

**COMMONWEALTH SITE READINESS PROGRAM
TECHNICAL ASSISTANCE TO PUBLIC ENTITY
GRANT AGREEMENT**

THIS GRANT AGREEMENT (the “Agreement”) dated this _____ day of _____, 202_ (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 [MUNICIPALITY], a [_____], having a mailing address of [ADDRESS] (the “Recipient”).

RECITALS

WHEREAS, the Site Readiness Program (“the Program”) was created pursuant to *An Act Relative to Job Creation and Workforce Development, 2016 Mass. Acts c. 219, § 2A* (the “Enabling Legislation”) to fund site assembly, site assessment, predevelopment permitting and other predevelopment marketing activities that enhance a site’s readiness for commercial, industrial or mixed use development; and

WHEREAS, MassDevelopment’s Board of Directors voted to approve guidelines for the Program on January 12, 2017 and has subsequently amended and ratified those guidelines (the “Guidelines”); and

WHEREAS, on October 14, 2021, MassDevelopment’s Board of directors approved a Program award on behalf of the Recipient; and

WHEREAS, the Recipient desires to improve site readiness at [ADDRESS] (the “Site”); and

WHEREAS, this Agreement is entered into for the public purpose, consistent with the Enabling Legislation and the Program’s guidelines, of assisting the Recipient to complete the site assembly, site assessment, predevelopment permitting and other predevelopment and marketing activities that enhance a site’s readiness for commercial, industrial or mixed-use development for the construction of [DESCRIPTION OF WORK], which is expected to accommodate [DESCRIPTION OF USES, SF OF SPACE TO BE BUILT IF APPLICABLE], to improve site readiness at the Site (the “Project”); and

WHEREAS, the Recipient and MassDevelopment agree that the Recipient will contract with its consultants (collectively, the “Consultant Team”) to provide certain services in connection with the Project as further described in **Exhibit A** attached hereto and made part hereof (the “Services”); and

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

TERMS

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:

1. MassDevelopment's Obligations.

(a) MassDevelopment shall allocate and expend up to [\$_____] in the delivery of the Services, exclusive of the expenses and costs of its staff time (the "MassDevelopment Funds"). The amount of the MassDevelopment Funds actually disbursed that have not already been repaid to MassDevelopment are referred to as the "Disbursed Funds".

2. Recipient's Obligations.

(a) The Recipient shall retain, manage, and oversee the performance by the Consultant Team of the Services.

(b) Recipient hereby represents, warrants and covenants that:

- (i) The Disbursed Funds shall be used exclusively for the Services;
- (ii) The Recipient has the legal power and authority to enter into and perform this Agreement and any related documents in which it is named as a party, to fulfill its obligations set forth herein and therein and to carry out the transactions contemplated hereby and thereby;
- (iii) This Agreement and any other documents delivered to MassDevelopment by the Recipient pursuant hereto are the legal, valid and binding obligations of the Recipient, enforceable against the Recipient in accordance with their respective terms. There are no actions, suits, proceedings, adverse findings or investigations pending or, to the knowledge of the Recipient, threatened, anticipated or contemplated (nor, to the knowledge of the Recipient, is there any basis therefor) against or affecting the Recipient before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that call into question the validity of this Agreement or any action taken or to be taken in connection with the transactions contemplated hereby;
- (iv) Each of the representations and warranties of this section shall survive the termination of this Agreement and the Recipient shall indemnify and hold harmless MassDevelopment and any members, officers, employees, or directors thereof (the "Indemnitees") from and against all loss, expense or liability directly or indirectly resulting from the breach thereof, including, without limitation, the cost of defending or settling any claim arising therefrom against the Indemnitees.

(c) The Recipient shall reimburse MassDevelopment for the Disbursed Funds as follows:

(i) If the Site or any portion thereof is sold, conveyed, gifted, demised, ground leased, otherwise transferred, or refinanced, and as a result, Recipient, or any affiliate, 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, and sale of the Site or of the portion of the Site transferred (the "Net Proceeds"), then Recipient shall reimburse MassDevelopment the full amount of the Net Proceeds, in an amount up to the Disbursed Funds. In the event of a ground lease or other stream of income derived from the Site, Recipient shall provide MassDevelopment with relevant agreements and a cash flow statement and MassDevelopment and Recipient shall agree on repayment terms regarding Disbursed Funds taking into account the project debt of the Recipient. This Section 2(c)(i) shall only apply from the Effective Date established above through 11:59 P.M. on the date 30 years thereafter, but shall survive the earlier expiration or termination of this Agreement.

(d) The Recipient hereby promises to repay the Disbursed Funds in accordance with the foregoing terms and conditions. Recipient further agrees to execute and enter into any and all documents that reaffirm the terms and conditions of this section, as reasonably requested by MassDevelopment, and as relates to the Disbursed Funds and Recipient's obligations hereunder. Attached hereto at **Exhibit B** is a commitment letter from the Recipient agreeing to the foregoing reimbursement obligations.

(e) The Recipient shall meet with MassDevelopment staff and/or its consultants on an as needed basis, during the period when the Services are being performed or as MassDevelopment reasonably requests thereafter. The Recipient's Project Manager (as identified in Section 4) shall assist MassDevelopment and its consultants in accessing the assistance of other municipal agencies or staff, as necessary. The Recipient shall work diligently with MassDevelopment in coordinating and resolving any issues that may arise in connection with the Project.

(f) For five years from the Effective Date, the Recipient shall provide biannual update reports to MassDevelopment that include Project goals, updates, timelines, Net Proceeds, and Economic Benefit to the Municipality; the biannual reports are due on or before June 1 and December 31 of each calendar year. After the expiration of five years from the Effective Date, the Recipient shall provide annual reports, with the same information referenced above, to MassDevelopment, on December 31 of each year, until the earlier of: (i) the date MassDevelopment has been fully reimbursed for the Disbursed Funds or (ii) the date the Agreement has expired.

3. Contracts with Third Parties. 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)" means a minority-owned business enterprise ("MBE"), women-owned business enterprise ("WBE"), veteran-owned business enterprise ("VBE"), or service-disabled veteran-owned business enterprise ("SDVOBE"). The Agency strongly encourages the use of Diverse Business Enterprises as consultants, subconsultants, and suppliers. Recipient and/or its general

consultant/contractor shall exercise good-faith efforts to seek opportunities for Diverse Business Enterprise participation.

4. Project Personnel. Both MassDevelopment and the Recipient have designated the following persons to serve as Project Manager to support effective communication between MassDevelopment and the Recipient and to report on the Project's progress:

For MassDevelopment:

Name: _____
Telephone: _____
Email: _____

For Recipient:

Name: _____
Telephone: _____
Email: _____

5. Materials. MassDevelopment shall be timely provided copies of all reports and information including, without limitation, disks, plans, specifications, reports, manuals, pamphlets, and articles ("Documentary Materials").

6. Term. The term of this Agreement shall commence upon the Effective Date established above and shall expire at 11:59 P.M. on the date that is thirty (30) years from the date of this Agreement.

7. Survival. The provisions of this Agreement, which expressly or by their nature survive expiration or termination of this Agreement, will remain in effect after the termination of this Agreement.

8. Compliance with Laws. In connection with this Agreement, MassDevelopment shall, and shall require all of its 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 MassDevelopment's performance of the Services.

9. MassDevelopment Liability.

(a) In no event shall MassDevelopment be held liable with respect to:

- (i) Any contract entered into with a third party by the Recipient 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, unless MassDevelopment is grossly negligent; or
- (iii) Any work performed by any contractor as part of the Services provided under this Agreement.

(b) MassDevelopment shall have no obligation to perform, or have performed, any work described in the Services with internal staff resources, nor shall MassDevelopment be obliged to incur any costs if the Recipient shall unreasonably fail to provide MassDevelopment

with material information necessary to deliver the work described in the Services.

(c) MassDevelopment shall have no obligation to perform, or have performed, any particular work described in the Services if it determines, in its sole discretion, that doing so is beyond the scope of this Agreement or is otherwise inadvisable or impractical.

10. Assignability. The parties agree not to 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 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.

11. Nature of Relationship; Independent Contractor.

(a) The parties acknowledge that MassDevelopment is providing services solely for public purposes as set forth herein and that no agency, partnership, joint venture or other ownership relationship is intended to be or is created by this Agreement, and, except as is expressly set forth herein, MassDevelopment shall act as an independent contractor pursuant to this Agreement.

(b) MassDevelopment's participation in this Agreement in no way obligates any further action or financial assistance by MassDevelopment with respect to the Project or the Recipient.

(c) MassDevelopment understands that it has no authority to make or imply any commitments, which are binding upon the Recipient.

(d) The parties understand and agree that the ultimate feasibility or economic viability of the Project, or any other project arising out of this Agreement is not being guaranteed or assured by MassDevelopment or the Recipient. Notwithstanding the foregoing, the parties acknowledge they have a special relationship with a duty of loyalty and a duty to act in good faith toward each other.

12. 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
Attention: Ed Starzec, Director of Land Planning
and Permitting

With a copy to:

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

To the Recipient: [_____]
[_____]
[_____]
[_____]

Either party may change any of its notification information for the purpose of this section by giving the other party prior notice thereof in accordance herewith.

13. Termination.

(a) This Agreement may be terminated:

- (i) At any time, upon the mutual written agreement of MassDevelopment and the Recipient;
(ii) At the option of MassDevelopment, for any reason or no reason, upon no less than 60-days' written notice to the Recipient; or
(iii) By either MassDevelopment or the Recipient, upon the other party's failure to perform or observe any of its obligations under this Agreement (a "Default"), after a period of 30 days or the additional time, if any, that is reasonably necessary to promptly and diligently cure such failure, after such defaulting party receives notice from the non-Defaulting party setting forth in reasonable detail the nature and extent of the failure and identifying the applicable provisions of this Agreement.

(b) Upon notice of a Default under this Agreement, the non-defaulting party shall have no further obligation to the defaulting party under this Agreement until and unless the default is cured.

(c) Upon an event of Default under this Agreement beyond any applicable grace period, this Agreement shall be terminated. In the event of such termination, MassDevelopment shall pay the Consultant Team for any unpaid amounts of their respective invoiced services. Termination of this Agreement for any reason shall not release either party from any accrued liability to the other party. A party's right to terminate this Agreement as provided herein shall be without prejudice to any other rights provided to it by law or in equity.

14. 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 parties.

15. Exculpation. There shall be absolutely no personal liability on the part of MassDevelopment or the Recipient or on the part of any of its/their employees, agents, 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. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to its conflict-of-law rules.

17. 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 Recipient.

18. 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.

19. 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.

20. 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.

21. Counterparts: Electronic Execution. This Agreement may be executed in any number of counterparts and by different parties and separate counterparts, each of which when so executed and delivered, shall be deemed an original, and all of which, when taken 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" signature in a 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. Delivery of an executed counterpart of a signature page to this Agreement by electronic means shall be as effective as delivery of a manually executed counterpart of this Assignment. Any party delivering an executed counterpart of this Agreement by electronic means also shall deliver a manually executed counterpart of this Agreement, but the failure to deliver a manually executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement.

22. 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 Chairman of the Board of Directors for PEDDA 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 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 30 days, unless such time period is modified by mutual agreement. In the event that (i) the actual Mediation Costs exceed \$5,000 per party, or (ii) the period for mediation exceeds the 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.

[Signatures on following page]

EXECUTED as a sealed instrument as of the Effective Date.

**MASSACHUSETTS DEVELOPMENT
FINANCE AGENCY**

Approved as to Form
Agency Counsel

By: _____
Name:
Title:

[RECIPIENT]

By: _____
Name:
Title:

[Signature page [Name of Recipient], Commonwealth Site Readiness Program, Technical Assistance to Public Entity Grant Agreement]

SAMPLE

EXHIBIT A

SCOPE OF SERVICES

SAMPLE

EXHIBIT B

CONTENT OF COMMITMENT LETTER

[MUNICIPALITY], Massachusetts municipality, having a mailing address at [ADDRESS] (the “Municipality”) wishes to express support to [description of project and anticipated impact]. It is the opinion of the Municipality that assistance through the Commonwealth Site Readiness Program, administered by the Massachusetts Development Finance Agency (“MassDevelopment”), would prepare the site for market and provide significant public benefits, described below.

In signing this letter of support, the Municipality agrees to comply with the applicable terms of the grant agreement issued by MassDevelopment dated [DATE]. Specifically, the Municipality commits to obtain a vote of the City Council in the form substantially similar to the **Sample Vote** attached hereto.

The signatory to this letter represents and warrants to MassDevelopment that it has full power, and has taken all necessary action, to authorize the execution, delivery, and performance of this letter, and this letter constitutes the legal, valid, and binding obligation of such party enforceable in accordance with its terms.

[MUNICIPALITY]

By: _____
Name:
Title:

EXHIBIT B-1

SAMPLE VOTE

**[SAMPLE -- ACTUAL VOTE WILL DIFFER BASED ON MUNICIPALITY'S BYLAWS
AND CIRCUMSTANCES OF THE GRANT]**

RESOLUTION IN SUPPORT OF THE SITE READINESS GRANT FOR

WHEREAS, the land located at [ADDRESS] (the "Site") has been deemed a site suitable for the site assessment program administered by the Massachusetts Development Finance Agency ("MassDevelopment");

WHEREAS, [NAME OF MUNICIPALITY], a Massachusetts municipal corporation having a mailing address at [STREET, MUNICIPALITY, STATE ZIP] ("Municipality") has been awarded a site readiness grant in the amount of \$ _____ from MassDevelopment (the "Grant") for readiness assistance related to the Site (the "Project");

WHEREAS, the recoverable grant was formalized through a grant agreement dated [DATE] entered into by and between the Municipality and MassDevelopment (the "Grant Agreement"); and

WHEREAS, the Municipality has agreed to repay the Grant under certain circumstances.

NOW, THEREFORE, the [NAME OF MUNICIPAL AUTHORITY] votes as follows:

If the Site or any portion thereof is sold, conveyed, gifted, demised, ground leased, or otherwise transferred, or refinanced, and as a result of said transaction, the Recipient 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, and sale of the Site or of the portion of the Site transferred (the "Net Proceeds"), then Recipient shall reimburse MassDevelopment the full amount of the Net Proceeds up to the amount of the Grant that has been disbursed and has not already been repaid to MassDevelopment (the "Disbursed Funds").

[INSERT NECESSARY CERTIFICATIONS]