000,000 per occurrence and \$5,000,000 aggregate.

The Vendor shall furnish the Agency with certificates of insurance showing that the Vendor has complied with this Article 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. Such certificates shall provide that written notification of cancellation of the insurance policies required hereunder shall be given to the Agency thirty (30) days prior to such cancellation. Vendor’s insurance shall be primary over and above any insurance that may be maintained by the Agency.

ARTICLE 5 – TERM AND TERMINATION.

A. The Term of this Agreement shall commence on June 1, 2025 and end on September 30, 2025, provided, however that Vendor shall have the right to use the Facility only for a period of between ten (10) and fifteen (15) weeks between June and September of each calendar year, as will be more particularly designated by Agency. Vendor will notify Agency no later than March 1st of each calendar of the specific ten (10) week period that Vendor wishes to use the Facility. Access/use of any MassDevelopment facilities at other times shall be only upon prior written consent of MassDevelopment.

B. Vendor and Agency shall have the right to extend the Term of this Agreement for two additional terms of one operating season each provided the extension is mutually agreed upon between the Vendor and the Agency. Any such extension shall be mutually agreed upon the parties in writing by January 31st immediately preceding the applicable operating season.

C. The Agreement may be terminated by either party upon thirty (30) days written notice in the event of substantial failure by the other party to perform in accordance with the terms of the Agreement through no fault of the terminating party unless said failure is rectified within said period. The Agreement may also be terminated by the Agency for its convenience but only upon thirty (30) days written notice to the Vendor.

In the event of termination not the fault of the Vendor, the Vendor shall be compensated for all the Services performed and costs incurred up to the effective date of termination for which the Vendor has not been previously compensated.

Upon receipt of notice of termination from the Agency, the Vendor shall discontinue its services hereunder unless otherwise directed and shall deliver to the Agency all materials as may have been accumulated by the Vendor in the performance of the Agreement.

Notwithstanding the above, in the event of termination, the Vendor shall not be relieved of liability to the Agency for injury or damages sustained by the Agency by virtue of the Agreement, and the Agency may withhold any payment to the Vendor for the purposes of set-off until such time as the exact amount of damages due to the Agency is determined. Those provisions of this Agreement where equity would require survival shall be deemed to survive and remain binding upon the parties following the termination of the Agreement.

ARTICLE 6 – CERTIFICATIONS & COMPLIANCE WITH LAWS.

By signing the Agreement, the Vendor 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 the Vendor:

(1) 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;

(2) 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.*;

(3) is in compliance with all federal and state laws and regulations prohibiting discrimination, including without limitation Executive Order 11246; and, in particular, does not and shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age (as defined by law), sex, sexual orientation, religion or physical or mental handicap. The Contractor agrees to comply with all applicable federal and state statutes prohibiting discrimination in employment including Title VII of the Civil Rights Acts of 1964, the Age Discrimination in Employment Act of 1967, Section 504 of the Rehabilitation Act of 1973, and Massachusetts General Laws Chapter 151B, section 4 (1).

(4) 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;

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

(6) 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;

(7) 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

(8) (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 7 – DIVERSITY.

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. 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.

Vendor 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, Vendor 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 by reference into the Agreement.

ARTICLE 8 – TERMS & CONDITIONS.

A. Laws and Regulations. This Agreement shall be considered to incorporate by reference all applicable federal, state and local laws and rules and regulations of all competent authorities having jurisdiction over the Facility and Services as though such provisions were set forth in full herein, including but not limited to Chapter 153 of the Acts of 2012, now codified at G.L. c. 111, §127A1/2 and any regulations promulgatedthereunder.

B. Governing Law. The Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to its choice of law rules. Any actions arising out of this Agreement shall be brought and maintained in a state or federal court in Boston, Massachusetts which shall have exclusive jurisdiction thereof

C. Vendor Legal Compliance. The Vendor shall comply with and be solely responsible for any violation of all federal, state and local laws, ordinances, rules, regulations or orders, including, but not limited to, emergency orders relating to the COVID-19 pandemic, which are applicable to the Services being provided hereunder and in the performance of the Agreement.

D. Notices. All notices required or permitted under the Agreement shall be in writing and shall be deemed sufficiently served when delivered by hand if a receipt is obtained therefore,

or when actually received if delivered by mail, and if delivered by mail shall be mailed registered or certified first class mail, return receipt requested, postage pre-paid, and in all cases shall be addressed as follows:

To the Agency: Massachusetts Development Finance Agency
Recreation Department
99 Buena Vista Street
Devens, MA 01434
Attention: Hillary Clark, Devens Recreation Manager

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

To the Vendor:

Attention:

Each party authorizes the other to rely in connection with their respective rights and obligations under the Agreement upon approval by the parties named above or any person designated in substitution or addition hereto by notice, in writing, to the party so relying.

E. Non-assignment. This Agreement may not be assigned or subcontracted in any way without the prior written agreement of MassDevelopment. Any unauthorized assignment shall be null and void.

F. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns where permitted by this Agreement.

G. Authorized Signatories. Each party to this Agreement represents that the individual executing this Agreement on its behalf is duly authorized to bind such party to this Agreement according to its terms.

H. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

I. Non-Waiver. No failure or waiver of successive failures or waivers on the part of either party hereto, their successors or permitted assigns, in the enforcement of any condition, covenant or section of the Agreement, shall operate as a discharge of any such condition, covenant or section, nor render the same invalid, nor impair the right of either party hereto, their

successors or permitted assigns to enforce the same in the event of any subsequent breaches by the other party hereto, its successors or permitted assigns.

J. Force Majeure. Neither party shall be liable to the other or be deemed to be in breach of the Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include, but are not limited to, acts of God, acts of a public enemy, fires, floods, epidemics, pandemics, quarantine restrictions, strikes, freight embargoes or unusually severe weather (each a “Force Majeure Event”). To the extent that a party has notice of a Force Majeure Event, or such an event becomes foreseeable, then the party has a duty to mitigate and/or remediate damages arising out of the Force Majeure Event. Dates or times of performance shall be extended to the extent of delays excused by this Article, provided that the party whose performance is affected notifies the other promptly of the existence and nature of such delay. Nothing contained in this Article shall derogate from or affect the Agency’s rights to terminate this Agreement pursuant to Article 5 above.

K. Severability. If any provision of the Agreement is declared or found to be illegal, unenforceable or void, then both parties shall be relieved of all obligations under that provision. The remainder of the Agreement shall remain enforceable to the fullest extent permitted by law.

L. Headings. The headings used herein are for reference and convenience only and shall not enter into the interpretation of the Agreement.

M. Amendments. No amendment to the Agreement shall be effective unless it is signed by authorized representatives of both parties and accepted for filing at the offices of the Agency.

N. Extent of Agreement. The Agreement, together with any and all materials presented by the Agency or delivered by the Vendor to the Agency in connection with the procurement of the Services shall represent the entire and integrated agreement between the Agency and the Vendor and supersedes and replaces all terms and conditions of any prior agreements, arrangements, negotiations or representations, written or oral, with respect to the subject matter hereof. The order of precedence shall be, in descending order, (1) this Agreement including exhibits and attachments; (2) MassDevelopment’s bid or solicitation; (3) Vendor’s proposal or response to the bid or solicitation.

[Remainder of page left blank; signature(s) on next page]

IN WITNESS WHEREOF, this Agreement has been executed by the Agency and the Vendor and is effective as of the date first written above.

**MASSACHUSETTS DEVELOPMENT
FINANCE AGENCY**

VENDOR

By: _____
Name:
Title:

By: _____
Name:
Title:

Approved as to Form
Agency Counsel

Contract Number:
Contract Amount:

*[Signature page to Agreement for Services by and between Massachusetts Development Finance
Agency and VENDOR]*

EXHIBIT A – SCOPE OF SERVICES

EXHIBIT B – DBE PARTICIPATION SCHEDULE

EXHIBIT A – SCOPE OF SERVICES

Management and operation of the Mirror Lake Recreational Area for the summer season shall include the following:

- a) Respondent shall retain sole management and control over its employees and agents.
- b) Respondent shall ensure that all personnel be subjected to a Criminal Offender Records Information (“CORI”) system check and records of such CORI check be kept and maintained.
- c) Respondent shall provide full waterfront services including the positions of Waterfront Director, Water Safety Instructors, Lifeguards, and attendants. Respondent will provide staffing levels which are appropriate to accommodate the use of the area by the public and participants in any camp program run by respondent which uses facilities in Devens.
- d) Respondent shall staff waterfront areas with personnel holding current and adequate industry standard lifeguard, water safety, first aid, and CPR certifications.
- e) Attendants will collect fees, supervise the parking area, monitor and direct boat landing traffic, and direct handicapped parking.
- f) All staff, while on duty, will wear standardized lifeguard uniforms (to be approved by MassDevelopment/Devens Recreation).
- g) Mirror Lake activities will include recreational swimming, instructional swim programs, boat/canoe/kayak rental and/or instruction, and supervised outings. Organized outings/events shall be coordinated with and approved in advance by MassDevelopment/Devens Recreation.
- h) Any and all vendors serving the Mirror Lake Recreational Area must be approved in advance by MassDevelopment/Devens Recreation and shall present a copy of its certificate(s) of insurance which shall show evidence of such insurance coverage as MassDevelopment may request and secure any additional permits required, including but not limited to a food permit through the Nashoba Associated Boards of Health and propane permit through Devens Fire Department. No alcohol shall be allowed. Respondent and any such vendors are responsible for obtaining any permits applicable to the vending activity.
- i) Prior to the beginning of the season, respondent shall present in a form acceptable to MassDevelopment and its Devens Fire Chief, a “Standard Operating Procedure and Emergency Action Plan” for all Mirror Lake activities.
- j) Respondent shall monitor all activities for the highest level of safety and comply with applicable conservation and land preservation restrictions.
- k) Respondent’s minimum hours of operation shall be” seven (7) days a week, 10 a.m. – 7 p.m. from an agreed upon start date in June through an end date in August or September. The number of weeks will be between ten (10) and fifteen (15) as determined by MassDevelopment and Vendor.
- l) Respondent is subject to and shall comply with all Nashoba Valley Board of Health regulations.
- m) Respondent shall assume all costs, charges, and expenses incurred relative to the management of Mirror Lake including, but not limited to, the following:

- a. Labor, including salaries, wages, taxes, benefits as accrued, retirement plan, and benefit services.
 - b. Other costs, charges, and expenses, including insurance costs for workers' compensation, general liability and other insurance maintained (at minimum limits to be set by MassDevelopment), sales and use taxes, licenses, and permits.
- n) Respondent shall keep itemized records (financial reports) of all revenue collected by respondent (including, without limitation, Admission Fees, Season Pass Admission Fees, fees from swim lessons, boat rental, camps, concessions and outings, etc.) and all expenses incurred by respondent in the performance of the services. All such records shall be kept by the respondent on the basis of generally accepted accounting principles consistently applied and shall be submitted to MassDevelopment on a monthly basis. A final report listing all of the revenues and expenses for the term is due to MassDevelopment not later than the September 30th immediately following each operating season.
- o) Respondent shall submit monthly attendance figures to MassDevelopment.
- p) No capital or significant operational improvements, hole digging (for signs or otherwise) or alteration of buildings shall be undertaken except with prior express written approval of MassDevelopment/Devens Recreation.

[Attachment 2 – 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”) that 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 (attached hereto as Exhibit A) **must be submitted**. The proposal submission **must 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 Bidder/proposer 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.
4. Respondent will provide an explanation of its efforts to diversify its workforce, management, and ownership in order to make its business a more equitable and inclusive workplace.

5. At the time the contract is executed, respondent shall submit its final DBE Participate Schedule to MassDevelopment. Respondent shall cooperate with MassDevelopment and exercise good faith efforts to seek opportunities for Diverse Business Enterprise participation.

Exhibit A

MassDevelopment's Diverse Business Enterprise (DBE) Participation Schedule

[THIS SCHEDULE AND A NARRATIVE MUST BE RETURNED WITH RESPONDENT'S PROPOSAL]

PART 1: CONSULTANT INFORMATION

Business Name and Address: _____

Contact Name and Phone Number: _____

Email Address: _____

Is the Consultant Supplier Diversity Office certified as a DBE:

☐ Yes ☐ No, not a certified DBE

Consultant is a 1) Minority Business Enterprise; 2) Women Business Enterprise; 3) Veteran Business Enterprise; or 4) Service-Disabled Veteran-Owned Business Enterprise (**check the appropriate category(ies) below**):

☐ MBE ☐ WBE ☐ VBE ☐ SDVBE

PART 2: NARRATIVE

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, (4) procedures for the replacement of DBEs if termination is required, and (5) an explanation of efforts to diversify your own staff and leadership and make your business a more equitable and inclusive workplace.

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</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	
	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 3 – Conservation Restriction]

AMENDED AND RESTATED CONSERVATION RESTRICTION
To The Trustees of Reservations

Mirror Lake and Esker Parcel, Devens, Massachusetts

The Massachusetts Development Finance Agency, a Massachusetts body politic and corporate, established and existing under Chapter 23G of the Massachusetts General Laws, successor In interest to the Government Land Bank under Chapter 289 of the Acts of 1998, notice of which was recorded on October 7, 1998, with the Worcester District Registry of Deeds in Book 20505, Page 279, having its principal place of business located at 160 Federal Street, 7th Floor, Boston, Massachusetts 02110, being all the owners of the granted premises and intending hereby to bind themselves and their heirs, successors and assigns, who, together with the said Massachusetts Development Finance Agency, are collectively referred to herein as "Grantor", acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, hereby grants, with quitclaim covenants, to The Trustees of Reservations, a Massachusetts charitable corporation established under Chapter 352 of the Acts of 1891, qualified to hold Conservation Restrictions in accordance with Chapter 184 of the Massachusetts General Laws, and having an address at 572 Essex Street, Beverly, Massachusetts 01915, its successors and permitted assigns ("Grantee"), in perpetuity and exclusively for conservation purposes, the following described Conservation Restriction (hereinafter, the "Conservation Restriction" or the "Restriction") on parcels of land of approximately 207.1 acres located in the Devens Regional Enterprise Zone, Town of Harvard, County of Worcester, Massachusetts, said parcels being described in Exhibits A and B attached ("Premises"). For Grantor's title to the Premises, see the Worcester District Registry of Deeds Book 29378, Page 64 and Book 17907, Page 1.

Relationship to the Original Conservation Restriction: This Restriction amends and restates the Conservation Restriction granted by the Massachusetts Development Finance Agency to The Trustees of Reservations, dated October 16, 2003, approved by the Devens Enterprise Commission, the Joint Boards of Selectmen from the Towns of Harvard, Ayer and Shirley, and the Secretary of Environmental Affairs, and recorded in the Worcester District Registry of Deeds Book 34280, Page 28 ("the 2003 Restriction"), in order to include additional abutting parcels consisting of approximately 21.48 acres as shown as "Areas to be Added" in Exhibits A-I and B-I, and to clarify the rights and obligations of the Grantee and Grantor. Said Conservation Restriction shall henceforth provide in its entirety as hereinafter set forth.

WITNESS THAT

WHEREAS, pursuant to the Defense Base Realignment and Closure Act of 1990 (Public Law 101-510, as amended, and codified at 10 U.S.C. 2687, note), the United States Department of the Army (the "Army") closed the military installation located at Fort Devens, Massachusetts ("Devens"), and made a final disposal decision with respect

Return to:
Lee S. Smith, Esq.
Mass Development
160 Federal St
Boston MA 02110

thereto; and

WHEREAS, pursuant to Chapter 498 of the Massachusetts Acts of 1993, as amended from time to time, the Grantor, was granted the exclusive authority to oversee and implement the civilian reuse of Devens in accordance with a locally approved reuse plan and bylaws; and

WHEREAS, the Army transferred a certain parcel of land commonly referred to as Parcel A-27 located in the Devens Regional Enterprise Zone, Town of Harvard, County of Worcester Massachusetts, to the Grantor by quitclaim deed dated February 11, 2003 recorded with the Worcester District Registry of Deeds in Book 29378, Page 64, and

WHEREAS, the Army transferred a certain parcel of land located in the Devens Regional Enterprise Zone, Town of Harvard, County of Worcester, Massachusetts, to the Grantor by quitclaim deed dated May 9, 1996, recorded with the Middlesex County, Southern District, Registry of Deeds in Book 26317, Page 3, and with the Worcester District Registry of Deeds in Book 17907, Page 1, said parcel commonly referred to as "Parcel I"; and

WHEREAS, portions of Parcel I and Parcel A27, consisting of approximately 154.4 acres of land (the "Mirror Lake Parcel") as shown on a plan attached hereto as Exhibit A-I contain unique qualities; and

WHEREAS, a portion of Parcel I, consisting of approximately 52.7 acres of land (the "Esler Parcel") as shown on a plan attached hereto as Exhibit B-I contains unique qualities; and

WHEREAS, the Grantor has determined that both the Esler Parcel and the Mirror Lake Parcel contain unusual, unique and outstanding qualities and recreational opportunities the protection of which will be in the public interest; and

WHEREAS, the parties hereto desire to expand the size of the Original Conservation Restriction parcels by placing additional land adjacent to the Mirror Lake Parcel and the Esler Parcel under conservation restriction hereby.

NOW THEREFORE, for consideration the receipt and sufficiency of which is hereby acknowledged, the Grantee and the Grantor hereby agrees as follows:

Purpose. This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the Massachusetts General Laws and otherwise by law. Its purpose is to assure that the Premises will be retained in perpetuity predominantly in their natural, scenic, and open condition and to prevent any use of the Premises that will significantly impair or interfere with the conservation values of the Premises. These purposes shall collectively be referred to as the "Conservation Interests".

The public benefits resulting from conservation of the Premises include, without limitation:

The Premises contain unusual, unique or outstanding qualities the protection of which in their predominately natural or open condition will be of benefit to the public. These qualities include

wildlife (native and migrating species), geologic (eskers and kettle-holes), wetlands, cultural (historical features relating to past military activities), educational (scientific and cultural resources), water quality (contributing to the underlying aquifer), aesthetic (vistas and buffer areas) and recreational (hiking, biking, wildlife observation, swimming and exercise) benefits, many of which contribute significantly to adjacent landscapes.

- In addition, the Mirror Lake Parcel may contain an appropriate location for a productive water supply well to serve the Devens community,

- In addition, the Mirror Lake Parcel provides an unusual opportunity for water-based recreation in the Devens community, as well as a black spruce bog containing uncommon and sensitive wetland habitat meriting special attention. This parcel provides protection of the watershed of Mirror Lake (a Great Pond) and also abuts land owned by the United States Fish and Wildlife Service managed as part of the Oxbow National Wildlife Refuge.

- In addition, the Esker Parcel provides an example of a glacial esker and contributes to the water quality of nearby Robbins Pond. One or more potential vernal pools on the parcel provide habitat for certain amphibians and invertebrates, including some that may be rare and/or endangered.

The terms of this Restriction are as follows:

A. Prohibited Uses. Except as provided in the reserved rights set forth in section B below, the Grantor will neither perform nor allow others to perform the following acts and uses, which are expressly prohibited on, above and under the Premises:

- (1) Constructing or placing any temporary or permanent building, tennis court, concession stand, showers, landing strip, mobile home, swimming pool, asphalt or concrete pavement, sign, fence, billboard or other advertising display, antenna, utility pole, tower, conduit, line or other temporary or permanent structure or facility on, above or under the Premises;

- (2) Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit; alteration of the existing natural topography of the Premises.

- (3) Placing, filling, storing or dumping on the Premises of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever or the installation of underground storage tanks;

- (4) Cutting, removing or otherwise destroying trees, grasses or other vegetation;

- (5) Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, or archaeological conservation;

(6) Activities within the zone I of adjacent public water supply wells (as shown on Exhibit A-I) which are not directly related to the public water supply well or which are otherwise prohibited by current applicable water supply protection laws, rules or regulations;

(7) The use, temporary or permanent parking of or storage of motorcycles, motorized trail bikes, snowmobiles and all other motor vehicles except as reasonably necessary in exercising any of the reserved rights in section B below or as necessary for the police, firefighters or other federal, state or local governmental agents to carry out their lawful duties;

(8) Conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises without the written consent of the Grantee; conveyance of the Premises in its entirety shall be permitted, provided that any such conveyance is subject to, and consistent with, the terms of this Conservation Restriction;

(9) Use of the Premises in connection with building or development requirements on this or any other parcel except as may be required to allow the maximum allowable development of previously disturbed areas in the adjacent Salerno Circle area.

(10) Any other use of the Premises or activity thereon that would materially impair the purpose of this Restriction or other significant conservation interests, unless the use or activity is necessary for the preservation of the premises in an emergency and is temporary in duration.

B. Reserved Rights. All acts and uses not prohibited in paragraph A are permissible, provided that such acts and uses do not materially impair the purpose of this Restriction or other significant conservation interests. The following acts and uses, otherwise prohibited in Paragraph A, are permitted, provided that such activities are carried out to minimize environmental impacts:

1. Fishing, swimming, picnicking, boating, hiking, cross-country skiing and other non-motorized outdoor recreational activities that do not materially alter the landscape nor degrade environmental quality.

(2) In accordance with generally accepted forest management practices, selective pruning and cutting to prevent, control or remove hazards, disease or insect damage, fire, or to preserve the present condition of the Premises, including vistas, woods, roads and trails.

(3) Vegetation management of a limited scope along roadsides, trails, and the beach edge to maintain the current condition of the Premises and which does not materially impair the purposes of this Conservation Restriction.

(4) Erection, maintenance, repair and replacement of signs by the Grantor and/or Grantee identifying the Premises, its conservation values or any limitations relating to

public access or use or the Grantee's role in conservation of the Premises with the prior written approval of other party, which approval shall not be unreasonably withheld or delayed

(5) With the prior written approval of Grantor and Grantee, which approval shall not be unreasonably withheld or delayed, the erection, maintenance, repair and replacement of interpretive signs, bulletin boards and displays for use by the public for educational purposes, provided that such signs, bulletin boards and displays are designed and located so as not to have a deleterious impact on the conservation purposes (including scenic values) of this Restriction.

(6) Education and similar activities which do not impair significant Conservation Interests.

(7) With the prior written approval of the Grantee, which approval shall not be unreasonably withheld or delayed, scientific research, measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, or rare or endangered species, and similar activities which do not impair significant Conservation Interests.

(8) Construction, use, and maintenance of trails for passage on foot, horseback, skis or other means not destructive of significant Conservation Interests, including the installation and maintenance of bridges, signs and facilities reasonably necessary to the use of such trails.

(9) Subject to the prior written approval of the Grantee, which approval shall not be unreasonably withheld or delayed, conservation activities to remedy soil erosion, habitat degradation or environmental impairment on the Premises.

(10) On the Mirror Lake Parcel, swimming, fishing, and boating, including electric motor boating, in and adjacent to Mirror Lake shall be permitted.

11. Motorized access to designated locations on Mirror Lake but only for drop-off and pick-up of boats shall be permitted, provided that no new paved or unpaved parking areas shall be permitted except as needed for compliance with the Americans with Disabilities Act Standards.

12. On the Mirror Lake Parcel, with prior written notice to the Grantee, the existing boat launch area and access road may be relocated or replaced by an area of similar size or smaller.

13. On the Mirror Lake Parcel, existing grills, picnic facilities, guard-rail fencing, paving and playground equipment may be maintained, replaced or removed, provided that the area is restored to a natural condition following removal. With prior written approval of the Grantee, existing guard-rail fencing may be replaced with more aesthetic fencing for

safety and visitor management purposes.

14. On the Mirror Lake Parcel, the construction, use, maintenance, repair and replacement of a bathhouse building, including all necessary utilities (telephone, electricity, water and sewage), provided that the existing structures are removed prior to occupancy of the new structures, and the bathhouse building shall not exceed 800 gross square feet of floor area and a height of 25 feet as measured from mean natural grade.

15. On the Mirror Lake Parcel, the construction, use, maintenance, repair and replacement of a pavilion, provided that the pavilion shall not exceed a footprint of 800 square feet and a height of 25 feet as measured from mean natural grade.

16. Passive recreation (walking, hiking, cross country skiing, bicycling) which has no significant Impact on water quality within the zone I's of adjacent public water supply wells;

17. Military training activities on Mirror Lake and access to Mirror Lake for such training activities are permitted, provided that they are conducted in accordance with the reserved rights retained by the United States in the Deed, Lease, and Notice of Lease from the United States of America to the Government Land Bank dated May 9, 1996 (recorded with the Worcester District Registry of Deeds at Book 17907, Page 001 and with the Middlesex County, Southern District, Registry of Deeds at Book 263 1 7, Page 003).

18. On the Mirror Lake Parcel, use, maintenance, repair and replacement of the existing visitor parking area and associated structures substantially in their present condition; and with prior approval of the Grantee, which approval shall not be unreasonably withheld or delayed, the redesign, reconstruction and expansion of the visitor parking area, provided that the total number of spaces provided shall not exceed 125.

19. The use, operation, maintenance, repair, replacement and upgrade of existing utilities within the Premises with rights of ingress and egress thereto, including the right to use and operate such vehicles and equipment necessary to perform the functions permissible hereunder, provided that that the Grantor will use the minimum amount of equipment necessary to accomplish the above, together with the right to trim and cut from time to time trees and underbrush along said lines and to use said utility lines for the above purposes.

20. Subject to the prior written approval of the Grantee, which shall not be unreasonably withheld or delayed, and subject to all applicable permitting and regulatory requirements of the Massachusetts Department of Environmental Protection, the design, construction and operation of a new public water supply well to replace an existing well located in Devens along with necessary connections to the water distribution system. A request for approval of a replacement well must be accompanied by any environmental Impact studies deemed reasonably necessary by Grantee to determine the impact of the activity on the Conservation Interests.

21. The right to receive and/or grant easements for any of the reserved rights or otherwise permitted activities if necessary due to conveyance of the Premises or the facilities thereon (i.e., sale or transfer of utility systems).

The exercise of any right reserved by Grantor under this paragraph B shall be in compliance with the then-current Devens Zoning By-Laws, Open Space Plan, the Wetlands Protection Act (Massachusetts General Laws Chapter 13 1, Section 40) and all other applicable federal, state and local law. The inclusion of any reserved right in this paragraph B requiring a permit from a public agency does not imply that the Grantee or the Commonwealth takes any position as to whether such permit should be issued.

C. Notice and Approval. Whenever notice to or approval by Grantee/Grantor is required under the provisions of Sections A or B, notice shall be given In writing, delivered to the appropriate party at the address provided herein, by Certified Mail, return receipt requested, not less than thirty (30) days prior to the commencement of the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit an informed judgment as to its consistency with the purposes of this Restriction. Where approval is required, it shall be granted or withheld in writing within thirty (30) days of receipt of written request thereof unless approval is granted for a time extension, which approval shall not be unreasonably withheld. Approval shall not be unreasonably withheld, but shall be granted only upon a showing that the proposed activity will not materially impair the purposes of this Restriction. If approval is withheld, the notice shall clearly indicate the reasons therefore, Failure to respond in writing within such 30 days to a request which complies with the requirement of this paragraph shall be deemed to constitute approval of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after the passage of time.

D. Extinguishment.

I Grantee's Receipt of Property Right. The Grantor(s) and the Grantee agree that the donation of this Conservation Restriction gives rise for purposes of this paragraph to a real property right, immediately vested in the Grantee, for the sole purpose of being able to enforce the provisions hereunder.

2. Grantor/Grantee Cooperation Regarding Public Action. Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action.

3. Allocation of Expenses upon Disposition. All reasonable and documented related expenses Incurred as a result of provisions of paragraph D.2 by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be paid to the Grantor.

E. Access. The Restriction hereby conveyed does not grant to Grantee, to the public generally, or to any other person any right to enter upon the Premises except as follows: Grantor hereby grants to the Grantee and its representatives the right to enter the Premises (a) at reasonable times and in a reasonable manner for the purpose of regular monitoring and inspecting the same to determine compliance herewith, including the right to access the Premises over roads and rights of way owned by the Grantor and any rights of way or other access ways now or hereafter available to Grantor for access to the Premises, and (b) after 30 days' prior written notice, to take any and all actions with respect to the Premises as may be necessary or appropriate, with or without order of court, to remedy, abate or otherwise enforce any violation hereof. The Conservation Restriction grants to the Grantee and to the general public an easement to pass and re-pass upon the Premises, for those acts and uses provided for in Section B., but only if such acts or uses do not materially impair the purposes of this Restriction.

F. Grantee's Right to Post Identifying Signage. The Grantee shall have the right to erect and from time to time replace, at appropriate locations on the Premises mutually agreed upon, suitable signs identifying the Grantee and its interest in the Premises, and informing the public of the nature and public benefit of the conservation of the Premises, providing such activities are carried out to minimize environmental impacts.

G. Legal Remedies of Grantee. The rights hereby granted shall include the right to enforce this Restriction by appropriate legal proceedings and to obtain Injunctive and other equitable relief against any violations, including without limitation relief requiring restoration of the Premises to their condition prior to such violation (it being agreed that Grantee will have no adequate remedy at law). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to Grantee. Grantor covenants and agrees to reimburse Grantee for all reasonable costs and expenses (including without limitation reasonable counsel fees) incurred in enforcing this Restriction or in taking reasonable measures to remedy or abate any violation thereof, provided that a violation of this Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred. By its acceptance of this Conservation Restriction, Grantee does not undertake any liability or obligation relating to the condition of the Premises, including with respect to compliance with hazardous materials or other environmental laws and regulations. Any election by the Grantee as to the nature and timing of its actions pursuant to its right to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

H. Acts Beyond Grantor's Control. Nothing contained in this Restriction shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Premises resulting from causes beyond the Grantor's control, including, but not limited to, fire, flood, storm and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes; or the actions of any other person or agency acting with proper authority. The parties to this Conservation Restriction agree that in the event of damage to the Premises from acts beyond the Grantor's control, if it is desirable that the Premises be restored, the parties will cooperate in attempting to restore the Premises if feasible.

I. Duration and Assignability. The burdens of this Restriction shall run with the Premises and shall be enforceable against Grantor in perpetuity. Grantee IS authorized, subject to prior written notice, to record or file any notices or Instruments appropriate to assuring the perpetual enforceability of this Restriction. The Grantor appoints the Grantee its attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor agrees itself to execute any such instruments upon request. The benefits of this Restriction shall be in gross and shall not be assignable by Grantee, except under the following conditions: (i) as a condition of any assignment, Grantee requires that the purpose of this Restriction continue to be carried out; (ii) the assignee, at the time of assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and under Section 32 of Chapter 184 of the Massachusetts General Laws, as an eligible donee to receive this Restriction directly; and (iii) any such assignment complies with the provisions required by Article 97 of the Amendments to the State Constitution, if applicable. In the event an assignee and/or successor IS not immediately named or fails to accept such assignment by the Grantee, the Grantee and the Devens Enterprise Commission ("DEC") or local conservation commission shall act as interim successor of this Restriction.

J. Subsequent Transfers. The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument by which he divests himself of any interest in all or a portion of the Premises, including a leasehold interest, and to notify the Grantee within twenty (20) days of such transfer. Failure to do so shall not impair the validity or enforceability of this Conservation Restriction. Any transfer shall comply with article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

K. Termination of Rights and Obligations. Notwithstanding anything to the contrary contained herein, the rights and obligations under this Restriction of any party holding any interest in the Premises terminate upon transfer of that party's interest, except that liability for acts or omissions occurring prior to transfer, and liability for the transfer itself if the transfer is in violation of this Restriction, shall survive the transfer. Any new owner shall cooperate in the restoration of the Premises or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations.

L. Estoppel Certificates. Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor any document, including an estoppel certificate, that certifies the status of Grantor's compliance with any obligation of Grantor contained in this Restriction, or that otherwise evidences the status of this Restriction, as may reasonably be requested by Grantor.

M. Amendment. If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986 as amended, or Sections 31-33 of Chapter 184 of the General Laws of Massachusetts. Any amendment shall occur only in exceptional circumstances. Any amendment shall be consistent with the purposes

of this Conservation Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of Energy and Environmental Affairs or as required by applicable statutes in effect at the time of the proposed amendment and, if applicable, shall comply with the provisions of Article 97 of the Massachusetts Constitution. Any such amendment shall be recorded in the Worcester County Registry of Deeds.

N. Effective Date. This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and it has been recorded in the Worcester County Registry of Deeds.

O. Recordation. The Grantee shall record this instrument in timely fashion in the Worcester County Registry of Deeds.

P. Notices: Any notice, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage pre-paid, addressed to the party to be notified at the address last known to the notifying party.

Q. Miscellaneous.

- (1) Controlling Law. The interpretation and performance of this Restriction shall be governed by the laws of the Commonwealth of Massachusetts.
- (2) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Restriction shall be liberally construed in favor of the grant to effect the purpose of this Restriction and the policy and purpose of Mass. Gen. Laws Chapter 184, Sections 31-33. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.
- (3) Severability. If any provision of this Restriction shall to any extent be held invalid, the remainder shall not be affected.
- (4) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Restriction and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Restriction, all of which are merged herein.
- (5) Joint Obligation. The obligations Imposed upon the parties hereto by this Restriction shall be joint and several.
- (6) Captions. The captions in this instrument have been inserted solely for convenience of reference. They are not a part of this instrument and shall have no effect upon construction or interpretation.

- (7) Pre-existing rights of the Public. Approval of this Restriction pursuant to M.G.L Chapter 184, Section 32 by any municipal officials and by the Secretary of Environmental Affairs is not to be construed as representing the existence or nonexistence of any pre-existing rights of the public, if any, in and to the Premises. Any such pre-existing rights of the public, if any, are not affected by the granting of this Restriction.
- (8) No Merger. The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction Into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take, title to any part of the premises without having first assigned this Conservation Restriction, In accordance with Paragraph J, above (if necessary to avoid merger), to ensure that merger does not occur.
- (9) Baseline Documentation: In order to establish the present condition of the Premises and the conservation values thereon which are protected by this Conservation Restriction, so as to enable the Grantee to monitor future uses of the Property and to assure compliance with the terms hereof, Grantor and Grantee have prepared an inventory of the relevant features and conditions of the Premises (the "Baseline Documentation Report"), and agree that the same is an accurate representation of the condition of the Premises as of the date of the execution of this Conservation Restriction. Verified originals of the Baseline Documentation Report will be deposited with the Grantor and in the permanent records of the Grantee. If the originals of said Baseline Documentation Report are subsequently destroyed by casualty or other circumstance, other evidence may be offered by the parties to establish the condition of the property as of the date of this Restriction.
- (10) Subordination. Grantor represents, and Grantee relies on Grantor's representation, that the Premises are free from any lien, encumbrance, or other interest by any third party in the Premises, except as set forth in Section B, Paragraph 16 and/or Exhibit A. Any such interests which would disqualify this conveyance for treatment as a qualified conservation contribution in accordance with Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, are subordinated to this Conservation Restriction by subordination documents recorded herewith

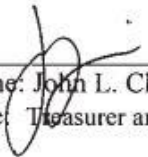
No documentary stamps are required, as this Restriction is a gift.

Executed under seal this 15th day August, of 2011.

GRANTOR

MASSACHUSETTS DEVELOPMENT FINANCE AGENCY

By: 
Name: Martha L. Jones
Title: President and CEO

By: 
Name: John L. Champion
Title: Treasurer and Chief Financial Officer

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

August 15, 2011

On this 15th day of August, 2011, before me, the undersigned notary public, personally appeared Martha L. Jones who proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.


Notary Public
My commission expires: 

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

August 15, 2011

On this 15th day of August, 2011, before me, the undersigned notary public, personally appeared John L. Champion who proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.


Notary Public
My commission expires: 

ACCEPTANCE OF GRANT

The above Conservation Restriction is accepted this 27 day of June, 2011.

THE TRUSTEES OF RESERVATIONS

By: 

Name: Andrew Kendall

Title: President

COMMONWEALTH OF MASSACHUSETTS

Worcester

June 27, 2011

On this 27 day of June, 2011, before me, the undersigned notary public, personally appeared Andrew Kendall who proved to me through satisfactory evidence of identification, which was shown to me personally, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.




Notary Public

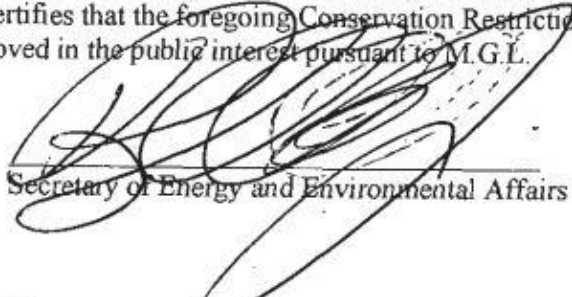
My commission expires:

July 11, 2014

APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
COMMONWEALTH OF MASSACHUSETTS

The undersigned, Secretary of the Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction to The Trustees of Reservations has been approved in the public interest pursuant to M.G.L. Chapter 184, Section 32.

Date: Oct 25, 2011

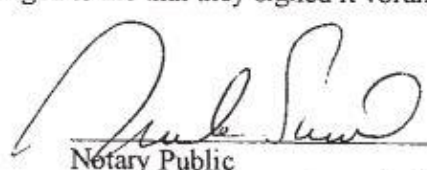

Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

, ss.

Oct 25, 2011

On this 25 day of October, 2011, before me, the undersigned notary public, personally appeared Richard & Sedona, Jr., proved to me through satisfactory evidence of identification, which was personally known to me, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.


Notary Public

My commission expires: 12/15/2011

MUNICIPAL CERTIFICATION

Mirror Lake & Esker Parcels
Patton Road, Devens (Harvard), MA

We, the Devens Enterprise Commission, acting in our role as the Conservation Commission for the Devens Regional Enterprise Zone, (the certifier/holder), hereby certify that the proposed conservation restriction is in the public interest in that:

The Premises contain unusual, unique or outstanding qualities the protection of which in their predominately natural or open condition will be of benefit to the public. These qualities include wildlife (native and migrating species), geologic (eskers and kettle-holes), wetlands, cultural (historical features relating to past military activities), educational (scientific and cultural resources), water quality (contributing to the underlying aquifer), aesthetic (vistas and buffer areas)

and recreational (hiking, biking, wildlife observation, swimming and exercise) benefits, many of which contribute significantly to adjacent landscapes.

- In addition, the Mirror Lake Parcel may contain an appropriate location for a productive water supply well to serve the Devens community.
- In addition, the Mirror Lake Parcel provides an unusual opportunity for water-based recreation in the Devens community, as well as a black spruce bog containing uncommon and sensitive wetland habitat meriting special attention. This parcel provides protection of the watershed of Mirror Lake (a Great Pond) and also abuts land owned by the United States Fish and Wildlife

Service managed as part of the Oxbow National Wildlife Refuge.

- In addition, the Esker Parcel provides an example of a glacial esker and contributes to the water quality of nearby Robbins Pond. One or more potential vernal pools on the parcel provide habitat for certain amphibians and invertebrates, including some that may be rare and/or endangered.

The conservation of the Premises will add to previously protected lands in the Devens Regional Enterprise Zone, enhance the magnitude and effect of Devens Regional Enterprise Zone conservation and protected open space properties, as recommended in the 2008 Devens Open Space and Recreation Plan and contribute to the protection and resource value of the abutting Oxbow National Wildlife Refuge and the nearby Nashua River.

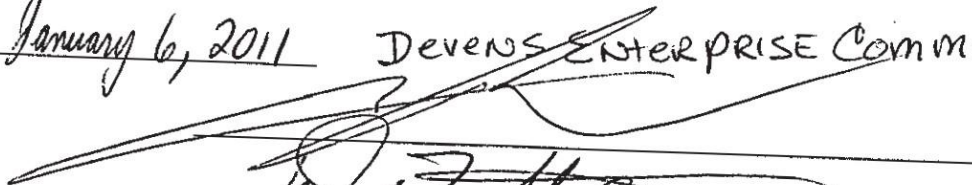
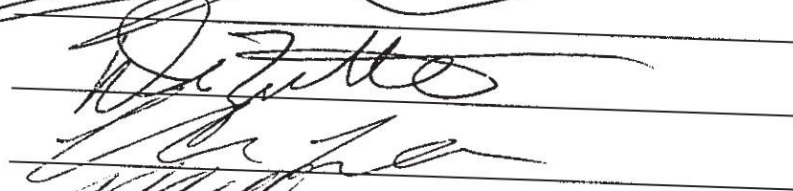
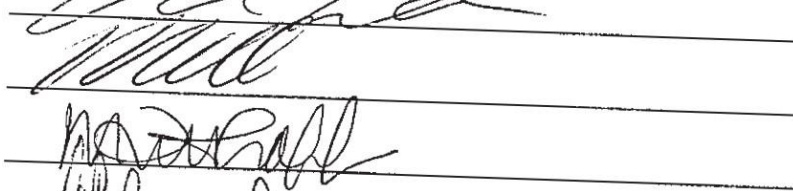
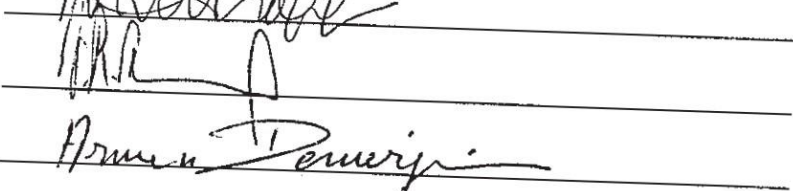
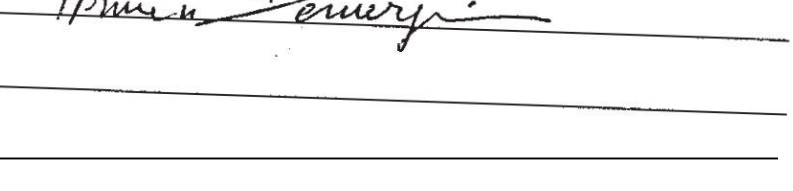
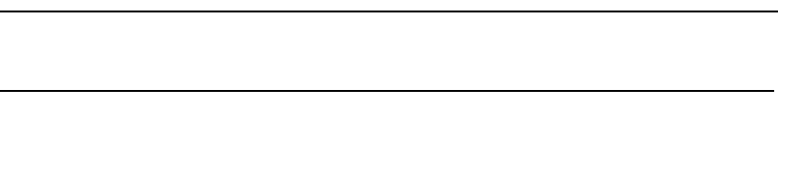






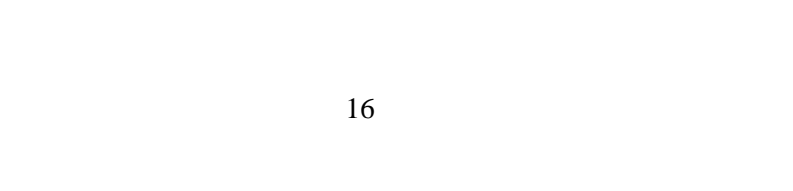

This Conservation Restriction will eliminate uses and activities associated with residential, commercial, or industrial development of the Premises and related adverse effects on the conservation values of the Premises and adjacent lands and will preserve the parcel in it's undisturbed condition. This will help preserve and enhance the water quality in the Nashua River water shed and will enhance the aesthetic value of the surrounding public and private lands.

Date:

January 6, 2011

DEVENS ENTERPRISE COMMISSION

Signed:

[REDACTED]

[REDACTED]

Exhibit A

Mirror Lake Parcel
Legal Description

[REDACTED]

[REDACTED]

[REDACTED]

Legal Description
"Mirror Lake" Conservation Restriction Area

A certain conservation restriction area of land located in the Devens Regional Enterprise Zone, in the Town of Harvard, County of Worcester, Massachusetts situated southerly of Patton Road. Said area of land being shown as "Mirror Lake" Conservation Restriction Area" on a plan entitled, "Plan of Conservation Restriction — Devens Mirror Lake Parcel", prepared for Massachusetts Development Finance Agency and prepared by WSP Sells dated June 22, 2010 and last revised September 8, 2011. Said plan to be recorded in the Worcester County Registry of Deeds in book 891 page 92.

Beginning at a point being the northwestern corner of the area of land described herein. Said point having coordinates of Northing: 3,017,767.16 Easting: 625,553.23; thence,

Along land now or formerly The Government Land Bank (Parcel 1) the following twenty one courses:

S 81° 42' 41" E two hundred thirty four and 66/100 feet (234.66') to a point; thence,

S 14° 30' 55" W three hundred twenty six and 89/100 feet (326.89') to a point; thence, N 82° 51'

02" E seven hundred twenty nine and 10/100 feet (729.10') to a point; thence,

N 68° 24' 38" E nine hundred fifty two and 48/100 feet (952.48') to a point; thence,

Along a non-tangent curve to the right; said arc having a radius of four hundred twenty and 00/100 feet (420.00) and a length of five hundred fifteen and 12/100 feet (515.12'). The chord bearing of the curve is S 59° 19' 19" E and chord length of four hundred eighty three and 44/100 feet (483.44') to a point, thence;

S 67° 13' 48" E five hundred sixty one and 67/100 feet (561.67') to a stone bound with drill hole found; thence,

S 15° 27' 38" W eight hundred one and 42/100 feet (801.42') to a point; thence,

S 37° 30' 40" W two hundred ninety one and 72/100 feet (291.72') to a point; thence,

S 30° 08' 13" W one hundred seventy nine and 34/100 feet (179.34') to a point; thence,

S 23° 04' 34" E one hundred seventy two and 62/100 feet (172.62') to a point; thence,

S 35° 07' 28" W three hundred nineteen and 68/100 feet (319.68') to a point; thence,

S 47° 55' 40" W one hundred fifty four and 09/100 feet (154.09') to a point; thence,

S 08° 44' 25" W one hundred three and 32/100 feet (103.32') to a point; thence,

S 29° 47' 35" W two hundred forty eight and 28/100 feet (248.28') to a point; thence,

N 65° 48' 29" W four hundred fifty eight and 91/100 feet (458.91') to a point; thence, S 85° 53' 39" W two hundred eighty and 73/100 feet (280.73') to a point; thence,

S 36° 17' 01" W two hundred eighty nine and 90/100 feet (289.90') to a point; thence, S 14° 56' 23" E three hundred ninety eight and 79/100 feet (398.79') to a point; thence, S 19° 30' 49" W three hundred thirty six and 61/100 feet (336.61') to a point; thence,

N 75° 36' 05" W four hundred thirty eight and 66/100 feet (438.66') to a point; thence,

S 73° 24' W thirty two and 61/100 feet (32.61') to a point along land now or formerly The Government Land Bank (Lot W-2); thence,

Along a non-tangent curve to the right on land now or formerly The Government Land Bank (Lot W-2); said arc having a radius of four hundred twenty and 00/100 feet (420.00) and a length of eight hundred two and 54/100 feet (802.54') The chord bearing of the curve is N 85° 01' 09" W and chord length of six hundred eighty five and 90/100 feet (685.90') to a stone bound with drill hole to be set on the northerly sideline of Sheridan Road, thence;

Along the northerly sideline of Sheridan Road the following four courses:

Along a curve to the left; said arc having a radius of two thousand three hundred seventy two and 00/100 feet (2,372.00) and a length of three hundred thirty four and 32/100 feet (334.32') to a point, thence;

N 55° 42' 09" W four hundred ninety seven and 93/100 feet (497.93') to a point; thence,

Along a curve to the left; said arc having a radius of one thousand six hundred twenty two and 00/100 feet (1,622.00) and a length of three hundred thirty and 35/100 feet (330.35') to a point, thence;

N 67° 22' 18" W one hundred eighty seven and 27/100 feet (187.27') to a point along land now or formerly Federal Bureau of Prisons (Parcel A) ; thence,

Along land now or formerly Federal Bureau of Prisons (Parcel A) the following thirteen courses:

N 59° 32' 33" E nine hundred twenty four and 33/100 feet (924.33') to a point; thence,

S 86° 51' 39" E three hundred five and 96/100 feet (305.96') to a point; thence,

N $56^{\circ} 55' 05''$ E two hundred seventy seven and $76/100$ feet (277.76') to a point; thence,

N $07^{\circ} 24' 12''$ E one hundred eighty two and $20/100$ feet (182.20') to a point; thence,

N $82^{\circ} 50' 53''$ W fifty six and $70/100$ feet (56.70') to a point; thence,

Along a curve to the right; said arc having a radius of one hundred seventy three and $13/100$ feet (173.13) and a length of three hundred sixty three and $42/100$ feet (363.42') to a point, thence;

N $37^{\circ} 25' 24''$ E seventy five and $58/100$ feet (75.58') to a point; thence,

Along a curve to the left; said arc having a radius of one hundred fourteen and $2 1/100$ feet (14.21') and a length of eighty eight and $03/100$ feet (88.03') to a point, thence; N $06^{\circ} 44' 26''$ W two hundred eight and $56/100$ feet (208.56') to a point; thence, N $06^{\circ} 44' 26''$ W one hundred fifteen and $15/100$ feet (15.15') to a point; thence,

Along a curve to the right; said arc having a radius of five hundred twenty five and $73/100$ feet (525.73) and a length of two hundred eight and $22/100$ feet (208.22') to a point, thence;

N $15^{\circ} 57' 06''$ E three hundred ninety and $90/100$ feet (390.90') to a point; thence,

Along a curve to the left; said arc having a radius of one hundred seventy two and $43/100$ feet (172.43) and a length of one hundred fifty eight and $49/100$ feet (158.49') to the point of beginning.

Said area of land being 6,725,567 S.F. or 154.40 acres of land, more or less.

[REDACTED]

[REDACTED]

[REDACTED]

Exhibit A-I

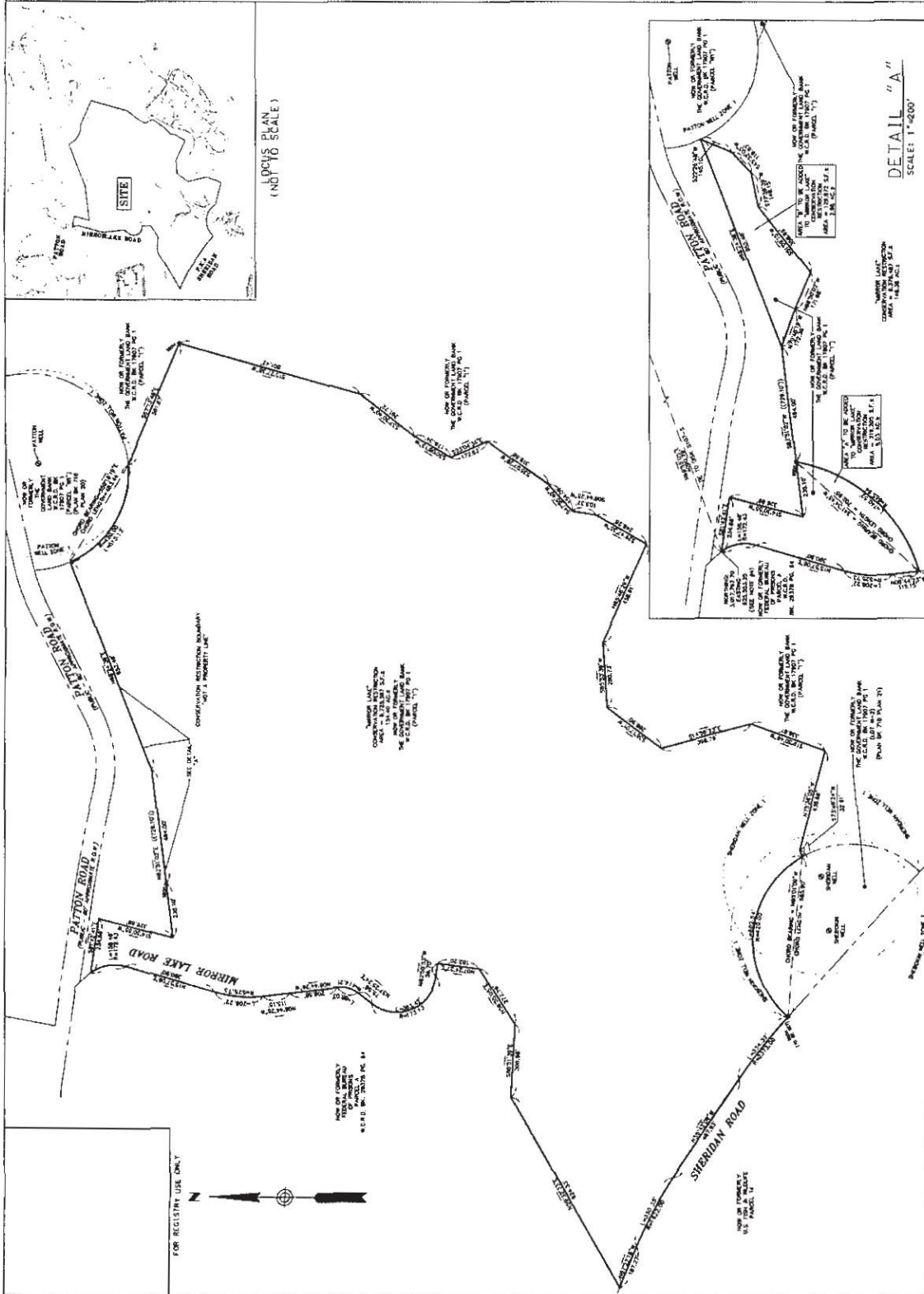
Mirror Lake Parcel
CR Plan

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



NOTES:

1. THIS PLAN WAS PREPARED FROM AN ON-THE-GROUND FIELD SURVEY CONDUCTED BY WSP & SELLS, INC. ON JANUARY 29, 2009. A SITE PLAN, CONVEYANCE SYSTEM, & CONVEYANCE SYSTEM MAP WAS PREPARED BY WSP & SELLS, INC. ON JANUARY 29, 2009. LAST REVISED JAN 1, 2011.
2. MASSACHUSETTS DEPARTMENT OF HIGHWAYS (MDH) IS THE AGENCIES INTEREST IN THE PROJECT. THE PROJECT IS A CONVEYANCE SYSTEM MAP FOR THE DEVEN'S MIRROR LAKE PARCEL, PREPARED BY WSP & SELLS, INC. ON JANUARY 29, 2009. LAST REVISED JAN 1, 2011.
3. THE PROJECT IS A CONVEYANCE SYSTEM MAP FOR THE DEVEN'S MIRROR LAKE PARCEL, PREPARED BY WSP & SELLS, INC. ON JANUARY 29, 2009. LAST REVISED JAN 1, 2011.
4. THE PROJECT IS A CONVEYANCE SYSTEM MAP FOR THE DEVEN'S MIRROR LAKE PARCEL, PREPARED BY WSP & SELLS, INC. ON JANUARY 29, 2009. LAST REVISED JAN 1, 2011.
5. THE PURPOSE OF THIS PLAN IS TO OBTAIN A CONVEYANCE SYSTEM MAP FOR THE DEVEN'S MIRROR LAKE PARCEL, PREPARED BY WSP & SELLS, INC. ON JANUARY 29, 2009. LAST REVISED JAN 1, 2011.

REFERENCES:

1. PLAN OF LAND CONVEYED TO THE DEVEN'S MIRROR LAKE PARCEL BY THE SECRETARY OF THE ARMY, PREPARED BY WSP & SELLS, INC. ON JANUARY 29, 2009. LAST REVISED JAN 1, 2011.
2. MASSACHUSETTS DEPARTMENT OF HIGHWAYS (MDH) IS THE AGENCIES INTEREST IN THE PROJECT. THE PROJECT IS A CONVEYANCE SYSTEM MAP FOR THE DEVEN'S MIRROR LAKE PARCEL, PREPARED BY WSP & SELLS, INC. ON JANUARY 29, 2009. LAST REVISED JAN 1, 2011.
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LEGEND

- WELL
- STONE BOUND (1000)
- CONCRETE BOUND (1000)
- STONE BOUND TO BE SET
- EXISTING CONVEYANCE RESTRICTION
- ADJUTANT LIT LINE
- AREA TO BE ADDED
- ZONE 1 AREA

CERTIFICATION:

TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, INFORMATION AND BELIEF, THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT. I HAVE NOT BEEN AWARE OF ANY FACTS OR CIRCUMSTANCES WHICH MIGHT CAUSE THE INFORMATION CONTAINED HEREIN TO BE MISLEADING OR INACCURATE. I HAVE NOT BEEN AWARE OF ANY FACTS OR CIRCUMSTANCES WHICH MIGHT CAUSE THE INFORMATION CONTAINED HEREIN TO BE MISLEADING OR INACCURATE. I HAVE NOT BEEN AWARE OF ANY FACTS OR CIRCUMSTANCES WHICH MIGHT CAUSE THE INFORMATION CONTAINED HEREIN TO BE MISLEADING OR INACCURATE.

DEVEN'S MIRROR LAKE PARCEL

155 MAIN DUNSTABLE RD.
SUITE 120 & 125
603-500-7000

WSP & SELLS
Transportation & Infrastructure
155 Main Dunstable Rd. Suite 120 & 125 - Dunstable, MA 01830 - 603-500-7000
www.wspandsells.com

HARVARD (DEVENS), MASSACHUSETTS
PLAN OF CONSERVATION RESTRICTION
DEVENS MIRROR LAKE PARCEL

DATE: 6/27/2010 SCALE: 1" = 200' UNC. 01396-049-1.00M SHEET 1 OF 1

REV.	DATE	DESCRIPTION	BY
REV. 1	09/08/2011	UPDATED REFERENCE COORDINATES	ES
REV. 2	11/22/2010	ADDED WELL LOCATIONS & ZONE 1 AREA	GH

[REDACTED]

[REDACTED]

[REDACTED]

Exhibit B

Esker Parcel Legal Description

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Legal Description
"Esker" Conservation Restriction Area

A certain conservation restriction area of land located in the Devens Regional Enterprise Zone, in the Town of Harvard, County of Worcester, Massachusetts situated easterly and southerly of land now or formerly of the United States of America, Department of the Army (Parcel "D"). Said area of land being shown as "Esker" Conservation Restriction Area" on a plan entitled, "Plan of Conservation Restriction — Devens Esker Parcel", prepared for Massachusetts Development Finance Agency and prepared by WSP Sells dated February 13, 2009 and last revised September 8, 2011. Said plan to be recorded in the Worcester County Registry of Deeds. *Bk 891 Page 93*

Beginning at a point located on a stone bound with drill hole to be set on land now or formerly of The Department of the Army "Parcel D". Said point being the northwestern corner of the area of land described herein, at a point having coordinates of Northing: 3,020,561.66 Easting: 625,994.68; thence,

Along land now or formerly The Department of the Army Parcel "D"
 S $39^{\circ} 53' 39''$ E seven hundred eighty two and 08/100 feet (782.08') to a point at the corner of land now or formerly of The Government Land Bank, "Parcel I" ; thence,

Along land now or formerly The Government Land Bank (Parcel I) the following nineteen courses:

N $89^{\circ} 04' 29''$ E one hundred fifty nine and 72/100 feet (159.72') to a stone bound with drill hole to be set; thence,

S $13^{\circ} 25' 53''$ E three hundred sixty four and 68/100 feet (364.68') to a point; thence,

S $30^{\circ} 56' 55''$ W ninety and 23/100 feet (90.23') to a point; thence,

S $56^{\circ} 03' 27''$ W two hundred thirty three and 59/100 feet (233.59') to a stone bound with drill hole found; thence,

N $88^{\circ} 40' 31''$ W one hundred eleven and 60/100 feet (111.60') to a point; thence,

S $09^{\circ} 27' 30''$ W ninety one and 52/100 feet (91.52') to a stone bound with drill hole found; thence,

S $50^{\circ} 07' 18''$ W four hundred and 79/100 feet (400.79') to a stone bound with drill hole found; thence,

S $14^{\circ} 36' 01''$ W two hundred twenty six and 16/100 feet (226.16') to a point; thence,

S $35^{\circ} 29' 59''$ W one hundred eighty nine and 27/100 feet (189.27') to a point; thence,

S $46^{\circ} 54' 47''$ W one hundred twenty seven and 08/100 feet (127.08') to a point; thence,

S $17^{\circ} 02' 36''$ W seventy and 17/100 feet (70.17') to a point; thence,

N $90^{\circ} 00' 00''$ W two hundred ninety four and 13/100 feet (294.13') to a point; thence,

N $90^{\circ} 00' 00''$ W sixty eight and 30/100 feet (68.30') to a point; thence,

N $20^{\circ} 20' 07''$ W two hundred ten and 96/100 feet (210.96') to a point; thence,

N $62^{\circ} 44' 00''$ W four hundred forty eight and 42/100 feet (448.42') to a point; thence,

N $72^{\circ} 51' 22''$ W two hundred sixty one and 52/100 feet (261.52') to a point; thence,

N $49^{\circ} 26' 55''$ W eighty two and 64/100 feet (82.64') to a point; thence,

N $41^{\circ} 34' 37''$ W one hundred sixteen and 36/100 feet (116.36') to a point; thence,

N $06^{\circ} 10' 13''$ E two hundred forty six and 46/100 feet (246.46') to a point along land now or formerly Department of the Army Parcel "D"; thence,

Northerly along land now or formerly Department of the Army Parcel "D" the following five courses:

N $70^{\circ} 29' 00''$ E one hundred sixty and 26/100 feet (160.26') to a concrete bound with drill hole found; thence,

N $48^{\circ} 28' 13''$ E three hundred eighty and 12/100 feet (380.12') to a point; thence,

N $48^{\circ} 28' 13''$ E four hundred seventy four and 70/100 feet (474.70') to a point; thence,

N $48^{\circ} 28' 13''$ E two hundred twenty nine and 14/100 feet (229.14') to a point; thence,

N $48^{\circ} 28' 13''$ E five hundred ninety two and 96/100 feet (592.96') to a stone bound with drill hole to be set at the point of beginning.

Said area of land being 2,295,497 S.F. or 52.70 acres of land, more or less.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Exhibit B-1

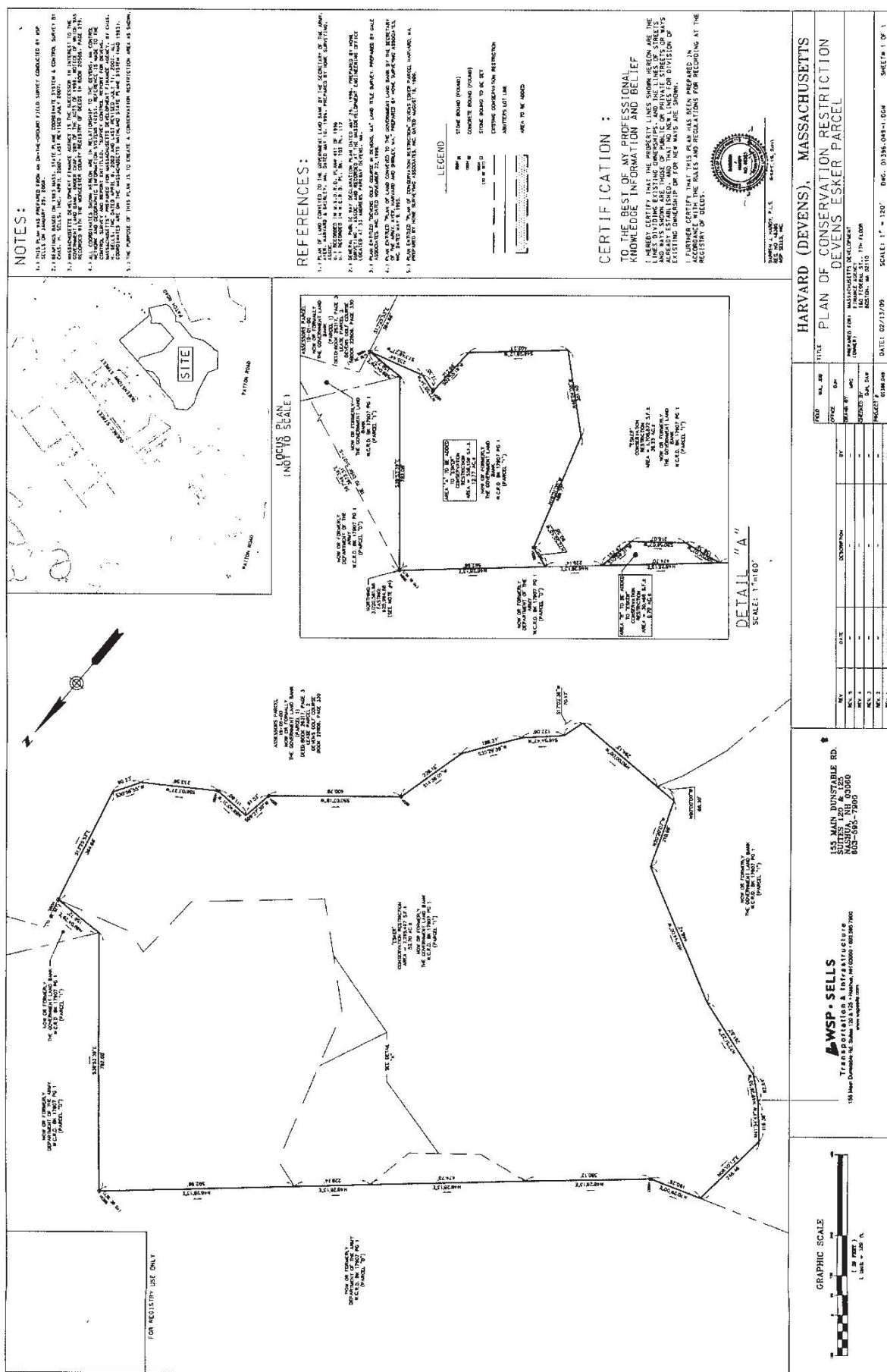
Esker Parcel
CR Plan

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



ATTEST: WORC. Anthony J. Vlgliotti, Register