

MEMORANDUM OF AGREEMENT TEMPLATE DOCUMENT

This Memorandum of Agreement (“Agreement”) is made as of this ____ day of _____, 20__ (the “Effective Date”), between **MASSACHUSETTS DEVELOPMENT FINANCE AGENCY**, a Massachusetts body politic and corporate established and existing under Chapter 23G of the Massachusetts General Laws, having its principal place of business at 99 High Street, Boston, Massachusetts 02110 (“MassDevelopment”), and [**NAME OF MUNICIPALITY**], a Massachusetts municipal corporation having its principal place of business at [**Street, Municipality, State Zip**], (the “Municipality”). MassDevelopment and the Municipality may be individually referred to as a “Party” and collectively referred to as the “Parties.”

RECITALS

WHEREAS, the Board of Directors of MassDevelopment have identified certain strategic initiatives for which MassDevelopment shall expend internal staff and financial resources to advance; and

WHEREAS, one strategic initiative concerns the provision of planning and other economic development services to selected Municipalities of the Commonwealth of Massachusetts; and

WHEREAS, MassDevelopment has adopted a set of criteria to apply in determining whether to assist a community with its planning and/or economic development efforts, which include the ability to:

- Attract or retain jobs,
- Create housing opportunities,
- Result in the redevelopment of urban, blighted, and/or surplus public property,
- Help economically disadvantaged communities,
- Advance smart growth,
- Advance planning and pre-development activities to a point where the private sector is compelled to invest in the project area; and

WHEREAS, MassDevelopment has determined that the Municipality’s efforts to advance job creation and economic development in the Municipality would benefit from certain planning and/or economic development services from MassDevelopment; and

WHEREAS, MassDevelopment has determined [**LIST OF ELIGIBILITY CRITERIA**]; and

WHEREAS, this Agreement is entered into for the purpose of assisting the Municipality in [**PROJECT DESCRIPTION**] to promote job creation and economic development (the “Project”) within the Municipality at [**ADDRESS**](the “Site”); and

WHEREAS, the Municipality and MassDevelopment agree that MassDevelopment may provide certain services in connection with the Project as further described in **Exhibit A** attached

hereto and incorporated herein (the “Services”); and

WHEREAS, the Municipality and MassDevelopment intend by this Agreement to establish clearly articulated responsibilities expressly agreed upon by both Parties.

NOW, THEREFORE, in consideration of the mutual promises set forth herein and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto hereby agree as follows:

TERMS

1. Mutual Obligations. The Parties agree and acknowledge the following:

(a) Neither MassDevelopment nor the Municipality can guarantee any particular outcome regarding the Services, the Site, the Project, or the future related-municipal actions concerning the Site. This Agreement and the conditions and terms set forth herein are strictly preliminary in nature. Nonetheless, the obligations hereunder shall be performed diligently, reasonably, and in good faith.

(b) The Services shall be performed in a timely and expeditious manner, with a goal of completion by [DATE]. However, failure to meet this deadline shall not subject either of the Parties to damages under this Agreement, and shall not constitute an Event of Default (defined below).

(c) The Services may be modified, but only with the prior written consent of both Parties. MassDevelopment may withhold consent to such modification in its sole and absolute discretion.

2. MassDevelopment Obligations.

(a) MassDevelopment shall contribute, toward completion of the Services, funds not to exceed [DOLLAR AMOUNT] (the “MassDevelopment Funds”), which shall be provided pursuant to Section 5 below.

(b) MassDevelopment, with prior approval from the Municipality, shall retain consultants to implement the Services, which include, but are not limited to the consultants referenced in Exhibit A (the “Consultant Team”). Additionally, MassDevelopment shall manage and oversee the performance of the Consultant Team. MassDevelopment will make good-faith efforts to attend any materially important meetings or Site visits with the Municipality and the Consultant Team.

3. Municipality Obligations.

(a) With respect to the Project, the Municipality shall cooperate with MassDevelopment and the Consultant Team, including, without limitation, providing access to information, access to the Site, and facilitating meetings with Municipality officials and

stakeholder community groups as needed.

(b) The Municipality shall provide reasonable in-kind services related to the Services, including staff time, organization of public meetings, and a location in which to hold said public meetings.

(c) The Municipality shall provide all reasonable cooperation, access, consents, data, and such other assistance as may be necessary to facilitate the diligent performance of the Services, MassDevelopment's oversight of the Consultant Team, and any other requirements reasonably related to the Project. The Municipality shall promptly review and comment upon the Consultant Team's work product upon request by MassDevelopment or the Consultant Team. The Municipality shall provide MassDevelopment and the Consultant Team with a single point of contact (the "Point Person") who shall be responsible for: (1) providing any and all assistance as may be reasonably required; (2) providing access to the Site; (3) providing Project-related documentation, regardless of form, and any other information reasonably requested; (4) attendance, facilitation, and sponsorship of meetings, hearings, and other such events as may be reasonably requested, including, without limitation, any necessary advertising and coordination of meetings; (5) working with, and seeking the cooperation of, private-property owners; (6) working with third-party consultants or other parties providing the Services or other services pursuant to this Agreement; and (7) promptly reviewing and commenting on any Project-related deliverables, as may be reasonably necessary. Notwithstanding anything to the contrary in the foregoing sentence, those records which are voluminous may be made available to the Consultant Team in the Municipality's offices during normal business hours.

The Point Person for the Municipality shall be [NAME, TITLE]. The Municipality may change its Point Person by giving MassDevelopment prior notice thereof; such notice shall be in writing and shall be deemed given when delivered by hand or when received via overnight delivery by a recognized overnight delivery service with confirmation of delivery and shall be addressed to MassDevelopment pursuant to Section 13 below.

(d) The Municipality shall participate in Project-related education or training programs, which may be in on-line or webinar format ("Webinars"), at MassDevelopment's reasonable request. The Municipality shall make reasonable efforts to comply with the practices and methods described in the Webinars.

(e) Reporting.

[IF SITE/BUILDING SPECIFIC PROJECT WITH REPAYMENT REQUIRED]

For five (5) years from the Effective Date, or upon satisfaction of the repayment obligation set forth in Section 6 below, whichever is earlier, the Municipality shall provide annual update reports to MassDevelopment that include Site goals, updates, timelines, and Net Proceeds. The purpose of the update reports is to advise MassDevelopment of the status of the Site and the anticipated timeline for reimbursement of MassDevelopment Funds, as applicable. The annual reports are due on or before July 31 of each calendar year.

[IF NO REPAYMENT REQUIRED]

For five (5) years from the Effective Date, the Municipality shall provide annual update

reports to MassDevelopment that include Site goals, updates, and timelines. The purpose of the update reports is to advise MassDevelopment of the status of the Site. The annual reports are due on or before July 31 of each calendar year.

(f) **[NOT APPLICABLE IF REPAYMENT IS NOT REQUIRED.]** The Municipality shall be obligated to repay MassDevelopment for the aggregate amount of MassDevelopment Funds expended for the Project pursuant to Section 6 below.

4. Third-Party Contracts. In carrying out the performance of the Services, MassDevelopment may contract or subcontract with third parties, including the Consultant Team, in MassDevelopment's sole discretion and without the need to obtain prior approval from the Municipality, but consistent with any applicable procurement laws, rules, or regulations, for goods and services, planning, design services, and other consulting services for all activities that MassDevelopment deems necessary or desirable in the course of performing the Services. Unless otherwise agreed by the Municipality, the Municipality shall not have any liability under such contracts between MassDevelopment and third Parties.

5. Contribution of Costs.

(a) Both Parties shall contribute to the cost of the Services, as provided below.

(b) MassDevelopment shall contribute to the cost of the Services an amount not to exceed the MassDevelopment Funds, as defined above. In no event shall MassDevelopment be expected to contribute more than the MassDevelopment Funds. The participation in this Agreement by MassDevelopment does not include or imply any obligation for further action or additional contribution with respect to the Site, the Services, the Project, the Municipality or otherwise.

(c) The Municipality shall contribute an in-kind donation of staff time, as well as the hosting of stakeholder meetings, all related directly to the Site and/or Project. **[MUNICIPAL CONTRIBUTION OF FUNDS] Within sixty (60) days of the Effective Date, the Municipality shall pay to MassDevelopment [_____ Dollars (\$_____)] (the "Municipality Funds")**, which shall be used by MassDevelopment to pay for a portion of the Services. **If, upon completion of the Project, MassDevelopment has not spent the Municipality Funds on the Services, the remaining Municipality Funds shall be retained by MassDevelopment to be used for any purpose whatsoever, but shall be credited against any existing repayment obligation described in Section 6 below, and said credit shall be deemed a repayment in the amount of the remaining Municipality Funds made as of the date of the Project's completion.]**

(d) The MassDevelopment Funds shall be held by MassDevelopment and used to pay the Consultant Team for performance of the Services.

(e) Any and all MassDevelopment Funds remaining after the expiration of the Term (defined below) or termination of this Agreement shall be the sole property of MassDevelopment and shall in no event be deemed owed to the Municipality.

6. **Repayment of MassDevelopment Funds [APPLICABLE IF MASSDEVELOPMENT FUNDS BENEFIT A SPECIFIC SITE OR BUILDING]**

(a) *Repayment Obligation.* If the Site, or any portion thereof, is sold, conveyed, gifted, demised, ground leased, leased, otherwise transferred, or refinanced, and as a result, the Municipality receives funds that exceed the aggregate amount necessary for repayment of existing monetary liens, mortgage loans, and other debt on the Project and all of the costs incurred by them in the acquisition, development, ownership, sale, conveyance, gift, demise, ground lease, or other transfer, or refinancing of the Site, or any portion of the Site (the “Net Proceeds”), then the Municipality shall reimburse MassDevelopment the full amount of the Net Proceeds up to the amount of the MassDevelopment Funds disbursed, plus an additional 10% of that amount for MassDevelopment staff time (the “Repayment Amount”), subject to the discount schedule described in subsection (b) below.

(b) *Discount Schedule.* The repayment obligation described in subsection (a) above shall be reduced if the Municipality causes the repayment in accordance with one of the below requirements:

(i) If the Municipality repays to MassDevelopment 25% of the Repayment Amount within one (1) year of the Effective Date, the remainder of the Repayment Amount shall be forgiven and the repayment obligation shall be deemed satisfied.

(ii) If the Municipality repays to MassDevelopment 50% of the Repayment Amount within three (3) years of the Effective Date, the remainder of the Repayment Amount shall be forgiven and the repayment obligation shall be deemed fully satisfied.

(c) *Transaction Notice.* Not less than (30) business days before the Municipality’s sale, conveyance, gift, demise, ground lease, lease, or other transfer, or refinancing of the Site, or any portion thereof, the Municipality shall notify MassDevelopment in writing of the terms of the potential transaction, including, without limitation, the sale price or rental amount of the term of the lease, any transaction costs incurred since the Municipality’s most recent update report, as provided below, the amount of Net Proceeds estimated to be paid to MassDevelopment resulting from such transaction, and if applicable the schedule of payments for the Net Proceeds due to MassDevelopment pursuant to a lease.

(d) *Payment Timing.* At the closing of any sale, conveyance, gift, demise, ground lease, lease, other transfer, or refinancing of the Site, or any portion thereof, through which the Municipality receives Net Proceeds, the Municipality shall reimburse MassDevelopment the Repayment Amount via direct and prompt payment to MassDevelopment in the manner then-prescribed by MassDevelopment in writing. In the event the Municipality leases the Site, or any portion thereof, under which lease periodic payments are due to the Municipality over the term of the lease, the Municipality shall pay one-half of the rent received from each rent payment, via direct payment to MassDevelopment, in the manner then-prescribed by MassDevelopment in writing, within five (5) business days from the date the Municipality receives such rent payments, until the repayment obligation described in subsection (a) above has been fully satisfied.

(e) *Survival.* This Section 6 shall expire 30 years from the Effective Date, **but shall survive any earlier termination or expiration of this Agreement.**

7. Term; Delivery Date for Services. This Agreement shall commence upon the Effective Date and shall expire upon the earlier of completion of the Services or on [DATE], except for those provisions which explicitly or by their nature shall survive termination of the other provisions herein (the "Term").

8. Ownership and Use of Materials. All materials produced by MassDevelopment or the Consultant Team, including, without limitation, disks, plans, specifications, reports, manuals, pamphlets and articles, shall be the property of MassDevelopment, and shall appropriately designate MassDevelopment as the owner. MassDevelopment shall make these materials available to the Municipality for purposes related to the Project, as reasonably determined by MassDevelopment.

9. Compliance with Laws. In connection with this Agreement, each of the Municipality and MassDevelopment shall, and shall require all of their employees, contractors, and agents to, comply with all federal, state, and local laws, regulations, rules, ordinances and orders of any kind which are applicable to any performance under this Agreement.

10. MassDevelopment Liability. In no event shall MassDevelopment be held liable with respect to: (i) any contract entered into with a third party by the Municipality, whether relating to the subject matter of this Agreement or otherwise; (ii) any recommendations, proposals, suggestions, comments, or actions taken or omitted in connection with this Agreement; or (iii) any work performed by any contractor or consultant as part of the Services provided under this Agreement.

11. Assignability. The Parties hereto shall not assign any rights or interests arising under this Agreement or make any person a third-party beneficiary of this Agreement, without obtaining, on each occasion, the prior written consent of the other Party, which consent may be withheld for any reason or for no reason, in such Party's sole and absolute discretion.

12. Nature of Relationship. The parties acknowledge that MassDevelopment, as an independent contractor with the Municipality, is providing assistance solely for public purposes as set forth herein, and nothing herein shall create an agency relationship, partnership, joint venture, or other ownership relationship between MassDevelopment, any third-party contractor, or the Municipality. MassDevelopment's participation in this Agreement in no way obligates any further action or financial assistance by MassDevelopment. Furthermore, the Parties understand and agree that the ultimate feasibility of the Project, or any other project arising out of this Agreement, or any other agreement, is not being guaranteed or assured by MassDevelopment.

13. Notices. All notices shall be in writing and shall be deemed given when delivered by hand or when deposited in the United States Postal Service via certified or registered first class mail, return receipt requested, or via overnight delivery with confirmation of process and shall be addressed as follows:

To MassDevelopment: Massachusetts Development Finance Agency
99 High Street, 11th Floor
Boston, Massachusetts 02110
ATTN: Executive Vice President—Real Estate

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

To the Municipality: [INSERT]

With a copy to: [INSERT]

Any Party may change any of its notification information for the purpose of this Section 13 by giving the other Party prior written notice thereof in accordance herewith.

14. Default and Termination. This Agreement may be terminated:

- (a) At any time, upon the mutual written agreement of the Parties.
- (b) At the option of either Party, for any reason or no reason, upon no less than sixty (60) days' written notice to the other Party.
- (c) By either Party, upon Default (defined below) of the other Party.
- (d) Definitions.
 - (i) "Default" means the failure to cure an Event of Default (defined below) after being given a Notice of Default (defined below) and the expiration of the Cure Period (defined below).
 - (ii) "Event of Default" means a Party's failure to perform or observe any of its obligations under this Agreement, including but not limited to failing to provide the other Party with material information required to perform the Services.
 - (iii) "Notice of Default" means notice given from one Party to the other, setting forth in reasonable detail the Event of Default and identifying the applicable provisions of this Agreement. Upon being given such notice, the Party who sent the notice shall have no further obligation to the receiving Party, until and unless the Event of Default is cured, except for those obligations set forth in Section 6, above.

- (iv) “Cure Period” means thirty (30) days after a Notice of Default is given, or the additional time, if any, that is reasonably necessary to promptly and diligently cure such Event of Default.

15. Exculpation. There shall be absolutely no personal liability on the part of MassDevelopment, its employees, directors, agents, contractors, subcontractors, invitees or guests, or on the part of the Municipality or any of its employees, agents, contractors, subcontractors, invitees or guests for monetary damages with respect to terms, covenants, and conditions of this Agreement. This exculpation of personal liability is to be absolute and without exception.

16. Publicity. Each of the Parties agree not to make, issue, or cause to be made, press releases or other publicity concerning this Agreement or the Project without the prior consent of the other Party. MassDevelopment may withhold such consent in its sole and absolute discretion.

17. Governing Law. The Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts. Any actions arising out of this Agreement shall be governed by the laws of Massachusetts, and shall be brought and maintained in a State or federal court in Massachusetts, which shall have exclusive jurisdiction thereof.

18. Entire Agreement. This Agreement supersedes all earlier letters, conversations, purchase orders, proposals, memoranda and other written and oral communications, and it contains all the terms agreed on by the Parties, with respect to the subject matter hereof, and no changes in, additions to, or subtractions from, this Agreement will be binding on the Parties unless in writing and signed by MassDevelopment and the Municipality.

19. Limitation of Rights. Nothing contained herein shall be construed to confer upon any person other than the Parties hereto any rights, remedies, privileges, benefits or causes of action to any extent whatsoever.

20. Authority to Enter Agreement. Each signatory to this Agreement represents and warrants to the other that it has full power, and has taken all necessary action, to authorize the execution, delivery and performance of this Agreement, and this Agreement constitutes the legal, valid and binding obligation of such Party enforceable in accordance with its terms.

21. Severability. If any term or provision of this Agreement or the application thereof to any circumstance shall be invalid or unenforceable the remainder of this Agreement or the application thereof to any circumstance other than that to which it is invalid or unenforceable shall not be affected thereby.

22. Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which 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.

23. Dispute Resolution. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this Agreement. Any dispute that arises under or with respect to this Agreement that cannot be resolved in the daily management and implementation of this Agreement shall in the first instance be the subject of informal negotiations between the [*Municipal Official*] and the Executive Vice President-Real Estate for MassDevelopment, who shall use their respective best efforts to resolve such dispute. In the event that the Parties cannot resolve a dispute by such informal negotiations, the Parties agree to submit the dispute to mediation. Within forty five (45) days following the date on which the dispute was first identified, the Parties shall propose and agree upon a neutral and otherwise qualified mediator. In the event that the Parties fail to agree upon a mediator, the Parties shall request the American Arbitration Association to appoint a mediator. The mediation shall be conducted in accordance with the commercial arbitration rules of the American Arbitration Association. The Parties shall be responsible for equal shares of the costs associated with locating and obtaining the services of a mediator (the "Mediation Costs"). The period for mediation shall commence upon the appointment of the mediator and shall not exceed thirty (30) days, unless such time period is modified by mutual agreement. In the event that (i) the actual Mediation Costs exceed \$ 5,000, or (ii) the period for mediation exceeds the thirty (30) day period specified above, then either Party shall have the option to withdraw from all mediation proceedings without penalty, and the Parties may seek redress in whatever forum may be available to them under applicable law. Notwithstanding the foregoing, in the event that the nature of the Parties' dispute is such that one or both Parties are likely to suffer irreparable harm, such Party or Parties may seek immediate judicial relief without resorting to the mediation process described above.

*[THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK.
THE NEXT PAGE IS THE SIGNATURE PAGE.]*

This Memorandum of Agreement is hereby EXECUTED by the Parties hereto.

Approved as to form:

**MASSACHUSETTS DEVELOPMENT
FINANCE AGENCY**

Agency Counsel

By: _____
Name:
Title:

[Signature page of Memorandum of Agreement between Massachusetts Development Finance Agency and [MUNICIPALITY NAME]]

This Memorandum of Agreement is hereby EXECUTED by the Parties hereto.

[MUNICIPALITY NAME]

By: _____

Name:

Title:

[Signature page of Memorandum of Agreement between Massachusetts Development Finance Agency and [MUNICIPALITY NAME]]

EXHIBIT A
SCOPE OF SERVICES